



October 26, 2020

EXPANSIONS TO THE CALIFORNIA FAMILY RIGHTS ACT (SB 1383)

Presented by: Jennifer Shaw, Esq.

425 University Avenue, Suite 200
Sacramento, California 95825
Telephone: 916.640.2240
Facsimile: 916.640.2241
<http://shawlawgroup.com>



EXPANSIONS TO THE CALIFORNIA FAMILY RIGHTS ACT (SB 1383)

Table of Contents

	<u>Page No.</u>
Please Note.....	1
California Family Rights Act Basics.....	1
Covered Employers.....	1
Eligible Employees.....	2
Purposes for Using CFRA.....	2
What Is a “Serious Health Condition”?.....	2
Amount of Leave Available.....	3
Measuring the Leave Year.....	3
Intermittent or Reduced Schedule Leave.....	3
Entitlement to Health Benefits While On Leave.....	4
Pay During Leave.....	4
Available Wage Replacement Benefits During Leave.....	4
Reinstatement.....	5
Notice and Posting Requirements.....	5
Medical Certification.....	5
Second and Third Opinions.....	6
Reinstatement.....	6
If an Employee Cannot Return to Work After CFRA Leave.....	6
Key Changes to the CFRA.....	7
Your “To Do” List.....	7
Questions/Comments.....	7

Jennifer Shaw

Jennifer Shaw is the founder of Shaw Law Group. A well-respected expert in employment law for more than 25 years, employers rely on Jennifer to provide practical advice and counsel on a broad range of employment law issues, including wage-hour compliance, reasonable accommodation/leaves of absence, and hiring/separation. Named by Northern California Super Lawyers magazine as one of the top attorneys in California every year since 2009 and the recipient of numerous other awards, including the 2019 Sacramento Business Journal's "Women Who Mean Business," Jennifer is a frequent speaker on employment law topics, and a regular guest on local television and radio. After receiving a Bachelor of Arts degree in economics with honors from the University of California, Santa Cruz, Jennifer graduated magna cum laude from the University of San Francisco School of Law, where she was the editor-in-chief of the law review.



425 University Avenue
Suite 200
Sacramento, California 95825

Telephone: 916.640.2240
Facsimile: 916.640.2241

<http://shawlawgroup.com>



PLEASE NOTE...

- This program is intended to be a general overview, and should not be considered legal advice regarding your specific situation
- Consult with your counsel before making any changes to your practices

CALIFORNIA FAMILY RIGHTS ACT BASICS

COVERED EMPLOYERS

- Employers with 5 or more employees for at least 20 calendar weeks in the current or preceding calendar year
- Beware of joint employment

ELIGIBLE EMPLOYEES

An employee who has:

- at least 12 months of service (not necessarily consecutive); and
- worked at least 1,250 hours during the 12-month period preceding the first day of leave



© 2020 Shaw Law Group, P.C. All Rights Reserved.

PURPOSES FOR USING CFRA

- Employee's own "serious health condition"
- Covered family member's "serious health condition"
 - Parent, spouse, child, grandparent, grandchild, sibling, and maybe "in-laws"
- To "bond" with a new child (within 12 months of birth, adoption, placement in foster care)
- For qualifying exigencies related to military service



© 2020 Shaw Law Group, P.C. All Rights Reserved.

WHAT IS A "SERIOUS HEALTH CONDITION"?

- An illness, injury, impairment, or physical or mental condition that generally involves either:
 - Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential care facility; or
 - Continuing treatment or supervision by a healthcare provider
- Not necessarily a "disability"
- Determined by a healthcare provider



© 2020 Shaw Law Group, P.C. All Rights Reserved.

AMOUNT OF LEAVE AVAILABLE

- 12 weeks in a 12-month period (the "leave year")
- Based on employee's regular workweek
- Can be used in blocks of time or on intermittent/reduced schedule basis
- May be more than 480 hours



© 2020 Shaw Law Group, P.C. All Rights Reserved.

MEASURING THE LEAVE YEAR

Options:

- Calendar year
- Any fixed 12-month period
- Measure forward from the date on which the employee takes FMLA/CFRA leave
- Measured backward from the date on which the employee takes FMLA/CFRA leave on a "rolling" basis



© 2020 Shaw Law Group, P.C. All Rights Reserved.

INTERMITTENT OR REDUCED SCHEDULE LEAVE

- Must be "medically necessary"
- Smallest increment of FMLA/CFRA leave is 1 hour
- Only the amount of leave actually taken counts
- Employees may be reassigned to similar positions that can better accommodate their schedules (with equivalent pay and benefits)
- Employees cannot be required to schedule routine appointments around employer's operational needs



© 2020 Shaw Law Group, P.C. All Rights Reserved.

