

CFRA and FMLA Cheat Sheet

Disclaimer: This guidance is for informational purposes only, does not establish substantive policy or rights, and does not constitute legal advice.

Both California Family Rights Act (CFRA) and the federal Family Medical Leave Act (FMLA) guarantee job-protected leave to eligible employees with a serious health condition, who are caring for a family member with a serious health condition, or to bond with a new child (by birth, adoption, or foster placement). When both state and federal laws apply, the employee receives the benefit of the more protective law.

Leave Scenario	CFRA	FMLA
Determining eligibility	Employee's family member has a serious health condition, The employee has worked for current employer for 1+ year, has 1250 hours of service in the past year, and employer has 5+ employees. (Gov. Code, § 12945.2; Cal. Code Regs., tit. 2, § 11087).	Employee's family member has a serious health condition, Employee has worked for current employer for 1+ year, employee has 1250+ hours of service in the past year, and 50+ employees work within 75 mile radius. (29 U.S.C. § 2611(2); 29 C.F.R. § 825.110).
Amount of time allowed for leave	Up to 12 weeks per year for all CFRA purposes. (Cal. Code Regs., tit. 2, § 11090). Note: FMLA and CFRA run concurrently when the qualifying event qualifies under both.	Up to 12 weeks per year for all FMLA purposes. (29 U.S.C. § 2612; 29 C.F.R. § 825.701). Note: FMLA and CFRA run concurrently when the qualifying event qualifies under both.
Family members for whom the employee can take leave	An eligible employee may take job-protected leave to care for a child of any age, spouse, domestic partner, parent, grandparent, grandchild, or sibling with a serious health condition. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of an employee or the employee's domestic partner, or a person to whom the employee stands in loco parentis. "Parent" includes a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.	An eligible employee may take job-protected leave to care for a child, spouse, or parent with a serious health condition.
Serious health condition qualification	A serious health condition is an illness, injury, or physical or mental condition that involves either inpatient care or continuing treatment by a healthcare provider. (Cal Code Regs., tit. 2, § 11087).	A serious health condition is an illness, injury, or physical or mental condition that involves either inpatient care or continuing treatment by a healthcare provider. (29 U.S.C. § 2611(11); 29 CFR § 825.113).

Leave Scenario	CFRA	FMLA
Advance notification to employer	Employee should provide at least 30 days' notice if possible. (<i>Cal. Code Regs., tit. 2, § 11091</i>).	Employee should provide at least 30 days' notice if possible. (<i>29 U.S.C. § 2612(e)(1)</i>).
Taking leave all at once or intermittently	The leave does not need to be taken in one continuous period of time. (<i>Cal. Code Regs., tit. 2, § 11090</i>).	Leave can be taken intermittently if medically necessary. Otherwise, employee needs the approval of employer to take intermittent leave. (<i>29 U.S.C. § 2612(b); 29 C.F.R. § 825.202(c)</i>).
Terminating an employee while on leave	<p>Caution: An employee on leave can be terminated due to layoffs. However, this should be vetted through legal counsel because there is a risk that the employee will file a lawsuit.</p> <p>The employee should be reinstated to their same or comparable job, except in limited circumstances unrelated to their leave. (<i>Cal. Code Regs., tit. 2, § 11089</i>).</p>	<p>Caution: An employee on leave can be terminated due to layoffs. However, this should be vetted through legal counsel because there is a risk that the employee will file a lawsuit.</p> <p>The employee should be reinstated to their same or comparable job, except in limited circumstances unrelated to their leave. (<i>29 U.S.C. § 2614(a); 29 C.F.R. § 825.214 & 825.216</i>).</p>
Employee eligibility for state benefits	Employee may apply to California Employment Development Department (EDD) for State Disability Insurance (SDI) or Paid Family Leave (PFL) to determine if eligible for those benefits. (<i>Cal. Code Regs., tit. 2, § 11092</i>).	N/A
Employee use of paid sick / vacation time	<p>CFRA leave for employee: If employee receives State Disability Insurance for their own serious health condition, an employer may not require the employee to use accrued vacation or sick time. Employee may elect to supplement State Disability Insurance with accrued vacation or sick time. If employee is not receiving SDI, employee may elect to use, and employer may require use of, accrued vacation and/or sick time.</p> <p>CFRA leave for employee family member: If employee is receiving Paid Family Leave to care for the serious health condition of a family member, an employer may not require employee to take accrued vacation time. Employee may elect to supplement Paid Family Leave with accrued vacation time or, if employer agrees, sick time. If employee is not receiving Paid Family Leave, employee may elect to use it, and employer may require employee to use accrued vacation time, and employee and employer may agree that employee can use sick time.</p>	Employee may elect to use vacation time, sick leave, or paid time off. If employee is on unpaid leave, employer may require employee to use vacation time, sick leave, or paid time off. (<i>29 C.F.R. § 825.207</i>).

Leave Scenario	CFRA	FMLA
Employer's responsibility to pay for health care coverage	Employer must pay for the continuation of employee's group health benefits if employer normally pays for those benefits. If the employee does not return from the leave, the employer can recover benefit premiums paid during the leave under certain conditions (<i>Cal. Code Regs., tit. 2, § 11092</i>).	Employer must pay for the continuation of employee's group health benefits if employer normally pays for those benefits. (29 U.S.C. § 2614(c); 29 C.F.R. § 825.209).
Loss of employee seniority benefits	Employee will not lose seniority benefits and may accrue seniority or benefits if employer allows accrual for other forms of leave. (<i>Cal. Code Regs., tit. 2, § 11092</i>).	Employee will not lose seniority benefits and may accrue seniority or benefits if employer allows accrual for other forms of leave. (29 U.S.C. § 2614(a) (2); 29 C.F.R. § 825.209(h)).
Requirement of medical certification	Employer may require medical certification of a serious health condition. (<i>Cal. Code Regs., tit. 2, § 11091</i>).	Employer may require medical certification of a serious health condition. (29 U.S.C. § 2614(a)(4); 29 C.F.R. § 825.306).

Source: <https://calcivilrights.ca.gov/employment/family-care-medical-leave-guide/>