



The Vita Viewpoint

Important Information for Decision Makers

Administering Leaves of Absence: FMLA, CFRA, & PDL

Overview

Each month we get numerous calls regarding administration of Leaves of Absence (LOA) from our clients. These calls range from general LOA questions to those involving “sticky” predicaments with a particular employee’s request for a leave. Perhaps the trickiest part of administering Leaves of Absence is understanding the difference between job/benefit protection while out on leave, and a company’s policy regarding pay during a leave.

Is There a Secret to the Strategy?

Not really! You need to arm yourself with a calendar, a few websites (found on the third page of this Vita Viewpoint), and some general knowledge of the most complex state and federal leave laws for California... FMLA, CFRA and PDL.

Before diving into the complexities of the laws, begin by mentally separating your company’s policy on pay or payment received from other social sources during a leave of absence (including the use of “Maternal/Paternal Leave”, Sick Time, Vacation, Paid Time Off (PTO), State Disability Insurance (SDI), Paid Family Leave (PFL), Worker’s Comp, etc.). Place “pay” in a completely separate bucket for the time being.

Now, decide what the individual is eligible for under state and federal law. Is your company large enough to be subject to FMLA, CFRA, Military Leave, Pregnancy Disability, etc.? Is this employee working in a satellite office of your company, that is not within a 75-mile radius of a site that employs 50 or more employees? What is your company obliged to give this individual while they are out? To help you determine these things, please refer to the basics of Leave of Absence Administration outlined below.

What is FMLA?

The Family and Medical Leave Act (FMLA) has been federal law since August 1993. FMLA provides up to 12 weeks of *unpaid*, job protected leave during any 12-month period. Covered employers are required to maintain any preexisting group *health* coverage (medical, dental, vision, EAP and FSA benefits) during the leave. Once the eligible employee returns to work, the employer is required to reinstate the employee to the *same or an equivalent job* with equivalent benefits, pay and all other terms and conditions of employment.

Who is Eligible for FMLA?

Covered EmployERS

1. An employer who employs 50 or more employees for each working day during 20 or more calendar workweeks in the current OR preceding calendar year.
2. Public agencies and private elementary and secondary schools are covered regardless of number of employees.

Covered EmployEES

1. An employee who works for a covered employer; AND
2. Has been employed for at least 12 months at the time the leave begins (the 12 months need not be consecutive); AND
3. Has completed at least 1,250 hours of service during the previous 12-month period; AND
4. Works at a location in the United States where the company employs at least 50 employees within a 75 mile radius of the worksite.

What is CFRA?

The California Family Rights Act (CFRA) has been California state law since 1991. CFRA provides up to 12 weeks of *unpaid*, job protected leave during any 12-month period. Covered employers are required to maintain *all* pre-existing group benefits (medical, dental, vision, life, disability, EAP, FSA, etc.) during the leave. Once the eligible employee returns to work, the employer is required to reinstate the employee to the *same or an equivalent job* with equivalent benefits, pay and all other terms and conditions of employment.

Who is Eligible for CFRA?

Covered EmployERS

1. An employer who employs 50 or more employees for each working day during 20 or more calendar workweeks in the current OR preceding calendar year.
2. State of California, counties, and any political or civil subdivision of the state and cities are covered regardless of the number of employees.

Covered EmployEES

1. An employee who works for a covered employer; AND
2. Has been employed for at least 12 months at the time the leave begins (the 12 months need not be consecutive); AND
3. Has completed at least 1,250 hours of service during the previous 12-month period; AND
4. Works at a location in the United States where the company employs at least 50 employees within a 75 mile radius of the worksite.

Is There a Difference Between FMLA and CFRA?

As you can see from this brief explanation of FMLA and CFRA, they are very similar to one another, and in most cases, run concurrently during an employee's leave of absence. The main difference between FMLA and CFRA (aside from one being a federal law and one being a state law) is that FMLA requires an employer to maintain group *health* benefits (medical, dental, vision, EAP and medical FSA plans), while CFRA requires an employer to maintain *all* group benefits (medical, dental, vision, life, disability, EAP, FSA, etc.) throughout the protected portion of an eligible leave.

