

# CALIFORNIA SIGNIFICANTLY EXPANDS COVERAGE UNDER THE CFRA



by **Jenn Protas**, Shareholder and Attorney, **Employment Law Group**

Governor Gavin Newsom approved an historic expansion of the California Family Right Act ("CFRA") in signing **Senate Bill ("SB") 1383**.

## Existing Law

Under existing law, the California Family Rights Act requires employers with 50 or more employees within a 75-mile radius to grant a leave of absence to eligible employees of up to 12 workweeks in a 12-month period for permitted purposes, including to bond with a new child or to care for themselves or a child, parent, or spouse. The baby bonding requirements of the CFRA were expanded effective January 1, 2018 under the New Parent Leave Act to apply to employers with 20 or more employees within a 75-mile radius for eligible employees. Further, under existing law, where both parents worked

for the employer, the employer was only required to grant a combined 12 weeks of leave for baby bonding purposes under the CFRA and New Parent Leave Act.

## What's Changed

SB 1383, which becomes **effective January 1, 2021**, expands the CFRA to apply to private employers with **five or more employees** (regardless of the number of employees within a 75-mile radius). Once effective, employers with five or more employees must grant eligible employees (those who have more than 12 months of service with the employer and who have at least 1,250 hours of service with the employer during the previously 12 months) up to a total of **12 workweeks in any 12-month period** (as defined by the employer) for job-protected family care and medical leave. CFRA leave may be taken for the following purposes:

- **To bond with a child** following the birth of the employee's child or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee ("baby bonding")
  - The new bill removed the ability for employers of both parents to limit baby bonding leave to a total of 12 workweeks for such purposes; now, **each parent is entitled to receive 12 workweeks of CFRA baby bonding leave** even if they both work for the same covered employer.
- **To care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner with a serious health condition**
  - The definition of child no longer applies only to children under age 18 or adult dependent children; **child is now expanded to cover all adult children**, regardless of dependency status
  - Note that the FMLA and the CFRA, previously, only allowed time to care for a parent, spouse (including domestic partner under the CFRA), or child with a serious health condition
- Because of an **employee's own serious health condition** that makes the employee unable to perform the functions of the position, except for disability on account of pregnancy, childbirth, or related medical conditions (California provides for such leave under Pregnancy Disability Leave)
- Because of 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 (bringing the CFRA more in line with the FMLA, which already provides for qualifying exigency leave)

CFRA is **generally unpaid**, however, employees may elect, and in some cases, employers may require, employees to use accrued vacation leave or paid time off, and, where the leave is to care for themselves, sick leave.

Employers are required to **maintain and pay for coverage under any group health plans** for the duration of the CFRA-qualifying leave at the level and under the conditions coverage would have been provided if the employee had continued employment continuously during the leave.

CFRA leave is job-protected, meaning that the employer must provide the employee, upon granting the leave request, a **guarantee of employment in the same or a comparable position** upon termination of the leave. The new bill **removed the “key employee” exception** from the prior law; an employer may no longer refuse to reinstate salaried employees who are among the highest paid 10% of the employees where refusal is necessary to prevent substantial and grievous economic injury.

### What's Next

The CFRA's provisions have changed—even for larger employers—so all employers with five or more employees should add or update their CFRA policies in their employee handbooks. Employers who were not previously subject to the CFRA should spend some time understanding how this new law will interact with their currently practices; the learning curve may be steep. The Employment Law Team at Hoge Fenton is ready to help.

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Have a dispute with an employee, or questions regarding employment or COVID-19?

Contact our Employment Law Group at [info@hogequenton.com](mailto:info@hogequenton.com).

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### Meet Our Employment Law Group



**Jenn Protas** helps employers navigate California's numerous employment laws and defends employers with an eye toward successful, yet cost-effective resolution. Jenn is a committed advocate for her clients and a tenacious litigator. She defends employers on matters related to wage and hour law, wrongful termination, harassment, discrimination, and retaliation in single-plaintiff litigation, Private Attorney General Act actions, and/or class actions. Jenn's practice also includes housing discrimination matters and business litigation.



**Sarju Naran** is a zealous advocate for his clients and approaches litigation with creativity and strategy. Chair of Hoge Fenton's Employment Law Group, Sarju's experience spans from representing middle-market and family-owned closely held businesses to large multi-national companies. He regularly litigates and provides advice and counsel to companies on wage and hour issues, trade secret misappropriation, employee mobility, wrongful termination, performance management, and leaves of absence.



**Embert Madison, Jr.** focuses on employment advice and counsel, cannabis regulation, and real estate matters. He has represented clients throughout California. Embert spent several years as an attorney in the California Capitol. During this time, he "toed the political ropes" in the areas of employment, taxation and real estate for a California Assembly Member and served in the Office of Legislative Counsel.



**Ashlee Cherry** is an experienced litigator and represents clients with employment law needs ranging from wage and hour disputes and wrongful termination to disability and leave matters. Ashlee is a board member of the Santa Clara County Employer Advisory Council (EAC).



**Laura Riparbelli** aggressively litigates employment law disputes. Laura has handled all aspects of litigation from start to finish, including second chairing three bench trials. She regularly prepares and argues challenges to initial pleadings, discovery disputes, and dispositive motions. Laura adeptly navigates all facets of the written and oral discovery process.

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