

New Obligations for Small and Not-So-Small Employers Under Amended CFRA

Recent amendments to the California Family Rights Act (CFRA) significantly expanded coverage under the law; now, a whole group of California employers suddenly have substantial obligations they previously did not, including providing employees with 12 weeks of unpaid family leave for certain medical or family reasons. Before the amendments, which took effect Jan. 1, 2021, the CFRA was very similar to the federal Family and Medical Leave Act (FMLA): It applied to employers with 50 or more employees. Now the CFRA requires employers with as few as five employees to comply with the requirements of the California law or face administrative actions by the Department of Fair Employment and Housing (DFEH) and civil suits by employees. The types of leave requests now permitted under the CFRA have also been expanded—for example, employees may now request leave to care for adult children, grandchildren, grandparents and siblings. Additionally, the availability of bonding leave under the CFRA now applies equally to both partners even if employed by the same employer. Both newly covered employers and those that were already subject to the act will need to review and revise their employment practices.

CFRA Compliance Requirements Now Apply to Small and Not-So-Small Employers

Employers with five to 49 employees are now subject to the CFRA. Here are some of the basic requirements:

- The CFRA requires employers to grant eligible employee requests for up to 12 weeks of unpaid family or medical leave within a 12-month period.
- An eligible employee is someone with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period.



- Triggering events include the employee's own serious health condition, as well as the need to care for a child, parent, grandparent, grandchild, sibling, spouse or domestic partner with a serious health condition; the birth or adoption of a child; and "qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States."
- Employers must maintain and pay for group health insurance coverage on the same terms for employees during any period of leave.
- Employers must provide returning employees with employment in the same position or a comparable position that has the same or comparable duties and compensation.
- CFRA leave does not run concurrently with Pregnancy Disability Leave, so an employee who is disabled by pregnancy can take up to seven months of unpaid protected leave.

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What Employers Should Do Now

1. Satisfy CFRA Notice Obligations

It's not enough for employers subject to the CFRA to simply agree to provide employee leave when requested. Employers not previously covered will now have to give thought to specific request and approval processes, and develop the appropriate forms for use in those processes. Employers must also affirmatively notify employees of their right to request leave under the CFRA. Employers that maintain written policies, manuals or employee handbooks should now revise them to include a CFRA policy. Finally, all employers subject to the CFRA needed to post CFRA information in the workplace by Jan. 1, 2021, either by using the "all in one" employee rights poster or the stand-alone CFRA poster—both of which are now available on the DFEH website. Employers may be required to display posters in multiple languages.

2. Strategize Workforce Coverage Ahead of Leave Requests

For small and not-so-small employers that employ a lean staff, every employee can be critical to keeping their companies' work moving forward. People who employ a home office staff or small group of domestic workers in their household face similar challenges. Even a short leave or a single employee out on leave can cause problems. Planning for workforce coverage is an essential part of preparedness for employers now subject to the CFRA. Well before the first employee leave request, employers should have mapped out employee responsibilities, skills and experience; strategized scenarios for coverage; and considered any additional information and training employees might need to keep workflow optimized. Employers should also understand CFRA regulations relating to the substitution of vacation and sick leave and how leave may affect employee benefits.

3. Understand and Maximize the Concurrent Running of Leaves

Because of the difference in the size of the workforce that triggers coverage under the CFRA and the FMLA, employers with between five and 49 employees will have obligations only under the CFRA. Employers that have 50 or more employees continue to have obligations under both laws and need to understand the interplay between the two. In some cases, employers' obligations under the CFRA match their obligations under the federal law, and in other cases, they don't. For example, the amendments broadened the definition of family member to include grandparents, grandchildren and siblings, so the CFRA provides for leave to care for some family members that the FMLA doesn't. Additionally, Pregnancy Disability Leave will run concurrently with FMLA leave but not with CFRA leave. Understanding the requirements and relationship between leave laws is essential to effective operations.

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