An act to amend and repeal Section 12945.6 of, and to amend, repeal, and add Sections 12945 and Section 12945.2 of, the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1383, as amended, Jackson. Unlawful employment practice: family leave.

Existing law, the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act (CFRA), makes it an unlawful employment practice for a government employer or any employer with 50 or more employees, as specified, to refuse to grant a request by an employee, who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves, a child, a parent, or a spouse, as specified. Existing law authorizes an employer to refuse to grant the request if the employer employs less than 50 employees within 75 miles of the worksite where the employee is employed or if the employee is a salaried employee who is among...
the highest paid 10% of the employer’s employees, as provided. Existing law, if both parents of a child are employed by the same employer, authorizes the employer to only grant both employees a total of 12 workweeks of unpaid protected leave during the 12-month period.

Existing law, the New Parent Leave Act, makes it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child. The New Parent Leave Act defines employee as a parent who has more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles.

This bill would revise and recast these provisions to make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified. The bill would require an employer who employees’ both parents of a child to grant leave to each employee. The bill would also make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States. The bill would define employee for these purposes as an individual who has at least 1,250 hours of service with the employer during the previous 12-month period, unless otherwise provided.

Existing law prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work. Existing law also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave, as specified.

This bill would specify that these provisions apply to employers with one or more employees.

This bill would provide that its provisions are effective on January 1, 2021.
The people of the State of California do enact as follows:

SECTION 1.—Section 12945 of the Government Code is amended to read:

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

1. For an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission’s regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

2. (A) For an employer to refuse to maintain and pay for coverage for an eligible employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months.

An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
(ii) The employee’s failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee’s health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee’s physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section:

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any
other provision of this part, including subdivision (a) of Section 12940.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 12945 is added to the Government Code, to read:

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the council’s regulations.

The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
(ii) The employee's failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee's health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee's physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section:

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any
other provision of this part, including subdivision (a) of Section 12940. 

(c) This section shall apply to employers with one or more employees. 

(d) This section shall become operative on January 1, 2021.

SEC. 3. 

SECTION 1. Section 12945.2 of the Government Code is amended to read:

12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (u), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request. 

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed. 

(c) For purposes of this section:

(1) “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age. 

(B) An adult dependent child. 

(2) “Employer” means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary. 

(B) The state, and any political or civil subdivision of the state and cities. 

(3) “Family care and medical leave” means any of the following:
(A) Leave for reason of the birth of a child of the employee, the
placement of a child with an employee in connection with the
adoption or foster care of the child by the employee, or the serious
health condition of a child of the employee.
(B) Leave to care for a parent or a spouse who has a serious
health condition.
(C) Leave because of an employee’s own serious health
condition that makes the employee unable to perform the functions
of the position of that employee, except for leave taken for
disability on account of pregnancy, childbirth, or related medical
conditions.
(4) “Employment in the same or a comparable position” means
employment in a position that has the same or similar duties and
pay that can be performed at the same or similar geographic
location as the position held prior to the leave.
(5) “FMLA” means the federal Family and Medical Leave Act
of 1993 (P.L. 103-3).
(6) “Health care provider” means any of the following:
(A) An individual holding either a physician’s and surgeon’s
certificate issued pursuant to Article 4 (commencing with Section
2080) of Chapter 5 of Division 2 of the Business and Professions
Code, an osteopathic physician’s and surgeon’s certificate issued
pursuant to Article 4.5 (commencing with Section 2099.5) of
Chapter 5 of Division 2 of the Business and Professions Code, or
an individual duly licensed as a physician, surgeon, or osteopathic
physician or surgeon in another state or jurisdiction, who directly
treats or supervises the treatment of the serious health condition.
(B) Any other person determined by the United States Secretary
of Labor to be capable of providing health care services under the
FMLA.
(7) “Parent” means a biological, foster, or adoptive parent, a
stepparent, a legal guardian, or other person who stood in loco
parentis to the employee when the employee was a child.
(8) “Serious health condition” means an illness, injury,
impairment, or physical or mental condition that involves either
of the following:
(A) Inpatient care in a hospital, hospice, or residential health
care facility.
(B) Continuing treatment or continuing supervision by a health
care provider.
(d) An employer shall not be required to pay an employee for
any leave taken pursuant to subdivision (a), except as required by
subdivision (e).

