NEW LAW REQUIRES EMPLOYERS TO PROVIDE PAID GROUP HEALTH INSURANCE TO EMPLOYEES ON PREGNANCY LEAVE

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On October 6, 2011, Governor Brown signed into law SB 299, which imposes new obligations upon employers regarding group health insurance for employees who become disabled due to pregnancy, childbirth or related medical conditions. Currently, employers subject to the Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA") must pay for group health insurance premiums for up to 12 weeks for eligible employees who take FMLA or CFRA leave. C.C.R. §7291.12(c).

Effective January 1, 2012, employers will be required to maintain and pay for health insurance coverage for eligible female employees who take pregnancy disability leave ("PDL") for a period not to exceed four months over the course of a 12-month period commencing on the date the PDL is first commenced. Unlike the FMLA or CFRA, which affects employers who employ 50 or more employees, the PDL applies to employers with only five or more full-time or part-time employees. Further, failure or refusal to provide paid group health insurance for eligible employees may arguably be considered "harassment" based on pregnancy and constitute an unlawful employment practice and subject employers with as few as one employee to liability. C.C.R. §7291.3.

In addition, unlike the FMLA and CFRA, there will be no one-year waiting period or requirement that employees work at least 1,250 hours before they become eligible for paid health insurance while on PDL. Instead, pregnant employees will be entitled to take PDL at any time after they become employed. Thus, a larger segment of businesses will now be required to subsidize health insurance premiums while employees take medical-related leaves.

SB 299 has also expanded the protections of existing law by making it an unlawful employment practice to "interfere with [or] restrain" any right afforded to pregnant employees provided by law. Therefore, liability may be created if it is determined that an employer in some manner interfered with or tried to restrain a pregnant employee from exercising her protected rights, even if paid group health insurance was ultimately provided.

While employers have the right under the law to recover premiums paid if an employee fails to return from PDL leave, it can only do so if the employee fails to return for a reason other than the reason for taking such leave or "other circumstances beyond the control of the employee." In practice, unless an employee simply decides not to return to work because she, for example, wants to become a "stay-at-home mom," employers will not be able to recover health insurance premiums paid for employees who take PDL.

Employers would be wise to check with their health benefits plan administrator and make sure that their plans will conform with SB 299. Additionally, HR and payroll administrators should adjust their employee policies and leave forms to comply with the changes in the law that become effective on January 1, 2012.

Should you have any questions about the new requirements of SB 299, you may contact David Goldman at (510) 834-6600 or at dgoldman@wendel.com.