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California Requires Bereavement Leave for Certain Employers

AB 1949 adds Section 12945.7 to the Government Code to require certain California employers, including public sector employers, provide for bereavement leave. Prior to January 1, 2023, the California Family Rights Act ("CFRA") (Government Code Section 12945.1 *et seq.*) allowed employees to take up to 12 weeks of family leave to care for a newborn child or to care for family members suffering from serious medical conditions, and the Fair Employment and Housing Act ("FEHA") (Government Code Section 12900 *et seq.*) allowed employees the right to take up to 12 weeks unpaid time off work to care for a qualifying family member with a serious health condition. However, neither the CFRA nor the FEHA permitted employees to take time off to grieve the loss of a close family member.

Specifically, the bill does the following:

- Adds Section 12945.7 to the Government Code, and makes it an unlawful employment practice for an employer (a person who employs five or more persons, or the State or any political subdivision thereof) to refuse to grant a request by any employee (a person employed for at least 30 days prior to the start of the leave) to take up to five (5) days of bereavement leave, upon the death of a family member (spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law). There does not appear to be a limit for how many times an employee can be eligible for AB 1949 bereavement leave. This leave need not be paid unless an employer's existing policy provides for paid bereavement leave. Other provisions of the bill include:
    - Days of bereavement leave do not need to be consecutive;
    - Bereavement leave must be completed within three (3) months of the date of the death;
    - Bereavement leave shall be taken pursuant to any existing bereavement leave policy, but the employee shall be entitled to no less than five (5) days of leave;
    - Whether bereavement leave must be paid will depend on the terms of the existing leave policy. For example, if an employer's existing leave policy provides for three days

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of paid bereavement leave, the employer must provide for three (3) days of paid leave and up to two (2) days of unpaid bereavement leave. The employee may elect to use any accrued and unused paid leave that is otherwise available to them for that portion of the unpaid bereavement leave (e.g., paid vacation, personal leave, accrued and available sick leave, or compensatory time off, etc.).

- An employer may request that the employee provide documentation of the death if requested within thirty (30) days of the first day of leave. Documentation includes, but is not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.
- It is an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, an employee's right to take bereavement leave.
- It is also an unlawful employment practice for an employer to refuse to hire or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:
    - An individual's exercise of the right to bereavement leave; or
    - An individual giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to the right to take bereavement leave.

The employer shall maintain the confidence of any employee requesting bereavement leave.

- This section does not apply to an employee that is covered by a valid collective bargaining agreement if the agreement provides for (1) bereavement leave that is at least equivalent to that required by this section; (2) the wages, hours of work, and working conditions of the employees; (3) premium wage rates for all overtime hours worked; and (4) a regular hourly rate of pay for those employees that is at least 30 percent above the state minimum wage.

AB 1949 also amends Government Code Section 12945.21 as it relates to the Small Employer Family Leave Mediation Pilot Program. Specifically, the pilot program is amended to apply to an employee requesting to sue an employer, with between five (5) and nineteen

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(19) employees, for violation of bereavement leave. Under existing law, the Pilot Program is automatically repealed on January 1, 2024, unless extended by the Legislature.

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