

Sick-leave.com

Stephen M. Murphy, attorney at law

44 Montgomery St. • Suite 1000 • San Francisco, CA 94104 • Phone (415) 986-1338 • Fax (415) 288-1836

About Us

"Representing sick and injured employees in their battles against big corporations and insurance companies."

Frequently Asked Questions

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Sick-leave.com assists California employees who have been denied leave or disciplined for absences protected by the **Family Medical Leave Act** ("FMLA") and **California Family Rights Act** ("CFRA").

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Our firm has been successful in obtaining compensation for employees who have been denied leave to care for their own or a family member's serious health condition. We have also successfully litigated and tried cases in which employees have been wrongfully disciplined and terminated for absences protected by the FMLA and CFRA.

We want to know if you have a case that we can help you pursue. Please take an opportunity to fill out our confidential [QUESTIONNAIRE](#). We will promptly analyze your claim and let you know if we can help. All information you provide to us is strictly confidential.



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About Us

STEPHEN M. MURPHY is a sole practitioner in San Francisco where he represents plaintiffs in personal injury and employment litigation. He is certified as a civil trial specialist by the National Board of Trial Advocacy (NBTA).

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A Boston native, he graduated from Boston Latin School, the oldest public school in the country, and the College of the Holy Cross, a Jesuit liberal arts college in Worcester, Massachusetts. After serving on Law Review and graduating with honors from the University of San Francisco School of Law, he worked as law clerk to the justices of the New Hampshire Superior Court, where one of his supervising judges was current United States Supreme Court Justice David Souter.

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He returned to San Francisco in 1982 as an associate with Bianco, Brandi & Jones. He became a partner in 1988 and in 1992 started Bianco & Murphy with Robert L. Bianco before opening his own firm in 1999.

For many years Mr. Murphy has been devoted to teaching law at all levels, and in particular demystifying the law for lay people. He helped found the Barristers Club Speakers-in-the-Schools and the Children, Courts & Classrooms programs, both dedicated to educating children about the law. In 1988 and again in 1999, the Bar Association of San Francisco awarded him its Award of Merit for his "singular contribution to the public and legal community."

He has taught classes and seminars in litigation to lawyers, law students, paralegals, and legal secretaries. A regular contributor of articles to legal newspapers and magazines, he is co-author of CEB's Wrongful Employment Termination Practice. He has also contributed to the education of his fellow attorneys by editing several legal journals. In 1985 he was one of the founding editors of the award-winning Barrister Law Journal. He currently serves as editor of the SFTLA Trial Lawyer, and San Francisco Attorney Magazine.

By a fluke of nature or nurture, he has always identified with the underdog and gets a real charge out of representing employees and injured plaintiffs in their battles against big corporations and insurance companies.

Associate attorney **NIKKI HALL** joined the Law Offices of Stephen M. Murphy upon its inception in October of 1999. She first worked with Mr. Murphy as a law clerk in 1995. Ms. Hall limits her practice to research and writing in state and federal trial and appellate courts. Her persuasive briefs have resulted in the firm's clients prevailing in many summary judgment and discovery motions. A 1996 graduate of the University of San Francisco School of Law, she obtained her B.A. with High Honors from the University of California at Santa Barbara in 1992. Throughout her legal career, Ms. Hall has represented plaintiffs in civil litigation disputes, specializing in employment, insurance bad faith, and personal injury cases."

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Q: Which employers are covered by the Family Medical Leave Act (FMLA)?

A: The FMLA covers private employers with 50 or more employees.

Related Links

Q: Which employees are eligible for family or medical leave under the FMLA?

A: To be eligible for family or medical leave, an employee must have been employed by his or her employer for at least 12 months and actually worked for at least 1,250 hours during the preceding 12 months.

Q: How much leave are eligible employees entitled to?

A: Eligible employees are entitled to 12 "workweeks" of leave during any 12 month period.

Q: When may an eligible employee be entitled to family or medical leave?

