

Changes to California Family Rights Act (Effective January 1, 2021)

| Comparisons | CFRA before 1/1/21 | CFRA as amended, effective 1/1/21 | FMLA compared to CFRA, as amended |
|--|---|--|---|
| Covered Employers | 50 employees for most reasons; 20 employees for baby bonding | Five or more employees unclear whether five or more employees in California or anywhere --guidance likely forthcoming | 50 employees for each working day during at least 20 calendar weeks in the current or preceding calendar year |
| Eligible Employees | Employed 1 year and worked 1,250 hours during 12 months preceding leave; employee must work at location with 50 or more employees within a 75-mile radius | Employed 1 year and worked 1,250 hours worked during 12 months preceding leave (can be non-consecutive; 75-mile radius requirement is eliminated) | Employed 1 year and worked 1,250 hours during 12 months preceding leave; employee must work at location with 50 or more employees within a 75-mile radius |
| Exceptions to Employee Eligibility | Employee is salaried and among the highest paid 10% | None | Employee is salaried and among the highest paid 10% |
| Amount of Leave | 12 weeks within a 12-month period; 12 weeks leave need not be consecutive, can be taken intermittently | No change | Same as CFRA |
| Reason for Leave – Employee's Own Health | Employee's own serious health condition | No change | Same as CFRA |
| Reason for Leave – Family Member's Health | Serious health condition of child (minor or dependent adult), parent, spouse, domestic partner | Serious health condition of child of any age, parent (broadly defined), grandparent, grandchild, sibling (broadly defined), spouse, domestic partner | Serious health condition of child (minor or dependent adult), parent, spouse |
| Reason for Leave – Bonding with Child | Born, adopted, or foster-placed within one year of event – only one parent eligible | Born, adopted, or foster-placed within one year of event – both parents eligible | Born, adopted, or foster-placed within one year of event – only one parent eligible |

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| Reason for Leave – Military Exigency | Not covered | 12 weeks of leave in 12-month period for reasons relating to deployment or military activities of employee's spouse, domestic partner, child or parent who is a member of the Armed Forces | Same as CFRA except domestic partner not covered |
| Military Caregiver Leave | Not covered | Not covered | Provides up to 26 weeks per 12-month period to care for ill service member with a "serious injury or illness;" first 12 weeks may run concurrently with CFRA if the family member is covered under both CFRA and FMLA |
| Relationship to Pregnancy Leave | Pregnancy disability leave up to 4 months per pregnancy subject to medical confirmation of disability does not count as CFRA leave because it is a separate right. | No change | Time taken for pregnancy disability counts as FMLA leave |
| Documentation Permitted – Employee's Own Health | Limited to date condition commenced, probable duration, statement that employee is unable to perform employee's position; 2nd and 3rd tie-breaking opinions allowed | No change | Employer can require information about diagnosis (<u>not</u> allowed for CA employees per CFRA) |

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| Documentation Permitted – Family Member's Health | Limited to date condition commenced, probable duration, estimate of the time employee needs to provide care, confirmation that health condition warrants participation of a family member | No change | Employer can require information about diagnosis (<u>not</u> allowed for CA employees under CFRA) |
| Health Insurance During Leave | Premiums paid by employer as though employee were working | No change | Same as CFRA |
| Payment During Leave | Unpaid by employer except as follows. For employee's own health condition, employee must be permitted to and can be required to use sick leave and vacation. For other purposes, employee must be permitted to and can be required to use vacation; use of sick leave use is by mutual agreement. Eligible employees may apply directly through the EDD for State Disability Insurance (SDI)(up to 52 weeks) if leave is for employee's own health condition and for Paid Family Leave (PFL) insurance (up to 8 weeks) if leave is to care for a baby or a family | No change | Same as CFRA |

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| | member with a health condition, or for military exigency. Local ordinances, including in San Francisco, may provide additional payment from employer during leave for baby bonding. | | |
| Reinstatement | Reinstatement to same or a comparable position | No change | Same as CFRA |
| Relationship to Collective Bargaining Agreement | N/A | No change required during life of existing collective bargaining agreement | N/A |

DISCLAIMER: This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.