Small Employer Family Leave Mediation Program

FAQ

The Civil Rights Department (CRD) provides free mediation services to small employers (five to 19 employees) and their employees to help them resolve disputes about employees' rights to leave protected by the Fair Employment and Housing Act (FEHA).[1] This document provides information about CRD's small employer family leave mediation program and a flowchart of the small employer family leave mediation program process.

1 What is the small employer family leave mediation program?

CRD's small employer mediation program gives small employers (five to 19 employees) and their current or former employees (collectively "employees" in this document) the right to mediate certain disputes before the employee can file a court case.[2] Specifically, employers and employees covered by the program may – at no cost to the parties – mediate disputes about the employee's right to family and medical leave (also known as California Family Rights Act (CFRA) leave), bereavement leave, and/or reproductive loss leave.

2 What is mediation? Are CRD mediations free?

Mediation is a confidential process facilitated by a neutral third party. It helps parties resolve conflict when there is a dispute. CRD employs a staff of experienced neutrals whose only job is to mediate disputes. CRD provides free, voluntary mediation services after it receives certain discrimination complaints. Mediation can take place before, during, or after CRD's investigation into the complaint. In addition, CRD's free mediation services are available as part of the small employer family leave mediation program, even without a pending investigation by CRD. Engaging in mediation does not guarantee or require that a dispute will be resolved.

3 What types of leave disputes are mediated by this program?

To be eligible for CRD's small employer family leave mediation program, there must be a dispute between the employee and employer about the employee's right to one of the following types of leave. These types of leave apply to private employers with five or more employees, as well as to state and local public employers.

CFRA leave[3]: Eligible employees have the right to take leave from work to care for their own serious health condition, to care for certain family members with a serious health condition, or to bond with a new child. Eligible employees can take up to 12 weeks of unpaid leave per 12-month period. An employee may take CFRA leave to care for the following family members with a serious health condition: spouse, domestic partner, child (minor or adult), parent (including parent-in-law), grandparent, grandchild, sibling, or someone else with whom the employee has a blood or family-like relationship ("designated person").

1 Gov. Code § 12900 et seq.
2 Gov. Code § 12945.21
3 Gov. Code § 12945.2

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Bereavement leave[4]: Eligible employees have the right to take to up to five days of bereavement leave from work following the death of certain family members. This means employers with five or more employees must allow eligible employees to take bereavement leave upon the death of the employee's spouse, child, parent, sibling, grandparent, grandchild, or parent-in-law.

Reproductive loss leave[5]: Eligible employees have the right to take up to five days of leave following their own reproductive loss, or another person's reproductive loss if the employee would have been the parent of the child born or adopted. The law defines reproductive loss as a miscarriage, stillbirth, failed adoption, failed surrogacy, and unsuccessful assisted reproduction.

For more information on CFRA, bereavement, and reproductive loss leave, visit calcivilrights.ca.gov/family-medical-pregnancy leave/

4 | What is an "immediate right-to-sue notice"?

Some employees file discrimination complaints with CRD for investigation, but asking CRD to investigate a complaint is not required. When an employee wants to go directly to court instead of having CRD investigate their complaint, they must first inform CRD of their claims and receive an "immediate right-to-sue notice."

The law says that when an employee of a small employer (five to 19 employees) obtains an immediate right-to-sue notice alleging their employer violated the employee's right to CFRA, bereavement, and/or reproductive loss leave, the employee cannot go directly to court. Instead, when the employee is ready (but before filing a timely court case), the employee must alert CRD and give the employer an opportunity to request that CRD mediate the claim. The employee may also request mediation.

5 | As an employee who works for a small employer, what should I do if I want to sue my employer for violating my right to CFRA, bereavement, and/or reproductive loss leave? What if I want to mediate my claims before going to court?

When an employee of a small employer obtains an immediate right-to-sue notice that includes a claim related to CFRA, bereavement, and/or reproductive loss leave, the notice informs the employee that, before filing a court case, that particular claim must go through the small employer family leave mediation program. **Employees do not have to request that CRD mediate CFRA, bereavement, and/or reproductive loss leave claims, but employees must inform CRD about their claims.**

When the employee is ready (but before filing a timely court case), the employee must email CRD's Dispute Resolution Division at drdonlinerequests@calcivilrights.ca.gov to initiate the process. In the email, the employee must state whether they want to mediate their CFRA, bereavement, and/or reproductive loss leave claim and if they want to mediate any other claims covered by the right-to-sue notice. The employee should provide information showing they believe their employer has five to 19 employees.

