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Employee Benefits | Life Insurance | Retirement Planning

TO: Clients of Sitzmann Morris & Lavis Inc.

RE: Pregnancy Disability Leave Expansion

Governor Jerry Brown recently signed legislation which provides increased protections for expecting mothers. One set of bills expands California's Pregnancy Disability Leave (PDL) requirements.

Background: PDL applies to employers with a minimum of 5 employees (full or part-time) and provides up to four months of *pregnancy-related disability leave*. PDL is available to all employees with no requirement for a minimum number of work hours or length of time employed.

Key Provisions:

Benefit Continuation Rights – Under SB 299 and its companion bill AB 592, an employer must maintain and pay for medical coverage under a group health plan for an employee who takes PDL.

Under prior law, PDL required an employer to maintain benefits to the same extent health benefits were maintained for employees on other medical or disability-related leaves. Therefore, employers subject to the Family and Medical Leave Act (FMLA) were required to continue benefits during PDL for up to 12 weeks. Employers subject to FMLA will now have to continue benefits for up to an additional 4 weeks to meet the full four months of PDL. Small employers with no company leave policy were not required to continue benefits under prior law. Under the new law, small employers will be required to continue benefits and to pay the employer share of premium for up to four months.

Recovery of Premium – An employer may recover from the employee the premium that the employer paid if both of the following conditions occur:

- The employee fails to return from leave after the period of leave to which the employee is entitled has expired, and
- The employee's failure to return from leave is for a reason other than one of the following:
 - The employee taking leave under the California Family Rights Act (CFRA).
 - The continuation, recurrence, or onset of a health condition that entitles the employee to PDL or other circumstance beyond the control of the employee.

Reasonable Accommodation – an employer cannot refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider. An employer who has a policy or practice of transferring temporarily disabled employees to less strenuous or hazardous positions, must do the same for a pregnant employees who so requests. However, no employer is required to create additional employment that would not otherwise have been created. Nor are they required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

Effective date: January 1, 2012

Action Items: Determine what methods of payment will be allowed for employees on unpaid PDL. Although no guidance is provided in either bill, we recommend employers follow the FMLA rules for collecting employee premium. You must provide your employees with two of the following three options:

- Pay in advance. If you have a Sec. 125 pre-tax premium plan the employee can pay their premium in advance pre-tax. Otherwise, they pay with post-tax monies.
- Pay as you go. Under this method the employee pays with post-tax monies.
- Pay upon return to work. If the PDL crosses Sec. 125 Plan years then monies must be collected post-tax. If all PDL is within the Plan year, monies can be paid pre-tax.

This last method is the riskiest for the employer should the employee decide not to return to work. Therefore, we recommend the first two options. Update your leave policies accordingly on or before the effective date. Further, we recommend you notify employees of the new provision, although it is not required.

What's Next:

If additional guidance is issued we will pass it along. As always, contact your SML Account team if you have any questions.

The information provided in this legislative update for our clients and colleagues is for general guidance only and is not intended to be, and does not constitute, tax or legal advice. We recommend that you consult with your tax and legal advisors for the interpretation or application of any laws for your particular circumstances and situation.