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## Significant Expansion to Protected Family Leave Comes to California

California Governor Gavin Newsom recently signed into law an amendment that significantly broadens the California Family Rights Act (the “CFRA”). Starting January 1, 2021, the CFRA will apply to employers with as few as five employees and provide employees with job-protected leave to care for grandparents, grandchildren and siblings with serious health conditions.

The CFRA is California’s analog to the federal Family and Medical Leave Act (the “FMLA”). While the CFRA largely resembles the FMLA, there are a few key differences. The laws generally allow eligible employees to take up to 12 weeks of unpaid, job-protected leave for an eligible leave event such as an immediate family member’s serious health condition. Whereas the FMLA’s definition of “immediate family member” is restricted to spouses, children and parents, the CFRA currently extends coverage to domestic partners. The FMLA also provides for pregnancy disability and military caregiver leave. The CFRA amendments only increase the differences between the two laws.

Changes to the CFRA include:

- Extending coverage from employers with 50 or more employees within a 75-mile radius to those with **five or more** employees (and not requiring that those employees work within any given distance or area).
- Expanding the qualifying uses of leave to include leave to care for a grandparent, grandchild or sibling with a serious health condition. The definition of “child” now includes adult children and the children of domestic partners.
- If both parents work for the same employer, the employer is required to give each parent 12 workweeks of unpaid leave to bond with their child, rather than limiting them to a combined total of 12 workweeks of leave to bond with their child.
- Elimination of the “key employee” exception to reinstating certain employees. This exception allows employers to refuse to reinstate certain key employees if necessary to prevent substantial and grievous economic injury to the employer’s operations.
- Requiring employers to provide up to 12 workweeks of leave due to a qualifying exigency arising because a spouse, domestic partner, child or parent is on active duty in the Armed Forces of the United States. This change brings the CFRA in step with the FMLA, although the FMLA does not cover domestic partners.

### Next Steps

Small employers not previously covered by the CFRA will need to take the necessary steps to institute leave procedures including, but not limited to, drafting CFRA leave policies, revising employee handbooks, and implementing procedures to track and administer employee leave.

In addition, employers of all sizes should reevaluate their leave policies’ concurrent usage provisions because employees who are eligible to take CFRA and FMLA leave may be able to separately use both types of leave in the same 12-month period (for a total of 24 weeks of leave). If an employee takes leave for a purpose that is permitted

under both laws, the leave will run concurrently. However, if an employee takes leave for a reason that is only permitted under the CFRA (e.g., to care for a sibling with a serious medical condition), the employee may be entitled to take another 12 weeks of leave for a reason that is permitted by the FMLA (e.g., to care for a spouse with a serious health condition). It may be possible to overcome this issue by voluntarily expanding one's FMLA leave policy to better align with the CFRA. Another leave policy provision to consider is whether an employee will be required to use accrued vacation and/or sick leave while on CFRA and/or FMLA leave.

Governor Newsom also signed SB 1867 into law, which creates a Department of Fair Employment and Housing ("DFEH") pilot mediation program for small employers (those with between five and 19 employees). Under the pilot program, an employer receiving a notice alleging a violation of the CFRA may, within 30 days of receipt of such notice, request a mediation through the DFEH. If a mediation is requested, the employee will not be able to pursue any civil action until the mediation is complete. The pilot program will run until January 1, 2024.

If you have any questions about the CFRA or family leave laws in general, please contact a member of the [Kutak Rock Employee Benefits Practice Group](#).

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