4 Gov. Code § 12945.7
5 Gov. Code § 12945.6

After the employee initiates the process, CRD notifies the employer and any other people or entities who are part of the employee's complaint ("respondents"). CRD also notifies the employer of its right to request mediation of the CFRA, bereavement, and/or reproductive loss leave claim through the small employer family leave mediation program. If neither the employee or employer ask CRD to mediate the claim within 30 days of all parties receiving notice from CRD, or all parties agree not to mediate, CRD will not take any action and the employee may go to court.

If the employee or employer requests mediation within 30 days of receiving this notice, CRD initiates the mediation within 60 days.

The employee and employer are only required to mediate the claim about CFRA, bereavement, and/or reproductive loss leave if the employee or employer requests mediation. The parties may agree to mediate other claims, but they are not required to do so.

6 | As a small employer, what should I do if I want to mediate a claim against me relating to CFRA, bereavement, and/or reproductive loss leave?

Once the employee authorizes CRD to notify the employer that the employee has a claim about CFRA, bereavement, and/or reproductive loss leave against their employer, CRD notifies the employer and any other respondents of the employer's right to request mediation before the employee can file a court case. An employer has 30 days from receipt of this notification from CRD to request mediation by emailing CRD's Dispute Resolution Division at drdonlinerequests@calcivilrights.ca.gov. If the employee or employer makes a timely request for mediation, CRD will initiate the mediation within 60 days.

7 | What happens after an employee or employer requests mediation?

If the employee or employer requests mediation within 30 days of all parties receiving notice from CRD, and the complaint is covered by the small employer family mediation program, CRD will assign a particular mediator to the matter. Usually, within three to five business days, the mediator contacts the parties by phone or email to share information and gather potential dates for the mediation. Once the mediator coordinates a date, the mediation is held for one day or partial day, depending on need and schedules. No later than seven days before the agreed-upon mediation date, the mediator notifies the employee of their right to request employment-related documents and information from the employer under Sections 226 and 1198.5 of the Labor Code. The mediator will also help facilitate any other reasonable requests for information necessary for either party to present their claim in mediation.

Engaging in mediation does not guarantee or require that a dispute will be settled. Generally, in the small employer mediation program, the employee is free to file a case in court if one of the following scenarios takes place:

- The dispute cannot be settled within 30 days of when mediation begins.
- CRD believes or the parties agree that mediation would be fruitless.

- The employer refuses to participate.
- The mediator determines that the employer has fewer than five or more than 19 employees.

If the employee refuses to participate in the small employer family leave mediation program, the employer has the right to stop the employee's court case until the mediation is deemed complete by CRD.

8 | What if I am an employee with a claim relating to CFRA, bereavement, and/or reproductive loss leave, but I do not know the number of employees my employer has?

CRD's Dispute Resolution Division will not investigate the number of employees an employer has. Employees must decide if they think their employer has between five and 19 employees. If an employee does not inform CRD that their employer has between five and 19 employees, their request for a right to sue will not be directed into the small employer family leave mediation program.

If employees go straight to court and later learn during the litigation that their employer is eligible for participation in the small employer family leave mediation program because it has between five and 19 employees, the employer can still require the employee to participate in the CRD mediation process. The law allows an eligible employer to obtain a stay (in other words, a pause) of the court case for the employer and employee to participate in a CRD mediation when the employer did not receive pre-court notice of the right to sue. If, at mediation, the employer provides evidence that they have fewer than five or more than 19 employees, the mediator may determine that the core facts of the employee's complaint are unrelated to the small employer family leave mediation program.

9 | What if the employee alleges discrimination claims in addition to those involving CFRA, bereavement, and/or reproductive loss leave?

The parties may agree to mediate other claims within the authority of CRD but are not required to do so. Under the small employer family leave mediation program, the parties are only required to mediate the claim about CFRA, bereavement, and/or reproductive loss leave if either the employee or employer requests mediation.

10 | Do I have to participate if another party requests a mediation?

Yes, if an employer or employee requests to mediate a claim covered by the program, all parties must participate. An employee cannot file in court until the mediation is complete (see question seven). If the employee refuses to participate in the small employer family leave mediation program, the employer has the right to stop the employee's court case until CRD mediates the dispute.

11 | What if an employee goes directly to court without participating in the small employer family leave mediation program?

If the employee files a court case with a claim covered by the program, the employer has the right to stop the entire case until a CRD mediation on that claim is complete.

12 | Can larger employers and their employees participate in the small employer family leave mediation program?

