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Employment Update: Three Important New Laws Posted September 23, 2020

It is that time of year and new laws are surfacing. Below are three important ones to keep your eye on. We will provide more detailed information in our annual update at the end of the year. Meanwhile, feel free to contact us with any questions. This communication is intended for informational purposes only and is not intended to be legal advice.

1. Expansion of the California Family Rights Act (CFRA) - SB 1383

- Starting January 1, 2021 employers with five or more employees will be subject to CFRA.
- The new law makes other important expansions to CFRA, including broadening covered family members to include grandparent, grandchild, domestic partner and sibling, removing limitations on leave for spouses that work for the same employer, and removing the ability of an employer to refuse reinstatement to the 10% highest paid salaried employees.
- This is a dramatic change for all employers with less than 50 employees (and at least 5). If you fall within this category know that you will have increased responsibilities to your employees, including notice requirements beginning January 1.
- We will provide detailed information before the end of the year.

2. Workers' Compensation Notice Requirement Related to COVID-19 – SB 1159

- This law goes into effect immediately as an urgency legislation.
- Codifies Governor Newsom's Executive Order (N-62-20) allowing employees who work outside the home to collect workers' compensation benefits for illness or injury associated with contracting COVID-19 by creating a presumption that the illness was work-related if the employee tests positive within 14 days of working at their place of employment. The presumption covered illness contracted between March 19 and July 5.
- Extends the presumption from July 6 until January 1, 2023 for certain classes of workers.
- The law is retroactive to July 6 and gives employers with five or more employees thirty business days from enactment of the law to provide their workers' compensation carrier with the following information about any employees who tested positive for COVID-19 from July 6 to Sept 17:
 - That an employee tested positive (without identifying information);
 - The date of the test;
 - The place where the employee worked during the 14 days prior to the test; and
 - The highest number of employees who reported to work at the employee's workplace between July 6 and Sept 17.
 - (Although not required, if you know the employee contracted COVID-19 outside of work, we recommend including that information)
- In addition, starting Sept 17, employers must report this information to their carrier within three business days of learning that an employee tested positive for COVID-19. The last bullet point is changed to in the 45 days preceding the date of the employee's positive test.
- Employers may be subject to civil penalties of up to \$10,000 for intentionally submitting false or misleading information, or for failing to report required information.

- For more questions regarding this law, the DIR's FAQ page can be accessed here: <https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>.
- Additionally, **AB 685** will go into effect January 1, 2021. It will require employers to notify employees of potential exposure to COVID-19 within one business day. We will provide more information on this before the end of the year.

3. Expansion of CA COVID-19 Supplemental Paid Sick Leave – AB 1867

- Effective September 19, expands the law that previously only applied to food sector workers to apply to all private employers with 500 or more employees nationwide, as well as to health care providers and emergency responders.
- Requires covered employers to provide up to 80 hours of supplemental paid sick leave for COVID-19 related reasons to all employees that are unable to work due to one of the following reasons:
 - The covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
 - The covered worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
 - The covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.
- Employers that already provide supplemental paid leave for the same COVID-19-related purposes are not required to provide the supplemental paid sick leave in addition to what they already provide, as long as the paid leave already provided is equal to or greater than what is required under the statute.
- Employers are required to post a notice of the supplemental paid sick leave for employees. A copy of the poster for non-food sector employers with 500 or more employees can be accessed here: <https://www.dir.ca.gov/dlse/COVID-19-Non-Food-Sector-Employees-poster.pdf>.
- The supplemental paid sick leave is available until December 31, 2020.
- For more questions regarding this new law, the DIR's FAQ page can be accessed here: <https://www.dir.ca.gov/dlse/FAQ-for-PSL.html>.
- This law is consistent with the City of Santa Rosa and the County of Sonoma's recent regulations.

REMINDERS:

Employers with less than 500 employees are still subject to the obligations under the FFCRA to provide emergency paid sick leave and emergency FMLA leave for COVID-19 related reasons, which is effective until December 31, 2020. A summary of employer obligations under the FFCRA can be found on the DOL employee notice poster here:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

All orders continue to state that if workers can work remotely from home they should, even if you are an essential business.

Testing: Although the CDC keeps changing its mind on testing protocols, as an employer you are never "required" to test. You are allowed to test. You can require employees to be tested to start, continue or return to work and you can ask those that have been exposed to COVID outside of work to be tested. Testing and quarantining continues to be a big issue and we encourage you to seek legal advice if you are navigating these situations.