(e) An employee taking a leave permitted by subdivision (a)
may elect, or an employer may require the employee, to substitute,
for leave allowed under subdivision (a), any of the employee’s
accrued vacation leave or other accrued time off during this period
or any other paid or unpaid time off negotiated with the employer.

If an employee takes a leave because of the employee’s own serious
health condition, the employee may also elect, or the employer
may also require the employee, to substitute accrued sick leave
during the period of the leave. However, an employee shall not
use sick leave during a period of leave in connection with the birth,
adoption, or foster care of a child, or to care for a child, parent, or
spouse with a serious health condition, unless mutually agreed to by
the employer and the employee.

(f) (1) During any period that an eligible employee takes leave
pursuant to subdivision (a) or takes leave that qualifies as leave
taken under the FMLA, the employer shall maintain and pay for
coverage under a “group health plan,” as defined in Section
5000(b)(1) of the Internal Revenue Code, for the duration of the
leave, not to exceed 12 workweeks in a 12-month period,
commencing on the date leave taken under the FMLA commences,
at the level and under the conditions coverage would have been
provided if the employee had continued in employment
continuously for the duration of the leave. Nothing in the preceding
sentence shall preclude an employer from maintaining and paying
for coverage under a “group health plan” beyond 12 workweeks.

An employer may recover the premium that the employer paid as
required by this subdivision for maintaining coverage for the
employee under the group health plan if both of the following
conditions occur:

(A) The employee fails to return from leave after the period of
leave to which the employee is entitled has expired.

(B) The employee’s failure to return from leave is for a reason
other than the continuation, recurrence, or onset of a serious health
condition that entitles the employee to leave under subdivision (a)
or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall
continue to be entitled to participate in employee health plans for
any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer’s discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee’s need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee’s need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment
or supervision to avoid disruption to the operations of the employer,
subject to the approval of the health care provider of the individual
requiring the treatment or supervision.

(j) (1) An employer may require that an employee’s request
for leave to care for a child, a spouse, or a parent who has a serious
health condition be supported by a certification issued by the health
care provider of the individual requiring care. That certification
shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) An estimate of the amount of time that the health care
provider believes the employee needs to care for the individual
requiring the care.
(D) A statement that the serious health condition warrants the
participation of a family member to provide care during a period
of the treatment or supervision of the individual requiring care.
(2) Upon expiration of the time estimated by the health care
provider in subparagraph (C) of paragraph (1), the employer may
require the employee to obtain recertification, in accordance with
the procedure provided in paragraph (1), if additional leave is
required.

(k) (1) An employer may require that an employee’s request
for leave because of the employee’s own serious health condition
be supported by a certification issued by the employee’s health
care provider. That certification shall be sufficient if it includes
all of the following:

(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) A statement that, due to the serious health condition, the
employee is unable to perform the function of the employee’s
position.
(2) The employer may require that the employee obtain
subsequent recertification regarding the employee’s serious health
condition on a reasonable basis, in accordance with the procedure
provided in paragraph (1), if additional leave is required.
(3) (A) In any case in which the employer has reason to doubt
the validity of the certification provided pursuant to this section,
the employer may require, at the employer’s expense, that the
employee obtain the opinion of a second health care provider,
designated or approved by the employer, concerning any
information certified under paragraph (1).
(B) The health care provider designated or approved under
subparagraph (A) shall not be employed on a regular basis by the
employer.
(C) In any case in which the second opinion described in
subparagraph (A) differs from the opinion in the original
certification, the employer may require, at the employer’s expense,
that the employee obtain the opinion of a third health care provider,
designated or approved jointly by the employer and the employee,
concerning the information certified under paragraph (1).
(D) The opinion of the third health care provider concerning
the information certified under paragraph (1) shall be considered
to be final and shall be binding on the employer and the employee.
(4) As a condition of an employee’s return from leave taken
because of the employee’s own serious health condition, the
employer may have a uniformly applied practice or policy that
requires the employee to obtain certification from the employee’s
health care provider that the employee is able to resume work.
Nothing in this paragraph shall supersede a valid collective
bargaining agreement that governs the return to work of that
employee.
(l) It shall be an unlawful employment practice for an employer
to refuse to hire, or to discharge, fine, suspend, expel, or
discriminate against, any individual because of any of the
following:
(1) An individual’s exercise of the right to family care and
medical leave provided by subdivision (a).
(2) An individual’s giving information or testimony as to the
individual’s own family care and medical leave, or another person’s
family care and medical leave, in any inquiry or proceeding related
to rights guaranteed under this section.
(m) This section shall not be construed to require any changes
in existing collective bargaining agreements during the life of the
contract, or until January 1, 1993, whichever occurs first.
(n) The amendments made to this section by Chapter 827 of the
Statutes of 1993 shall not be construed to require any changes in
existing collective bargaining agreements during the life of the
contract, or until February 5, 1994, whichever occurs first.
(o) This section shall be construed as separate and distinct from Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:
(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer’s employees who are employed within 75 miles of the worksite at which that employee is employed.
(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.
(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).
(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.
It shall be an unlawful employment practice for an employer
to interfere with, restrain, or deny the exercise of, or the attempt
to exercise, any right provided under this section.