Not at this time. By law, the program is only available to employers with five to 19 employees and their employees. But if an employee at a larger employer submits a complaint to CRD for investigation, the complaint may be eligible for dispute resolution services (mediation).

If you have experienced discrimination, please contact CRD.

TO FILE A COMPLAINT

Civil Rights Department

calcivilrights.ca.gov/complaintprocess

Toll Free: 800.884.1684

TTY: 800.700.2320

California Relay Service (711)

Have a disability that requires a reasonable accommodation? CRD can assist you with your complaint.

For translations of this guidance, visit: www.calcivilrights.ca.gov/posters/employment/

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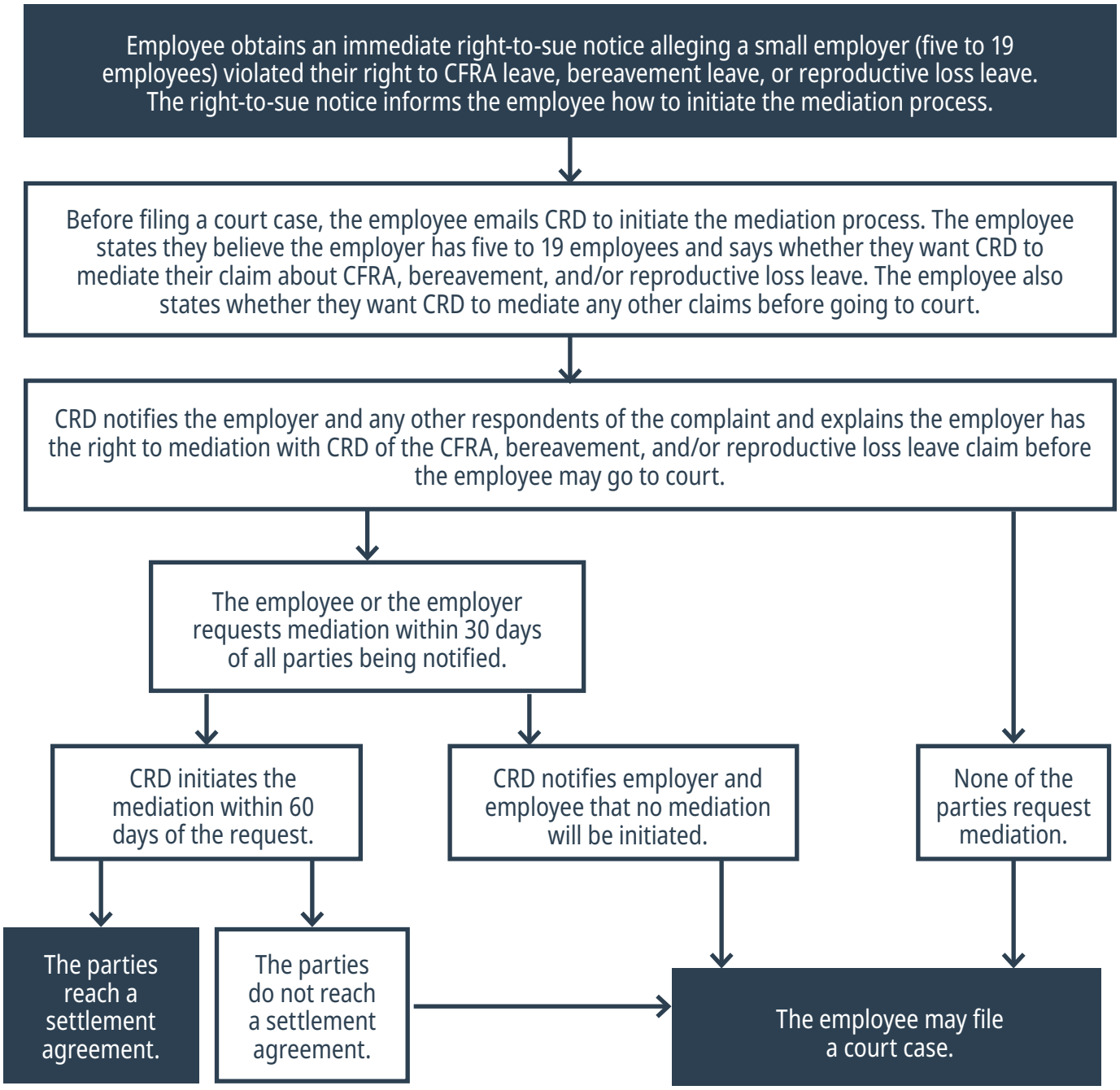
THE SMALL EMPLOYER FAMILY LEAVE MEDIATION PROGRAM PROCESS