

New family leave rights incorporates former CFRA and adds protections

By Dan Eaton

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With the new year comes a new California family leave law. The new law replaces the former California Family Rights Act (CFRA). The new law also absorbs and expands key protections of the now-repealed New Parent Leave Act.

What's unchanged

To be eligible for 12 weeks of job-protected unpaid family leave in a 12-month period, an employee must work for the employer at least 1,250 hours in the prior 12-month period. A leave-eligible employee may elect, or be required, to use accrued employer-provided vacation leave if the leave is to care for others. The employee and employer may agree to the employee's use of accrued sick leave if the leave is to care for the employee's own serious health condition.

Upon returning from leave, the employee must be restored to his or her former job or a comparable position, defined as a job "that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave."

An employer may require an employee requesting leave to care for another to provide written certification from the health care provider of the individual requiring care of: the date the serious health condition commenced; its probable duration; an estimate of the time the employee will be needed to care for the family member; and a statement that care for the condition warrants the employee's participation.

If leave is for the employee's own illness, the employer may require certification of the date the condition began, its probable duration, and a statement that the condition renders the employee incapable of performing the functions of the employee's position.

What's new

Previously, CFRA leave was limited to employees of employers with 50 or more employees within 75 miles of the requesting employee's worksite. The new CFRA covers employers of five or more employees. This exposes small employers to new administrative and operational burdens, as well as litigation risk. That was the main reason the California Chamber of Commerce opposed the measure.

An employer of five or more employees also must provide job-protected unpaid leave to a new parent. Formerly, only employers with 20 or more employees within 75 miles of the worksite had to provide such leave to eligible employees under the now-repealed New Parent Leave Act.

CFRA formerly limited job-protected leave to leave for the care of the employee's own serious illness or that of a child, parent, or spouse. The new law adds to this list the care of a grandparent, grandchild, sibling, or domestic partner.

While the term "parent-in-law" is defined in the new statute, it is not included in the definition of "parent", as it is under the state's Paid Family Leave (PFL) law, or otherwise listed among those for whose care an employee may use job-protected family leave.



The new law replaces the former California Family Rights Act (CFRA). The new law also absorbs and expands key protections of the now-repealed New Parent Leave Act. (Ingram Publishing / Getty Images/Ingram Publishing)

Leave related to the care of a parent-in-law is, however, covered by a part of the new law connected to leave necessitated by a family member's active military service. Job-protected unpaid leave is provided for a "qualifying exigency" related to service in the U.S. Armed Forces of an employee's spouse, domestic partner, child, or parent, as specified in the PFL law. That includes leave needed to make changes necessitated by the family member's military service in the care arrangements of an employee's child or of a parent of a "spouse, domestic partner, child, or parent in the armed forces" incapable of self-care.

Under the new law, an employer may no longer deny job-protected leave to a salaried employee who is among the highest 10% of the employer's employees. Also removed was the right of an employer who employed two parents of a child to limit both employees to a total of 12 weeks of job-protected child-related leave in a 12-month period.

The overall impact of these changes is to make more workers eligible for job-protected unpaid leave to care for a broader range of family members and to add certain circumstances connected to a family member's active military service as a basis for such leave.

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