ENTITLEMENT TO HEALTH BENEFITS WHILE ON LEAVE

- Employer must continue group health benefits for employee and dependents under the same conditions as if employee were actively working
- Maximum of 12 weeks in most cases



© 2020 Shaw Law Group, P.C. All Rights Reserved.

PAY DURING LEAVE

- FMLA/CFRA leave unpaid
- Salaries of exempt employees may be "docked" for FMLA/CFRA, including partial-day absences (exception to salary test basis)



© 2020 Shaw Law Group, P.C. All Rights Reserved.

AVAILABLE WAGE REPLACEMENT BENEFITS DURING LEAVE

- Sources
 - Employer-provided paid time off
 - California Healthy Workplaces, Healthy Families Act sick leave ("PSL")
 - State Disability Insurance ("SDI")/Nonindustrial Disability Insurance ("NDI")
 - Workers' compensation benefits
- Cannot require employees to use PSL
- Cannot require employees who receive wage replacement benefits during FMLA/CFRA leave to use employer-provided time off



© 2020 Shaw Law Group, P.C. All Rights Reserved.

REINSTATEMENT

- Employer must reinstate employee to the same or a comparable position when FMLA/CFRA leave ends, provided employee is able to return to work
- A “comparable position” must be one with the same pay, benefits, schedule, shift, responsibilities, job duties, and location
- Employee has no greater right to reinstatement than if they had been continuously working (e.g., can still be subject to layoff, performance management)



© 2020 Shaw Law Group, P.C. All Rights Reserved.

NOTICE AND POSTING REQUIREMENTS

- Every employee must receive notice of their CFRA rights upon hire (can include in employee handbooks/personnel manuals, or provide annual printed notice)
- Every covered employer must post printed notices, even where no employees are eligible for CFRA leave
 - Post in additional languages if more than 10% of employees are literate in a language other than English



© 2020 Shaw Law Group, P.C. All Rights Reserved.

MEDICAL CERTIFICATION

- Employee may be required to submit health care provider certification of “serious health condition”
- Certification must be provided prior to leave, if leave is foreseeable
- If leave is not foreseeable, certification must be provided within 15 days of employer’s request
- Use the DFEH’s standard medical certification form available at: https://dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/CFRA-Certification-Health-Care-Provider_ENG.pdf



© 2020 Shaw Law Group, P.C. All Rights Reserved.

SECOND AND THIRD OPINIONS

- Employer may challenge a medical certification for an employee's serious health condition if there is a "good faith, objective" reason to doubt the validity of the certification
- Employer must pay for second/third opinions, including employee's time and expenses



© 2020 Shaw Law Group, P.C. All Rights Reserved.

REINSTATEMENT

- Employee must be reinstated to the same or a comparable position
- Employer may require return-to-work certification (except for intermittent leave)
- If employer believes an employee may pose a direct threat, employer may require employee to undergo a fitness-for-duty examination after reinstatement



© 2020 Shaw Law Group, P.C. All Rights Reserved.

IF AN EMPLOYEE CANNOT RETURN TO WORK AFTER CFRA LEAVE...

- If the delay is due to employee's own serious health condition, evaluate whether employee has a disability, requiring "reasonable accommodation" (which may mean more leave!)
- If the delay is due to anything else, follow your policies and practices for discretionary leave unless some other leave law applies



© 2020 Shaw Law Group, P.C. All Rights Reserved.

KEY CHANGES TO THE CFRA

- SB 1383; effective 1/1/21
- New Parent Leave Act eliminated
- Applies to all employers with five or more employees
- Eliminated the requirement of 50 or more employees within a 75-mile radius
- Eliminates the “key employee” exception to reinstatement
- Expands definition of “family member” to include grandparent, grandchild, sibling (and maybe in-laws)
- Eliminates the requirement that “parents” who work for the same employer must share “bonding” time
- Creates Mediation Pilot Program for employers with between five and 19 employees (ends on 1/1/24)



© 2020 Shaw Law Group, P.C. All Rights Reserved.

YOUR “TO DO” LIST

- Assign a “team” in the organization to handle leaves of absence
- Update your handbooks, manuals and procedures ASAP (there are LOTS of other new laws that require changes)
- If covered by the FMLA, consider how to handle “stacking” issues



© 2020 Shaw Law Group, P.C. All Rights Reserved.

QUESTIONS/COMMENTS



© 2020 Shaw Law Group, P.C. All Rights Reserved.

THANK YOU!



425 University Ave, Suite 200
Sacramento, California 95825
Telephone: 916.640.2240
Facsimile: 916.640.2241

201 Mission Street, 12th Floor
San Francisco, California 94105
Telephone: 415.983.5960
Facsimile: 415.983.5963

Email: info@shawlawgroup.com
Website: <http://shawlawgroup.com>

