

Small Employer Family Leave Mediation Program



FAQ

The Civil Rights Department (CRD) enforces the Fair Employment and Housing Act and other laws that protect the civil rights of Californians.¹ Among other protections for employees and job applicants, the Fair Employment and Housing Act guarantees eligible employees a certain amount of job-protected leave from work when:

- The employee has a serious health condition, a family member with a serious health condition to care for, or a new child to bond with. These protections are also known as California Family Rights Act leave or CFRA leave.²
- Certain members of the employee’s family passes away. This form of leave is also known as bereavement leave.³

CFRA leave and bereavement leave are available to eligible employees working for California employers with five or more employees. CRD provides free mediation services to small employers (5-19 employees) and their employees in order to help them resolve a disagreement about the employee’s right to CFRA leave and/or bereavement leave. This document provides important information about CRD’s small employer family leave mediation program.

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

Recent California laws created a new, small employer mediation program at CRD.⁴ The program gives small employers (5-19 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 (CFRA leave) and/or bereavement leave. Unless it is extended, the program will end on January 1, 2028. 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 certain 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 § 12945.7
4 Gov. Code § 12945.21

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3 | What is CFRA leave? What is bereavement leave?

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. Employers of five or more employees are covered by CFRA. 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 a blood or family-like relationship with the employee (“designated person”). While on CFRA leave, the employee’s job and health insurance are protected.

The Fair Employment and Housing Act requires private employers with five or more employees to grant an eligible employee’s request for up to five days of bereavement leave from work following the death of the employee’s family member. To be eligible for bereavement leave, an employee must have been employed for at least 30 days before taking the leave. Employers 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.

For more information on CFRA leave and bereavement 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 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, when an employee obtains an immediate right-to-sue notice that alleges their employer violated the employee’s right to CFRA leave and/or bereavement leave, and when the employer has 5-19 employees, 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 the claim about CFRA leave and/or bereavement leave 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 right to CFRA leave or bereavement leave? 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 claim related to CFRA leave and/or bereavement leave, that notice will inform the employee that, before filing a court case, that particular 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@calcivilrights.ca.gov to initiate the process. When emailing the Dispute Resolution Division, the employee

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must state whether they would like to mediate their claim regarding CFRA leave and/or bereavement leave and if they would like to mediate any other discrimination claims they might have. The employee should set forth information indicating that they believe their employer has 5-19 employees.

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 claim about CFRA leave and/or bereavement leave 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 claim about CFRA leave and/or bereavement 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 would like to mediate a claim against me relating to CFRA leave or bereavement leave?

Once the employee authorizes CRD to notify the employer that the employee has a claim about CFRA leave and/or bereavement leave against their employer, CRD will notify the employer and any other respondents of the employer's right to request mediation 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@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 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 three to five business days, the mediator will reach out to the parties, either by phone or email, to share information and gather potential dates for the mediation. Once the mediator has coordinated a date, the mediation will occur during 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 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 if 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 mediation is deemed complete by CRD.

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8 | What if I am an employee with a claim relating to CFRA leave and/or bereavement leave 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 5-19 employees. If you do not claim to CRD that your employer has between 5-19 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 5-19 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 for the employer and employee to participate in a CRD mediation when the employer did not receive pre-suit notice of the right to sue. If, at mediation, the employer can provide evidence that they have more than 5-19 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 leave and/or bereavement leave?

The parties may agree to mediate other claims within the jurisdiction 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 leave and/or bereavement leave 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 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 will have the right to stop the entire case until a CRD mediation over the claim covered by the program is complete.

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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 5-19 employees and their employees. However, complaints submitted to CRD for investigation by the department may be eligible for dispute resolution services of the department.

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

TO FILE A COMPLAINT

Civil Rights Department

civildrights.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.civildrights.ca.gov/posters/employment

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THE SMALL EMPLOYER FAMILY LEAVE MEDIATION PROGRAM PROCESS

