



Small Employer Guide to California Family Rights Act (CFRA)

Requests for leaves of absence rank amongst the most frequently encountered challenges employers face. California employers are required to comply with state-specific leave laws, including the California Family Rights Act (CFRA), which provides eligible employees with 12 workweeks of protected leave under qualifying events for full-time employees, and a proportional number of workweeks for employees who work less than full-time. Employers are prohibited from interfering with the exercise of CFRA rights and from retaliating against an employee who takes CFRA leave.

Covered Employers

The CFRA applies to employers who directly employ **five or more employees** during each of any 20 or more calendar weeks in the current calendar year or the preceding calendar year (this does not include independent contractors). It requires employers to provide eligible employees with up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a “qualifying event” defined below.

Qualifying Events (Reasons for Leave)

CFRA leave may be taken for any of the following qualifying events:

- The employee’s own serious health condition (not including pregnancy) that makes the employee unable to work at all or unable to perform one or more essential functions of the job
- The serious health condition of an employee’s child, parent, grandparent, grandchild, sibling, spouse or domestic partner
- Baby bonding: to bond with the employee’s new child (by birth, adoption or foster placement). All baby bonding leave must conclude within one year of the birth, adoption or foster placement of the child
- 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

The CFRA does not include an undue hardship provision. Small employers will need to find a way to comply and provide this required leave for eligible employees.

Definitions

- A **child** means a biological, adopted or foster child; a stepchild; a legal ward; or a child who is either under 18 years of age or is an adult-dependent child of an employee who stands in loco parentis (acting or done in the place of a parent) to that child. An adult-dependent child is an individual who is 18 years of age or older and is incapable of self-care because of a mental or physical disability
- A **parent** means a biological, foster, or adoptive parents, a stepparent, a legal guardian or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child
- A **parent-in-law** is defined as the parent of a spouse or domestic partner

- A **spouse** means a partner in a legal marriage or a registered domestic partner, including same-sex partners in a marriage with the employee
- A **grandchild** means a child of the employee's child
- A **grandparent** means a parent of the employee's parent
- A **serious health condition** means an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential care facility; or continuing treatment or continuing supervision by a health care provider
- A **qualifying exigency** is an urgent need related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child or parent in the United States Armed Forces. Such events may include leave to spend time with a covered military member either prior to or post deployment, or to attend to household emergencies that would normally have been handled by the covered

Employee Eligibility

Full-time and part-time employees are eligible for CFRA leave. To be eligible for CFRA leave, employees must:

- Be employed for at least 12 months (52 weeks) preceding the commencement of a CFRA leave (the 12 months need not be consecutive);
- Have worked for the employer at least 1,250 hours during the 12-month period immediately prior to the date the CFRA leave is to commence; and
- Not have already exhausted their available CFRA leave in the employer's designated 12-month CFRA leave year

Eligible employees may take CFRA-protected leave for a qualifying reason that covers the duration of the illness, medical treatment or recovery time up to 12 workweeks in a 12-month period.

Employers of both parents must grant each parent up to 12 workweeks of leave in the same 12-month period, and the employees can request to take the leave at the same time.

How to Define the 12-Month Period

Employers may use any one of the following methods to define the 12-month period:

- Calendar year
- Fixed year based on a fiscal year, an employee's anniversary date, or other fixed 12-month "leave year"
- 12-month period measured forward from the date the employee begins their leave
- *A rolling 12-month period measured backward from the date the employee uses any leave
- Part-time employees who regularly works part-time receive 12 workweeks based on that part-time schedule, not a full-time schedule

**Recommended as a best practice.*

You must apply whatever method you choose consistently and uniformly to all employees. If an employer fails to select one of the four methods for measuring the 12-month period, the method that provides the most beneficial outcome for the employee will be used.

