

THE C & D NEWSLETTER



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THE U.S. FAMILY MEDICAL LEAVE ACT AND THE CALIFORNIA FAMILY RIGHTS ACT

The U.S. Family and Medical Leave Act of 1993 ("FMLA") and the California Family Rights Act ("CFRA") provide rules governing the rights of employees to take time off from work for family medical reasons. This Newsletter shall briefly discuss the employees' rights under these laws.

Covered Employers. Both FMLA and CFRA apply only to private employers with 50 or more employees and public agencies regardless of the number of employees.

Eligible Employees and Amount of Leave. In order to be eligible for family and medical leave, an employee must have worked for the employer for a period of 12 months, and must have worked at least 1,250 hours in that 12 month period prior to the date the leave begins. An eligible employee may take an unpaid leave of up to 12 work weeks in a 12 month period for a "qualifying event", as described below.

Qualifying Events. Events which qualify for family or medical leave are (a) the birth or adoption of a child; (b) the serious health condition of the employee's parent, child or spouse; or (c) the employee's own "serious health condition." A serious health condition is defined as an illness, injury, impairment, or physical or mental condition which incapacitates the employee or family member for more than 3 consecutive calendar days and requires treatment by a health care provider. A serious health condition also includes chronic medical conditions such as arthritis or asthma that flare up periodically, and conditions that require regular multiple treatments, such as therapy or radiation, even if it is not necessary to take 3 consecutive days off from work.

Documentation. The employer may require medical documentation of the serious health condition. If the employer has reason to doubt the validity of the first medical documentation it can demand a second opinion.

Family Leave and Vacation Benefits. Under both Acts the employee may insist upon, or the employer may require, that accrued vacation or other time off be used as part of the unpaid FMLA or CFRA leave.

Rights After Leave. The employer must reinstate the employee either to the employee's original position or a comparable one. There is no absolute right to reinstatement to the same job held prior to the leave. The only defense to reinstatement is if the employer can prove that reinstatement would cause substantial and grievous economic injury. Under FMLA, an employee may receive up to 3 times the actual out-of-pocket losses; under CFRA, an employee may receive unlimited compensatory damages for emotional injury, as well as punitive damages.

Although FMLA and CFRA provide substantially the same rights to employees, there are some important differences between the two laws and it is important to understand how both laws operate. In some cases, both laws will apply, while in other cases only one law will apply. Where there is a direct conflict between the two laws, FMLA provides that the law that provides for greater family and medical leave rights will prevail.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.