

The 12 days of California Labor & Employment Series – Day 1 “Additional CFRA Expansion”

2 min read

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The end of the year is coming to a close, and employers need to be aware of the changes and updates for 2023. While COVID-19 laws have been trimmed down, COVID-19 remains part of the 2023 employment update. As usual, California employers are also expected to learn and comply with the new laws coming down the pipeline in 2023. A glimmer of hope came in the fact that 2022 saw the least amount of new employment laws being passed in many years, leading to what we hope will be a calmer 2023 involving local and state mandates, orders, and laws. However, before we pop the champagne and say goodbye to 2022, it is time to reprise our annual review of key California labor and employment law developments. In the spirit of the season, we are using the “12 days of the holidays” blog series to address new California laws and their impact on California employers. So, on the First Day of the Holidays, my Labor and Employment attorney gave to me - a partridge in a pear tree and AB 1041.

The California Family Rights Act (“CFRA”), part of the Fair Employment and Housing Act (“FEHA”), makes it unlawful for an employer who meets the criteria under CFRA to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12 month period. In 2020, California passed SB 1383, which we addressed in our [2020 #12Days Blog Series](#). Initially, CFRA allowed a qualified employee to take leave to care for a parent, child, spouse, or registered domestic partner with a serious health condition. SB 1383 expanded CFRA to include taking care of a grandparent, grandchild, and sibling with a serious health condition. In 2021, [California passed AB 1033](#), which acted as an add-on to SB 1383. The legislature realized that parent-in-law was omitted from the prior bill. As such, with the addition of AB 1033, under the CFRA, an eligible employee may now take up to 12 workweeks of unpaid protected leave during any 12-month period to care for a parent, child, spouse, registered domestic partner, grandparent, grandchild, sibling, and parent-in-law with a serious health condition.

For 2023, we now have AB 1041, which now adds that a qualified employee may take job-protected leave under CFRA to care for a “designated person.” “Designated person” is defined as any individual related by blood or whose association with the employee is the “equivalent of a family relationship.” The bill does not define what the

“equivalent of a family relationship” means. However, it is safe to say for California, if a qualified employee requests CFRA leave for an individual related by blood, it will likely meet the criteria. However, employers may need to obtain additional information from the qualified employee. An example might be a qualified employee who was raised by an aunt or an uncle. Aunt and Uncle are not specifically included in CFRA and would likely qualify as a “designated person.”

AB 1041 is effective on January 1, 2023. With the passage of AB 1041, employers should update their CFRA policy to include “designated person.” An addendum to your handbook notifying employees of the change is recommended. At a minimum, employers should ensure their Human Resources department is aware of this change, so they do not wrongly deny a request for CFRA leave.

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Topics

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