



Update on California Family Rights Act (CFRA) - Proposed Pending Amendments

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As you know in the past we have provided updates regarding changes with respect to the leave laws. Now on February 21, 2014, California's Department of Fair Employment and Housing Council published proposed amendments to the CFRA regulations. These regulations are intended to clarify some aspects of the existing regulations and also to adopt many of the recent amendments to the Family Medical Leave Act (FMLA) regulations to make the two acts more consistent. Notwithstanding, there remain some differences between CFRA and FMLA administration. The proposed amended regulations touch on almost every aspect of the CFRA process, addressing, among other things, length of service/eligibility issues, the certification process and timeframes for responding to employee requests for CFRA leave, computation of amount of leave entitlements, key employee issues, clarification of reinstatement rights, maintenance of health and other benefits during leave, retroactive designation of leave, and the interplay between CFRA leave and California pregnancy disability leave. [The proposed amendments cover 11 sections with the following titles/subjects: 1. Definitions, 2. Right to CFRA Leave: Denial of Leave; Reasonable Request; Permissible Limitation, 3. Right to Reinstatement: Guarantee of Reinstatement; Rights Upon Return; Refusal to Reinstatement; Permissible Defenses, 4. Computation of Time Periods: Twelve Workweeks; Minimum Duration, 5. Requests for CFRA Leave: Advance Notice; Certification; Employer Response, 6. Terms of CFRA Leave, 7. Relationship between CFRA Leave and Pregnancy Disability Leave; Relationship between CFRA Leave and Non-Pregnancy Related Disability Leave, 8. Retaliation and Protection from Interference with CFRA Rights, 9. Notice of Right to Request CFRA Leave, 10. Relationship with FMLA Regulations, and 11. Certification Form.]

For example, the proposed regulations make it clear that (1) same-sex spouses are covered under CFRA and the FMLA regulations apply to CFRA leave to the extent not inconsistent with the CFRA regulations, and (2) a California employer is required to maintain the employee's group health benefits for the entire time an employee is on pregnancy disability leave and FMLA/CFRA leave, not just during the latter [12 week].

If you have any concerns regarding the proposed amendments, now is the time to speak up. There is a public comment period through June 2, 2014. Comments can be submitted via email to FEHCouncil@dfeh.ca.gov. There will also be two public hearings on the proposed amended regulations: 10:00 a.m. on April 7, 2014 at UC Irvine School of Law, and 10:00 a.m. on June 2, 2014 at the California Public Utilities Commission Main Auditorium in San Francisco. More on the DFEH website.

Stay tuned for further updates.