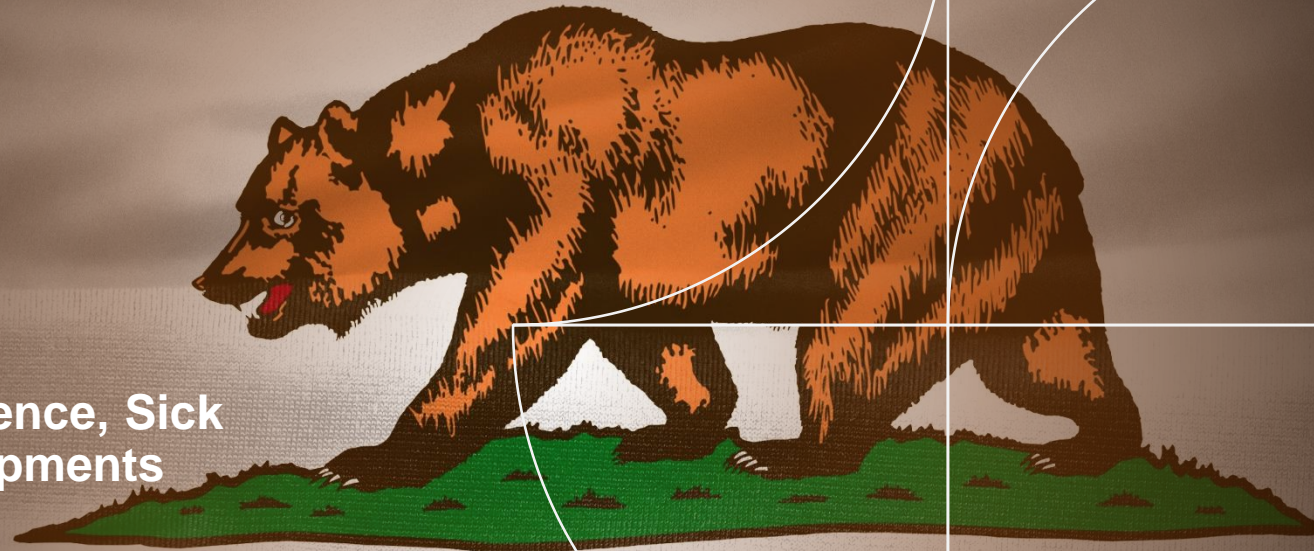




# 2023 Cal-Peculiarities

Part 2: California Leaves of Absence, Sick  
Leave, and Vacation Pay Developments

September 7, 2023



**CALIFORNIA REPUBLIC**

**Seyfarth Shaw LLP**

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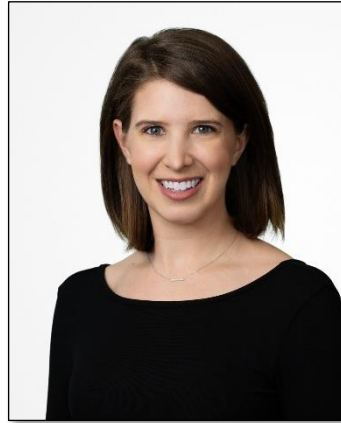
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# Agenda

- 1 | California Family Rights Act and Paid Family Leave Developments
- 2 | California Paid Sick Leave Developments
- 3 | California Bereavement Leave
- 4 | Vacation Pay Development
- 5 | Local Leave Law Updates

# CFRA Expansion



- California has its own family and medical leave law – the California Family Rights Act (or CFRA).
- Over the past several years, CFRA has greatly expanded and almost no longer resembles the FMLA.
- **Employer Coverage:** Employers with at least five employees anywhere now are covered.
- **Covered Family Members:** Sibling, grandparent, grandchild, parent-in-law, and, as of January 1, 2023, “designated person” are all covered.

