

# CALIFORNIA

## EMPLOYMENT LAW

# Employee Leave Laws – Family and Medical Leave



The federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees, provides eligible employees with up to 12 weeks of unpaid leave in any 12-month period for personal illness, to attend to a family's illness and after the birth or adoption of a child.

In addition to these federal leave requirements, California has enacted its own law, the California Family Rights Act (CFRA), which requires employers in the state with **50 or more employees** (five or more, effective Jan. 1, 2021) to provide eligible employees with **unpaid** family and medical leave. When an employee's leave is covered under both the FMLA and CFRA, employers must apply the provisions of each federal and state law that are most generous to employees.

### STATE RESOURCES

California Department of Industrial Relations [website](#)

California Department of Fair Employment and Housing [website](#)

California Labor Commissioner's Office [website](#)

California Health and Human Services Agency [website](#)

California Employment Development Department [website](#)

### ELIGIBLE EMPLOYEES

To be eligible for family and medical leave under the CFRA, an employee must:

- Have a total of at least **12 months** of service with the employer;
- Have worked at least **1,250 hours in the 12 months prior** to leave; and
- Be employed at a work site with **50 or more employees** within 75 miles of the employee's work site (for employees with no fixed worksite, the worksite is the site to which they are assigned as their home base, from where their work is assigned or to where they report). As of Jan. 1, 2021, employees need only be employed by an employer with **five or more employees**, and the 75-mile requirement no longer applies.

If an employee is not eligible for CFRA leave at the start of leave because he or she has not yet met the 12-months of service requirement, the employee may meet this requirement while on leave.

### AMOUNT OF LEAVE

Under the CFRA, an eligible employee may take **up to 12 weeks** of unpaid leave in a 12-month period for:

- Birth of the employee's child.
- Placement of a child with the employee through adoption or foster care.
- The employee's own serious health condition.



- The serious health condition of the employee’s child, parent, spouse or registered domestic partner. (Beginning Jan. 1, 2021, the serious health condition of the employee’s grandparents, grandchildren, siblings, or domestic partner’s children are also reasons for leave.)
- A 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. (This reason for leave takes effect Jan. 1, 2021.)

Because California has separate requirements for leave due to pregnancy- and childbirth-related medical conditions, CFRA leave may **not** be taken for disability resulting from these conditions.

However, an eligible employee may take CFRA leave when her pregnancy disability leave ends.

In addition, CFRA leave is subject to the following limitations:

- Leave may be taken in one or more periods, but must run concurrently with FMLA leave if the employee is eligible for both FMLA and CFRA leave;
- Employers may limit leave increments to the shortest period of time that the employer’s payroll system will allow;
- Each leave period taken to care for a newborn child must be taken within one year of the birth and be **at least two weeks** in duration (employers may grant up to two requests for a shorter leave period); and
- If both parents are employed by the same employer, the amount of leave available for birth, adoption or foster care of a child **must be shared**. (This limitation expires Jan. 1, 2021.)

### PAYMENT ON LEAVE

Employers are **not** required to pay an employee during CFRA leave.

### OTHER TYPES OF LEAVE

Employees may use, and employers may require employees to use, accrued vacation leave or other accrued time off (paid or unpaid) for family and medical leave purposes. However, employers do not have to allow employees to use accrued paid sick leave if the employee is taking CFRA leave to care for the serious health condition of a child, spouse, parent or domestic partner.

Employees may substitute leave taken pursuant to a short- or long-term disability leave plan (as determined by the terms and conditions of the employer’s leave policy) for an otherwise unpaid portion of CFRA leave that is for the employee’s own serious health condition. This paid leave runs concurrently with CFRA leave and may continue longer than the CFRA leave if permitted under the disability leave plan.

### CONTINUATION BENEFITS

During an employee’s CFRA leave period, employers must maintain and pay for **group health plan coverage** for the employee. The health coverage must be continued under the same conditions as those provided prior to leave. However, employers are not required to pay for retirement benefits for the employee during a leave period.

### NOTICE REQUIREMENTS



An employee requesting CFRA leave must provide **reasonable advance notice** to his or her employer of the reason for the leave and the anticipated timing and duration of leave. Notice may be verbal, but must be sufficient to make the employer aware that the employee needs CFRA leave.

