
THIRD READING

Bill No: SB 1383
Author: Jackson (D), et al.
Amended: 6/29/20
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE BUDGET & FISCAL REVIEW COMMITTEE: 10-8, 6/24/20
AYES: Mitchell, Beall, Durazo, Leyva, McGuire, Monning, Pan, Skinner, Stern,
Wieckowski
NOES: Nielsen, Caballero, Dahle, Hurtado, Melendez, Moorlach, Morrell, Roth

SUBJECT: Unlawful employment practice: family leave

SOURCE: Author

DIGEST: This bill makes statutory changes to the California Family Rights Act and repeals the New Parent Leave Act.

Senate Floor Amendments of 6/29/20 expand the scope of the California Family Rights Act (CFRA) to employers with five or more employees. The prior version of the bill proposed to expand the CFRA to employers with one or more employees. The amendments also remove changes to the Pregnancy Disability Leave.

ANALYSIS:

Existing law:

California Family Rights Act (CFRA)

- 1) Entitles, pursuant to the CFRA and the federal Family and Medical Leave Act (FMLA), required to be taken concurrently, eligible employees of covered employers *with 50 or more employees*, if the employee worked 1,250 hours in the prior 12 months, to:

- a) Take up to *12 workweeks of unpaid, job-protected leave* during a 12-month period for specified family care and medical leave reasons.
 - b) Guaranteed reinstatement to the same or comparable position, as specified.
 - c) Continued group health coverage during the duration of the leave. (Government Code §12945.2)
- 2) Defines “family care and medical leave” as any of the following:
- a) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.
 - b) Leave to care for a seriously ill parent or spouse.
 - c) Leave because of an employee’s own serious health condition.
- 3) Defines “child” as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or an adult dependent child.
- 4) Defines “parent” as a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.
- 5) Stipulates that eligible employees must have at least 12 months of service with the employer, and at least 1,250 hours of service during those 12 months, to qualify for family care and medical leave under CFRA.
- 6) Specifies that in any case in which both parents entitled to leave under CFRA are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the 12 workweeks. [Government Code §12945.2(q)]

New Parent Leave Act

- 7) Establishes the New Parent Leave Act which prohibits an employer with *20 or more employees* in a 75-mile radius to refuse to grant an employee request to take up to *12 weeks of unpaid leave to bond* with a new child within one year

of the birth, adoption, or foster care placement of the child if the employee worked 1,250 hours in the prior 12 months. (Government Code §12945.6)

- 8) Requires the employer to provide a guarantee of employment in the same or comparable position upon return, as specified, and requires that the employer maintain and pay for continued group health coverage for employees during the duration of the parental leave.
- 9) Specifies that in any case in which both parents entitled to leave are employed by the same employer, the employer is not required to grant leave allowing leave that totals more than the 12 weeks. The employer may, but is not required to, grant simultaneous leave to both employees.
- 10) Specifies that the New Parent Leave does not apply to an employee who is subject to both CFRA and FMLA (applicable to employers of 50 or more employees).

Paid Family Leave

- 11) Establishes the State Disability Insurance (SDI) program as a partial wage-replacement plan funded through employee payroll deductions that is available [through the Disability Insurance and PFL programs] to eligible individuals who are unable to work due to sickness or injury of the employee (including pregnancy), the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child.
- 12) States that PFL provides eligible employees with *up to six weeks of wage replacement benefits* to take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption, or (beginning on January 1, 2021) to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. (Unemployment Insurance Code §3301)

Effective July 1, 2020, PFL wage replacement benefits will increase from six weeks to eight weeks for all bonding and care-giving claims.

- 13) States that PFL provides wage replacement equal to one-seventh of the employee's weekly benefit amount for each full day during which the individual is unable to work, a wage replacement of approximately 60-70 percent depending on income. (Unemployment Insurance Codes §2655 and §3301)
- 14) States that PFL does not provide job protection or return to work rights *nor* does it require employers to provide continued health coverage during the leave.

Pregnancy Disability Leave

- 15) States that Pregnancy Disability Leave (PDL), under the Fair Employment and Housing Act, requires private employers with *five or more employees* and public employers to provide *up to four months of unpaid, job-protected leave* for pregnancy, childbirth or related conditions. (Government Code §12945)
 - a) Employees may use accrued vacation and paid sick leave during PDL.
 - b) Employees are entitled to reasonable accommodations and reinstatement to the job held before PDL began.
 - c) Employers are required to continue the employee's health coverage.

This bill makes the following changes to existing law, and will be effective on January 1, 2021:

California Family Rights Act (CFRA) Provisions

- 1) Expands the scope of the CFRA to prohibit employers with *five or more employees* to refuse to grant an employee request to take up to 12 weeks of unpaid leave for family care and medical leave if the employee had 180 days of service with the employer.
- 2) Expands the definition of "family care and medical leave" to include:
 - a) Leave to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition.
 - b) Leave because of 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, as specified.

- 3) Expands the definition of “child” under CFRA to include a child of a domestic partner, or a person to whom the employee stands in loco parentis, however, eliminates the requirement that the child be under the age of 18 years of age or an adult dependent child.
- 4) Provides definitions for “sibling,” “parent-in-law,” “grandchild,” and “grandparent.”
- 5) Removes from existing law a provision specifying that, if both parents are employed by the same employer and are entitled to leave, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents leave to be greater than 12 weeks.
- 6) Removes from existing law a provision that authorizes an employer to refuse reinstatement of an employee returning from leave to the same or comparable positions under specified conditions. This change thereby entitles an employee guaranteed reinstatement to the same or comparable position.

New Parent Leave Act

- 7) Repeals the entire provisions of the New Parent Leave Act enacted in 2017.

Comments

As noted above, California has several medical leaves under which an employee may be able to take time off work to care for their personal illness, that of specified family members or for bonding with a new child. On the following page is a brief summary of some of the leave programs and their eligibility requirements.

	CFRA/FMLA (Job Protected)	PFL (No Job Protection)	PDL (Job Protected)	NPL (Job Protected)
Employers Covered	50 or more employees in 75 mile radius of worksite	One or more (employee pays, employee gets)	Five or more employees	20 or more employees
Employee Eligibility	Worked 1,250 hours in prior 12 months	Once employee earns \$300 in base period for fund contribution	Immediate as necessary	Worked 1,250 in prior 12 months
Reason for Leave	Employee serious health condition; seriously ill family member care; bond with newborn or newly placed adopted or foster child	Care for seriously ill family member; bond with a child within 1 year of birth, foster care or adoption placement; or participate in qualifying active duty exigency	Disability due to pregnancy, childbirth or related medical condition	Bond with a child w/in 1 year of birth, adoption or foster care placement
Length of Leave	12 weeks in 12-month period	6 weeks in 12-month period	Up to 4 months	Up to 12 weeks
Paid or Unpaid	Unpaid, may run concurrent with other paid leave	Partial wage replacement	Unpaid, may run concurrent with SDI for partial wage replacement	Unpaid, employee can use vacation, paid sick time
Continued Health Coverage	Yes	No	Yes	Yes

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/23/20)

None received

OPPOSITION: (Verified 6/23/20)

None received

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