## CFRA Expansion (Cont.)



- **Designated Person:**
  - Designated person is any individual related by blood or whose association with the employee is the equivalent of a family relationship.
  - Must be allowed to designate a person at the time the leave request is made.
  - Employer may limit an employee to one designated person in a 12-month period.
- **No Geographical Proximity Requirement:** There no longer is a requirement that an employee work at a worksite with at least 50 employees within a 75-mile radius.

## Implications of CFRA Expansion



- California employees who are not eligible for FMLA leave still may be eligible for up to 12 weeks of CFRA leave.
- If a California employee takes up to 12 weeks of CFRA leave to care for a sibling (or for any other reason not covered under the FMLA), then the employee still is entitled to an additional 12 weeks of FMLA leave in the same 12-month period for a FMLA-qualifying reason (if the employee satisfies the FMLA's eligibility requirements).
- Handbook Implication:
  - CFRA has a mandatory written policy requirement.
  - Employers should ensure this new covered family member is included in their CFRA policy.
  - Employers should include in the policy the once-a-year limitation on designation of a designated person.

## California PFL Changes



- For claims after January 1, 2023, the maximum weekly CA PFL benefit increased from \$1,540 to \$1,620.
- Additionally, the applicable deductions from employee wages for PFL and SDI was reduced to 0.9% of the first \$153,164 earned in a calendar year, with a maximum withholding of \$1,378.48 per year.
- Ensure that you are using the most current version of the Paid Family Leave pamphlet for onboarding and leaves of absence, which can be found on the EDD's website.  
[https://edd.ca.gov/pdf\\_pub\\_ctr/de2511.pdf](https://edd.ca.gov/pdf_pub_ctr/de2511.pdf)



# California Paid Sick Leave Developments



- Effective January 1, 2023, California’s Paid Sick Leave Law was amended to include a “designated person” for whom an employee may take paid sick leave.
  - For the purpose of the California Paid Sick Leave Law, a “designated person” is any person designated by the employee.
  - This is broader than under CFRA.
- Employee must be allowed to designate a person at the time the request is made.
  - Employers therefore cannot require employees to designate a person in advance.
  - Employers are free to limit designated persons to just one in the period of a year; employees are entitled to select a new designated person every twelve months.

# California Bereavement Leave



## AB 1949 - Bereavement Leave

- Effective January 1, 2023, CFRA was amended to provide for up to five days of bereavement leave upon the death of a family member for employees working 30+ days.
- Family Member: spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.
- Leave must be completed within three months of the date of death of the family member, does not need to be consecutive.
- If the employer does not have a paid bereavement policy, the leave may be unpaid.
  - Employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.
- Requests for documentation are permitted.

