

# Small Employer Family Leave Mediation Program



# FAQ

The Civil Rights Department (CRD) is California’s civil rights agency. Among the laws enforced by CRD is the Fair Employment and Housing Act, which protects employees and job applicants from discrimination and harassment based on a protected characteristic.<sup>1</sup> The Fair Employment and Housing Act guarantees eligible employees a certain amount of job-protected leave when the employee needs to care for their own serious health condition or a family member’s serious health condition, or to bond with a new child.<sup>2</sup> These leave provisions, which apply to California employers with 5 or more employees, are known as the California Family Rights Act (CFRA).

## 1 | What is the small employer family leave mediation program?

California laws passed in 2020 and 2021 created a new, small employer mediation program at CRD.<sup>3</sup> The program gives small employers (of 5 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. Specifically, employers and employees covered by the program are able to – at no cost to the parties – mediate disputes about the employee’s right to medical or family care leave under the California Family Rights Act (CFRA). Unless it is extended, the program will end on January 1, 2024. The last page of this document includes a flowchart of the small employer family leave mediation program process, which is also described below.

## 2 | What is mediation? Are CRD mediations free?

Mediation is a confidential process facilitated by a neutral third party to help parties in dispute resolve conflict. CRD employs a staff of experienced neutrals, whose exclusive role at the department is to mediate complaints. CRD provides free, voluntary mediation services for discrimination complaints submitted to CRD for investigation by the department. In addition, as part of the small employer family leave mediation program, CRD’s free mediation services are available for those disputes covered by the program, even though CRD is not investigating the complaint. Engaging in mediation does not guarantee or require that a dispute will be settled.

1 Gov. Code § 12900 et seq.

2 Gov. Code § 12945.2

3 Gov. Code § 12945.21

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### 3 | What is CFRA?

CFRA provides eligible employees with the right to take, per 12-month period, up to 12 weeks of unpaid 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. 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, or sibling. While on CFRA leave, the employee's job and health insurance are protected. Since January 1, 2021, employers of 5 or more employees are covered by CFRA. For more information on CFRA leave, visit: [www.calcivilrights.ca.gov/family-medical-pregnancy-leave/](http://www.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 by the department, but asking CRD to investigate a complaint is not required. When an employee wants to go directly to court and not have CRD investigate their complaint, they must first inform CRD of their claims and receive an “immediate right-to-sue notice.”

Under the small employer family leave mediation program, an employee who obtains an immediate right-to-sue notice that alleges a CFRA violation against a small employer (of 5 to 19 employees) 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 the CFRA claim be mediated by CRD. 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 rights under CFRA? What if I would like 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 CFRA claim, that notice will inform the employee that, before filing a court case, the CFRA claim must go through the small employer family leave mediation program. Specifically, when the employee is ready (but, again, before filing a timely court case), the employee must email CRD's Dispute Resolution Division at [DRDOnlineRequests@CRD.ca.gov](mailto:DRDOnlineRequests@CRD.ca.gov) to initiate the process. When emailing the Dispute Resolution Division, the employee must state whether they would like to mediate their CFRA claim and if they would like to mediate any other discrimination claims they might have.

After the employee initiates the process, CRD will notify the employer and any other respondents of the employee's complaint and will notify the employer of its right to request mediation of the CFRA claim through the small employer family leave mediation program. If the employee or employer makes a timely request for mediation, CRD will initiate the mediation within 60 days.

The employee and employer are only required to mediate the CFRA claim and only if the employee or employer requests mediation. The parties may agree to mediate any non-CFRA claims but they are not required to do so.

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### 6 | **As a small employer, what should I do if I would like to mediate a CFRA claim against me?**

Once the employee authorizes CRD to notify the employer that the employee has a CFRA claim against it, CRD will notify the employer and any other respondents of the employer's right to request mediation of the CFRA claim before the employee can file suit. An employer has 30 days from receipt of this notification from CRD to request mediation, by emailing CRD's Dispute Resolution Division at [DRDOnlineRequests@CRD.ca.gov](mailto:DRDOnlineRequests@CRD.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 makes a timely request for mediation?**

If the employee or employer makes a timely request for mediation and the complaint is covered by the small employer family mediation program, CRD will assign a particular mediator to the matter. Usually within two to five business days, the mediator will reach out to the parties, either by phone or email, to gather potential dates for the mediation. Once the mediator has coordinated a date, the mediation will occur, during the course of a day or partial day, depending on need and schedules. Once the mediation has been initiated, no later than seven days before the mediation date, the mediator will notify the employee of their right to request employment-related documents and information from the employer pursuant to Sections 226 and 1198.5 of the Labor Code. The mediator will also help facilitate any other reasonable requests for information that may be 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, if the dispute cannot be settled within 30 days of when mediation begins, if CRD or the parties agree that mediation would be fruitless, or the employer refuses to participate, the employee will be free to file a case in court. If the employee refuses to participate in the small employer family leave mediation program, the employer has the right to stop their court case until the dispute is mediated by CRD.

### 8 | **What if I am an employee with a CFRA claim but I do not know the number of employees my employer has?**

CRD's Dispute Resolution Division is not able to investigate the number of employees an employer has. You must decide if you think your employer has between 5 and 19 employees. If you do not claim to CRD that your employer has between 5 and 19 employees, your request for a right to sue will not be directed into the small employer family leave mediation program.

If you go straight to court and later learn during the litigation that your employer is eligible for participation in the small employer family leave mediation program because it does in fact have between 5 and 19 employees, the employer can still require that you 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 in order for the employer and employee to participate in a CRD mediation of the employee's CFRA claim when the employer did not receive pre-suit notice of the right to sue.

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### 9 | What if the employee alleges discrimination claims in addition to those involving CFRA leave?

The parties may agree to mediate the non-CFRA claims but they are not required to do so. Under the small employer family leave mediation program, the parties are only required to mediate the CFRA claim, if either the employee or employer requests mediation.

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

Yes. Neither the employee nor the employer is required to request mediation by CRD. But, 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, which generally means that the dispute was not settled within 30 days of when mediation began, CRD or the parties agreed that further mediation was fruitless, or the employer refused to participate. If the employee refuses to participate in the small employer family leave mediation program, the employer has the right to stop their court case until the dispute is mediated by CRD.

### 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 CFRA claim covered by the program, the employer will have the right to stop the entire case until a CRD mediation over the CFRA 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 of 5 to 19 employees and their employees. In addition, complaints submitted to CRD for investigation by the department may be eligible for dispute resolution services of the department.

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**If you think you have been a victim of discrimination, please contact CRD.**

## TO FILE A COMPLAINT

### Civil Rights Department

[calcivilrights.ca.gov/complaintprocess](https://calcivilrights.ca.gov/complaintprocess) / Toll Free: 800.884.1684 / TTY: 800.700.2320

If you have a disability that requires a reasonable accommodation, CRD can assist you with your complaint. Contact us through any method above or, for individuals who are deaf or hard of hearing or have speech disabilities, through the California Relay Service (711).

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### THE SMALL EMPLOYER FAMILY LEAVE MEDIATION PROGRAM PROCESS

