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## Client Alert

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### **CALIFORNIA EXPANDS EMPLOYER LEAVE OBLIGATIONS UNDER THE CFRA**

Governor Newsom recently enacted legislation that significantly expands employee leave rights under the California Family Rights Act (CFRA). Currently, the CFRA requires employers to provide eligible employees with up to 12 weeks of unpaid leave per year due to the employees' own illness, to care for a seriously ill family member (limited to a child, parent, spouse or domestic partner), or to bond with a new child. To be eligible, employees must have worked for the employer for at least one year and have provided at least 1,250 hours of service within the past year. Covered employers have at least 50 employees working within a 75-mile radius.

*The new law, which takes effect on January 1, 2021, will now apply to California employers with as few as five employees.* Employees must still meet eligibility requirements of 12 months of service and 1,250 hours worked during the previous 12 months to qualify. However, the 75-mile requirement has been eliminated. In addition, the qualifying reasons for leave have been expanded to include caring for grandparents, grandchildren and siblings. Moreover, the definition of "child" has been expanded to cover all adult children, regardless of whether they are dependent, as well as children of a domestic partner.

Where both parents of a child are employed by the same employer, that employer will need to grant leave to each employee. Currently, the employer is only required to provide these employees with a combined total of 12 weeks of leave. The new legislation also deletes language that previously authorized an employer to refuse reinstatement of salaried employees among the highest 10% of the employees and where the refusal was necessary to prevent substantial and grievous economic injury.

Employers with 50 or more employees who were already covered by the CFRA must now face the possibility that covered employees could be eligible for 24 weeks of leave. This is because the new legislation expands the definition of "family member" beyond the definition that is contained within the federal companion to the CFRA, the Family Medical Leave Act (FMLA). As a result, employers could find themselves granting 12 weeks of leave under the new CFRA, followed by a second 12-week leave under the FMLA where applicable.

To address the unique challenges to small employers who are not currently covered by the CFRA, a companion piece of new legislation provides for a "small employer family leave mediation pilot program." This program will apply to employers with 5-19 employees and allows such employers to request mediation through the Department of Fair Employment & Housing (DFEH) within 30 days of receipt of a DFEH right-to-sue letter. Employees may not file their civil claims in court until after the mediation. The pilot program remains in effect until January 1, 2024.

Employers with five or more employees should become familiar with the revised leave law and incorporate it into their company policies. Those who are already covered by the CFRA should ensure that their leave policies are updated to be consistent with their expanded obligations under the new legislation.