



Employment Law News

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Big Changes to The California Family Rights Act

Important changes to the [California Family Rights Act \(CFRA\)](#) became effective January 1, 2021.

Small employers – take note! Employers of five or more employees are now covered by CFRA. The federal counterpart, the Family and Medical Leave Act (FMLA), still applies only to employers of 50 or more. Under CFRA, you must generally provide up to twelve weeks of unpaid leave to employees for their own serious health condition, to care for a family member with a serious health condition, bond with a new baby or newly adopted or foster child, and participate in certain military activities.



Even if you were already a CFRA-covered employer, you need to be aware of significant new changes to CFRA. The amended law:

- Removes the geographic restriction in the definition of an employee.
 - Defines **employee** for these purposes as an individual who has **at least 1,250 hours** of service with the employer during the **previous 12-month period**.
 - No longer requires that the employees be within a 75-mile radius.
- Expands the definition of family member to include grandparents, grandchildren, and siblings (in addition to children, parents, and spouse).
- Now requires an employer employing both parents of a child to grant leave to **both** employees for “baby bonding.”
- No longer permits an employer to refuse to reinstate “key employees.”
- Adds leave for military activities of employees, and their spouses, domestic partners, children, or parents.

Previously, there was little difference between CFRA and FMLA. These changes dramatically widen the gap between the two leave laws. Employers covered by both laws should not assume that an employee’s FMLA and CFRA leaves will be concurrent, or that employees who are ineligible for FMLA will be ineligible for CFRA.

If you are new to CFRA, it is critical that you take the time to learn what the law covers and what you need to do to implement it. A few important points to understand:

- There are notice requirements that, if not complied with, may result in a leave not being designated as a CFRA leave.
- The CFRA leave does not run concurrently with a Pregnancy Disability Leave. Thus, an employee who finishes her pregnancy disability leave is still eligible for a CFRA “baby bonding” leave.
- Employers must maintain an employee’s group insurance benefits in the same manner during the leave as before the employee went on leave.
- Providing all twelve weeks of CFRA leave does not mean that you may not be required to provide a longer leave of absence as a reasonable accommodation of a disability.
- If you have an employee handbook that describes leave policies (and you should!), you must provide information about CFRA in it.
- You have an obligation to advise employees of their CFRA rights if you become aware of circumstances giving rise to a CFRA-eligible leave, even if employees do not request the CFRA leave.

What should you do now?

1. Understand the principal requirements of CFRA.
2. Draft or update a CFRA policy and include it in your employee handbook.
3. Prepare a CFRA checklist, notice template, and related documents so that you can implement a CFRA leave properly when the need arises.
4. Order your DFEH required posters for [Pregnant Employee Rights](#) and [CFRA and Pregnancy Leave](#).

Review Your Employment Applications and Recruiting Practices

In the midst of trying to manage the difficulties presented by the COVID-19 pandemic, you may have missed new [Fair Employment and Housing Act \(FEHA\)](#) regulations, which went into effect July 1, 2020. These may require changes in your job application forms. Make sure that you:

DON'T request work availability information in a way that might ascertain the applicant’s religion or disability. So, for example, don’t ask “Can you work on Sundays?” Instead ask “Are there days you are unavailable to work, other than for reasons related to your religion, disability, or medical condition?”



DON'T ask questions that may reveal the applicant's age. For example, remove any requests for graduation dates.

DO include a mechanism in online application technology for applicants to request an accommodation of disability.

DON'T use online application technology that includes algorithms that screen out applicants age 40 or over or use drop-down menus containing age-based cut-off dates.

And, as a reminder, while you are reviewing your application forms, be sure they comply with two laws from recent years:

DON'T ask if an applicant has been convicted of a crime.

DON'T ask for an applicant's compensation rate at any prior job.

Finally, when you update your application forms electronically, also be sure to instruct everyone to destroy old hard copies of the applications.

COVID-19 Laws and Regulations Require Diligence

Last, but far from least, employers need to understand and comply with several COVID-19 laws and regulations.

Workers' Compensation: [SB 1159](#) codified an earlier executive order creating a rebuttable presumption that an employee's Covid-19 infection is a workplace injury. The new law, applying to employers of 5 or more employees, creates a disputable presumption that an employee contracted COVID-19 at the workplace if there is a workplace "outbreak." In very general terms, an outbreak is defined as follows:



- Employers with 5 – 100 employees have an "outbreak" if 4 or more employees test positive within 14 calendar days.
- Employers with more than 100 employees have an "outbreak" if 4% of their employees test positive within 14 calendar days.

Importantly, employers must report to their workers' compensation carrier **within three business days** when any employee tests positive for COVID-19.

Sick Leave: In 2020, the federal Families First Coronavirus Response Act (FFCRA) provided two weeks of sick leave for COVID-19 related purposes to employees who worked for employers with less than 500 employees. California enacted a similar sick leave law covering larger employers, which remained effective until the expiration of the FFCRA.

The FFCRA mandatory sick leave was not extended, and thus the mandatory sick leave under both the federal and state laws expired at the end of last year. However, Congress is allowing employers to continue to provide the federal sick leave on a voluntary basis to employees who had not used the entire 80 hours in 2020, and continue to claim the related payroll tax credit, through March 31, 2021.

Notice and Recordkeeping: [AB 685](#) requires employers who learn of a potential COVID-19 exposure in the workplace to take the following steps **within one business day**:

1. Provide a notice to all employees and employees of contractors who were at the worksite during a defined infectious period.
2. Exclude employees from the workplace if they were in “close contact” with the infected employee, as defined.
3. Provide benefits information to all employees who are excluded from the workplace, as defined, including sick leave or other leave and wage replacement benefits. (Note: An emergency Cal/OSHA regulation requires that an employer continue the wages and benefits of an employee excluded from the worksite due to COVID-19 exposure if the employee is otherwise able to work.)
4. Notify all employees of the disinfecting and safety plan the employer is implementing.

All such notices must be retained by the employer for three years.

Covid-19 Prevention Plan: The Cal/OSHA Emergency Regulation also requires employers to adopt a detailed COVID-19 Prevention Plan, which can be included in the employer’s Injury and Illness Prevention Program (IIPP) or be a separate document.

The 21-page [CalOSHA Emergency Regulation](#) should be reviewed by all employers. Cal/OSHA has an [“FAQ”](#) on its website that provides additional information on the regulation.

There are at least two lawsuits pending that seek to enjoin enforcement of portions of this emergency regulation. Murphy Austin is monitoring those actions and will send an alert when there are updates.

For the present, however, employers should draft and implement the required Prevention Plan.



Created and curated by Shawn Joost, [Murphy Austin's Employment Law News](#) is a quarterly update focused on the top legislative changes affecting California employers.



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