A second difference between FMLA and CFRA lies in the definition of a "Covered Employer". Both FMLA and CFRA define a "Covered Employer" as "an employer who employs 50 or more employees for each working day during 20 or more calendar workweeks in the current *or* preceding calendar year." However, under FMLA, public agencies, private elementary and secondary schools are covered regardless of the number of employees. CFRA extends its definition of a covered employer to include any state, county, or political/civil subdivision of the state and cities regardless of the number of employees.

A third significant difference that has grown in importance over the last several years is that CFRA allows an employee to take a leave to care for a seriously ill spouse, domestic partner, child or parent, while the federal law continues to limit its use of leave to care for a seriously ill spouse, child(ren) or parent(s).

A fourth difference between FMLA and CFRA is that CFRA specifically excludes pregnancy related disabilities as a reason for taking CFRA leave. However, at the expiration of Pregnancy Disability Leave (see section below), a mother is eligible to take an additional 12 weeks of leave under CFRA for the birth of her child regardless of whether the mother or child are disabled.

What is PDL?

The Pregnancy Disability Leave Law (PDL or PDLL) has been California state law since August 1995. PDL provides up to 4 months (or 88 workdays for full-time employees) of unpaid, job protected leave due to pregnancy related disabilities or conditions. Covered employers are only required to maintain any pre-existing benefits to the extent the employer provides such benefits for other temporary disabilities. Once the employee returns to work, the employer is required to reinstate the employee to the same position.

Who is Eligible for PDL?

Covered EmployERS

1. An employer who employs 5 or more full or part-time employees.

Covered EmployEES

1. A woman disabled due to pregnancy related conditions regardless of the length of employment or hours of service with the employer.

Step By Step Guide for Administering Leaves of Absence

Based on the Physician's Certification or Personal Request for Leave that you receive from your employee, you can now determine the length of time the individual is eligible for leave and what leave laws run concurrently (FMLA and PDL or FMLA and CFRA). So what do you do now?

Step 1: Pull out your "Leave of Absence" calendar and mark the days this person is out on leave. Ignore holidays (as they do not extend a leave of absence).

Step 2: On that same calendar, mark the days that are job and/or benefit protected. This will assist you with notifying your COBRA vendor when benefits eligibility expires.

Step 3: Now factor in your company's pay policy involving leaves.

If your company self administers your short-term disability policy, do you require the individual to use their sick or vacation time during the elimination period? Employers may not require that employees on PDL utilize accrued vacation time. Using the calendar above, you can easily determine which days are paid and which days are not.

If your short-term disability policy is administered by a third party, now is the time to call them to get the appropriate forms. Your STD carrier will coordinate pay with other social sources (Social Security, Worker's Comp, State Disability, Paid Family Leave, etc.).

Step 4: Go over this calendar with the individual requesting the leave AND hand them the legal notifications you have developed (or borrowed from the Department of Labor – see page 3) notifying them that their leave will be counted towards FMLA, CFRA and/or PDL.

Step 5: Notify your Payroll Administrator of payroll and benefit end dates (when applicable), making sure to note any reduction in pay or benefits that will be paid by Workers Comp, State Disability Insurance or Paid Family Leave if your company self administers your short-term disability benefits.

Step 6: Notify the employee's manager so that he/she may temporarily replace the person on leave, if applicable.

Step 7: Stay in contact with your employee while he/she is out. Make sure they send Physician Certification(s) in a timely manner (when applicable) and return to work when scheduled.

Step 8: Notify your benefits carriers and COBRA administrator once benefits terminate.

Useful Websites for Administering Leaves of Absence...

Department of Labor (DOL)

www.dol.gov

✓ Click on "Forms" and search for "FMLA" or click on "Topics" and then click on the "Leave Benefits" section.

Employment Development Department

www.edd.ca.gov

✓ Click on the "Paid Family Leave" or "Disability Insurance" links on the left-hand side of the page.

Department of Fair Employment & Housing

www.dfeh.ca.gov

✓ Click on the "Publications" link (gray area) and then "Employment Discrimination" in the center of the page.

Law Room

www.lawroom.com

Most Vita Clients are Members of this Site. For more details, please contact benefits@vitamail.com.

For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.