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New Leave of Absence/Bereavement Laws For 2023

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Leaves of absence just got a bit more complicated with the passage of two new California laws that went into effect in 2023. Historically, leaves of absence under the California Family Rights Act (CFRA) allowed an employee to take time off to care only for an ill or injured “family member.” The statute contains a laundry list of potential recipients of that care, all blood relations of one sort, including in-laws, but limited. California paid sick leave (PSL) has a similar laundry list.

Because of two new laws, under both the CFRA and PSL, employees are now allowed to take leave to care for a “designated person” who may be a distant relative (CFRA), or no relative at all (PSL). Interestingly, the two laws are not quite the same in how they define a “designated person.” Let’s deal with CFRA first.

Under the CFRA, the designated person must be a blood relative, but it doesn’t have to be someone within the previous laundry list of those who qualify. For example, Great Aunt Sally may be a blood relation, but she was not included in the previous CFRA laundry list. But now, because she’s a relative, however distant, she could be designated and the employee can take off time to care for her.

Sick leave for a “designated person” under PSL is more expansive. The designated person does not have to be a relative at all. An employee, for example, may regularly help an elderly next-door neighbor with chores, food and shopping. Now, if they take them to a doctor’s visit or otherwise assist them with medical issues, the employee may designate the neighbor as the individual for whom the employee is going to provide such assistance or care under the paid sick leave law.

Under both laws, the employee must designate one person at the time they go out on leave or use sick leave for short absences. Once they designate a specific person, that person is the only “designated person” the employee can take care of for an entire year under either of the statutes. The two statutes are consistent on that point (although the employee could designate a different person under each law).

CFRA used to be consistent with the Family Medical Leave Act (FMLA) in requiring the employer to have 50 employees before CFRA applied. That changed a couple of years ago. Under the CFRA, the employer need have only a minimum of five employees, and only one of them needs to be in California (and that’s the only one to whom CFRA would apply). The employee still needs to have worked 1,250 hours over the prior year, and worked for at least a year for the employer (with some exceptions for past employment tacked on).

With PSL, as long as employees have PSL available on the books, they may exercise their “designated person” rights regardless of length of employment, so long as they have been there



at least 90 days if the employer wants to require them to wait that long.

A few last general points on FMLA/CFRA. When an employee goes out on workers’ compensation leave, the employer should give them a notice regarding their FMLA/CFRA rights and the applicability of those rights to the workers’ compensation leave. Workers’ compensation leave and FMLA/CFRA leave run concurrently. If the workers’ compensation leave extends many months, the 12 weeks of FMLA/CFRA will run out much earlier. If that occurs, the employer then has the option to discontinue paying its share of health insurance premiums. If the employer did not give the FMLA/CFRA notice up front, however, the employer will need to provide the notice when the employer discovers the omission. Then the employer would let the 12 weeks run out before discontinuing payments (and only after providing a COBRA notice). Employers often call about an employee who has been on workers’ compensation leave for six or seven months. They ask, “Can we stop paying medical premiums?” The answer is “yes,” but only if the employer has given the 12 weeks of notice. If not, the employer can immediately give the 12 weeks’ notice and let that time run out before the employer may stop paying the premiums.

CFRA and FMLA generally run concurrently, except when it comes to pregnancy disability leaves in California. Then, there are several laws that overlap (FMLA/PDL and, separately, CFRA/PFL), as well as SDI and PFL

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for benefits from the state. This is all complicated further when employees only qualify for CFRA/FMLA in the middle of the pregnancy disability leave because they have reached a year with the employer during the leave. Some of the laws are available immediately, however, regardless of length of employment. The dissection of this alphabet soup of leave and benefits laws during pregnancy and baby bonding is best left for another time.

Although not technically a leave of absence in the traditional sense, another new California law allows up to five days of unpaid bereavement leave for employees of companies with at least five employees. The employee must have worked for at least 30 days to use this new leave law. The employee

may apply paid leave benefits such as PTO, vacation or sick time to cover the unpaid leave days. Employers who already grant some paid bereavement time can just overlap that policy with the new unpaid leave law. There are the usual restrictions on the family members applicable to this leave (but no “designated person” is allowed). There is no limit on the number of times the five days can be used in a year, but employers are entitled to proof of the need for the bereavement leave. Note that in small companies, like a medical corporation, the physician-owner is considered one of the five employees when determining head count.

These are just a few of the leave laws that tangle up employees on a regular basis. Employers should use this opportunity to update their handbooks to address these new basic changes in leave laws, and to ensure that they are referencing the myriad of leave laws that California provides to its workers. Applicability depends on the number of employees as to most of the leaves, and to length of service with a very few, so employers need to be clear about what they may provide and what they must provide.

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