



California's New Parent Leave Act – 20 is now the New 50!

By Lauraine Bifulco

Effective Date – January 1, 2018

On October 12, 2017 Governor Brown signed into law Senate Bill 63 called the New Parent Leave Act (NPLA) which, effective January 1, 2018, will require employers with between 20-49 employees to provide up to 12 weeks of unpaid parental leave, in a 12-month period, to bond with a new child within one year of the child's birth, adoption, or foster care placement.

Prior to the enactment of this law, only employers with 50 or more employees were required to provide baby bonding leave under both the Federal Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA). Employers with less than 50 employees could provide this type of baby bonding leave on a discretionary, non-protected basis, or not at all.

Similar to FMLA and CFRA, in order for an employee to be eligible for New Parent Leave, the employee must have worked for the employer for at least 12 months and have at least 1250 hours of service in the last 12 months. There is also a requirement that the employee work at a facility that has at least 20 employees within a 75-mile radius.

Unlike FMLA and CFRA, the New Parent Leave Act does not provide for time off for the employee's own serious health condition or to care for a family member with a serious health condition.

However, keep in mind that any employer with 5 or more employees is also covered under California's Pregnancy Disability Leave (PDL) law, which provides female employees with the right to accommodations which include up to 17 1/3 weeks (or 88 days) of medically necessary leave for pregnancy, birth, or related medical issues. As such a pregnant employee may take up to 17 1/3 weeks off for medically necessary pregnancy leave and then, if eligible under the New Parent Leave Act, request an additional 12 weeks of baby bonding leave - and all this time off is considered protected.

The following describes several of the other provisions of the law:

- Employers may not refuse to hire, discharge, demote, suspend, discriminate, or take any other adverse action against an employee for exercising his/her right to parental leave or from testifying regarding their or another employee's right to parental leave.

- New Parent Leave may commence anytime within one year of the child’s birth, adoption, or placement in foster care.
- Employees must be allowed to use any available sick, vacation, or other paid time off during a New Parent Leave.
- Employers must maintain and pay for the employee’s health insurance benefits at the same level and conditions as would have existed if the employee had not gone out on leave. The employer may recover the cost of the employer paid premiums if the employee fails to return following the expiration of the employee’s leave as long as the reason the employee was unable to return is not due to the continuation, recurrence, or onset of the employee’s own serious health condition or other circumstance beyond the employee’s control.
- If both parents work for the same covered employer, the company does not have to authorize more than 12 weeks of combined leave for the two parents, nor is the employer required to provide simultaneous leave for both parents, but it may do so at its own discretion.
- Failure to provide an eligible employee with 12 weeks of protected leave, to return the employee to the same or comparable position, or take any adverse action in relationship to an employee’s request for New Parent Leave is considered an “unlawful employment practice” and could make the employer subject to a lawsuit.
- The New Parent Leave does not apply to employees who are eligible for baby bonding leave under FMLA or CFRA.

The law explicitly says that it applies to employees who are “not subject to” FMLA/CFRA. Some industry experts are posing the question as to whether or not employees who work for an FMLA/CFRA covered employer (50 or more employees) but who work at a worksite with less than 50 employees within a 75-mile radius would be entitled to NPL. Our interpretation is that while these employees work for a covered employer, they themselves would not be eligible for FMLA or CFRA and as such we believe they would be eligible for NPL. We are certain more clarification will come with time.

Additionally, the law states that to the extent existing CFRA regulations are within the scope of and not inconsistent with NPLA, those regulations will apply to governing the NPLA. This is an important detail not to be overlooked as it will provide a tremendous amount of guidance to employers about how to administer these new leaves with regards to things like notification, certifications, return to work, etc.

To review a redline version of the New Parent Leave Act, click here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB63

Checklist for Employers:

- ✓ Get familiar with the details of the NPLA;
- ✓ Implement or amend existing leave of absence written notices, forms, letters;
- ✓ Update your existing employee handbook;
- ✓ Train your managers about the NPL so that they can identify when an employee may be entitled to leave and notify HR and senior management;
- ✓ Discuss how NPL will be tracked within payroll;
- ✓ Call Vantaggio if you have any questions or need help!

If you are feeling overwhelmed, you are not alone! At Vantaggio, we are here to help analyze your current policies and practices and make recommendations about getting into compliance in a way that best meets your company's specific business needs.

Vantaggio HR has developed a Leave Administration Kit with easy to follow instructions, customizable letters for all types of leave (including FMLA, CFRA, PDL, Workers Comp, Military Spousal Leave, and the new NPLA), and ready-to-use leave request and Medical Certification forms. All for the attractive price of \$495.00.

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