Calculating 12 Workweeks

“Twelve workweeks” means the equivalent of 12 of the employee’s normally scheduled workweeks. For eligible employees working more or less than five days a week or working alternative workweek schedules, the number of working days constituting 12 weeks is calculated on a pro-rata or proportional basis. As examples:

- For a full-time employee working five, eight-hour days per week, 12 workweeks means 60 eight-hour days of leave entitlement
- For an employee working half-time, 12 workweeks means 30 eight-hour days, 60 four-hour days, or 12 workweeks of whatever is the employee’s normal half-time work schedule

If the employee’s schedule varies from week-to-week such that it is difficult to determine with any certainty how many hours an employee would be expected to work if not for the CFRA leave, then a weekly average of the hours the employee was scheduled to work over the 12 months prior to the beginning of the leave period (including any hours the employee took leave of any type) should be used to calculate the employee’s leave entitlement.

Intermittent or Reduced Schedule Leave

Employees may take CFRA leave intermittently or on a reduced schedule under certain circumstances.

- Intermittent leave: leave taken in separate blocks of time due to a single qualifying reason
- Reduced schedule leave: a change in the employee’s schedule, normally from full-time to part-time

Intermittent or reduced schedule leave may be taken with some restrictions:

- The leave must be for the serious health condition of the employee or his or her family member
- The leave must be “medically necessary”
- The employee must still be able to perform the essential functions of the job
- Only the amount of leave actually taken counts

There is no limit to the size of an increment for intermittent or reduced schedule leave for the serious health condition of the employee or the employee’s family member. You may limit leave increments to the shortest period that your payroll system uses to account for absences or use of leave, provided it is one hour or less. For example, if employees must use vacation or sick time in half hour increments or more, then you can require an employee leaving 20 minutes before the end of the workday for treatment for a serious health condition to use a half hour of the employee’s CFRA leave entitlement.

If employees need intermittent or reduced schedule leave for planned medical treatment, they must make a reasonable effort to schedule the treatment to not unduly disrupt their employer’s operations. However, employees cannot be required to schedule routine appointments around employers’ operational needs.

Employees who need CFRA leave for planned medical treatment for the employee or family member may be temporarily reassigned to similar positions that can better accommodate their schedules (with equivalent pay and benefits). Transfer to an alternative position includes altering an existing job to accommodate the employee’s need for intermittent leave or reduced work schedule and must comply with any applicable collective bargaining agreement or employer leave policy, the Fair Employment and Housing Act, and any other applicable state or federal law. The employer must not transfer the employee to an alternative position to discourage the employee from taking leave or otherwise to create a hardship for the employee.

The minimum duration of intermittent leave for baby bonding is two weeks for CFRA leave. However, you must grant a request of less than two weeks' duration on any two occasions and may grant requests for additional occasions of leave lasting less than two weeks.

Medical Certification

Employers are allowed to request certification from a health care provider for CFRA leaves due to the employee's own serious health condition or that of a family member.

Timing

The employer may require that the employee provide any certification within **no less than 15 calendar days** of its request for certification, unless it is not practicable for the employee to comply despite the employee's good faith efforts. This means that, in some cases, the leave may begin before the employer receives the certification.

Absent extenuating circumstances, such as the health care provider being unavailable, failure to return the certification in a timely manner can result in denial of CFRA protections following the expiration of the 15-day time period until a sufficient certification is provided. Additional time may be permitted in some circumstances.

If the employee never provides the certification (or recertification), the leave is not protected CFRA leave.

When you request certification, you need to advise the employee of the consequences of the employee's failure to provide adequate certification.

Content of Certification

- Employee's own serious health condition: you may require the certification to include: the date the serious health condition commenced; the probable duration of the serious health condition; and a statement that the employee is unable to perform one or more of the essential functions of the job due to the serious health condition
- Serious health condition of a family member: in addition to the above, the certification must contain a statement from the health care provider that the serious health condition "warrants the participation of a family member to provide care during a period of treatment or supervision of the individual requiring care"
- For privacy reasons, employers are prohibited from asking employees to provide additional information in the certification process, such as symptoms or underlying diagnosis.
- Employers may use the certification form under the [Family and Medical Leave section of The California Department of Fair and Employment and Housing \(DFEH\) website](#).

