Construction Law Newsletter

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NO GOOD DEED GOES UNPUNISHED

By Cal Stead

Your employee has come to you and asked to take Paid Family Leave to be with his new baby. He says he's entitled to the leave, but you have only 26 employees. Do you have to honor this request?

Paid Family Leave (PFL) is an unfortunately named law, and frequently misunderstood. It is not a leave; it is a wage replacement program.

In the fact pattern above, yes, but--the employee is entitled to ***apply*** for PFL, but there is no job protection because he doesn't qualify to take the protected leave.

Protected leave is authorized by the federal Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA), only for an employer with ***50 or more*** employees. If an employer has fewer than 50 employees, it is an internal judgment call whether to grant time off. If time off is granted, the employee can apply for PFL. It is processed as payment through the Employment Development Department (EDD) for up to six weeks, and is a partial wage replacement.

Eligible workers can receive up to 55% of their previous weekly earnings. Employees can apply for PFL for other reasons also: to care for a seriously ill family member (child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner) or to bond with a new child as above (including newly fostered and adopted children).

Don't set an internal precedent

Employers need to be aware that if they do grant time off when the employee is not entitled to it by law, the action can set a precedent.

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Often employers grant the time off due to it being a slow time of the year for the business, or other conditions. If these factors can be proven objectively, the danger of precedent might not be a problem. If, however, employers grant the time off simply because they like the employee and want to help him out, the next time someone asks to "take" PFL, it might be required. And if the leave is denied, that employee could claim discrimination.

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