(u) (1) An employee employed by an air carrier as a flight deck
or cabin crew member meets the eligibility requirements specified
in subdivision (a) if all of the following requirements are met:
(A) The employee has 12 months or more of service with the
employer.
(B) The employee has worked or been paid for 60 percent of
the applicable monthly guarantee, or the equivalent annualized
over the preceding 12-month period.
(C) The employee has worked or been paid for a minimum of
504 hours during the preceding 12-month period.
(2) As used in this subdivision, the term “applicable monthly
guarantee” means both of the following:
(A) For employees described in this subdivision other than
employees on reserve status, the minimum number of hours for
which an employer has agreed to schedule such employees for any
given month.
(B) For employees described in this subdivision who are on
reserve status, the number of hours for which an employer has
agreed to pay such employees on reserve status for any given
month, as established in the collective bargaining agreement or,
if none exists, in the employer’s policies.
(3) The department may provide, by regulation, a method for
calculating the leave described in subdivision (a) with respect to
employees described in this subdivision.
(v) This section shall remain in effect only until January 1, 2021,
and as of that date is repealed.

SEC. 4.
SEC. 2. Section 12945.2 is added to the Government Code, to
read:

12945.2. (a) It shall be an unlawful employment practice for
any employer, as defined in paragraph (3) of subdivision (b), to
refuse to grant a request by any employee with more than 12
months of service with the employer, and who has at least 1,250
hours of service with the employer during the previous 12-month
period or who meets the requirements of subdivision (r), to take
up to a total of 12 workweeks in any 12-month period for family
care and medical leave. Family care and medical leave requested
pursuant to this subdivision shall not be deemed to have been
granted unless the employer provides the employee, upon granting
the leave request, a guarantee of employment in the same or a
comparable position upon the termination of the leave. The council
shall adopt a regulation specifying the elements of a reasonable
request.

(b) For purposes of this section:

(1) “Child” means a biological, adopted, or foster child, a
stepchild, a legal ward, a child of a domestic partner, or a person
to whom the employee stands in loco parentis.

(2) “Domestic partner” has the same meaning as defined in
Section 297 of the Family Code.

(3) “Employer” means either of the following:

(A) Any person who directly employs one five or more persons
to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state
and cities.

(4) “Family care and medical leave” means any of the following:

(A) Leave for reason of the birth of a child of the employee or
the placement of a child with an employee in connection with the
adoption or foster care of the child by the employee.

(B) Leave to care for a child, parent, grandparent, grandchild,
sibling, spouse, or domestic partner who has a serious health
condition.

(C) Leave because of an employee’s own serious health
condition that makes the employee unable to perform the functions
of the position of that employee, except for leave taken for
disability on account of pregnancy, childbirth, or related medical
conditions.

(D) Leave because of a qualifying exigency related to the
covered active duty or call to covered active duty of an employee’s
spouse, domestic partner, child, or parent in the Armed Forces of
the United States, as specified in Section 3302.2 of the
Unemployment Insurance Code.

(5) “Employment in the same or a comparable position” means
employment in a position that has the same or similar duties and
pay that can be performed at the same or similar geographic
location as the position held prior to the leave.

