



State Legislature, Congress Propose Family Leave Measures

April 2007

Although health coverage has been at the center of public debate, both in California and on a national stage in recent weeks, other issues have started to emerge. ICS has been busily analyzing all of those bills that may affect our clients, including those that would change family leave laws. This *Briefing* highlights several California bills and one Federal bill that would affect California employers' family leave obligations.

California Bills

The current status of domestic partners under CFRA has been a source of confusion to employers. AB 25, the law that recognized domestic partnership status in California, did not affect CFRA. However, a later bill amended the Family Code to provide that *registered* domestic partners have the same "rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law," as are granted to spouses. [Family Code section 297.5.] This law is widely understood to require employers to grant CFRA leave rights to registered domestic partners, regardless of the CFRA definition of "spouse." The definition of "spouse" would be clarified, and leaves for other family members would be protected, under two bills pending in the California legislature.

Assembly Member Sandré Swanson (D-16th District) has introduced a bill that would increase the circumstances under which an employee is entitled to protected leave pursuant to the California Family Rights Act ("CFRA"). **AB 537** would:

- Eliminate the age and dependency elements from the definition of "child," thereby permitting an employee to take protected leave to care for his or her independent adult child suffering from a serious health condition
- Expand the definition of "parent" to include an employee's parent-in-law
- Permit an employee to also take leave to care for a seriously ill grandparent, sibling, grandchild, or domestic partner.

A similar bill, **SB 727**, was introduced by Senator Sheila Kuehl (D-23rd District). Senator Kuehl's bill would expand the scope of the family temporary disability insurance program ("FTDI") to include grandparents, grandchildren, parents-in-law and siblings within the definition of "family member." The bill would also clarify that an individual who is entitled to a leave under the federal Family Medical Leave Act ("FMLA") and CFRA must take the FTDI leave concurrently with the leave taken under FMLA or CFRA if the FTDI leave is a qualifying leave under either of those laws. Although the expansion of family member definitions under either of these bills may not be a welcome one for employers, the clarification of the status of domestic partners under CFRA would be welcome for employers who are uncertain as to whether and when domestic partners may take CFRA leaves. The further clarifications in Senator Kuehl's bill would bring a little more certainty to leave determinations.

Federal Legislation

On March 15, 2007, Representative Rosa L. DeLauro (CT) introduced H.R. 1542, the “Healthy Families Act.” If passed, this bill would require all covered employers to provide each employee who works 30 hours a week with 7 days of paid sick leave. It would additionally require all covered employers to provide each employee who works less than 30 hours a week on a year-round basis or 1,500 hours throughout the year with a pro rata number of days or hours of paid sick leave. It would cover any employee who works an average of at least 20 hours per week or at least 1,000 hours per year, and any public employer or employer who employs 15 or more employees for each working day during each of 20 or more workweeks in the current or preceding year.

Unlike California’s paid family leave law, there is no employee funding provision in the bill. Therefore, the cost of this legislation would likely fall on employers, if enacted in its current form. This could potentially have a large impact on many employers who do not provide sick leave benefits for those working 20 hours or less or on a per diem basis.