Can You Navigate the complex interactions between the FMLA and CFRA?

When navigating the complex interactions between the federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), it is critical for California employers to be aware of the key differences between the laws.

Many employers wrongly assume that because the basic principles of FMLA and CFRA are similar, the two leaves are essentially the same and can be administered as such. It is true that both leaves provide up to 12 weeks of unpaid protected leave for an employee's own serious medical condition or to care for a family member with a serious medical condition. Eligibility requirements for both FMLA and CFRA are similar and include: must be employed for 1 year and must have worked at least 1,250 hours in the past year.

The significant differences between the laws that employers should be aware of include:

1. CFRA has much higher standards regarding employer requests to medical providers. Employers may not unilaterally contact the employee's healthcare provider, except to authenticate a medical certification:
    a. Medical certification forms cannot seek identification of symptoms or diagnosis from the health care provider.
    b. When an employee is on CFRA leave to care for a qualifying family member, employers are not permitted to ask for a second opinion for the family member's medical condition.
    c. Employers can only ask for a second opinion for an employee's own serious medical condition if the employer has a good faith, objective reason to do so.
    d. Employers may only ask for recertification of the employee's medical condition if the original certification expires (and "lifetime" certifications do not expire).
2. FMLA is much more lenient regarding requests to medical providers:
    a. The employer may request a diagnosis and may require a second opinion if there is doubt as to the validity of the medical.
    b. Employers may contact the healthcare provider for clarification on a medical certification.
    c. Recertification of the employee's medical condition may be sought at least every six months.
3. Pregnancy is not considered a serious health condition under CFRA:
    a. California employees are entitled to Pregnancy Disability Leave ("PDL") for up to 4 months and additional CFRA leave for "baby bonding" for up to 12 weeks.
    b. A California employee may take up to 7 months leave (between PDL and CFRA) for a pregnancy-related disability and subsequent baby bonding.

4. Employees are only entitled to 12 weeks of FMLA leave, which covers both pregnancy disability and "baby bonding." FMLA and PDL run concurrently.
5. Employees who take CFRA leave to care for a qualifying family member cannot be required to use accrued sick leave but the employee may request to use sick leave if they wish.
    a. California's new Mandatory Paid Sick Leave Law allows an employee to decide when paid sick leave is used and restricts the employer's ability to require an employee on CFRA leave to use paid sick leave.
    b. The best practice is to permit an employee to use paid sick leave if requested, but not require paid sick leave to be used during CFRA leave.
6. If the employee requires CFRA leave for his or her own serious health condition, the employer may require the employee to use accrued sick leave.
7. Under FMLA, regardless of the reason for leave, an employer may require employees to use accrued paid sick leave during unpaid FMLA leave.

Employer's should review their current procedures regarding administering FMLA and CFRA leaves to ensure they are compliant with the subtleties of each law.

Lauren Sims is an author and a principal HR Consultant with eqHR Solutions.

Whenever you require HR advice or help navigating the ever-changing landscape of California and Federal Employment Laws and Regulations, call for a no obligation consultation.

eqHR Solutions is a leading human resources consulting firm providing tactical and strategic human resources support, plus ADP payroll product training, for all size businesses in Southern California and the San Francisco / Bay area.