

# California's Expanded Family and Medical Leave Act Imposes Additional Employer Obligations

Labor & Employment Workforce Watch

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On September 21, 2020, California Governor Gavin Newsom signed into law Senate Bill 1383, considerably expanding California's family leave laws, codified as the California Family Rights Act (the "CFRA"). It is critical that all employers in California, whether large or small, are familiar with the new law, which goes into effect on January 1, 2021, as it expands the reach of the CFRA to more employers and creates new obligations for those subject to its provisions.

### SB 1383 Expands the CFRA to Cover Smaller Employers

Perhaps the most significant development under SB 1383 is that it explicitly expands the scope of the CFRA to cover smaller employers not previously within its purview. The current iteration of the CFRA applies to private employers with 50 or more employees within 75 miles of the worksite (and all public employers regardless of size). SB 1383 expands the reach of the CFRA, making it applicable to employers with just five or more employees, and it removes the requirement that employees work within 75 miles of the worksite. Thus, smaller employers not previously subject to the requirements of the CFRA must now provide an otherwise eligible employee with up to 12 workweeks of unpaid protected leave for certain reasons enumerated by the statute.

### SB 1383 Expands the CFRA's Definition of "Family Members"

In addition to expanding the number of employers covered by the CFRA, SB 1383 also increases employer obligations under the CFRA. Most notably, SB 1383 expands the definition of "family members." Under the current CFRA, an employee may take leave to care for a minor child (or an adult dependent child), a parent, spouse, or a registered domestic partner. As of January 1, 2021, an employee may also take leave to care for his or her adult children regardless of dependency, as well as grandparents, grandchildren, and siblings.

Additional noteworthy changes include:

- Where an employer employs both parents of a child, it must grant up to 12 weeks unpaid protected leave to *each* parent. Under the current CFRA, an employer is required only to grant both employees a *combined* total of 12 weeks leave.
- An employer may not refuse reinstatement of "key employees" (a salaried eligible employee paid in the highest 10% of all employees), now permitted under the current CFRA when reinstatement would cause "substantial and grievous economic injury" to the employer.
- An employer must grant an employee up to 12 workweeks of unpaid protected leave during any 12-month period due to a qualifying exigency related to covered active duty or call to covered active duty of an

employee's spouse, domestic partner, child, or parent in the Armed Forces.

## **Navigating the New Obligations Arising from the Passage of SB 1383**

As the effective date for these changes to California's leave laws are fast approaching, it is crucial that employers review, revise, and/or supplement their leave policies to account for SB 1383's expansion of the CFRA. This focus is especially critical for smaller employers that, until now, had no obligations whatsoever under the CFRA.

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