

Comparison of Key Provisions in the Family and Medical Leave Act and the California Family Rights Act

SkillBrief

	Family and Medical Leave Act (FMLA)	California Family Rights Act (CRFA)
Employee Eligibility	Must have minimum of 12 months service (need not be consecutive) and work more than 1,250 hours during the 12-month period preceding the leave	Similar to FMLA
Maximum Length of Leave	<p>12 workweeks unpaid leave per “leave year.” The leave year may be a calendar year (Jan. 1 - Dec. 31), any defined 12-month period, the 12-month period measured forward from when FMLA is first taken or a ‘rolling’ 12-month period measured backward from when employee uses leave. Spouses working for the same employer share the 12 workweeks if leave is for newborn care, foster care or care for a seriously ill parent.</p> <p>Master Contract Note ✓ Articles 8.4, 8.4.17, and 8.5 provide up to one year of unpaid leave for parental or adoption leave. ✓ Articles 8.16D and 8.16.21D provide for a calendar “leave year.”</p>	<p>Similar to FMLA. “Parents” working for the same employer share the 12 workweeks if leave is for birth, adoption or foster care.</p> <p>Pregnancy Note: CFRA leave runs concurrently with FMLA leave, except when FMLA leave is for pregnancy disability. California’s pregnancy disability leave (PDL) law provides leave for pregnancy, childbirth or related medical condition of up to four months (or 6 weeks for a normal pregnancy) and guarantees the same benefits as provided to employees on temporary disability. After PDL, which runs concurrently with FMLA, the employee is entitled to the full 12 workweeks (less leave used for reason other than pregnancy disability) of EFRA leave for the birth of the child.</p>
Employee’s Obligation to Give Advance Notice	30 days notice if leave is foreseeable, or as soon as practicable if not foreseeable. Leave for planned treatment or intermittent leave must be scheduled so as to not unduly disrupt operations, subject to the health care provider’s approval.	Similar to FMLA, except the employee is to provide “reasonable notice” for leave that is foreseeable.

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Employer's Obligation to Give Notice of Adverse Action Rights and Designation of Leave	<p>Employer must post notice⁴ of FMLA rights. Once employer learns of need for FMLA leave, it must notify the employee as to whether the leave is being designated as FMLA leave and give notice of FMLA rights and duties, including specific written information on what it required of the employee and what may happen if the employee does not return to work at the end of the leave.</p>	<p>Similar to FMLA.</p>
Pay Status and Qualifying Reasons for Leave	<p>Unpaid leave for birth, placement of child for adoption or foster care, to provide care for one's own parent, minor child or dependant adult child or spouse with a "serious health condition" or for one's own "serious health condition." Subject to certain conditions, the employer or employee may choose to use accrued paid leave to cover some or all family leave.</p> <p><u>Master Contract (Article 8.16 and 8.16.21) Note:</u></p> <ul style="list-style-type: none"> √ FMLA may be used to care for seriously ill domestic partner. √ Available sick leave may be used for FMLA absence due to illness or injury of employee or eligible family member. √ Employee can choose to use other leave credits for FMLA absence due to illness or injury. √ Employee can choose to use leave credits other than sick leave if leave is for a reason other than illness or injury. 	<p>Similar to FMLA, except disability due to pregnancy, childbirth or related medical condition is not covered by CFRA. (Leave is available, however, under the separate pregnancy disability leave law.)</p>

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Medical Certification	<p>Certification may be required to support the need for leave due to a serious health condition and to provide information describing medical facts supporting the certification, the treatment regimen, etc. Employee must be given at least 15 days to provide. Not required to provide medical records. Employer may require employee to submit for fitness for duty to return to work if uniform policy or practice exists.</p>	<p>Similar to FMLA, except the employee cannot be required to disclose the specific health condition or other specific medical information.</p>
Recertification	<p>Can be required at reasonable intervals no more often than every 30 days (unless employee requests a leave extension, significant change in circumstance from previous certification or employer receives information casting doubt on validity of certification or reason for leave).</p> <p>Special rules apply when specified period of incapacity is more than 30 days, where leave is intermittent or a reduced schedule, and where leave is for pregnancy, chronic or permanent long-term condition.</p> <p>Master Contract Note:</p> <p>√ Articles 8.16C and 8.16.21C provide for recertification if department head or designee has reasonable cause to believe employee's condition or eligibility has changed. Reasons must be in writing.</p>	<p>Similar to FMLA, except CFRA provides that the employer may require recertification of the employee's condition on a "reasonable basis" if additional leave is requested. Where leave is to care for a spouse, child or parent, if additional leave is required then recertification can be required upon the expiration of the time estimated by the health care provider.</p>
Second and Third Medical Opinions	<p>Second opinion can be required if employer doubts validity of certification. Third opinion permitted if conflicting opinions. Employer bears expense. Cannot require employee to use a doctor employed by or regularly used by the employer.</p>	<p>Similar to FMLA, except under CFRA the employer only has the right to obtain second and third opinions if the leave is for the employee's own serious health condition (rather than the serious health condition of a child, parent or spouse).</p>

