



Employees Who Just Want To Leave

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California employers have been struggling to keep up with the clunky stew of federal and state leaves for years. Unwittingly, therefore, they have been training for years on managing multiple employees' leaves. What's two more, they may say?

The two more, of course, are complete gamechangers. We are talking about the pandemic-inspired Emergency Paid Sick Leave (EPSL) and the Expanded Family Medical Leave Act (EFMLA), and the questions employers are contending with now revolve around understanding the new leaves and coordinating them with the existing leave requirements.

First, it is important to know what the two new leaves require. The EPSL applies to employers of 500 or fewer employees, and it obligates employers to provide two weeks of paid leave for one of six pandemic-related reasons, including quarantine and loss of child care as a result of COVID-19. The EFMLA also applies to employers of 500 or fewer employees, which means that it applies to smaller employers who have never before had to deal with regular FMLA (it applies to employers of 50+ employees) and exempts the really large employers who usually do. The EFMLA requires covered employers to provide up to an additional 10 weeks of paid leave but only to employees who are unable to work or telework because of loss of child care as a result of COVID-19. Greater detail, as well as the amounts employers must pay during these leaves, is set forth in the mandatory Notice to Employees, which can be found [here](#).

Second, it is important to remember that the two new leaves supplement rather than replace other leaves during the pandemic. When an employee requests a leave, therefore, employers must also consider what other leaves may apply. For example, an employee who requires EPSL for his or her own quarantine and illness may be entitled to further leave after the two weeks of EPSL expire. Depending on the size and location of the employer and employee, that can be both state-mandated Paid Sick Leave (which cannot run concurrently with the EPSL) and/or regular FMLA leave.

Even if those leaves are applied and the employee exhausts those available leaves, or the employer is not large enough to have to comply with the regular FMLA, the employer should still engage in the interactive dialogue with the affected employee to determine whether a leave is an appropriate and reasonable accommodation under the federal Americans with Disabilities Act or the state Fair Employment and Housing Act.

Similarly, an employee who requires EPSL and EFMLA because the employee has to stay at home to take care of children, may be entitled to further leave under California Labor Code Section 230.8. Specifically, employers with 25 or more employees must provide up to 40 hours of unpaid leave per year to those employees who need to address certain school or child-care related emergencies, which are described vaguely enough in the statute to at least suggest that a closure for a pandemic may qualify.

Finally, employers must remember that even if the EPSL, EFMLA, and other legally-mandated leaves are exhausted or do not apply, a time of crisis is an opportunity to show compassion and flexibility with respect to discretionary leaves. Even if the company handbook requires that employees provide at least 30 days' notice before taking a discretionary personal leave, and even if the employer does not allow an extended personal leave more than once every five years, this may not be the moment the company focuses more on strict interpretation and enforcement of its own discretionary policies.

This may be the time when it's more appropriate for employers to allow a discretionary personal leave because it can, and because it's the right thing to do right now, all things considered. The likely alternative is that employees will just want to leave and not come back when the employer wants them to.



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