

California Family Rights Act (CFRA) Expansion Takes Effect January 1, 2021

Insights

November 20, 2020

Senate Bill 1383, signed earlier this year by Governor Gavin Newsom, takes effect at the start of next year. This law significantly expands the California Family Rights Act (CFRA) in that it will apply to employers with as few as five employees, add the right to care for expanded types of family members, and eliminate previous restrictions. The Fair Employment Housing Council (FEHC) issues regulations regarding the Department of Fair Employment and Housing's (DFEH) interpretation of new laws, yet it remains unclear whether that body will take up the new CFRA prior to January 1, 2021. Nonetheless, businesses with California employees should review and revise existing policies to comply with the expansion.

Below is a summary of SB 1383 and its impact on employers.

EXPANDED EMPLOYER OBLIGATIONS UNDER THE CALIFORNIA FAMILY RIGHTS ACT

Overview

- Gavin Newsom signed a new law – SB 1383 – which greatly increases the number of California employees who will be eligible to take job-protected family and medical leave.
- It also expands the scope of protected leave.
- This law most significantly impacts smaller employers (5+ employees) who were not previously required to provide family and medical leave.

- This new law takes effect January 1, 2021.

What is the Current law?

- The current California law was modeled on the federal Family Medical Leave Act (FMLA).
- It only applies to private employers with 50 or more employees in a 75-mile radius.
- It allows for 12 weeks of unpaid, job-protected leave to employees for themselves or to care for a spouse, domestic partner, child or partner.
- The current California New Parental Leave Act requires employers directly employing 20-49 employees to provide leave to new parents.

What is the New (effective 1/1/2021) law?

- The new California law applies to private employers with 5 or more employees, including successors-in-interest and joint employers, and employees need not all work in California.
- The 12 weeks of unpaid, job protected leave to care for an employee's own, or a family member's, serious health condition has expanded to include additional "family members." Previously, CFRA's definition matched FMLA's. Now, in addition to spouse, parent and minor or dependent adult child, the definition of family member under CFRA also includes child of any age, grandparent, grandchild, sibling, and domestic partner.
- The New Parent Leave Act is repealed effective December 31, 2020 in light of the expanded CFRA.

What will not change?

- An employee must have 12 months of service with the employer and have performed at least 1,250 hours of work in the 12 months prior to the commencement of the leave.
- Leave is unpaid, but health benefits must continue as if the employee were working.

What will change?

- Will create challenges for employers with 50 or more employees who are also covered by FMLA.

- Currently, CFRA and FMLA run concurrently. This means that, because of the expansion of definition of family members under CFRA, employees could theoretically take up to 24 weeks of job-protected leave in a 12-month period (one 12-week CFRA leave to care for a sibling, plus another 12 weeks of FMLA to care for a parent). The next FEHC meeting is scheduled for December 4, 2020, but the agenda remains forthcoming - <https://www.dfeh.ca.gov/fehcouncil/previous-meetings-and-agendas/>.
- Adds military exigency leave to the list of qualified reasons to take leave.
- Eliminates the requirement that the employee must work within 75 miles of the worksite.
- Requires an employer that employs both parents of a child to grant up to 12 weeks of leave to each employee, a change from current law that allows employers to grant both employees a combined total of 12 weeks of leave.
- Eliminates an employer's right to refuse CFRA leave to "key employees" (top 10% of highest salaried employees).

What steps should employers take?

- Per CFRA regulations, employers who publish employee handbooks that include policies on personal or disability leaves, must also include a description of CFRA leave.
- Employers with 5-49 employees should review and revise their existing policies to make necessary changes to implement the CFRA, including eliminating reference to the New Parent Leave Act.
- Employers with 50 or more employees should revise their existing FMLA/CFRA leave policies to incorporate CFRA amendments, including elimination of "key employees" exemption, as well as same employer parent leave split and geographical requirements, and update list of family members.
- Revise/ create leave certification forms to comply with this new law.
- Post new CFRA posters by January 1, 2021 – available on the [DFEH website](#).

Related People

Gregory S. Lemmer
PARTNER EMERITUS

P +1 650 321 2400



Natalie A. Pierce

PARTNER

P +1 415 801 4920



Claudia B. Renert

OF COUNSEL

P +1 650 463 5207

Related Services

Employment & Labor

Featured Insights

FIRM NEWS

Gunderson Dettmer Commemorates 2025 Asian American and Pacific Islander Heritage (AAPI) Month

CLIENT NEWS

Brazilian Carbon Capture Company Mombak Announces \$30M Financing

CLIENT NEWS

Africa B2B OmniRetail Announces \$20M Financing

CLIENT NEWS

Glacier Announces Series A Financing to Expand Robot Recycling Fleet

CLIENT NEWS

Dataminr Announces \$100M Investment Led by Fortress Investment Group

CLIENT NEWS

Omnidian Announces \$87M Series C for Renewable Energy Performance

INSIGHTS

Splitting the Pie: How Savvy Founders Divide Ownership and Navigate Other Founder Equity Decisions

CLIENT NEWS

Chainguard Announces \$356 Million Series D Led by Kleiner Perkins and IVP

INSIGHTS

Client Insight: California AI Transparency Act

INSIGHTS

Client Insight: Prepare for BE-10 Benchmark Survey of US Direct Investment Abroad

INSIGHTS

Tech Brew Interviews Aaron Rubin in “Where the legal battle stands around copyright and AI training”

CLIENT NEWS

Latin America Fintech Belvo Announces \$15M Funding