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## May 11, 2015 Employment Law Bulletin

### **California Agencies Issue Important Amendments to Regulations of the CFRA and Cal/OSHA Safety and Health Standards**

California agencies recently enacted amendments to the California Family Rights Act (CFRA) regulations, and the California Occupational Safety and Health Standards Board (CalOSHA) regulations, both of which will impact many California employers. This bulletin briefly discusses these amendments.

#### **Amendments to CFRA Regulations**

The California Family Rights Act (CFRA) was established to ensure secure workplace leave rights for the birth of a child, for purposes of bonding, placement of a child in the employee's family for adoption or foster care, for the serious health condition of the employee's child, parent or spouse, or for the employee's own serious health condition.

Importantly, the CFRA applies only to employers who employ 50 or more employees within a 75-mile radius. This is not new. However, the amended regulations clarify how to determine if this threshold is met for employees with no fixed worksite (i.e., work from home, etc.). The regulations now provide that such employees' worksite is the location (1) to which they are assigned as their home base; (2) from which their work is assigned; or (3) to which they report.

CFRA leave is only available to employees who have been employed for at least 12 months and at least 1,250 hours during the preceding 12 months period. The amended regulations provide that employees who are not eligible for CFRA leave at the *start* of a leave because they did not meet this requirement, may become eligible for protected CFRA leave *during* their non-CFRA leave because their continued employment during such leave counts toward the 12 month threshold.

Formerly, employers could require an employee using CFRA leave to obtain a second opinion of the employee's "serious health condition" if the employer had "reason" to doubt the validity of the first medical certification. This regulation has been amended to allow an employer to require a second opinion only where it has a "good faith, objective reason" to doubt the certification. Employers are also now prohibited from contacting health care providers except to authenticate a medical certification.

As amended, the regulations now provide that an employee who fraudulently uses CFRA leave is not protected for purposes of job restoration (at conclusion of leave) or health benefits.

Finally, the amended regulations require employers to post a notice explaining the CFRA and how to file a complaint with the Department of Fair Employment and Housing (DFEH).

## Amended CalOSHA Regulations

The Division of Occupational Safety and Health (DOSH), better known as CalOSHA, protects workers from health and safety hazards in almost every workplace in California. The amendments to certain CalOSHA regulations, effective May 1, 2015, will impact any business that includes an "outdoor place of employment." The amendments require action by employers, including (1) revision of written policies covering heat illness prevention; (2) updates to training protocols and materials; and (3) adoption of expanded workplace procedures, practices and protections to better prevent heat illness from occurring.

A key amendment relates to the temperature at which shade must be provided. Previously, the regulation required a shaded area when the temperature reached **85 degrees**. The threshold is now **80 degrees**.

Certain industries, including agriculture, construction, landscaping, oil and gas extraction, and transportation or delivery of agricultural, construction or other heavy materials, face an even heavier burden when the temperature reaches **95 degrees**. These include (1) conducting paid pre-shift safety meetings to go over the company's high-heat procedures; and (2) implementing effective heat illness monitoring, defined as having a supervisor assigned to observe 20 or fewer employees, a mandatory buddy system, regular communication with each employee, and a designated person at the worksite authorized to call emergency services in the event of a heat illness.

Employers must also provide adequate fresh, pure and suitably cool water, at no cost, located as close as practicable to the areas where employees are working. Employers must encourage employees to take cool-down periods of at least five minutes (10 minutes every 2 hours for agricultural workers at 95 degrees).

Finally, employers must establish a written heat illness prevention plan in English and any other languages that will be understood by employees. This plan must be made available at the worksite.

## Conclusion

Employers with questions about compliance with the CFRA and/or CalOSHA regulations, including these recent amendments, should consult with their employment law counsel, to help reduce the likelihood of a violation of these laws.

**The Law Offices of Alex W. Craigie** helps Central and Southern California employers prevent, address and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451, (805) 845-1752 or at [Alex@CraigieLawfirm.com](mailto:Alex@CraigieLawfirm.com).

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