

## REMINDER: California Family Rights Act Amendments Go Into Effect July 1, 2015

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The **California Family Rights Act (“CFRA”)** is a regulation that provides employees with up to 12 workweeks of leave within a 12-month period for a qualifying event, such as family care leave or leave for an employee’s own serious health condition. Employers covered by this regulation are those who employ 50 or more employees within a 75-mile radius. If an employer is covered by the CFRA, eligible employees are those who have worked for the employer for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding the leave.

As a reminder from our [April 28, 2015 post](#), significant amendments to the CFRA regulations take effect on July 1, 2015. While the majority of the amendments are being implemented to parallel and incorporate the March 2013 amendments to the analogous Family and Medical Leave Act (“FMLA”) federal regulations except where the two are inconsistent, there are some notable differences between the CFRA and FMLA of which employers should also be aware. The text of the new regulations is available [here](#). Below is a brief review of the notable updates to the CFRA:

- **Covered Employers:** This definition now includes successors-in-interest and joint employers. While a joint employer relationship is “to be viewed in its totality based on the economic realities of the situation,” the amendments to the regulations provide various factors that may be analyzed to determine if a joint employer relationship exists.
- **Worksite:** The amendments expand the definition of a worksite to “either a single location or a group of contiguous locations.” In addition, for employees without a fixed worksite (such as employees who work from home), the worksite is deemed to be: (1) the worksite to which employees are assigned as their home base; (2) the worksite from which their work is assigned; or (3) the worksite to which they report.
- **Covered Employees:** If an employee is ineligible for CFRA leave at the start of a leave because they have not been employed the requisite 12 months, they may still become eligible while on a leave because leave to which the employee is otherwise entitled counts toward length of service for coverage purposes. Once an employee on a leave becomes CFRA eligible, the employer should then document that portion as CFRA leave.
- **Spouse:** The definition now includes registered domestic partners and same-sex partners in

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marriage.

- **Key Employee:** Employees who are paid on a salary basis and are among the highest paid 10 percent of the workforce are considered key employees. The amendments provide more detailed requirements for an employer's defense of refusal to reinstate a key employee upon return from CFRA leave if it would cause "substantial and grievous economic injury to the operations of the employer."
- **Fraudulently-obtained CFRA Leave:** The regulations now provide the employer with an express defense that an employee who fraudulently obtains or uses CFRA leave is not protected by CFRA's job restoration or maintenance of health benefits provisions. However, the employer bears the burden of proving this defense.
- **Computation of Time:** the 12-month measuring period for CFRA leave may be: (1) the calendar year; (2) any fixed 12-month leave year; (3) the 12-month period measured forward from when an employee's CFRA leave first begins; or (4) a rolling 12-month period measured backward from the date an employee uses CFRA leave. If an employer fails to designate one of these measuring periods, the method that is most beneficial to the employee will be used. If an employer decides to change its measuring period, it must provide employees with 60 days' notice and ensure that employees receive their full 12-week benefit.
- **Twelve Workweeks:** If an employee's work schedule varies from week to week, a weekly average of the hours scheduled over the 12-month period prior to the commencement of the CFRA leave is used to calculate the employee's 12-week leave entitlement.
- **Required Overtime:** If an employee is normally required to work overtime but cannot do so for a CFRA-qualifying reason, the non-worked overtime hours can be counted against the employee's CFRA entitlement.
- **Intermittent Leave:** Where it is physically impossible for an employee to use intermittent leave, work a reduced schedule or modified shifts, then the entire period that the employee is absent may be designated as CFRA leave and count against the employee's CFRA entitlement. However, if the employee is able to perform other aspects of his or her work, those duties must shorten the time designated as CFRA leave.
- **Responding to Leave Requests:** The amendments change the employer's required response date to any CFRA leave request from 10 calendar days to 5 business days after receiving the request. Moreover, if the employee mentions vacation, paid time off or resignation in his or her notice, this does not render the notice insufficient as it is the employer's responsibility to determine whether the employee's request is CFRA-qualifying.
- **Medical Certification:** The amendments make clear that an employer may not contact a health care provider for any reason other than to authenticate a medical certification. Also, an employer must first have a "good faith, objective reason" to doubt the validity of a certification before requiring the opinion of a second health care provider. While an employer may require the employee to obtain a release to return-to-work from a health care provider, it cannot do so for each absence taken for an intermittent leave. In addition, an employer may not require an employee to undergo a fitness-for-duty exam as a condition of return from CFRA leave and such exams must be job-related and consistent with business necessity.

- **Paid Leave:** The amendments expand the use of accrued vacation time or other paid accrued time off for an otherwise unpaid portion of CFRA leave.
- **Group Health Plan Coverage:** The amendments expand the continuation of group health plan coverage for employees on CFRA leave and implement certain regulations depending on whether the CFRA leave is paid or unpaid.
- **Seniority:** The amendments provide that taking CFRA leave cannot be counted as a break in service or cause an employee to lose seniority even if other paid or unpaid leaves do.
- **Disability Leave:** The amendments highlight the distinction between an employer's obligation and an employee's rights under CFRA and those under the Fair Employment and Housing Act to engage in the interactive process to determine whether an employee's disability can be reasonably accommodated.
- **Retaliation and Protection from Interference:** The amendments expand the prohibition against and definition of retaliation for an employee's exercising his or her rights under the CFRA. Specifically, the definition of "interfering with" those rights includes refusing to authorize CFRA leave and discouraging an employee from using such leave. It also protects not only employees but also prospective employees against such retaliation. In addition, the amendments indicate that employees cannot waive their rights under the CFRA and that employers cannot induce employees to waive their rights.
- **Notice Posting:** Covered employers are required to post a notice of the CFRA's new provisions and information concerning the procedures for filing complaints of violations of the CFRA in conspicuous places where it can readily be seen by employees and applicants. While electronic posting is acceptable, the text of the posting must be large enough to be easily read and the posting must be translated into every language that is spoken by at least 10 percent of the workforce.

As the implementation of these amendments to the CFRA is upon us, covered employers should replace their workplace posters and medical certification forms and ensure that their relevant policies, procedures, and employee handbook provisions pertaining to the CFRA are updated and compliant. Covered employers should ensure that all supervisors and human resources personnel are familiar with these changes and properly trained to handle CFRA-related requests moving forward.

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