

# New California Family Rights Act: State Family Care and Medical Leave Expanded

## Key Points

- Effective Jan. 1, 2021, most California employees — even those who work for very small businesses — will be entitled to 12 weeks of job-protected time off work under the CFRA for qualifying reasons.
- Qualifying reasons for leave are broadly defined to include caring for a family member — including grandparents, grandchildren, adult children and siblings — with a serious health condition.
- California employers covered by both the CFRA and the FMLA may need to provide up to 24 weeks of job-protected leave in certain circumstances.

Governor Newsom signed Senate Bill (SB) 1383, significantly expanding the California Family Rights Act (CFRA). SB 1383 requires employers **with five (5) or more employees** to provide up to 12 workweeks of unpaid leave during each 12 month period for purposes of family care and medical leave. SB 1383 also expands the categories of people for whom employees can take leave. The new CFRA goes into effect on **Jan. 1, 2021**.

## Small Businesses Beware

Under the current CFRA, an employer must provide job-protected family care and medical leave to employees with at least 1,250 hours of service during the previous 12 month period, only if the employer has 50 or more employees within a 75-mile radius of the worksite. Under the New Parent Leave Act (NPLA), employers with 20 or more employees within a 75-mile radius must provide 12 workweeks of unpaid job-protected leave, also known as "baby bonding leave," to employees with at least 1,250 hours of service with the employer during the previous 12 month period.

Beginning Jan. 1, 2021, however, an employer will be required to provide job-protected family care and medical leave to employees with 1,250 hours of service in the previous 12 months, even if the employer only has **five (5) employees**, and even if those employees are not within a 75-mile radius of the same worksite. This expansion of the CFRA repeals the NPLA as it now allows for "baby bonding leave." Moreover, under SB 1383, new parents



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working for the same company are *both* able to benefit from this leave, and each may take up to 12 workweeks of unpaid job-protected leave, while current law limits parents who work for the same employer to a combined total of 12 weeks.

## **"Family Members" Include Domestic Partners, Siblings, Grandparents, Grandchildren**

While small businesses now need to adapt their business plans to provide family care and medical leave, all businesses will need to update their policies to reflect the new definition of "family members." In short, all employers should be aware that the new definition includes domestic partners, siblings, grandparents, and grandchildren, as well as adult children, whereas currently, "family members" only include a child, spouse, or a parent. That means employees can take family care or medical leave for themselves or their minor or adult child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

Notably, the Federal Family and Medical Leave Act (FMLA) does not cover all these categories. That means employees who work for California employers with 50 or more employees could end up entitled to two separate job-protected 12 workweek leaves under both laws, *i.e.*, 24 weeks of unpaid leave in a 12 month period. For example, an employee could take 12 weeks of unpaid family leave under the CFRA to care for a grandparent, and because caring for a grandparent is not covered by the FMLA, it would not count against the employee's 12-week entitlement to leave for an FMLA-qualified purpose. That would mean that if the employee requested additional time off for an FMLA-qualified purpose, such as time off for their own serious health condition, the employer would be obligated to provide an additional 12 weeks of job-protected unpaid leave in the same year.

## **Military Exigency**

The amended CFRA will also require employers to provide up to 12 workweeks of unpaid job-protected leave for any 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 Armed Forces of the United States.

Lastly, under SB 1383, employers will no longer be able to refuse reinstatement of "key employees" after a CFRA leave, which is currently allowed under qualifying circumstances.

## **Conclusion**

The new year is around the corner. California employers should start updating their policies, procedures, and forms, in accordance with the new provisions of the CFRA.

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