

FMLA AND CFRA: 4 Major Differences

How Pregnancy Is Handled:

FMLA: Incapacity because of pregnancy is considered “a serious health condition”

CFRA: Incapacity because of pregnancy is EXCLUDED under the definition of serious health condition; it is covered by PDL.

Effect: Potentially, a woman can take longer leave if she is disabled because of pregnancy and then wants to bond with the baby; she will be covered by FMLA and PDL first, then have CFRA time left for bonding.

Definition of “Spouse”:

FMLA: Does not cover registered domestic partners or same-sex spouse.

CFRA: Registered domestic partners, including same-sex partners, are treated the same as married persons.

Effect: An employee with a registered domestic partner in California could theoretically take more than 12 weeks of leave in a year if the leave for the other person is taken first. If the CFRA leave-but not the FMLA- was exhausted first, that would leave 12 weeks of FMLA time for a serious health condition (other than the partners) later in the year, totaling 24 weeks off.

Military Leave:

FMLA: Qualifying exigencies because of the employee’s or spouse’s military duty qualify for leave.

CFRA: Military related leaves are not covered

Effect: An employee taking FMLA military exigency leave could also have a total of 24 weeks of leave in a year if the military exigency leave was taken first – 12 weeks of FMLA leave and another 12 under the CFRA.

Caring for a family member who is a servicemember or veteran:

FMLA: The employee may take time off to care for an ill or injured family member who is a servicemember or a veteran – for up to 26 weeks. This is beyond (but not in addition to) the regular 12 weeks of leave.

CFRA: Employees may take up to 12 weeks off for the serious health condition of a family member, but no special consideration or additional time is given for family members who are military servicemembers or veterans.

Effect: An employee who takes FMLA leave to care for an injured or ill military member or a veteran could potentially argue that he or she is entitled to 12 weeks of CFRA leave because that leave was not exhausted by taking the time off for that family member-coming out to up to 38 weeks off in a year. This could be a tough argument, however, and would not be nearly as likely as the other scenarios.