

California Law Update: New Family Rights Act Regulations Starting July 1, 2015

Labor & Employment Law Update

By Heather Bailey on May 12, 2015

As California employers are well aware, the California Family Rights Act (CFRA) gives employees certain leave rights for medical conditions, similar to the federal Family & Medical Leave Act (FMLA). However, starting July 1, 2015, the regulations are updated to align more with FMLA in certain areas and to clarify areas where CFRA is different than FMLA.

CFRA alignment includes:

- “Covered employers” now contains successors in interest and joint employers are defined similar to FMLA;
- Spouse is defined to include same-sex spouses as FMLA;
- When calculating the 12 months of eligibility cut off, the break in service is now seven years or more like FMLA;
- Employer has five business days to respond to the need for CFRA leave;
- Key employees are defined as those in the highest 10% of the workforce; and
- Employers have the ability to deny reinstatement if an employee fraudulently uses CFRA leave, doesn’t cooperate with the medical certification process or fails to cooperate with employer questions re: leave.

It is important to highlight some of the key variances that remain between the two very alike, but different medical leave laws:

- If your workforce has 10% or more employees who speak another language as their primary one, you must translate the CFRA notice in that language.
- New CFRA Certification of Health Care provided should be used.
- Although under FMLA, an HR professional or administrator may contact the doctor to authenticate or clarify a medical certification, under CFRA, they may only contact the doctor to authenticate.
- Second opinions? More difficult under CFRA. You need a “good faith, objective reason” to request one, and don’t bother asking for one unless it’s for the employee’s serious health condition.

- During the certification process, employers may not ask for additional information such as the underlining diagnosis of the need for leave or symptoms.
- Medical continuation must be provided for employee's entire unpaid pregnancy disability leave (4 months) including the subsequent CFRA leave (12 weeks).
- While an employee is on Paid Family Leave, employer cannot require they exhaust/use any accrued paid leave during this time even if it's covered under the CFRA.

Practice Tips:

- Use the new CFRA medical certification form;
- Update your handbooks and related policies with the new changes;
- Update the poster with the revised CFRA poster;
- Survey your existing workforce to determine if at least 10% speak a different language;
- Vet out a reputable translation service for the new notices (in the event the department does not do so on its own);
- Train, train, train your management so they understand the triggers so they know when to get HR involved in employee leaves; and
- When in doubt, contact your labor and employment counsel.

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