

## Employment & Labor Law Alert

October 2023

# A New Law Establishes Employee Leave for Reproductive Loss

Senate Bill 848, signed by Gov. Gavin Newsom on Oct. 10, requires employers with five or more employees to provide up to five days of protected leave for employees who have suffered a reproductive loss and have worked for the employer for at least 30 days. There is no requirement that the days off for reproductive loss be consecutive. This law takes effect Jan. 1, 2024.

### Reproductive loss

A reproductive-related loss is defined as a failed adoption, a failed surrogacy, a miscarriage, a stillbirth or an unsuccessful assisted reproduction (such as an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure).

### Eligible employees

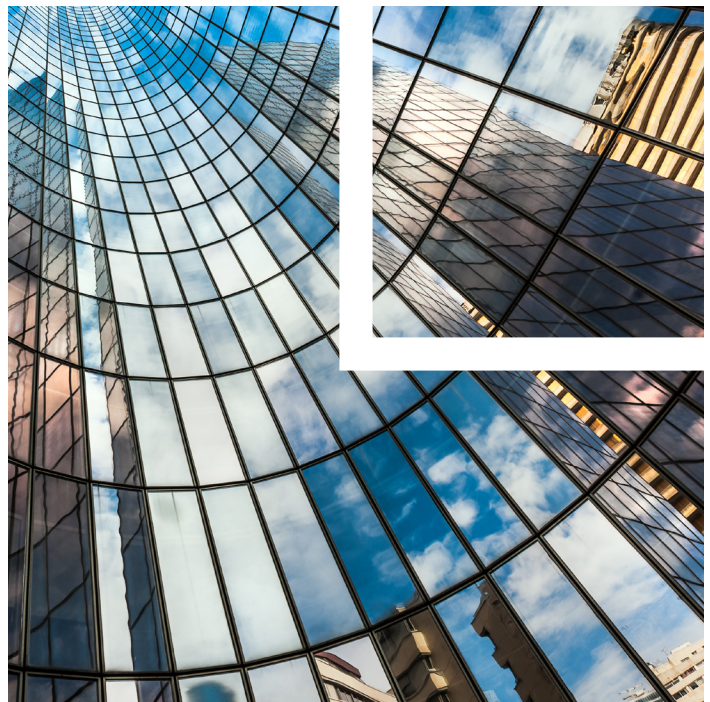
In general, the leave should be completed within three months of the reproductive-related loss event. However, if an eligible employee experiences multiple reproductive losses, the employer is only required to provide up to 20 days of leave within a 12-month period.

### Payment for reproductive loss leave

Payment or nonpayment for the reproductive loss leave should follow any existing leave policies of the employer. In instances where an employer does not have an existing leave policy, all five days may be unpaid. An employee may use, in addition to the reproductive loss leave, any vacation, personal leave, accrued and available sick leave, or compensatory time off that is available to the employee.

### Confidentiality

The employer must maintain the confidentiality of any employee requesting reproductive loss leave.



Any information provided to the employer may not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

### Retaliation

Retaliation is prohibited against anyone who exercises their right to reproductive loss leave or who gives information or testimony as to their own reproductive loss leave or another person's reproductive loss leave in an inquiry or proceeding related to rights guaranteed.

### Supporting documentation

Senate Bill 848 does not contain any provision that allows employers to request documentation regarding requesting or taking reproductive loss leave.

### What California employers should do now

1. Be aware that reproductive loss leave requirements go into effect Jan. 1, 2024.
2. Review their employee handbook and leave documents, policies and procedures for compliance and update as necessary to incorporate the new leave entitlements for reproductive loss.

*Attorney Advertising*



LOS ANGELES  
NEW YORK  
CHICAGO  
NASHVILLE

WASHINGTON, DC  
SAN FRANCISCO  
BEIJING  
HONG KONG

[loeb.com](http://loeb.com)

3. Determine whether reproductive loss leave will be paid or unpaid based on their existing employer-provided leave policies.
4. Provide training for human resources personnel, managers, supervisors and any other team members who may be expected to provide or engage in providing guidance on leaves of absence.

---

## Related Professional

Michelle La Mar . . . . . mlamar@loeb.com

---

*This is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This publication does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.*

© 2023 Loeb & Loeb LLP. All rights reserved.

7471 REV1 10-15-2023