A: Eligible employees are entitled to family and medical leave for the following reasons:

- 1) to care for the employee's own "serious health condition" which makes him or her unable to perform the essential functions of the job;
- 2) to care for a spouse, child or parent who has a "serious health condition";
- 3) to attend the birth of a child, and in order to care for that child; or
- 4) to care for a child placed with the employee for adoption or foster care.

Q: California already has a family leave law in effect (the "California Family Rights Act"). How will the FMLA affect this state law?

A: The FMLA does not displace any provision of a state or local law that provides greater family or medical leave rights to employees. Since the FMLA places no obligation on employees to designate whether the leave they are taking is FMLA leave as opposed to leave under a state law, employers covered by both the federal FMLA and an applicable state law must comply with the provisions of both.

Q: What types of conditions are considered "serious health conditions"?

A: A "serious health condition" must involve:

- (1) inpatient care in a hospital or medical care facility, or
- (2) continuing treatment by a health care provider.

Q: I understand what "inpatient care" is, but what does "continuing treatment by a health care provider" mean?

A: Under the FMLA, "Continuing treatment by a health care provider" means:

- (1) a period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that involves either (a) treatment two or more times by a health care provider; or (b) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
- (2) any period of incapacity due to pregnancy or for prenatal care;
- (3) any period of incapacity or treatment for such incapacity due to a "chronic serious health condition," which is a condition that (a) requires periodic visits for treatment by a health care provider, (b) continues over an extended period of time (including recurring periods of a single underlying condition), and may cause episodic rather than a continuing period of incapacity (e.g., asthma, epilepsy, diabetes, etc.);
- (4) any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- (5) any period of absence to receive multiple treatments (including any period of recovery) by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease.)

Q: Do employees have to be provided with paid family or medical leave under the FMLA?

A: No. Leave under the FMLA may consist of unpaid leave. An employee may elect, or an employer may require its employees, to substitute vacation, annual or personal leave for any part of the 12-week family leave period (sick leave may be substituted for medical leave). Of course, an employer is free to provide its employees with paid leave if it chooses to.

Q: How can an employer verify an employee's need for leave because of a "serious health condition"?

A: An employer may require an employee to obtain certification of a "serious health condition" from the employee's health care provider. The employer can pay for a second opinion if it doubts the validity of the original certification. If the second opinion conflicts with the first, the employer may pay for a third opinion. The provider of the third opinion must be jointly designated or approved by the employer and employee. The third opinion will be final.

Q: Is my health care provider required to disclose my diagnosis to my employer?

A: Under the CFRA, unlike the FMLA, your health care provider is not permitted to disclose your diagnosis without first obtaining your consent.

Q: How much notice must an employee give of his or her intention to take family or medical leave?

A: If leave is foreseeable based on a birth, adoption or planned medical treatment, an employee must give the employer 30 days' notice of his or her intention to take leave. If leave is not foreseeable, the employee must provide such notice "as is practicable."

Q: What type of notice is sufficient to make the employer aware of the employee's need for family or medical leave?

A: The employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs family or medical leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA, or even mention the FMLA, to meet the notice requirement. However, the employee must state the reason the leave is needed. It is then up to the employer to inquire further of the employee if it is necessary to have more information about whether family or medical leave is being sought by the employee and to obtain the necessary details of the leave to be taken.

Q: Must an employee be returned to his or her same job upon returning from leave?

A: An employee returning from leave must be restored to his or her old job or to an equivalent

position with equal pay, benefits, and other terms and conditions of employment.

Q: May an employee use his or her 12 weeks of leave in separate intervals or must the 12 weeks be taken consecutively?

A: An employee may take leave intermittently or on a reduced leave schedule, but there are two conditions. If the leave is for the birth or placement of a child for adoption or foster care, the employer must agree to intermittent leave. If the leave is for the "serious health condition" of the employee or the employee's spouse, child or parent, leave may be taken intermittently or on a reduced schedule only when "medically necessary."

Q: What happens to an employee's health coverage when he or she is out on leave?

