

EMPLOYMENT LAW SUMMARY

California: Employee Leave Laws – Family and Medical Leave



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The [California Family Rights Act](#) (CFRA) requires employers in the state with **five or more employees** to provide eligible employees with **unpaid** family and medical leave. In addition, the [California Fair Employment and Housing Act](#) (FEHA) requires employers to provide leave for bereavement and reproductive loss.

California employers must also comply with leave requirements under the federal Family and Medical Leave Act, not discussed here.

Leave Under CFRA

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 **five or more employees**.

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:

- The birth of the employee's child.
- The 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, grandparents, grandchildren, siblings, or domestic partner's children or, effective Jan. 1, 2023, a designated person identified by an employee at the time they request leave. The designated person can be any individual related by blood, or whose association with the employee is the equivalent of a family relationship. Employers may limit employees to one designated person per 12-month period.
- 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.

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; and
- 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).

Payment on Leave

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

Note that employees may be eligible for [paid family leave](#) through the California state disability insurance program. This benefit is funded by employees through payroll contributions, which employers are required to withhold and send to the California Employment Development Department. State disability insurance is a cash benefit program only and does not provide job-protected 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 their child, parent, parent-in-law, spouse or registered domestic partner, grandparent, grandchild, sibling, domestic partner's children or designated person.

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.

Coverage Continuation

During an employee's CFRA leave period, employers must continue providing **group health plan coverage** for the employee. The health coverage must be continued under the same conditions as those provided prior to leave. 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 minimizes disruption to the employer's business.

Certification Requirements

An employer may require certification from the employee's (or his or her family member's or designated person'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.

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. However, a [small employer mediation pilot program](#) run by the California Civil Rights Department gives employers with 5-19 employees and their current or former employees the right to mediate disputes about the employee's right to CFRA leave and bereavement leave (see below for information about bereavement leave). The statute establishing the program is scheduled to sunset Jan. 1, 2025.

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.

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

Employers are required to post a [notice](#) that explains the CFRA's provisions. The notice must be posted prominently on the employer's premises, in conspicuous places where it can be readily seen by employees and applicants for employment. If 10 % or more of the employer's workforce speaks another language as their primary language, the employer must provide the required notice in that language.

Leave for Bereavement and Reproductive Loss

In addition to the qualified CFRA leave outlined above, the FEHA entitles employees who have worked for their employer for at least 30 days to **five days of bereavement leave** upon the death of a family member, as follows:

- Leave must be completed within three months of the family member's death;
- Leave must be taken pursuant to any existing bereavement leave policy of the employer (so long as the employee is entitled to no less than a total of five days of bereavement leave);
- Bereavement leave may be **unpaid** in the absence of an existing policy, but employees are authorized to use other leave balances otherwise available, including accrued and available paid sick leave; and
- The days of bereavement leave do not need to be consecutive.

As with CFRA, the FEHA bereavement leave requirement applies to employers with at least **five employees**.

If requested by a covered employer, employees must provide documentation of the death of the family member within 30 days of the first day of leave. Documentation includes but is not limited to a death certificate, a published obituary, or written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or governmental agency.

Effective Jan. 1, 2024, FEHA also [requires](#) employers to allow employees to take up to **five days** of unpaid leave following a **reproductive loss**. The requirement also applies to employers with at least five employees, including the state and its political subdivisions, such as cities and counties. As with bereavement leave, employees are eligible for the leave if they have worked for their employer for at least 30 days.

"Reproductive loss" is defined as a failed adoption, failed surrogacy, miscarriage, stillbirth or unsuccessful assisted reproduction. Reproductive loss leave must be taken within three months of the reproductive loss event and pursuant to any applicable leave policy of the employer. Total leave for an employee's multiple reproductive loss events is limited to 20 days per 12-month period. Employees may take the leave on nonconsecutive days.

In the absence of an existing applicable employer policy, reproductive loss leave may be unpaid. However, employees may use any available vacation, personal leave, accrued and available sick leave or compensatory time off. The law prohibits employers from retaliating against employees who take the leave. Confidentiality provisions also apply.

More Information

For more information on employee leave laws in California, please contact your representative at Better Business Planning, Inc..

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