

### **OC Register Q&A – FMLA/CFRA**

**Q.** I am an exempt employee who is on short-term disability--however, my employer doesn't have short-term disability, so they sent me a letter saying I have been approved for 12 weeks of FMLA leave and/or 12 weeks of CFRA leave. I thought this meant 24 weeks in total. However, the company is being very vague about this, and I have been told they will hold my position for 12 weeks. I have 5 weeks left, and may not be able to make it in time for the 12-week requirement. What is the difference between FMLA and CRFA and have I actually been given 24 weeks to return or not?

**A.** In general terms, the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) are quite similar, and for all reasons other than disabilities due to pregnancy or pregnancy-related conditions, they run concurrently. Employees get one 12-week period of continued health benefits in each 12-month period. Only the first 12 weeks are governed by the family leave regulations. Companies may voluntarily permit employees to take a longer family leave. Any additional leave is governed by company policy, which should be clearly outlined in an employee handbook.

When an employee returns from family or medical leave under FMLA/CFRA regulations, he or she is generally entitled to reinstatement to the same position or to an equivalent position. An employer may, however, deny reinstatement to "key" employees under certain circumstances. In order to refuse reinstatement to a "key employee," several conditions must be met. Most notably, the employer must show that the employee requesting the leave is a salaried employee and is among the highest paid 10% of the company's employees who work within 75 miles of the work site.

Under the CFRA regulations, the employer must guarantee in writing to reinstate the employee to the same or an equivalent position if the employee requests a guarantee. It is unlawful for an employer to refuse to honor the guarantee of reinstatement unless the same position and any comparable position does not exist because of legitimate business reasons, which are unrelated to the employee's taking of the CFRA leave. An example of a legitimate business reason would be a layoff or elimination of a position as a result of a company reorganization, where no equivalent or comparable positions are available.

- Written by Audrienne Adams