

**TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CALIFORNIA FAMILY RIGHTS ACT REGULATIONS**

[Notice published February 21, 2014]

NOTICE OF PROPOSED RULEMAKING

The Fair Employment and Housing Council (Council) proposes to amend sections 11087 to 11098 of Title 2 of the California Code of Regulations (“Family Care and Medical Leave”) after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Council will hold a public hearing starting at **10:00 a.m. on April 7, 2014**, at the University of California, Irvine, School of Law, EDU 1121, 401 East Peltason Drive, **Irvine**, California 92697.

The Department will hold a second hearing at **10:00 a.m. on June 2, 2014**, at the California Public Utilities Commission, Main Auditorium, 505 Van Ness Avenue **San Francisco**, California 94102.

Both hearing rooms are wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Council. The written comment period closes at **5:00 p.m. on June 2, 2014**. The Council will consider only comments received by that time. Written comments can be mailed to:

Fair Employment and Housing Council
c/o Phyllis W. Cheng, Director
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

Comments may also be submitted by e-mail to FEHCouncil@dfeh.ca.gov.

AUTHORITY AND REFERENCE

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12945.2 of the Government Code.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

This rulemaking action clarifies, makes specific, and where appropriate conforms to relevant federal regulations, existing state regulations interpreting the California Family Rights Act (CFRA) set forth in Government Code section 12945.2. CFRA ensures work leave rights for the birth of a child for purposes of bonding; for the placement of a child in an employee's family for adoption or foster care; for the serious health condition of an employee's child, parent, or spouse; and for an employee's own serious health condition.

In compliance with the Administrative Procedure Act (APA), the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. Since the Council's predecessor entity previously promulgated CFRA regulations, the broad objective of the proposed amendments is to further supplement those regulations, primarily by clarifying confusing rules, making technical amendments to ease readability, and adopting and modifying some of the parallel federal Family and Medical Leave Act (FMLA) regulations. This action has the specific benefit of creating a more comprehensive set of rules to ensure that employees and employers better understand their rights and duties, in turn reducing litigation costs and court overcrowding.

The proposed amendments cover 11 sections with the following titles/subjects: 1. Definitions, 2. Right to CFRA Leave: Denial of Leave; Reasonable Request; Permissible Limitation, 3. Right to Reinstatement: Guarantee of Reinstatement; Rights Upon Return; Refusal to Reinstatement; Permissible Defenses, 4. Computation of Time Periods: Twelve Workweeks; Minimum Duration, 5. Requests for CFRA Leave: Advance Notice; Certification; Employer Response, 6. Terms of CFRA Leave, 7. Relationship between CFRA Leave and Pregnancy Disability Leave; Relationship between CFRA Leave and Non-Pregnancy Related Disability Leave, 8. Retaliation and Protection from Interference with CFRA Rights, 9. Notice of Right to Request CFRA Leave, 10. Relationship with FMLA Regulations, and 11. Certification Form.

Also, as per section 11096 of these regulations, as amended, "[t]o the extent that they are within the scope of Government Code section 12945.2 and not inconsistent with this article, other state law, or the California Constitution, the Council incorporates by reference the federal regulations interpreting FMLA that became effective March 8, 2013 (29 C.F.R. Part 825), which govern any FMLA leave that is also a leave under this article." The FMLA regulations were previously incorporated by reference; this modification merely updates the reference by including the date of the most current federal regulations and clarifies that the federal regulations are incorporated only to the extent that they are within the scope of Government Code section 12945.2.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern the California Family Rights Act.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: No additional costs or savings beyond those imposed by existing CFRA regulations.

Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: No additional costs or savings beyond those imposed by existing CFRA regulations.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or businesses: No additional costs or savings beyond those imposed by existing CFRA regulations.

Results of the economic impact assessment/analysis: The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. To the contrary, adoption of the proposed amendments to existing regulations is anticipated to benefit California businesses, workers, and the state's judiciary by clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations and reducing litigation costs for businesses.

Statewide adverse economic impact directly affecting businesses and individuals: None.

Significant effect on housing costs: None.

Small Business Determination: The proposed amendments, which clarify existing regulations without imposing any new burdens, will not affect small businesses because the California Family Rights Act applies only to businesses with 50 or more employees.

Business Report: The Council has determined that the proposed regulations do not require a report to be made.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Council must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the Council's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Phyllis W. Cheng, Director
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Telephone: (916) 478-7248
E-mail: phyllis.cheng@dfeh.ca.gov

The backup contact person for these inquiries is:

Annamarie Billotti, Chief of Dispute Resolution, Legislative & Regulatory Affairs
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Telephone: (916) 478-7247
E-mail: annmarie.billotti@dfeh.ca.gov

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, should other sources be used in the future, to Annmarie Billotti at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Annmarie Billotti at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Annmarie Billotti at the address indicated above. The

Council will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be available on the Council's Web page <http://www.dfeh.ca.gov/FEHCouncil.htm>.

Copies also may be obtained by contacting Annmarie Billotti at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and any modified texts and the Final Statement of Reasons can be accessed through the Council's Web page at <http://www.dfeh.ca.gov/FEHCouncil.htm>.

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