

California Expands Family and Medical Leave

Effective January 1, 2021, the California Family Rights Act (CFRA) applies to employers with 5+ employees. This law requires eligible employers to provide up to 12 weeks of unpaid, job-protected leave to employees.

Additionally, California has amended the law to expand the definition of “family member.” CFRA now includes grandparents, grandchildren, adult children, and siblings. Several other expansions of the law also took effect on January 1, 2021, as described below.

Applicability

As of January 1, 2021, all elements of CFRA applies to all employers with five+ employees.

When determining whether a company meets the five-employee threshold, all employees are counted. This includes those who work part-time or are on leave.

For employers whose employee count fluctuates, the standard is that they have 5+ on a “regular basis.” The Department of Fair Employment and Housing (DFEH) defines this as “recurring, rather than constant.” DFEH provides this example:

***Example:** In an industry that typically has a three-month season during a calendar year, an employer that employs 5+ employees during that season “regularly employs” the requisite number of employees. Thus, to be covered by the Act, an employer need not have 5+ employees working every day throughout the year or have 5+ employees at the time of the allegedly unlawful conduct, so long as at least 5 employees are regularly on its payroll during the season.*

Employee Eligibility

Employees are eligible to take CFRA leave if:

1. They work in California;
2. They have worked for the employer for more than 12 months (not necessarily consecutively); and
3. They have worked at least 1,250 hours in the 12 months before taking leave.

The amended law does *not* require that the employee work within a set radius of the worksite. For example, say an employer has 5+ employees scattered throughout the country and just one is in California. The employee in California will be eligible after one year of employment if they’ve met the 1,250-work hour threshold.

Family Members

The CFRA amendments has broaden the definition of **family members** from not only as parents, minor children, adult children who are incapable of self-care, spouses, and domestic partners but now to include grandparents, grandchildren, siblings, and children (both minor and adult).

Presumably, this will lead to a significant increase in the use of CFRA leave. It will also make it possible for an employee who is also covered by the [federal Family and Medical Leave Act](#) (FMLA) to take both FMLA and CFRA leaves in the same year, if their CFRA leave is not also covered by the FMLA.

Parents Working for the Same Owner

Under the amended law, if two parents both work for the same employer, the employer must grant CFRA leave for baby bonding for the full 12 weeks to each parent who is an employee. The amendments eliminate the “key employee” exception. There are no exceptions.

Qualifying Exigency

CFRA did not cover leaves for qualifying exigencies related to active duty in the military. The amendments have changed the law to entitle an employee to take qualifying exigency leave when their spouse, domestic partner, child, or parent is a member of the U.S. Armed Forces.

Small Employer Mediation Program

In response to concerns from small employers, the state has created a pilot mediation program for employers with 5-19 employees that will be in place until January 1, 2024. The program requires an employee to complete mediation before they can file a CFRA lawsuit.

Required Poster

Finally, employers must post a notice of employees’ rights under CFRA in a conspicuous location in the workplace or distribute it electronically to employees who do not go to the workplace.

Next Steps

Employers who already have CFRA (or New Parent Leave Act) policies should update them based on the expansions discussed above. Small, newly-covered employers should ensure they have a CFRA policy. Employers should have updated and implemented these policies by January 1, 2021

Managers should be trained to recognize whether leave requests fall under CFRA and note that granting CFRA leave to eligible employees is not discretionary.