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Serious Health Condition	Mental or physical illness, injury, impairment or condition that involves incapacity or treatment connected with an overnight stay in a hospital or medical care facility and a period of incapacity; or continuing treatment by a health care provider involving a period of incapacity due to (1) a health condition that lasts more than three consecutive days and also includes treatment two or more times or one treatment with a continuing regimen; or (2) a chronic or long-term condition for which periodic visits to a health care provider are required or for which treatment may not be effective; or (3) absences to receive multiple treatment for a condition which would likely result in incapacity of more than three days if untreated; or (4) incapacity related to pregnancy or prenatal care.	Similar to FMLA, except disability due to pregnancy, childbirth or related medical conditions is not a serious health condition under CFRA.
Health Care Provider	Doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, certain chiropractors, nurse practitioners, certain nurse midwives, Christian Science practitioners, or any provider recognized by employer or its group health plan's benefits manager.	Medical physician, surgeon or osteopathic physician certified by California or licensed in another jurisdiction.
Intermittent Leave	Leave may be taken in one or more blocks of time for a serious health condition when medically necessary, but must take leave all at once for "child care" unless employer agrees otherwise.	Similar to FMLA, except "child care" leave may be taken in two-week increments and twice in increments of less than two weeks.
FLSA Exempt	Entitled to FMLA benefit, NOTE: use of leave does not change. FLSA exempt employees can be charged partial day leaves only for FMLA absences	No specific provision.

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Protection of Group Health Insurance Coverage	Health insurance must be continued on same basis as provided to active employees for duration of the leave, but the employer may recover its part of the premium if the employee fails to return from leave. The employer is not required to maintain other coverages, but benefits must be reinstated upon return from leave. Accrued benefits cannot be taken away due to use of leave.	Similar to FMLA.
Reinstatement Rights	Guaranteed reinstatement to the same job or one with equivalent duties, pay and geographic location (unless employee would have lost the job if s/he was not on leave or is a highly paid "key" employee who has been given proper notice, etc.	Similar to FMLA.
Unlawful Acts by Employer	Interfering with or denying the right to leave or any right under FMLA. Discharging or discriminating against any employee for opposing a practice made unlawful by FMLA. Use of FMLA leave cannot result in any loss of employment benefits that employee earned or was entitled to before using FMLA leave and cannot be counted against the employee under a no-fault attendance policy.	Similar to FMLA.
Enforcement Procedures	<p>Complaint can be filed with the Wage and Hour Division of the U.S. Department of Labor (866-487-9243) within two years (or three if willful). DOL may resolve or sue.</p> <p>Private court action may be filed within two years (or three if willful). Not required to file a complaint with DOL before filing suit.</p> <p>Master Contract Note:</p> <p>√ Articles 8.16 and 8.16.21 are not subject to grievance of arbitration.</p>	<p>Fair Employment and Housing Act procedures apply. Individual must file a complaint with the Department of Fair Employment and Housing within one year of the violation.</p> <p>Must exhaust the administrative remedy with DFEH or cannot sue in court. A private action must be filed within one year of the 'right to sue' letter from DFEH.</p>
Possible Remedies	Injunctive or equitable relief, reinstatement, lost benefits and wages (possible doubled), other actual damages (such as cost of hiring help to care for family member), attorney fees, costs, expert witness fees and interest.	Similar to FMLA, but may also get compensatory damages for emotional distress. Remedies are the same as are available under the Fair Employment and Housing Act.

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