Verification

Medical privacy laws limit the type of information you can require on this certification. An employer may not contact a health care provider for any reason other than to authenticate a medical certification.

Employer requests for second and third opinions

If the employer has a good faith, objective reason to doubt the validity of the medical certification the employee provides for the employee's own serious health condition, the employer may seek, at its own expense, a second opinion. From a second health care provider the employer designates or approves. If the second opinion differs from the first opinion, the employer may obtain the opinion of a third health care provider designated or approved jointly by both the employer and

the employee, concerning any information in the certification. The opinion of the third health care provider concerning the information in the certification shall be considered to be final and binding on the employer and the employee.

Recertification

An employer can require the employee to obtain recertification at the end of the period that the health care provider originally estimated the employee needed for CFRA leave, but only if additional leave is requested.

Designation of Leave

Designation of a CFRA leave is a two-step process: employee notice of the need for a CFRA leave and employer designation of the leave as CFRA leave.

Employee Notice

Employees are required to notify their employers that they need to take CFRA leave, along with the anticipated timing and duration of the leave. The employee's notice may be verbal, and does not have to be specific.

Employees are not required to ask for CFRA leave by name. Employees just need to provide enough information for the employer to realize the absence might be covered by the CFRA. That triggers your responsibility to investigate further and decide whether the employee needs and is eligible for CFRA leave. Not recognizing a request as CFRA-covered is one of the most common ways employers violate the CFRA.

Timing of Employee Notice: if the need for leave is foreseeable, the employee must give reasonable advance notice and, if due to a planned medical treatment or supervision, the employee must make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision. If the employee's need for CFRA leave is not foreseeable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, **notice must be given as soon as practicable or 15 days from the employer's request.**

Employers are required to give employees reasonable advance notice of any notice requirements that it adopts.

Employer Designation

Once the employee requests CFRA leave, or you have enough information to determine whether the leave is being taken for a CFRA-qualifying reason, you are responsible for notifying the employee whether the leave will be designated as CFRA leave.

Timing of Employer Response: employers are required to respond to the leave request as soon as practicable and in no event later than **five business days** after receiving the employee's leave request or receipt of information allowing it to make this determination, typically after receiving certification from a health care provider. You must attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

- If the employer needs further information to determine whether the leave is CFRA-qualifying, it should ask the employee.
- The employer is required to respond to the employee's questions to determine if the leave qualifies for protection. Failure to respond may result in denial if the employer can't determine if the leave qualifies.
- If the employee is not eligible for CFRA leave, the employer response must explain why.

- When granting an employee's leave request, an employer must inform the employee of a **guarantee to reinstate the employee to the same or comparable position**. You are required to put the guarantee **in writing** if the employee requests.
- Employers 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 designate the leave in a timely manner does not cause harm or injury to the employee.

Denying CFRA Leave

Some employees who request CFRA leave will not be eligible for the leave. Document denial of CFRA leave for employees who:

- Fail to provide required medical certification
- Are not eligible for CRFA leave because they have not worked for the employer for 12 months or have not worked 1,250 hours in the prior year
- Exhausted their 12 workweeks of CFRA leave in the current 12-month period

Substitute Paid Leave

CFRA leave is **unpaid** by the employer. However, employees have certain rights to substitute accrued paid leave for the otherwise unpaid time and/or may be eligible for employee-funded insurance wage replacement benefits administered by California Employment Development Department (EDD).

Paid Sick Leave and Paid Time Off (PTO)

During CFRA leave, the employee may be eligible to receive:

- Accrued Vacation or Paid Time Off (PTO): the employee may elect, or the employer may require, the employee to use accrued vacation leave or other accrued paid time off (such as PTO) for any unpaid CFRA leave.
- Accrued Paid Sick Leave: the employee may elect, or the employer may require, the employee to use accrued paid sick leave for the employee's own serious health condition. However, if the employer and employee mutually agree, the employee may use accrued sick leave for any other reason (such as to bond with a baby or care for a family member).