An employer may require at least **30 days' advance notice** when the need for leave is foreseeable due to an expected birth, placement of a child for adoption or foster care or planned medical treatment for a serious health condition. If 30 days advance notice is not possible, notice must be given **as soon as practicable**.

An employer must respond to an employee's CFRA leave request **no later than five business days** after receiving the employee's request.

The employee must make reasonable efforts to schedule any planned medical treatment in a manner that minimizing disruption to the employer's business.

### CERTIFICATION REQUIREMENTS

An employer may require certification from the employee's (or his or her family member's) health care provider for leave taken due to a serious health condition and recertification for leave that continues beyond the initial leave period. The certification must contain the date on which the condition began and the probable duration of the condition, as well as the following:

- For leave to care for **another's serious health condition**:
  - An estimate of the amount of time that the health care provider believes the employee needs to care for the individual; and
  - A statement that the condition warrants the employee providing that care.
- For leave to care for **the employee's own serious health condition**: a statement that, due to the condition, the employee is unable to perform the duties of his or her position.

An employer may also require certification to demonstrate an employee's fitness to return to work from CFRA leave, as long as the practice of requesting certification is uniformly applied. Regardless of the reason for leave, an employer may not contact a health care provider for any reason other than to authenticate a medical certification.

### REINSTATEMENT RIGHTS

After an employee returns from CFRA leave, he or she must be restored to his or her previous position (or to a similar position with the same duties) at the same geographic location at which he or she worked prior to the leave. Employers must also pay employees returning from the leave the same amount they earned before the leave.

Effective until Jan. 1, 2021, an employer is **not** required to reinstate a **salaried employee** after returning from CFRA leave if:

- The employee is among the **highest paid 10 percent of employees** within 75 miles of the employee's work site;
- Reinstatement would lead to **substantial and grievous economic injury** to the employer's operations;
- The employer **notifies the employee** in writing of its ability to refuse reinstatement at the time the employee gives notice of the need for CFRA leave (or when CFRA leave commences, if earlier) due to the employee being a key employee; and



- The employer provides the employee with **written notice** (in person or by certified mail) that the employer intends to deny reinstatement on completion of leave.

This exception to the reinstatement requirement expires Jan. 1, 2021.

### EMPLOYEE PROTECTIONS

Family and medical leave may not be considered a break in the employee's continuous service affecting the employee's rights to salary adjustments, benefits or seniority.

In addition, employers may not:

- Interfere with, restrain or deny an employee's exercise of or attempt to take leave; or
- Discharge, fine, suspend, expel, discipline or otherwise discriminate against an employee who takes leave or gives information relating to any person's right to leave.

An employer may not retroactively designate leave as CFRA leave after the employee has returned to work, except with appropriate notice to the employee and where the employer's failure to timely designate does not cause harm or injury to the employee.

### ENFORCEMENT

Any violation of CFRA requirements is considered an unlawful employment practice.

If an employer violates the CFRA in any way, an affected employee may file a complaint with the Fair Employment and Housing Commission. The Commission may require the employer to:

- Hire, reinstate or upgrade the employee, with or without back pay;
- Pay damages for any injuries suffered, if the Commission files a civil action;
- Refrain from committing any further violations; or
- Pay a fine of up to \$25,000 for any discrimination.

Employers may also be liable for any civil suit that an employee may file.

### POSTING AND EMPLOYEE HANDBOOK REQUIREMENTS

Under the CFRA, employers are responsible for informing employees of their right to request family and medical leave. Employers must notify each employee whether any paid or unpaid leave will be counted toward the employee's CFRA leave entitlement.

#### EMPLOYEE HANDBOOK

Employers must include a description of CFRA leave in any employee handbooks that the employers provide to their employees.

#### REQUIRED POSTER

Employers are required to post a [notice](#) that explains the CFRA's provisions. The notice must be posted on the employer's premises, prominently, in conspicuous places where it can be readily seen by employees and applicants for

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employment. If 10 percent or more of the employer’s workforce speaks another language as their primary language, the employer must provide the required notice in that language.

### **MORE INFORMATION**

For more information on employee leave laws in California, please contact your representative at The TEAM Companies, LLC.