A: An employer must maintain coverage under its group health plan for an employee taking family or medical leave at the same level and under the same conditions through which coverage would have been provided if the employee had not taken leave. If paid leave is substituted for FMLA leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction. If the leave is unpaid, the employer may require that payment of the employee's share be made to the employer or to the insurance carrier, if any, but no additional charge may be added to the employee's premium payment for administrative expenses. The employer must provide the employee with advance written notice of the terms and conditions under which the employee's premium payments must be made during the leave.

Q: How are employees protected who request leave or otherwise assert FMLA rights?

A: An employer is prohibited from interfering with, restraining or denying the exercise of (or attempts to exercise) any rights provided by the FMLA. An employer is further prohibited from discharging or in any other way discriminating against any person for opposing or complaining about any unlawful practice under the FMLA.

[Click here](#) to read the DFEH brochure on CFRA which includes additional FAQs

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Please provide the following information so that we may determine whether we can assist you with your potential legal matter. Someone from our office will contact you as soon as possible upon receipt of your completed questionnaire to discuss your potential case further with you.

Name:

Address:

Work Phone:

Home Phone:

Cell Phone:

Email:

Employer Name:

Employer Address:

Salary:

Date of hire:

Have you attempted to take leave or taken leave (either intermittently or for an extended period) for the following situations:

<input type="radio"/>	To care for your own serious health condition
<input type="radio"/>	To care for your spouse, child or parent who has a serious health condition
<input type="radio"/>	To care for your newborn child
<input type="radio"/>	To care for a child placed with you for adoption or foster care

If so, please specify which situation applies to you and the period of time for which you requested leave for which you took leave.

If you required leave for your own or a spouse, child or parent's serious health condition, please describe the nature of the health condition of the person involved, as well as the type of medical treatment received.

health condition.

Were you denied a leave of absence for one of the situations listed in the previous question? If you the reasons given by your employer for the denial of leave.

Does your employer have at least 50 employees within a 75 mile radius of your job site?

Select One----

Had you worked for your employer for at least 12 months at the time of requesting a leave of absen

Select One----

Had you worked at least 1,250 hours (approximately 31 work weeks) during the 12 month period im preceding the first day of the needed leave of absence?

Select One----

How did you notify your employer of your need to take a leave of absence?(i.e, verbal or written no

How did your employer respond to your request for a leave of absence?

Do you believe you suffered any adverse employment action(s) as a result of your request for a lea and/or for actually taking a leave of absence? (i.e., termination, demotion, discipline) If so, please d adverse employment action(s) you suffered.

Date of termination, if applicable, or other adverse employment action:

If you have been terminated, or suffered other adverse employment action(s), state the reasons giv employer for the termination and/or adverse action(s).

Have you filed a claim with the United States EEOC or California Department of Fair Employment and Housing, so, state the date of filing and results of the claim, if any.

Is there any other information you think we should know in evaluating the merits of your case?

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Federal and state courts have been issuing increasing numbers of FMLA decisions. The summaries below are intended to represent a sampling only; there may be other cases directly contradicting the holdings of the cases mentioned. For a complete evaluation of current case law, consult an attorney.

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Exhaustion of Administrative Remedies

FMLA Cases

See e.g. [Mora v. Chem-Tronics, Inc.](#) (S.D. Cal. 1998) 16 F. Supp. 2d 1192 (an employee's DFEH claim stating that the employee believed he was fired because of his "family" and that he was told by his employer that it was "better for you and better for us because of son's illness" was sufficient to exhaust his administrative remedies, despite the fact specific boxes on the DFEH complaint for being denied "family leave" and for retaliation were not checked. The court came to this decision by observing that "the purpose of the administrative charge is to 'provide the basis for the DFEH to investigate the aggrieved employee's claims of discrimination. It is not intended as a limiting device'." Therefore, "to determine whether the allegations of the complaint are beyond the scope of the charge, the...court should construe the charge with the utmost liberality', mindful of the fact that these charges are made by lay persons unschooled in the technicalities of formal pleading.'")

