

California Dramatically Expands Leave Rights under the Family Rights Act

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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. Effective January 1, 2021, recent legislation (Senate Bill 1383) dramatically expands the CFRA in several major respects.

Employer Coverage

Until December 31, 2020, the CFRA applied only to private employers of 50 or more employees. As of January 1, 2021, the CFRA applies to private employers of 5 or more employees. Because of this expansion, California has repealed its New Parent Leave Act, which had provided similar coverage to employers with 20 to 49 employees.

Employee Coverage

To be eligible for CFRA leave, an employee generally has to meet 3 requirements: (a) have worked for the employer for more than 12 months; (b) have worked at least 1,250 hours in the 12 months prior to their leave; and (c) the employer has at least 50 employees within 75 miles of the employee's worksite. As of January 1, 2021, the worksite mileage requirement is eliminated. This means an employee who is not eligible for leave under the federal Family and Medical Leave Act (FMLA) because there are not 50 employees within 75 miles of the worksite may be eligible for family and medical leave under the CFRA.

Reasons for Taking CFRA Leave

Eligible employees can take up to 12 weeks of CFRA leave to: (a) care for their own serious health condition; (b) care for certain family members' serious health condition; or (c) to bond with a new child (by birth, adoption, or foster placement). Beginning January 1, 2021, CFRA leave also 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.” Note that the total amount of CFRA leave an employee may take in any 12-month period is still limited to 12 weeks, regardless of whether the employee has multiple qualifying reasons for leave.

Types of Family Members Expanded

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 also may take leave to care for additional family members: an adult child (previously, the child had to be under 18 or an adult dependent), a child of a domestic partner, grandparent, grandchild, or sibling. This expansion will create the possibility of “leave stacking” where an employee qualifies for CFRA leave but not FMLA leave.

Under the CFRA, for example, an eligible employee is entitled to take up to 12 weeks of leave to care for a sibling or grandparent. These family members are not covered by the FMLA. This means that employee would still have 12 weeks of FMLA leave available. As a result, the employee could possibly use 24 weeks of leave in a 12-month period. Leave stacking may also occur during leave for pregnancy-related conditions – such leave will not run concurrently under the CFRA and FMLA because pregnancy related conditions are excluded from the CFRA. Stacking also occurs when an employee takes CFRA leave to care for a domestic partner, who is not covered under the FMLA.

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 the full 12 weeks for bonding leave. Under the FMLA, by contrast, employers may require parents to split 12 weeks of leave between them for bonding leave.

Exceptions for Key Employees Eliminated

All employees who take CFRA leave now have the same reinstatement rights. An exception for an employer’s highest-paid employees is eliminated. This exception still remains under the FMLA.

Conclusion

California employers should review their current leave policies and forms to ensure they comply with these changes to the CFRA. Employers should also review their procedures for administering and coordinating CFRA and FMLA leave. Employers that have employee handbooks describing leave provisions must include a CFRA policy in the handbook. Contact your Vorys lawyer if you have questions about California-compliant leave policies.