Employment Law Expert: California Leave Law Changes for 2021

Employment Law Expert: California Leave Law Changes for 2021 Expand Qualifying Reasons for Leave and Push a Sweeping New Class of Employers into the Leave Administration "Minefield"

The California Family Rights Act (CFRA) has always required covered employers to provide up to 12 workweeks of leave during a designated 12-month period to covered employees with qualifying reasons for leave. Employees of covered employers can take leave for their own "serious health conditions," or to care for covered family members with such conditions. The 2021 changes to the CFRA expend its coverage in several respects.

Expanded Scope of Covered Employers and Employees

Robert Hudock, Managing Attorney of the Los Angeles-based **Hudock Employment Law Group**, said that up through December 31, 2020, the CFRA defined covered employers as those with 50 or more employees within 75 miles of the worksite. Hudock says that changes to the CFRA, however, effective January 1, 2021, eliminate the 75-mile limitation and drastically expand the scope of covered employers. The coverage threshold has now been substantially lowered so that all employers with five or more employees must now provide statutorily protected leave and comply with the all the associated requirements.

"If you're under five employees, you're lucky," said Hudock, an attorney with more than two decades of experience representing employers in employment law disputes. "But I'd venture to say that this expanded coverage is going to sweep up most employers in California."

Hudock referred to the complexity of the CFRA rules and requirements as a "minefield," one that the unaccustomed smaller companies would find difficult to navigate. Indeed, the full array of extensive leave rules and their nuances make it nearly impossible to achieve universal compliance, even for those familiar with them.

Expanded Qualifying Reasons for Leave — Family Members

The 2021 CFRA changes aren't just expanding the scope of covered employers, Hudock says, they're expanding the scope of qualifying reasons for leave. More specifically, until 2021, covered employees could take CFRA leave to care for a spouse, partner, parent, minor child, or adult dependent child with a serious health condition. Under the changes to the CFRA, leave may now also be taken to care for any adult child, a child of a domestic partner, sibling, grandparent, or grandchild.

Hudock provides an example of the potential effect of the expanded qualifying family members under the CFRA. Both the CFRA and the federal Family and Medical Leave Act (FMLA) apply to covered California employees. CFRA and FMLA leaves typically run concurrently, meaning that when an employee takes leave for a reason that qualifies under both Acts, the leave taken decreases the amount of available leave under both Acts. If, however, Hudock says, "an

employee takes two periods of leave during a leave year, one for a reason that qualifies under both Acts, and one for a reason that qualifies under only the CFRA, that employee will effectively be eligible for more than 12 weeks of leave during that leave year."

For example, before 2021, the CFRA and the FMLA had the same qualifying family members, and therefore leave available to care for a family member necessarily counted towards both the CFRA and FMLA 12 weeks. The family members added to the CFRA in 2021 are not included in the FMLA. Thus, if during a leave year an employee took 1 week of leave to care for his wife's serious health condition (included in the FMLA) and eleven weeks of leave to care for a grandparent (not included in the FMLA), that employee would have exhausted the full 12 weeks of CFRA leave, but he would still have 11 weeks of FMLA leave available. Theoretically, circumstances could allow for an employee to take up to 24 weeks of protected leave within a leave year (e.g., 12 weeks to care for wife, 12 weeks to care for grandparent).

The expanded family leave under the Families First Coronavirus Response Act expired on December 31, 2020. Health officials are optimistic about a relative return to normalcy somewhere on the horizon, but it is nonetheless likely that employers may for some time experience increased requests for leave under existing leave laws due to the pandemic. Hudock says: "It is now more important than ever that employers who are required to provide leave become educated on at least the fundamentals of leave law."

Hudock suggested any employer with at least five employees should contact an employment lawyer such as those at his firm to receive leave education tailored to its existing level of knowledge, schedule leave training for employees who will administer leave, or discuss tools for leave requirement compliance.

Robert Hudock has two decades of experience as an attorney, with over 15 of those years dedicated specifically to representing employers in employment law disputes. Clients trust Rob's thoughtful and creative approach that has turned "lost causes" into winners. Rob has a track record of achieving favorable results others believed were not possible.