State Disability Insurance and Paid Family Leave Benefits

Employees on CFRA leave may be eligible for employee-funded insurance wage replacement benefits administered by the California Employment Development Department (EDD):

- State Disability Insurance (SDI): If an employee takes CFRA leave for the employee's own serious injury or illness SDI wage replacement benefits may be available. Most employees are eligible for payments if absent for a qualifying reason. There is a seven-day waiting period before benefit payments begin.
- Paid Family Leave (PFL): Employees absent to care for a family member or to bond with a child during the first year after the birth, adoption, or placement for foster care, or leave for qualifying military exigency, may be eligible for eight weeks of wage replacement benefits. There is no waiting period.
- The employee may contact the EDD's website for more information and to file an SDI or PFL claim: www.edd.ca.gov.

Benefits

Covered employers must maintain and pay for eligible employee's health coverage with the group health plan, under the same conditions as coverage would have been provided if the employee were not on CFRA leave. This includes medical, dental, vision, mental health and other coverages, and coverage for dependents. This is subject to any changes in benefit levels that may have taken place during the period of CFRA leave affecting the entire workforce, unless otherwise elected by the employee.

This obligation to provide group health benefits begins on the date the leave first begins and continues for the duration of the leave, up to a maximum of 12 workweeks in a 12-month period.

If the employee does not return from the leave, you can recover benefit premiums paid during the leave under certain conditions.

Employee Reinstatement After Leave

Employees who take CFRA-covered leave are entitled to reinstatement to their same or a comparable job at the end of the leave and must be provided a guarantee in writing by the employer upon request of the employee.

An employee is entitled to reinstatement even if the employee has been replaced or their position has been restructured to accommodate the absence.

An employee returning from leave must have at least as much seniority as the employee had at the time of starting the leave, for purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation. The employee retains the same status and you must reinstate any benefits previously provided without any new qualification period.

Absent a request for reasonable accommodation, an employee is required only to return an employee to the same or a comparable position. Treat an employee's request to return to work on a part-time schedule or to take a different, available position the same as any other employee's request for a change in hours or positions. No special consideration for the request is necessary because of the employee's return from CFRA leave.

The CFRA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, position or geographic location that better suits the employee's personal needs on return from leave, from offering a promotion to a better position, or from complying with an employer's obligation to provide reasonable accommodations under the disability provisions of the California Fair Employment and Housing Act (FEHA) or the federal Americans with Disabilities Act (ADA).

If the employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license or other non-qualifying reason as a result of the leave, the employee must be given a reasonable opportunity to fulfill those conditions upon returning.

Ending the Employment Relationship Before the Leave Expires

You may terminate an employee who refuses to provide the required medical certification and remains absent from work. Employers should have a written policy and apply a consistent process when dealing with unauthorized absences from work.

In general, an employee on CFRA leave need not be reinstated if their job would have been eliminated had they not been on leave.

Unless blatant misconduct has occurred, an employer generally should not terminate an employee on leave; prior poor work performance is not enough. Performance issues should be addressed prior to and after any leave of absence.

Because of the retaliatory risk and liability, consult legal counsel before you terminate an employee who requests or is on leave.

Interaction with Pregnancy Disability Leave

It is important for employers to understand and coordinate leave requirements and designate them appropriately to avoid confusion. Pregnancy disability leave (PDL) taken for disability on account of pregnancy, childbirth, or a related medical condition is separate from CFRA leave. An employee on a leave due to a pregnancy disability and then to bond with a child may be on leave for about seven months: four months of PDL leave and then 12 workweeks of CFRA leave.

Prior to the onset of pregnancy disability leave, employers should request that employees obtain a medical certification from their health care provider of the need and duration of leave. [See *Your Rights and Obligations as a Pregnant Employee notice*](#). The actual time designated as disability related to pregnancy is determined by the employee's health care provider. The maximum amount of time available is four months, or 17 1/3 weeks per pregnancy. Note that if an employee is disabled longer than four months, the employee may be entitled to additional leave as a reasonable accommodation for a pregnancy-related or other disability.

