

CLIENT ALERT

## New Changes to the California Family Rights Act – Effective July 1, 2015

APRIL 28, 2015

Beginning July 1, 2015, the California Family Rights Act (“CFRA”) will include expansive changes to the regulations that will clarify and increase an employer’s duties and rights under the CFRA. Many of the changes are aimed at more closely aligning the CFRA with the federal Family Medical Leave Act (“FMLA”).

Key provisions of the new CFRA regulations include:

### **Definitions**

- Adds guidance on joint employer situations.
- Expands the definition of “eligible employee” to clarify the 12-month length of service requirement.
- Expands the definition of “spouse” to include coverage for same-sex spouses.
- “Inpatient care” is expanded to include not only overnight stay at a hospital, but anticipated overnight stay (even if the overnight stay does not occur).

### **Notice Posting Requirement**

- Every employer must post a notice explaining the CFRA provisions and procedures for filing complaints “in conspicuous places where employees are employed.” Employers must post the notice “where it can be readily seen by employees and applicants for employment.”

### **Responding to CFRA Request**

- Updates the process of responding to CFRA leave requests—reduced to only five business days rather than 10 calendar days.

### **Reinstatement and Key Employee Provisions**

- Expands reinstatement guarantee, permissible defenses to a refusal to reinstate, and “key employee” rules. The CFRA regulations have essentially adopted the FMLA regulations’ definition of a “key employee.” Subject to

certain notice requirements, an employer can deny a key employee who takes CFRA leave reinstatement to the same or comparable position.

**Health Benefits**

- States that an employee’s right to maintenance of health benefits under the CFRA is a separate and distinct right from an employee’s right to maintenance of health benefits under the Pregnancy Disability Leave (“PDL”) regulations.

**Disability Benefits or Partial Wage Replacement**

- Employees receiving disability benefits or partial wage replacement benefits while on CFRA leave are not considered to be on “unpaid leave.” Therefore, employers cannot require those employees to use any accrued paid leave during the CFRA leave.

**Interference and Retaliation**

- Expands protections against interference with protected CFRA rights and retaliation.

**Fraud Provision**

- Adds a new permissible defense for CFRA leave that is fraudulently obtained or used.

**Penalties for Employee Noncompliance**

- Adds provisions regarding the consequences of an employee’s failure to respond to employer inquiries regarding the leave request and failure to return a required medical certification.

**Posters and Notices**

- Updates the required workplace poster, adds a new medical certification form, and removes language from CFRA that permits the use of the Department of Labor’s (“DOL”) sample medical certification form. Employers should, therefore, stop using the DOL certification form and instead use the sample CFRA certification form.

# Next Steps

The new CFRA changes have greatly expanded which California employers and employees are covered under CFRA and increased an employer’s obligation to be transparent and efficient in its communications with employees regarding their medical leave. Further, with the added CFRA penalty provisions, employees will be held more accountable for their noncompliance with CFRA regulations. Employers should begin the process of updating their CFRA policies, procedures, and forms to ensure compliance with the new regulations. Beginning July 1, employers should replace their workplace posters and medical certification forms. The Department of Fair Employment and Housing has not yet published the new workplace poster, but will likely do so within the upcoming months.

Employers can review the final text of the amended regulations [here](#) and the new medical certification form [here](#).

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