New CFRA Bill Expands Job-Protected Leave

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On September 17, 2020, California Governor Gavin Newsom signed Senate Bill (SB) 1383, a bill which expands the reach and application of the California Family Rights Act (CFRA), by applying it to employers with five or more employees, by expanding the list of family members with serious health conditions that an employee may take leave to care for, and by eliminating other limitations for use. The bill goes into effect on January 1, 2021.

By implementing these changes, CFRA further distinguishes itself from the federal Family and Medical Leave Act (FMLA). Although CFRA closely resembles FMLA in many respects, there are some significant differences. Below are highlights of the ways in which the new law will change CFRA's reach and application.

Covered Employers

Currently, only employers with 50 or more employees are required to comply with CFRA, which provides unpaid, job-protected leave with continuation of health benefits to eligible employees for certain reasons. Under existing law, an employee is able to take CFRA leave only if: 1) their employer employs at least 50 employees; and 2) the50 employees are within 75 miles of the requesting employee's worksite.

SB 1383 eliminates the "50 employees within 75 miles" requirement. Effective January 1, 2021, any employer who employs at least 5 employees must comply with CFRA. This represents a significant change in the CFRA's scope, and allows significantly more employees to take advantage of CFRA's job-protected leave. It also departs from FMLA in this respect, which retains the "50 employees within 75 miles" requirement.

However, even under the new law, an employee must still have worked for the employer for at least 1,250 hours during a 12-month period to be eligible for leave.

Uses of CFRA Leave

Existing law allows employees to take up to 12 weeks of unpaid, job-protected leave to care for themselves and immediate family members with a serious health condition—namely, a child, a parent, or spouse. The new bill will expand this list of covered family members, allowing employees to take unpaid, job-protected leave to care for a

grandparent, grandchild, sibling, or domestic partner with a serious health condition as well. In contrast, FMLA provides for job-protected leave for an employee only to care for a child, spouse or parent with a serious health condition. Notably, SB 1383 adds a definition for "parent-in-law," but does not reference the term anywhere else. This may be an issue that requires further clarification by the legislature.

While domestic partners are not explicitly named under existing statutory law, an employee may currently take CFRA leave to care for a domestic partner with a serious health condition because CFRA regulations expressly include registered domestic partners in the definition of "spouse." (2 Cal. Code Reg, § 11087(r).)

SB 1383 also changes the definition of "child." Under existing law, a "child" is defined as someone under 18 years of age or a dependent adult. SB 1383 eliminates these restrictions, allowing employees to care for their child with a serious health condition regardless of age or dependency.

Other changes include the addition that an employee may take protected leave because of 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 military (mirroring FMLA). In addition, AB 1383 eliminates the "key employee" exception to an employee's right to reinstatement, now requiring an employer to provide a right to reinstatement to *all* employees.

Two Parents Employed by the Same Employer

CFRA allows an eligible employee to take up to 12 weeks of unpaid, job-protected leave to bond with their new child, either by birth, adoption, or foster placement. Under existing law, if two parents are employed by the same employer, they are only allowed a total of 12 weeks of CFRA leave between the two of them to bond with their child.

SB 1383 eliminates this requirement, entitling *each* parent to 12 weeks of bonding leave. Again, this differs from FMLA, which limits its leave to 12 weeks total if both spouses are employed by the same employer.

Takeaways

Because of the new amendments, CFRA will depart significantly from FMLA in many respects. In fact, employers may see of employees being eligible for CFRA leave, without exhausting FMLA leave (for example, if they take 12 weeks of CFRA leave to care for a grandparent with a serious health condition, and then 12 weeks of FMLA leave to care for a parent with a serious health condition). Thus, employers in California may be required to provide a single employee up to *24 weeks* of unpaid, job-protected leave in a 12-month period, depending on the reasons taken for leave.

Additionally, employers who were previously exempt from CFRA (that is, those with fewer than 50 employees) suddenly find themselves within CFRA's reach.

For more information about SB 1383 or for other questions regarding employee leave, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.

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