

## NEW EMPLOYMENT LAWS REQUIRE IMMEDIATE ACTION

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Several new laws went into effect in early 2009 that significantly impact California employers, including revisions to the Family Medical Leave Act ("FMLA") and COBRA continuation coverage entitlements. These new laws require affected employers to take immediate action.

### FAMILY MEDICAL LEAVE ACT ("FMLA")

Public agencies and all private employers who employ more than 50 employees are subject to FMLA. The January 1, 2009 statutory revisions to FMLA require these employers to take immediate steps to:

- Post a new FMLA poster to reflect the amended law in a location accessible to applicants and employees.
- Update employee handbooks to satisfy the new law's detailed requirements.

In addition, the amended FMLA provides additional leaves and expands the scope of pre-existing rules. For example,

- An employee is now entitled to take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
- An employee is now entitled to take up to 12 weeks of FMLA leave for a "qualifying exigency" relating to the deployment or call to active duty of an employee's parent, spouse or child in the National Guard, the military reserve or who is retired military.

Among other things, the amended law changes the increments in which FMLA



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leave can be taken, changes the way that paid leave can be used in conjunction with FMLA leave, sets forth new form and timing rules for employer notice requirements, adds new requirements for qualifying for a serious health condition and revises treatment of light duty leave.

It is important to note that there are other amendments to FMLA which may affect your business. Additionally, some of the new provisions of FMLA have created even more differences between FMLA and the provisions of the California Family Rights Act. To ensure that your business is fully complying with both federal and state law, employers should consult their attorneys.

### COBRA SUBSIDY

President Obama signed the American Recovery and Reinvestment Act of 2009 ("ARRA") on February 17, 2009. This law imposes affirmative obligations upon employers who offer group health benefit coverage to their employees

#### *What is the COBRA subsidy?*

Under ARRA, certain employees and their qualified dependents are eligible to receive a federal subsidy of 65 percent of their COBRA continuation coverage premium costs for up to nine months. For most employee benefit plans, the subsidy **is paid by the employer** sponsor of the health plan, which can

then be used as a credit toward the employer's quarterly employment tax return.

#### *Who is affected by the COBRA subsidy?*

Federal COBRA law applies to employers with 20 or more employees that maintain a group health plan. The law also provides for subsidies by insurance carriers for employees receiving continuation coverage under Cal/COBRA.

#### *Who is eligible for the COBRA subsidy?*

Employees and their qualified dependents are eligible for the COBRA subsidy if the employee was involuntarily terminated from employment between September 1, 2008, and December 31, 2009. Eligible individuals who did not elect COBRA continuation coverage or elected COBRA but whose coverage terminated are entitled to a second election period.

#### *What do Employers need to do?*

- Employers must provide special COBRA notices before April 17, 2009;
- Employers must establish procedures for implementation of the subsidy payments during a two-month transition period;
- Employers claiming an off-set credit on their employment payroll taxes must comply with new reporting and recordkeeping obligations; and
- For most plans, the new law applies to premium payments after March 1, 2009.

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*If you would like more information on these changes to the law, please contact either Laura Riesenber at 619.525.3877 or Wendy Tucker at 619.525.3845 or your regular Procopio attorney.*