

**Department of Human Resources
Memorandum**

TO: Personnel Management Liaisons (PML)

SUBJECT: Amendments to California Family Rights Act Regulations	REFERENCE NUMBER: 2015-027
DATE ISSUED: September 24, 2015	SUPERSEDES:

This memorandum should be forwarded to:

**Personnel Officers
Employee Relations Officers
Transactions Supervisors**

FROM: Department of Human Resources
Personnel Management Division

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New California Family Rights Act Regulations

On March 4, 2105, the California Fair Employment and Housing Council (FEHC) issued the final revised California Family Rights Act (CFRA) regulations which went into effect on July 1, 2015. The amendments represent the first significant revisions to the CFRA regulations in many years, and are intended to clarify previously confusing rules and adopt regulations that more closely parallel the federal Family and Medical Leave Act (FMLA). This memorandum highlights the most significant impacts the new CFRA regulations will have on employers. However, since other changes and clarifications were made that are not included in this memo, departments should review the full text of the CFRA regulations California Code of Regulations, title 2, section 11087 et seq.

As soon as feasible, departments should work towards updating leave policies to comply with the new regulations. In addition, departments should update the notices posted in accordance with the updated text in the new regulations, which may include electronic posting, for example, on a department's website. Notices should be accessible to both employees and applicants. Finally, with the rollout of the new regulations, departments are encouraged to train managers and supervisors regarding the new leaves laws and how they interact with each other. Please check the Department of Human Resources training calendar to enroll in applicable training <http://www.calhr.ca.gov/Training/Pages/calhr-training-calendar.aspx>.

Some of the significant changes pursuant to the newly adopted CFRA regulations include:

1. Change in definition of spouse.

The new CFRA regulations now expressly include registered domestic partners and same-sex partners in marriage in the definition of "spouse." (Cal. Code Regs., tit. 2, § 11087, subd. (r).)

2. Change in definition of serious health condition.

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves "inpatient care." Previously, "inpatient care" meant an "overnight stay" in a hospital, hospice, or residential health care facility. However, the new CFRA regulations only require an "expectation" that the individual will remain overnight. This means an individual who is admitted to the hospital with the expectation that he or she will stay overnight, but is discharged later or transferred to another facility, still qualifies as a person with a "serious health condition" under CFRA. (Cal. Code Regs., tit. 2, § 11087, subd. (q).)

3. Change in definition of reinstatement.

Reinstatement means the return of an employee to the position that the employee held prior to CFRA leave, or a comparable position, and is synonymous with "restoration" within the meaning of FMLA and its implementing regulations. (Cal. Code Regs., tit. 2, § 11087, subd. (p).)

4. Defining twelve workweeks.

Twelve workweeks means the equivalent of 12 of the employee's normally scheduled workweeks. The new regulations now state that for eligible employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days that constitutes 12 workweeks is calculated on a pro rata or proportional basis. If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period is used for calculating the employee's leave entitlement. (Cal. Code Regs., tit. 2, §§ 11087, subd. (s), 11090, subd. (c).)

5. Second opinion on medical certification now requires good faith, objective reason.

The former CFRA regulations permitted employers to require the employee to obtain a second opinion of his or her own serious health condition, if the employer simply had a "reason" to doubt the validity of the medical certification provided by the employee. Under the new CFRA regulations, the employer must have a "good faith, objective reason" to doubt the validity of the medical certification before requiring a second medical opinion. (Cal. Code Regs., tit. 2, § 11091, subd. (b)(2)(A).)

6. Employers may only contact health care provider to authenticate the certification of serious health condition.

Previously, upon receipt of a signed Authorization for Release of Medical Information, the employer could contact the health care provider to obtain clarifying information from the health care provider. Pursuant to the new CFRA regulations, the employer may only contact the health care provider for the limited purpose of authenticating the certification. (Cal. Code Regs., tit. 2, § 11091, subd. (b)(2).) Accordingly, if an employer receives a deficient or incomplete certification, the employer must write to the employee and explain the deficiencies in the certification and provide the employee an opportunity to provide the necessary

information. Moreover, the employer should advise the employee of the consequences of failing to timely provide a complete certification.

7. Employers must provide employees notice of the consequences for failing to provide a complete certification.

Employers must notify employees that if they do not submit the FMLA/CFRA paperwork, including a complete Health Care Provider's Certification, any time that would otherwise appropriately be considered FMLA/CFRA leave will not be designated as such, and will not be considered job protected leave. (Cal. Code Regs., tit. 2, § 11091, subd. (b)(3).)

8. Department of Fair Employment and Housing (DFEH) has provided a model Certification of Health Care Provider form.

Included within the new CFRA regulations is a template certification which captures all the information that must be included in the certification. (Cal. Code Regs., tit. 2, § 11097.) Departments are encouraged to follow the template provided by DFEH. The new form can also be accessed at the following link:

<http://www.dfeh.ca.gov/res/docs/Publications/CFRACertificationForm.pdf>

9. Response time.

Previously, departments had 10 calendar days to respond to an employee's request for CFRA leave. The new CFRA regulations require that the employer respond within five (5) business days after receipt of the request. (Cal. Code Regs., tit. 2, § 11091, subd. (a)(6).)

10. Loss of protection for fraudulently-obtained CFRA Leave.

The CFRA regulations now state: "an employee who fraudulently obtains or uses CFRA leave from an employer is not protected by CFRA's job restoration or maintenance of health benefits provisions. An employer has the burden of proving that the employee fraudulently obtained or used CFRA leave." (Cal. Code Regs., tit. 2, § 11089, subd. (d)(3).) If fraudulent use of CFRA leave is suspected, employers should seek legal counsel if they are going to deny leave (or discipline an employee) based on fraud.

11. Separate and distinct rights to maintain benefits exist under CFRA and PDL.

Similar to the 2012 Pregnancy Disability Leave (PDL) regulations, the new CFRA regulations provide that an employee's right to maintenance of health benefits under the CFRA is a separate and distinct right from an employee's right to maintenance of health benefits under the PDL. (Cal. Code Regs., tit. 2, § 11093.)

12. Notice requirements.

Every employer must post a notice explaining the CFRA provisions and procedures for filing complaints in conspicuous places where employees are employed. In addition, employers must post the notice where it can be readily seen by employees **and applicants** for employment. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of the new CFRA regulations. (Cal. Code Regs., tit. 2, § 11095, subd. (a).)

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Employers may post the CFRA notice on an Intranet site, but employers will also need to post the notice in an area accessible to applicants.

For questions related to this PML, state department personnel office designated liaisons should contact CalHR's Personnel Services Branch by emailing questions to psb@calhr.ca.gov or calling (916) 323-3343.

/s/Bryan Baldwin

Bryan Baldwin, Chief
Personnel Management Division