

California to Potentially Expand Family and Medical Leave Entitlement

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California is likely to significantly expand its family and medical leave laws, by expanding the obligation to provide job-protected leave to small businesses with as few as five employees, allowing leave to be taken for additional reasons, and eliminating certain exceptions to employer obligations to provide leave.

Current Law

Under the California Family Rights Act (“CFRA”), companies with 50 or more employees within a 75-mile radius are required to provide 12 workweeks of unpaid protected leave during a 12-month period to employees who have worked 1,250 hours during the previous year, if needed due to the employee’s own serious health condition, to bond with a new child, or to care for a qualifying family member with a serious health condition. Application of the CFRA only to companies with 50 or more employees within a 75-mile radius aligns with requirements under the federal Family and Medical Leave Act (“FMLA”).

In 2018, California passed the New Parent Leave Act, which expanded the obligation to provide 12 workweeks of unpaid protected leave to bond with a new child to companies with as few as 20 employees within a 75-mile radius.

S.B. 1383

[S.B. 1383](#), which is currently before Governor Newsom, if enacted, is set to expand the current law in a number of key ways.

First, the law would expand which companies are required to provide job-protected family and medical leaves.

- B. 1383 defines employers as those with 5 or more employees. There is no requirement that these 5 employees be within a 75-mile radius of one another. This means that small businesses with as few as 5 employees company-wide must provide 12 weeks of protected

leave under the CFRA to eligible employees. This also means that employees of larger companies who work on their own or at smaller locations would now be covered.

Additionally, S.B. 1383 expands the reasons for which employees may take protected leave under the CFRA.

- B. 1383 expands the family members for whom employees can take CFRA leave to provide care. Currently, the only family members that employees can take CFRA leave to care for are the employee's parent, child, spouse, or domestic partner. Under S.B. 1383, employees may also take leave to care for a grandparent, grandchild, or sibling with a serious health condition. Notably, leave to care for a grandparent, grandchild, or sibling is not provided under the FMLA, meaning that employees who take CFRA leave to care for a grandparent, grandchild, or sibling would still have 12 weeks of job-protected leave available to take for other qualifying reasons if they are eligible for FMLA leave.
- B. 1383 also provides for 12 workweeks of unpaid protected leave during a 12-month period due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States. Leaves for this reason are, for the most part, covered under the FMLA, so these leaves may run concurrently with leave under the FMLA if the leave qualifies for protection under both laws.

S.B. 1383 also eliminates two existing CFRA exemptions.

- Currently, if the employer employs both parents of a child, the employer can limit the total amount of leave taken by the parents to bond with the child to a total of 12 workweeks. B. 1383 eliminates this limitation, meaning that the employer would be obligated to provide up to 12 weeks of bonding leave to both parents – potentially at the same time.
- B. 1383 also eliminates the current “key employee” exception, which allows employers to refuse reinstatement to salaried employees who are among the highest paid 10 percent of the company's employees within a 75-mile radius. As revised by S.B. 1383, the CFRA would no longer contain a “key employee” exception.

Certain portions of the CFRA would remain unchanged under S.B. 1383. Employees must still have been employed for at least 12 months, and have worked at least 1,250 hours during the previous 12 months, in order to be eligible for leave. Additionally, CFRA leave may still run concurrently with FMLA leave, if the leave is eligible for FMLA protection, except for leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. Employee obligations to provide notice and supporting documentation also remain in place.

If S.B. 1383 is enacted, smaller companies will need to draft CFRA leave policies and institute leave procedures, and will need to approve, administer and track employee leaves after the law becomes effective. Larger companies will also need to update their CFRA policies and forms, as employees will be able to take leave for additional reasons, and existing exceptions will no longer apply.

If enacted, S.B. 1383 would be effective on January 1, 2021.

National Law Review, Volumess X, Number 246

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