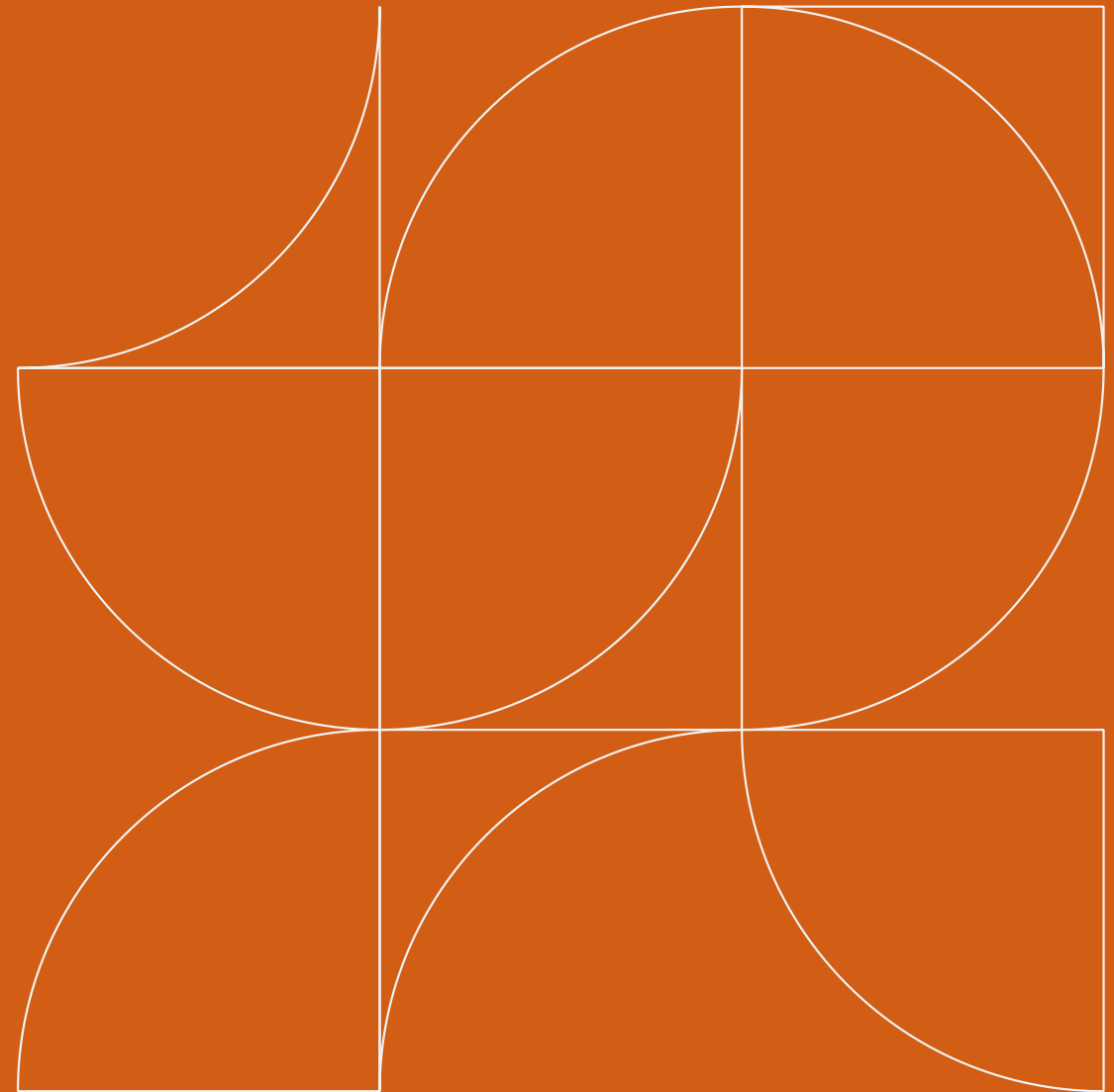
**Vacation Pay  
Development:  
*Cinnamon Mills  
v. Target Corp.*,  
Ninth Cir.; March 3, 2023**



## Calculating Vacation Pay Upon Separation

- Under California law, an employee must be paid out for all accrued, unused vacation upon employment separation at the employee's ***final rate***.
- How does the employer calculate the final rate?
  - If the employee earns a base rate of \$15.50/hour?
  - If the employee works the night shift with a \$1.00/hour shift differential?
- Ninth Circuit: The term “final rate” is the “final wage rate,” which includes shift differentials.

# CLE Code



## Local Leave Law Updates



- Numerous municipalities have opted to create their own special leave laws that do not follow the uniform state-wide standard.
- West Hollywood released updated regulations to its paid time off ordinance in May 2023, which in part provides:
  - Eligible employees with at least 24 hours of compensated leave for sick leave purposes that must be available to use beginning on the 90<sup>th</sup> calendar day of employment.
  - A new accrual rate for paid sick leave in excess of 24 hours.
  - A reduced waiting period for compensated and uncompensated time off.
- Other jurisdiction-specific leave laws include:
  - San Francisco’s Public Health Emergency Leave Law
  - San Francisco’s Pay Differential for Military Leave
  - Oakland’s ongoing COVID-19 Emergency PSL Mandate



**Questions?**



thank  
you

**contact information**

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