

California Mandated Employer Bereavement Policy

Erica Rosasco, McKeague Rosasco

On Sept. 29, Gov. Gavin Newsom signed Assembly Bill 1949, creating protected bereavement leave for employees.

Existing Law

Currently, under the California Family Rights Act (CFRA), it is unlawful for an employer to refuse grant an eligible employee's request to take up to 12 work-weeks of unpaid protected leave during any 12-month period for family care and medical leave. Eligible employers can seek mediation under the small employer family leave mediation pilot program provided by the Civil Rights Department for alleged violations of specified family care and medical leave provisions.

New Law

On Jan. 1, AB 1949 will expand employee rights provided under the CFRA by making it unlawful for employers with five or more employees to refuse to grant a request by an employee to take up to five days of bereavement leave on the death of a family member. For the purposes of AB 1949, a family member is defined as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.

An employee is eligible for bereavement leave once they have been employed for at least 30 days before the commencement of leave. Bereavement days need not be taken consecutively. However, the leave must be taken within three months of the date of the death of the family member. The bereavement policy established by AB 1949 is required to be taken pursuant to an employer's existing bereavement policy.

- **No Bereavement Policy:** If an employer does not have a bereavement policy, the bereavement leave may be unpaid, except that an employee may use accrued paid leave. Accrued paid leave includes any vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.
- **Bereavement Policy of Paid Leave Less than Five Days:** If an employer has a bereavement policy that provides less than five days of paid bereavement leave, the employee is entitled to no less than five days total of bereavement leave which includes the paid leave under the employer's current policy and the remaining days unpaid, except that an employee may use accrued paid leave.
- **Bereavement Policy of Unpaid Leave Less than Five Days:** If an employer's existing bereavement policy provides for less than five days of unpaid bereavement leave, the employee is entitled to no less than five days of unpaid leave, except that an employee may use accrued paid leave.

Employers may request that the employee provide documentation of the employee's family member's death within 30 days of the first day of leave.

Eligible documentation includes, but is not limited to, a death certificate, a published obituary, or written verification of death from a funeral home, religious institution, or government agency. Employers are required to maintain the confidentiality of the employee requesting bereavement leave and their accompanying documentation for any bereavement leave request.

Under AB 1949, it is unlawful for an employer to refuse to hire, discharge, demote, fine, suspend, expel, or discriminate against an individual because the individual exercised their right to bereavement leave or the individual provided information to their own, or another's, bereavement leave in an inquiry or proceeding related to their rights under the bill. It is also unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, an employee's right to bereavement leave.

Lastly, AB 1949 expands the Civil Rights Department's small employer family leave mediation pilot program to include mediation for employers with between 5 to 19 employees for alleged violations of its provisions.

If you have any questions about emergency condition prohibitions or new bereavement leave mandates, contact McKague Rosasco LLP at 916-672-6552 or info@mckaguerosasco.com.