CFRA

Related Links

What Constitutes A "Serious Health Condition"

1. [Victorelli v. Shadyside Hospital](#) (3rd Cir. 1997) 128 F.3d 184 (employers must consider an employee's chronic medical history when determining whether leave is for a serious health condition.)
2. [Rhoads v. FDIC](#) (D. Md. 1997) 956 F. Supp. 1239, 1254 (episodic periods of incapacity involving the inability to breathe freely due to asthma and concurrent migraine headaches were sufficient to preclude summary judgment as to whether serious health condition existed.)
3. [McClain v. Southwest Steel Co., Inc.](#) (N.D. Okl. 1996) 940 F.Supp. 295, 298-300 (summary judgment inappropriate where plaintiff attributed absenteeism to chronic nausea, diarrhea, vomiting, severe headaches, dizziness and/or lightheadedness as symptoms might constitute a serious health condition.)
4. [Hendry v. GTE North, Inc.](#) (N.D. Ind. 1995) 896 F. Supp. 816, 827 (plaintiff's absences which were attributed to migraine headaches raise a material issue as to whether she had a serious health condition.)

Sufficiency of Employee's Notice of Need for Leave

1. [Mora v. Chem-Tronics, Inc.](#) (S.D. Cal. 1998) 16 F. Supp. 2d 1192, 1209, 1213 (whether the notice an employee provides is practical both in terms of its timing and content will depend upon the facts and circumstances of each individual case. When an employee makes his or her employer aware that he or she suffers from a chronic illness, and subsequently calls in sick because of that illness, that notice may suffice for purposes of summary judgment.)
2. [Gibbs v. American Airlines, Inc.](#) (1999) 74 Cal. App. 4th 1 (jury may reasonably find that employee

who calls in sick to work for several days while taking antibiotics for apparent flu has not provided her employer with sufficient notice to make the employer aware that the employee needs CFRA-qualifying leave.)

3. Sims v. Alameda-Contra Costa Transit Dist. (N.D. Cal. 1998) 2 F. Supp. 2d 1253, 1267 (employee submitted sufficient information, in the form of calling in sick and submitting doctor's slips, to put employer on notice that his absence was due to a potentially FMLA-qualifying reason, and thus triggering employer's duty to inquire further into whether the leave qualified for FMLA protection.)

4. Price v. City of Fort Wayne (7th Cir. 1997) 117 F.3d 1022, 1026 (whether employee gave notice of requested leave is a question of fact, linked to employee's illness and its manifestations.)

5. Hendry v. GTE North, Inc. (N.D. Ind. 1995) 896 F. Supp. 816 (employee arguably complied with the notice requirement when she called her employer and reported herself ill with a migraine headache.)

Violation of Public Policy

1. Mora v. Chem-Tronics, Inc. (S.D. Cal. 1998) 16 F. Supp. 2d 1192, 1233 (to prove a prima facie case for retaliation in violation of the FMLA, the employee must show that: (1) the employee engaged in an activity protected by the FMLA; (2) the employer knew of this exercise of the employee's rights; (3) the employer thereafter took employment action adverse to the employee; and (4) there existed a causal connection between the protected activity and the adverse employment action.

2. George v. Associated Stationers (N.D. Ohio 1996) 932 F. Supp. 1012, 1017-1018 (FMLA leave cannot be counted under "no fault" attendance policies since, pursuant to the FMLA regulations, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. If an employee's last "occurrence" is due to a serious health condition within the FMLA, the employer may not terminate the employee based on its absenteeism policy.)

3. Williams v. Shenango, Inc. (W.D. Pa. 1997) 986 F. Supp. 309, 321 (the very inclusion of an FMLA-protected absence on a discipline record could lead reasonable persons to conclude that the employee was being retaliated against for exercising FMLA rights.)

4. Nelson v. United Technologies (1999) 74 Cal. App. 4th 597 (CFRA violation can underlie claim for tortious termination in violation of public policy.)

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TEXT OF CALIFORNIA FAMILY RIGHTS ACT

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California Government Code §12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

Related Links

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) "Employer" means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to

perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b) (1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life, short-term, or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life, short-term, or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(l) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to his or her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by the act adding this subdivision shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) The provisions of this section shall be construed as separate and distinct from those of Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

[Click here](#) to read the DFEH brochure on CFRA which includes additional FAQs.

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