

***First Wednesday — A Monthly Discussion of Employment Law
Issues and Other Hot Topics for Management***



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California's Paid Family Leave Program Takes Effect in 2004

In addition to existing state and federal laws covering family leave, California employers need to heed the new paid family leave law. Beginning January 1, 2004, employees will pay additional tax withholding to cover the cost of the paid family leave program signed into California law in 2002. The employee tax will take the form of an increase in the State Disability Insurance (SDI) withholding rate, to include an additional 0.08% for the initial cost of paid family leave benefits. Note that paid family leave is unlike SDI, which is a form of insurance for the employee's own illness or injury. The qualifying event for a paid family leave is, generally, the need to care for a seriously ill family member or bond with a new child, similar to the California and federal laws already covering unpaid family leaves.

Paid family leave will be funded by employee contributions and administered by the State. Employers will not pay any additional tax to cover this program. Employers are, however, required to deduct the paid family leave contribution from wages of all employees who are covered by SDI (or a voluntary plan in lieu of SDI).

Because existing law provides up to twelve weeks of unpaid family leave, the new law did not create a new right to a leave of absence; instead, the new law created the right of an employee to receive, from the State, partial wage replacement for up to

six weeks while on family leave. Under the new law, benefits are not payable for any leave taken before July 1, 2004. For leave taken after July 1, a claim form will need to be completed and filed with the Employment Development Department (EDD).

The amount of the benefit will be approximately 55% of lost wages, up to a maximum of \$728 per week. Before benefits are payable, there is a seven-day waiting period for each claim. Employers can establish a policy requiring that employees use up to two weeks of earned but unused vacation before receiving any paid family leave benefit. The first week of that vacation is then applied to the waiting period.

Due to the additional tax withholding, employers should immediately notify their employees of the paid family leave program. EDD has published a paid family leave brochure that must be given to all employees hired after January 1, 2004, and to employees taking a leave of absence after July 1, 2004. These pamphlets can be obtained by calling EDD at 1-877-BE-THERE. The EDD website is www.edd.ca.gov.

The duration of paid leave benefits is up to six weeks during any 12-month period. Thus, an employee who has taken the full six weeks of paid leave may be eligible for an additional six weeks of unpaid leave, depending on whether the existing California (CFRA) and federal (FMLA) family leave laws apply.

A significant difference between the existing family leave laws (CFRA and FMLA) and the new paid family leave program is that all employers are subject to the paid family leave program, whereas only employers with 50 or more employees at a work site are covered by CFRA and FMLA. Also, any employee who pays into SDI is eligible for paid family leave, whereas CFRA and FMLA provide a 12-month waiting period and minimum number of hours worked (1,250 hours worked in the previous 12-month period) before the employee is eligible for leave. Thus, a part-timer hired in June 2004 will become eligible for paid family leave starting in July 2004.

This paid family leave program is the first of its kind in the United States. Some details are not yet finalized because, as with other regulations covering new labor laws, Governor Schwarzenegger has placed the proposed EDD regulations on hold pending review by his administration. The proposed regulations are posted on the EDD website. Final regulations are expected by July 2004. In the meantime, while some details may

change, employers must begin complying with this new law by withholding the additional tax, notifying the necessary employees, and coordinating the program with existing company policies.

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