Once the employee is released from PDL by her health care provider, employers should designate the onset of CFRA leave by providing an employee notice in writing within five business days. This notice should include the employer's guarantee to reinstate the employee to the same or comparable position. [See *What to Expect When Your Employee is Expecting*](#) on [cda.org](#).

All leave for baby bonding must conclude within one year of the birth of the child, or one year from the date the child was placed with the employee for adoption or foster care.

CFRA Mediation Pilot Program Available

The California Department of Fair and Employment and Housing (DFEH) has created a "small-employer family leave mediation program" for employers with between 5 and 19 employees. Under this pilot program, if a small employer receives a right-to-sue letter from the DFEH notice alleging a claim under the CFRA then the employer may request mandatory mediation through the DFEH. The DFEH must initiate the mediation promptly following the request, and the employee may not pursue any civil action until the mediation is complete. For more information, contact the DFEH at www.dfeh.ca.gov.

Leave for a Qualifying Military Exigency

The CFRA allows for 12 weeks of leave in a 12-month period because of any "qualifying exigency" arising out of the foreign deployment of that the employee's spouse, domestic partner, child, or parent.

There are specific eligibility requirements for qualifying exigency leave. In order for the employee to take the leave:

- The employee's spouse, domestic partner, child or parent must be a member of the United States Armed Services (including the National Guard and Reserves); and
- The member must be on covered active duty status, call to covered active duty status or notified of an impending call or order to covered active duty. "Covered active duty" means:
 - For members of the Regular Armed Forces — duty during the deployment of the member with the Armed Forces to a foreign country.
 - For members of a Reserve component of the Armed Forces (members of the National Guard and Reserves) — duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

The type of events that count as “qualifying exigencies” for which an employee may take CFRA leave, include the following:

- Short notice deployment — a period of up to seven calendar days may be taken to address any issue arising from a short-notice deployment (i.e., deployment with seven or less days of notice)
- Military events and related activities — official events or family support or informational briefings
- Childcare and school related activities — including arranging for alternative childcare, providing childcare on an urgent basis, enrolling or transferring schools or day care, attending school or daycare meetings
- Financial and legal arrangements
- Counseling
- Parental care activities — time needed to care for a military member’s parent who is incapable of self-care, such as arranging for alternative care and providing care on an immediate basis
- Rest and recuperation — Eligible employees may take up to fifteen calendar days of leave to spend time with a covered military member on short-term, temporary, rest and recuperation leave
- Post-deployment activities — military sponsored arrival or reintegration briefings (within 90 days of end of covered active duty) and to address issues relating to death of a servicemember
- Additional activities — any other event that the employee and employer agree is a qualifying exigency

Beginning January 1, 2021, California’s Paid Family Leave (PFL) wage replacement program was expanded to include benefits to cover time off for qualifying exigencies. Employees are able to collect PFL benefits if they take time off for certain activities related to the covered active duty status of their spouse, registered domestic partner, child, or parent who is a member of the U.S. Armed Forces.

This new law doesn’t create a new protected leave of absence. It merely gives an employee the ability to collect PFL benefits if the employee does take time off. The right to take a protected leave for qualifying exigencies will depend on whether the employee is eligible under the CFRA. If the employee is not eligible, an employer could nonetheless choose to provide a leave for qualifying exigencies but would not be required to do so.

For more information about California’s PFL program, see [Paid Family Leave](#).

Employer Notice and Posting Obligations

Covered employers must post a Notice about the [CFRA](#) informing employees of their rights to CFRA leave. CDA includes this notice in the Required Poster Set.

An employer’s failure to provide notice to an employee of their right to take medical leave under the CFRA precludes it from taking any adverse action against the employee, including denial of leave.

The CFRA brochure ([DFEH-E03B-ENG](#)) may be provided to employees.

Under California law, if you publish an employee handbook that describes other kinds of personal or disability leaves available to your employees, you must include a description of CFRA leave in the next edition of your handbook.

