

California's New Law Grants Employee Leave for Reproductive Loss

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A new California law, Senate Bill 848 ("S.B. 848"), which takes effect on January 1, 2024, will require businesses to grant eligible employees up to five days off following a qualifying reproductive loss event. This new law is part of a growing interest in worker leave for reproductive loss.

S.B. 848 guarantees time off from work following a miscarriage or other reproductive loss. As drafted, the term "reproductive loss event" is defined to mean a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. The law does not specifically include abortion in the list of qualifying events.

The new law prohibits employers from retaliating against employees who take time off after a reproductive loss event. Employers will also be required to maintain employee confidentiality relating to reproductive loss leave. The new law does not require that leave be paid.

The law provides that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period.

California is the second state with a law explicitly granting reproductive loss leave for private-sector workers. Illinois enacted a similar law last year. The Illinois law covers miscarriages but not failed adoptions or in-vitro fertilization. Utah has established similar time-off policies for state or local government employees.

Although California is not the first state to enact reproductive loss leave, the enactment of S.B. 848 likely moves the trend forward, making it more likely that similar laws will be enacted in other jurisdictions. Last year, under the California Fair Employment and Housing Act, California similarly became one of the few states to require private-sector employers to grant bereavement leave for employees when a family member dies. Colorado, Illinois, Oregon, and Washington also mandate some form of bereavement leave in the private sector.

Although leave laws explicitly aimed at reproductive losses have recently developed, existing state and federal laws may cover some of the same circumstances.

The federal Family and Medical Leave Act (FMLA) ensures time off while a worker is recovering from their own serious medical condition or caring for a family member who is recovering. Miscarriages and stillbirths could be covered by FMLA. Further, an employee who suffers a miscarriage potentially could take leave as a disability accommodation under the Pregnant Workers Fairness Act.

The difference between existing laws and California's new law is that the new law guarantees time off for incidents that typically are not qualifying events under existing laws but fall under the California law's definition of "reproductive loss."

California employers should review their policies and prepare to comply with S.B. 848, as an increased number of employees may choose to use this leave. Our Labor and Employment practice group is available to assist employers with questions regarding compliance with S.B. 848.

To learn how these developments can affect your business, contact a member of Benesch's Labor & Employment Practice Group.

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