

Family Medical Rights Act v. California Family Rights Act Regulation Changes
Comparison Chart of Regulations

Topic	FMLA	CFRA
SERIOUS HEALTH CONDITION – CONTINUING TREATMENT	Must visit a health care provider in person on 2 occasions and have more than 3 full days of incapacity	No requirement that days of incapacity be full days No in-person requirement
	First visit/treatment must occur within 7 days of the first day of incapacity	No requirement that first visit/treatment must occur within 7 days of the first day of incapacity
	2 visits/treatments must occur within 30 days from the first day of incapacity	No requirement that 2 visits/treatments must occur within 30 days from the first day of incapacity
SERIOUS HEALTH CONDITION – INPATIENT CARE	Requires an actual overnight stay in a hospital, hospice, or a residential medical facility	Does not require an overnight stay as long as they are admitted with the expectation of an overnight stay
Pregnancy Disability	Covered as a Serious Health Condition – Up to 12 weeks of FMLA leave and health benefits	Employee’s own pregnancy disability is not covered. Look to CA PDL Instead. Employee can take CFRA for family member’s pregnancy disability
Military Family Leave	Caregiver: 26 weeks of leave to care for injured service member	No similar CFRA leave, unless there is a family member with SHC
	Qualifying Exigency: 12 weeks of leave because spouse, child, or parent called to military duty	No similar CFRA leave. CFRA not exhausted when FMLA used for Qualifying Exigency

Topic	FMLA	CFRA
Medical Certification	May contact HCP to clarify or authenticate	May only contact HCP to authenticate
	No restrictions on obtaining diagnosis	May not require diagnosis without patient consent or symptoms
	Recertification no less than every 6 mo	Recertification only upon expiration of time period initially certified if employee requests additional leave
	Second opinions for employee's or family member's SHC	Second opinions only for employee's SHC
	Second opinion only "when reason to doubt validity"	Second opinion when "good faith, objective reason to doubt validity" of certification
Intermittent Leave	Baby bonding may be intermittent only if employer agrees	Baby bonding leave may be taken in increments of two weeks except on any two occasions, employee may choose to take in shorter durations
Substitution of Paid Leave	PTO/vacation: employee may choose or employer may require for all leave reasons	PTO/vacation: employer may require or employee may choose for all leave reasons
	Sick: governed by employer's policies	Sick: employer may require or employee may choose for employee's own SHC or other agreed upon reasons
Employee Notice	Employee seeking leave for reason for which FMLA leave previously granted must reference qualifying reason	No similar requirement
	No similar requirement	If employee requests vacation time without reference to CFRA qualifying purpose, employer may not inquire further

Topic	FMLA	CFRA
Spouses/Parents Working for Same Employer	Combined total of 12 weeks for baby bonding or caring for family member with SHC when spouses work for same employer	Combined limit of 12 weeks of baby bonding when both parents work for same employer
Covered Family Member	Domestic partners not covered, all other the same	Domestic partners covered, all other the same
Fitness for Duty	An employer may have a uniformly-applied policy requiring employee to obtain and present a fitness-for-duty certification from the employee's health care provider stating that the employee is able to resume work.	An employer may not require a fitness-for-duty exam as a condition of return. After employee returns from CFRA leave, any fitness-for-duty exam must be job-related and consistent with business necessity
	An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide required notice. If an employer provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA.	No similar provision; Employer must restore employee to work prior to any fitness-for-duty exam.
Bonding Leave	Because of the birth or placement of a child and in order to care for the child	Bonding with a child after birth, but not limited to bonding (i.e. attend labor, pre-natal appointments)
Maintenance of Health Insurance Benefits	An employer must maintain an employee's group health plan for the duration of the employee's FMLA leave and under the conditions coverage would have been provided if the employee had not taken FMLA leave.	Employer must maintain an employee's group health plan for the duration of the employee's CFRA leave – but time during employee's pregnancy disability leave does not count and cannot be used towards CFRA leave period – even if the employer designates that time as FMLA leave.

