



COMING SOON: EXPANDED FAMILY AND MEDICAL LEAVE IN CALIFORNIA

DFEH



The California Family Rights Act (CFRA) provides most employees in California with the right to take up to 12 weeks of leave from work to care for themselves or their family members with a serious health condition or to bond with a new child. Employees returning to work from CFRA leave are entitled to their same or a comparable position, among other job protections. Recent legislation (Senate Bill 1383) expands CFRA in several major respects. The Department of Fair Employment and Housing (DFEH), which enforces CFRA, is providing this factsheet to assist employees and employers in understanding the upcoming changes to CFRA.

UPCOMING CHANGES TO CFRA - EFFECTIVE JANUARY 1, 2021

- 1. Employers of 5 or more employees covered by CFRA:** Until December 31, 2020, CFRA applies only to private employers of 50 or more employees. Starting January 1, 2021, CFRA applies to private employers of 5 or more employees. CFRA also applies to the California state and local governments as employers.
- 2. Worksite limitation eliminated:** To be eligible for CFRA leave, an employee generally has to meet 3 requirements: have worked for the employer for more than 12 months, have worked at least 1,250 hours in the 12 months prior to their leave, and the employer has at least 50 employees within 75 miles of the employee's worksite. Starting January 1, 2021, the worksite mileage requirement is eliminated.
- 3. Circumstances for CFRA leave expanded:** Eligible employees can take up to 12 weeks of CFRA leave to: care for their own serious health condition; care for certain family members' serious health condition; or to bond with a new child (by birth, adoption, or foster placement). SB 1383 did not change these three categories, but it did expand the types of family members for whom CFRA leave can be taken (see #4 below). In addition, beginning January 1, 2021, CFRA leave may be taken for "a 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, as specified in Section 3302.2 of the Unemployment Insurance Code."
- 4. Types of family members expanded:** Currently, CFRA leave may be taken to care for the serious health condition of a spouse, domestic partner, parent, minor child, or dependent adult child. Starting on January 1, 2021, employees may take leave to care for additional family members, including: an adult child, a child of a domestic partner, grandparent, grandchild, or sibling.
- 5. Limitation on parents working for the same employer eliminated:** Starting January 1, 2021, if both parents of a new child work for the same employer, each parent is entitled to up to 12 weeks of leave. Until December 31, 2020, employers may require parents to split 12 weeks of leave between them.

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- 6. Small employer mediation program created:** CFRA applies the same to covered employers regardless of size. However, DFEH offers mediation to smaller employers (5-19 employees) and their employees to resolve any dispute over CFRA leave, before the employee can proceed with a court case. For more information about this program, see Government Code section 12999.1. Employers and employees wishing to take advantage of DFEH's mediation services should contact DFEH at DRDOnlineRequests@dfeh.ca.gov or any of the channels below.
- 7. Exceptions eliminated:** Starting January 1, 2021, all employees who take CFRA leave have the same reinstatement rights. An exception for an employer's highest-paid employees is eliminated.

KEY CFRA PROVISIONS THAT ARE UNCHANGED

- 1. What qualifies as a "serious health condition"?** A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either (A) inpatient care in a hospital, hospice, or residential health care facility; or (B) continuing treatment or continuing supervision by a health care provider.
- 2. Is CFRA leave paid? What about health benefits?** Employers may pay their employees while taking CFRA leave, but employers are not required to do so. Employees taking CFRA leave may be eligible for California's Paid Family Leave (PFL) program or State Disability Insurance (SDI), which is administered by the Employment Development Department (EDD). For information about using paid time off while on CFRA leave, such as vacation or sick days, see California Code of Regulations, Title 2, section 11092. Employers are required to continue the health benefits of an employee taking CFRA leave.
- 3. How much notice must an employee provide to their employer?** If the employee's need for CFRA leave is foreseeable, the employee must provide reasonable advance notice and, if due to a planned medical treatment or supervision, the employee must make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision. If the employee's need for CFRA leave is not foreseeable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable or 15 days from the employer's request.
- 4. May an employer require medical certification?** An employer may require that an employee's request for leave for the employee's own health condition or to care for a family member who has a serious health condition be supported by a [certification](#) issued by the health care provider of the individual requiring care.
- 5. Where can I find out more about CFRA leave?** To learn more about CFRA, including applicable definitions, see Government Code section 12945.2 and California Code of Regulations, Title 2, sections 11087 - 11097. A variety of educational materials about CFRA are also available at: www.dfeh.ca.gov/Posters/

CONTACT US

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