Forms for use by California Employers:

- [Certification of Health Care Provider - Employees or Family Members Serious Health Condition \(Provided by DFEH\)](#)
- [Certification of Health Care Provider for Employee Return to Work](#)
- [CFRA Designation Notice](#)
- [CFRA Documentation Checklist - For Employer Use Only](#)
- [Certification of Health Care Provider for Pregnancy Disability Leave, Transfer and/or Reasonable Accommodation](#)

How to Avoid the Most Common CFRA Management Mistakes

Failing to designate CFRA leave in writing.

- Follow a two-part documentation process. An employer must designate the CFRA leave in writing as required at the onset of the request, the employer must determine eligibility and a copy of the employee rights and responsibilities form. Once the employee provides certification from the health care provider of the need for leave, the employer must determine and notify the employee of the CFRA leave entitlement.
- If an employer fails this process, any prior leave taken may not count against the 12-workweek maximum unless it is formally designated as CFRA leave in writing.
- CFRA regulations provide that employers 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 designate the leave in a timely manner does not cause harm or injury to the employee.

Not counting (designating) worker's compensation leave as CFRA leave.

- If an eligible employee is out of work because of a serious injury, this would qualify as a serious health condition under CFRA.

Terminating the employee on leave for a non-misconduct reason.

- Prior to or during an employee's leave of absence is not the time to evaluate an employee's past performance. Because of the risk of liability, employers who are considering terminating the employment of an employee on leave are highly encouraged to seek counsel of an employment attorney before doing so.

Not having a policy that employees may not work for another employer while on leave.

- In general, there is no rule that an employee may not work for another employer while on leave unless a written policy prohibits it. An employer may not discipline or terminate an employee for working for another employer while on CFRA leave if there is no written policy against it.

Terminating an employee who does not return from leave.

- Employers are advised against any automatic termination when an employee fails to return on the designated date of return. If an employee still has leave available, the employer must provide the employee a written notice directing the employee to respond within 15-days with a new medical certification requesting additional leave.
- The 15-day rule does not apply to non-CFRA leave, but as a best practice an employer should contact the employee and provide a reasonable amount of time to produce a new medical certification before considering any termination.

Terminating an employee who exhausts their CFRA leave.

- If an employee continues to need leave and is not medically able to return to work beyond the 12 workweeks, an employer must engage in the interactive process in determining if additional leave is a reasonable accommodation. The employer should conduct an assessment to determine how much additional leave the employee needs and whether such leave will result in an undue hardship.

Providing only limited “discretionary” leave for employees who are not eligible for CFRA leave.

- In the event an employee isn't eligible for CFRA leave, an employer would initiate the interactive process to determine if the leave is a reasonable accommodation. The employer should conduct an assessment to determine how much leave the employee needs and whether such leave will result in an undue hardship. Employers who consider an accommodation to be an undue hardship should seek counsel of an employment law attorney prior to the denial of an accommodation. undue hardship

Requiring Employees to be 100% healed before returning from leave.

- Employers may not require an employee to be 100% healed or free of restrictions prior to returning to work. Employers must initiate the interactive process to determine if restrictions can be accommodated in the employee's current or another job.
- Employers are not required to create a lighter-duty position to accommodate an injured employee.
- An employer's fear of re-injury is not a valid reason not to reinstate an employee who is released to return to work with restrictions.

Denying an employee intermittent leave under CFRA leave.

- Qualifying employees may request intermittent leave if, for example, their condition requires ongoing medical treatment, if they have a chronic condition, etc. It will be important for an employee to provide health care provider certification for the need for intermittent leave and communicate when they are taking CFRA-designated leave for tracking.
- Employers may require employees to provide as much advance notice as possible before taking leave, but if advance notice is not possible, employees are protected under CFRA leave.
- Employers may not terminate an employee for taking CFRA-designated intermittent leave.

Requiring an employee returning from leave to undergo a fitness for duty examination.

- Under the CFRA you may require an employee returning from leave to provide a medical release but you may not send the employee for a fitness-for-duty exam upon return from leave unless, by objective evidence the employee is unable to perform the duties of the position without serious harm to themselves or others.