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## A Primer on California's Recent Family Rights Act Amendments

By Jamie L. Lopez

Employers often juggle the differences between state and federal leave laws, making sure they comply with both in their handbook policies, practices, and workplace postings. It may therefore come as welcome news for employers with employees in California that the state recently issued regulations, effective July 1, 2015, to bring its California Family Rights Act ("CFRA") more into alignment with the federal Family and Medical Leave Act ("FMLA"). This article will highlight some of those changes, as well as point out areas where differences between the laws still exist.

The CFRA applies to employers with 50 or more employees within California. Like the FMLA, certain criteria must be met before employees are eligible for leave. The CFRA amendments address and clarify these requirements. In part, the amendments:

- Expand the definition of "covered employer" to add the definition of a "joint employer" and clarify that "covered employer" includes an employer's successors in interest.
- Clarify the definition of "eligible employee":
  - Eligible employees must have been employed for at least 12 months, and the amendments clarify that if the employee worked for the employer more than seven years before the current employment stint, those older periods of employment cannot be counted toward the 12 month length of service requirement unless the break was caused by military service;
  - For employees with no fixed worksite, their assigned worksite is used to determine if the employer meets the 50 employees within a 75-mile radius threshold;

- and
- Employees who have not met the 12-month service length requirement may meet the requirement while on leave and therefore designate the qualifying portion of the leave as CFRA leave.
- Expand the definition of "spouse" to include coverage for same-sex spouses ([in line with](#) the Department of Labor's recent guidelines on the FMLA).

The amendments also bring other provisions of the CFRA into alignment with the FMLA. For example, the amendments:

- Expand the reinstatement provisions by:
  - adding provisions guaranteeing covering personnel restructures and requiring employers to provide reasonable opportunities for returning employees to re-qualify for their positions;
  - adding permissible defenses to refusal to reinstate, including allowing employers to refuse to reinstate employees who fraudulently obtain or use CFRA leave; and
  - amending the "key employee" rules to clarify the definition of "key employee" and permit employers to refuse to reinstate a key employee in certain economic circumstances.
- Shorten employers' time to respond to CFRA leave requests to five business days.
- Revise the intermittent leave and reduced schedule provisions relating to overtime, holidays and calculating leave entitlement.
- Update employee consequences for misconduct, including failure to respond to employer questions regarding the request for leave, failure to return a required medical certification, and fraudulently obtaining CFRA leave.

However, as mentioned earlier, employers should be aware that not every aspect of the CFRA tracks the FMLA, and following the requirements of the FMLA will not be sufficient for CFRA-qualifying employers.

Therefore, employers should familiarize themselves with the ways in which the amendments still cause the CFRA to differ from the FMLA. For example, the California-specific amendments:

- Specify that pregnancy disability is not covered under CFRA, but is considered a "serious health condition" under FMLA.
- Require employers maintain an employee's group health benefits for the entire time an employee is on pregnancy disability leave and subsequent CFRA leave (consistent with recently updated pregnancy disability leave regulations).
- Revise medical certification regulations and state that employers:
  - are prohibited from contacting an employee's healthcare provider for any reason other than to authenticate a medical certification;

- must have a "good faith, objective reason" to ask for a second opinion on an employee's serious health condition;
  - may not seek a second opinion unless the certification involves an employee's own serious health condition; and
  - are barred from seeking additional information (such as symptoms or diagnosis) in the certification process.
- Revise the paid leave substitution rules to state and note that:
  - the CFRA differentiates between leave for an employee's own serious health condition and other reasons;
  - an employee may elect or employer may require employee to use sick leave during an unpaid portion of CFRA leave for the employee's own serious health condition, substitute sick leave during CFRA leaves that are not for the employee's own serious health condition, or use vacation or PTO for any unpaid CFRA leave; and
  - an employee receiving Paid Family Leave ("PFL") benefits is not on unpaid leave. (Therefore, an employer cannot require employee to use PTO or vacation during PFL-designated portion of CFRA leave.)
- Set forth new notice requirements providing that:
  - covered employers must provide and post notice of employee's right to request CFRA leave in conspicuous places easily seen by employees and applicants for employment;
  - electronic posting is sufficient if it meets the other requirements of the section;
  - employers are encouraged to give a copy of the notice to current and new employees, ensure that copies are otherwise available and disseminate the notice in any other way; and
  - if employer's workforce at any facility contains 10 percent or more of persons who speak a language other than English, the employer must translate the CFRA notice into every language that is spoken by at least 10 percent of the workforce.
- Require employers to include a description of CFRA leave in the next edition of their handbooks following these amendments if employers' handbooks describe other kinds of personal or disability leave.
- Provides the Certification of Health Care Provider form that employer may use for leaves involving serious health conditions.

In light of the recent amendments, employers should update their policies and procedures (as well as all posted notices), evaluate their workforce to determine if posted notices should be translated,

and ensure that supervisors are trained and prepared on the new laws and requirements. The amendments are substantial, and this article outlines only a few highlights from the amendments. Therefore, employers should consult with an employment attorney on how the amendments may affect their workforce.

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