

CLIENT NEWS BRIEF

Significant Changes to California Family Rights Act Regulations

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The California Family Rights Act (CFRA) is the state law that allows qualifying employees to take up to 12 weeks of leave in a 12 month period to care for an employee's family member or for the employee's own medical condition, or in connection with the birth, adoption or fostering of an employee's child. To qualify for CFRA leave, several threshold requirements must be met: (1) an employer must employ 50 or more employees; (2) an employee must work at a worksite with at least 50 employees within a 75 mile radius; (3) an employee seeking CFRA leave must have worked 1,250 hours for that employer in the 12 consecutive months prior to the leave; and (4) an employee must have been employed by the employer for at least 12 non-consecutive months before the requested leave.

The Family Medical Leave Act (FMLA) is the federal law that allows employees annually to take 12 weeks of leave for reasons that include those allowed under CFRA. While there are significant differences between CFRA and FMLA, the CFRA regulations have recently been changed to align the application of CFRA leave rights more closely with the application of FMLA leave rights. These revised CFRA regulations are effective July 1, 2015. Laws regarding leaves of absence, including CFRA and FMLA, can be complex and may overlap in various ways. Employers should consult with legal counsel when any specific questions of implementation arise.

Some of the significant amendments to the CFRA regulations include:

Eligibility Requirements

The CFRA regulations now align with FMLA regulations, which allow an employer to disregard the months worked by an employee before a break in employment of seven years or more when determining if an employee has worked for at least 12 months for the employer. However, employees who are ineligible for CFRA because they have not satisfied the 12 month requirement at the start of their leave may later become eligible for CFRA while on another leave (such as sick or vacation) regardless of whether that leave is paid or unpaid.

Employer Response

An employer previously had 10 calendar days to respond to a CFRA leave request. The CFRA regulations now align with the FMLA and require the employer to respond to a leave request within 5 business days.

Intermittent Leave

The CFRA regulations provide much greater detail regarding how intermittent CFRA leave may be taken and how it is counted against an employee's 12 week leave allotment. For example, partial-day absences must be counted against the allotted CFRA leave amount in the shortest period of time that the employer's payroll system uses to track leaves or absences, but the minimum increment cannot exceed a one-hour period.

Medical Information

The CFRA amendments limit an employer's ability to obtain additional medical information regarding an employee or an employee's family members. Under the new regulations, an employer is limited to only contacting the health care



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provider for the sole purpose of receiving authentication of a medical certification.

An employee must also cooperate with the employer's requests for necessary medical information. An employee's failure to respond to permissible employer inquiries may cause the employer to deny CFRA leave rights and protections. This may happen if the employer cannot determine if the leave that the employee is requesting is CFRA-qualifying. The employer may set a deadline for providing medical certifications no later than 15 calendar days after the employer has requested the information. The employer must give the employee notice of the consequences of non-compliance. Absent extenuating circumstances, the employer may deny CFRA leave protections following the 15-day time period until the employee produces sufficient certification.

Under the CFRA regulations, an employer may demand that an employee obtain the opinion of a second health care provider when it has a "good faith, objective reason" to doubt the validity of the initial certification. A third health care provider may be used only when the second opinion differs from the first health care provider's certification.

Health Coverage, Benefits, and Seniority

With a few exceptions, an employer must maintain group health plan coverage for an employee while the employee is on CFRA leave. The employee is responsible for maintaining timely payment of their premiums for their health plan coverage while on CFRA leave, and the revised CFRA regulations provide specific and limited circumstances under which an employer may discontinue coverage prior to reinstatement.

If an employer provides a new or different health plan or benefits during an employee's CFRA leave, the employer must give the employee notice that he or she is subject to the terms of the new or changed plan or benefits. Additionally, the CFRA regulations now expressly protect an employee from losing any seniority or longevity "credit" that he or she would have accrued without having taken a CFRA leave.

Reinstatement Rights and Obligations

An employee returning from CFRA leave is entitled to reinstatement to the same or comparable position upon his or her return to the workplace. The revised regulations clarify that the employee's position of reinstatement must be "virtually identical" in terms of pay, benefits, shift, schedule, geographic location, and working conditions including privileges, perquisites, and status. The regulations also expressly authorize an employer to accommodate an employee's request for a different position for personal reasons, promotion, or as a disability accommodation.

When an employee returns to work after a continuous CFRA leave, the employer may require the employee to produce a medical release to return-to-work, but only if it is required from other employees returning to work after illness, injury, or disability, and is not prohibited by a collective bargaining agreement. A medical release is not required upon return from every intermittent CFRA leave, but may be required every 30 days based upon reasonable safety concerns for the employee. A fitness-for-duty examination cannot be required as a condition of reinstatement, but it may be required after an employee returns to work if it is job-related and consistent with a business necessity.

Retaliation

The amended regulations provide much greater detail regarding prohibited "retaliation" and "interference" with an employee's exercise of CFRA rights. Prohibited conduct by an employer includes: interfering with an employee's right to take CFRA leave, retaliation or discrimination against an employee for requesting or taking CFRA leave, or requesting that employees "waive" their CFRA leave rights. Notably, the CFRA regulations now expressly affirm that an employee loses his or her reinstatement rights if the employee obtained or used CFRA leave on a fraudulent basis.

The application of CFRA and other leave laws requires a fact specific inquiry and an analysis of each individual employee's unique circumstances. Employers should consult with legal counsel if any questions arise regarding an employee's entitlement to CFRA leave or the employer's CFRA obligations.

For more on information on the CFRA regulations, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).