



## Navigating Medical Leave in the Workplace

*By Jizell Lopez, Wilke Fleury LLP,  
2023 Pacific Veterinary Conference Speaker*

Complex state and federal laws provide employees with certain rights and options during medical leave, including pregnancy leave. It is the employer's responsibility to comply with legal medical leave requirements and ensure an easy transition for a medical concern an employee may face.

Administered by the U.S. Department of Labor, **the Family Medical Leave Act (FMLA)** provides job-protected leave to an employee who is absent from work because of the employee's own serious health condition or to care for specified family members with serious health conditions, as well as for childbirth, childcare, and child bonding. In order to be eligible to take leave under the

FMLA, an employee must: (1) work 1,250 hours during the 12 months prior to the start of leave; (2) work at a location where 50 or more employees work at that location or within 75 miles of it; and (3) have worked for the employer for 12 months.

**The California Family Rights Act (CFRA)** is administered by the California Civil Rights Department (formerly known as the California Fair Employment and Housing Department). The CFRA, like the FMLA, provides up to 12 weeks of unpaid leave in a 12-month period. The CFRA allows eligible employees to bond with a new child, or to care for themselves, a family member, or a designated person with a serious health condition. A "serious health condition" is one that requires (1) inpatient care, (2) absence for three or more consecutive

days, (3) ongoing treatments, or (4) recovery after an accident. In order to be eligible for CFRA leave, an employee must: (1) work 1,250 hours during the 12 months prior to the start of leave; (2) work at a location where five or more employees work; and (3) have worked for the employer for 12 months.

Many employees and employers assume that because the basic principles of FMLA and CFRA are alike, their requirements should be administered the same. Be warned—this is a common misconception. While both FMLA and CFRA provide up to 12 weeks of job-protected leave and have nearly identical eligibility requirements, there are significant differences that employers and employees should note, including the following:

- The CFRA provides protections to a larger portion of the workforce and grants leave for more familial relationships, including to care for a domestic partner, a grandparent, a grandchild, sibling, or designated person with a serious health condition. Under the FMLA, a covered family member is limited to a spouse, child, or parent.
- The CFRA has strict limitations regarding employer requests to medical providers. Under the CFRA, medical certification forms cannot seek the identification of symptoms or diagnosis of an employee's serious health condition. By contrast, the FMLA allows employers to request a diagnosis of an employee's serious health condition when necessary to support the need for leave.
- Under both the CFRA and FMLA, certifications from a medical provider may be requested (with the above caveats). Under the FMLA, employers

may require second and third medical certifications for employees or family members if the employer has a "reason to doubt" the validity of a certification. Additionally, FMLA recertification may be required every six months—even if the original certification has not expired—whereas under the CFRA, employers may only require certification for **an employee's** medical condition and may only require recertifications when the original certification expires.

The nuances associated with CFRA and the FMLA are vital for both employers and employees to understand. Furthermore, in the event an employee needs additional leave beyond either the FMLA or CFRA limits, an employee may be entitled to "reasonable accommodations" under California's Fair Employment and Housing Act and/or the Americans with Disabilities Act.

Join me on June 11, 2023 at the Pacific Veterinary Conference, where we will discuss employee medical leave law in detail. ■

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*Jizell Lopez is a civil litigation attorney who primarily represents clients in federal and state court litigation and before administrative agencies regarding all manner of employment claims, including single plaintiff lawsuits, class action lawsuits, and wage and hour representative lawsuits. Jizell's practice includes allegations of harassment, discrimination, wrongful termination, retaliation, wage and hour non-compliance, and more.*



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