(6) “FMLA” means the federal Family and Medical Leave Act
of 1993 (P.L. 103-3).
(7) “Grandchild” means a child of the employee’s child.
(8) “Grandparent” means a parent of the employee’s parent.
(9) “Health care provider” means any of the following:
   (A) An individual holding either a physician’s and surgeon’s certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician’s and surgeon’s certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.
   (B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.
(10) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.
(11) “Parent-in-law” means the parent of a spouse or domestic partner.
(12) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:
   (A) Inpatient care in a hospital, hospice, or residential health care facility.
   (B) Continuing treatment or continuing supervision by a health care provider.
(13) “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
(c) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (d).
(d) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer.
If an employee takes a leave because of the employee’s own serious health condition, the employee may also elect, or the employer
may also require the employee, to substitute accrued sick leave
during the period of the leave. However, an employee shall not
use sick leave during a period of leave in connection with the birth,
adoptions, or foster care of a child, or to care for a child, parent,
grandparent, grandchild, sibling, spouse, or domestic partner with
a serious health condition, unless mutually agreed to by the
employer and the employee.

(e) (1) During any period that an eligible employee takes leave
pursuant to subdivision (a) or takes leave that qualifies as leave
taken under the FMLA, the employer shall maintain and pay for
coverage under a “group health plan,” as defined in Section
5000(b)(1) of the Internal Revenue Code, for the duration of the
leave, not to exceed 12 workweeks in a 12-month period,
commencing on the date leave taken under the FMLA commences,
at the level and under the conditions coverage would have been
provided if the employee had continued in employment
continuously for the duration of the leave. Nothing in the preceding
sentence shall preclude an employer from maintaining and paying
for coverage under a “group health plan” beyond 12 workweeks.

An employer may recover the premium that the employer paid as
required by this subdivision for maintaining coverage for the
employee under the group health plan if both of the following
conditions occur:

(A) The employee fails to return from leave after the period of
leave to which the employee is entitled has expired.

(B) The employee’s failure to return from leave is for a reason
other than the continuation, recurrence, or onset of a serious health
condition that entitles the employee to leave under subdivision (a)
or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall
continue to be entitled to participate in employee health plans for
any period during which coverage is not provided by the employer
under paragraph (1), employee benefit plans, including life
insurance or short-term or long-term disability or accident
insurance, pension and retirement plans, and supplemental
unemployment benefit plans to the same extent and under the same
conditions as apply to an unpaid leave taken for any purpose other
than those described in subdivision (a). In the absence of these
conditions an employee shall continue to be entitled to participate
in these plans and, in the case of health and welfare employee
benefit plans, including life insurance or short-term or long-term
disability or accident insurance, or other similar plans, the employer
may, at the employer’s discretion, require the employee to pay
premiums, at the group rate, during the period of leave not covered
by any accrued vacation leave, or other accrued time off, or any
other paid or unpaid time off negotiated with the employer, as a
condition of continued coverage during the leave period. However,
the nonpayment of premiums by an employee shall not constitute
a break in service, for purposes of longevity, seniority under any
 collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall
not be required to make plan payments for an employee during
the leave period, and the leave period shall not be required to be
counted for purposes of time accrued under the plan. However, an
employee covered by a pension plan may continue to make
contributions in accordance with the terms of the plan during the
period of the leave.

(f) During a family care and medical leave period, the employee
shall retain employee status with the employer, and the leave shall
not constitute a break in service, for purposes of longevity, seniority
under any collective bargaining agreement, or any employee benefit
plan. An employee returning from leave shall return with no less
seniority than the employee had when the leave commenced, for
purposes of layoff, recall, promotion, job assignment, and
seniority-related benefits such as vacation.

(g) If the employee’s need for a leave pursuant to this section
is foreseeable, the employee shall provide the employer with
reasonable advance notice of the need for the leave.

(h) If the employee’s need for leave pursuant to this section is
foreseeable due to a planned medical treatment or supervision, the
employee shall make a reasonable effort to schedule the treatment
or supervision to avoid disruption to the operations of the employer,
subject to the approval of the health care provider of the individual
requiring the treatment or supervision.

(i) (1) An employer may require that an employee’s request
for leave to care for a child, parent, grandparent, grandchild,
sibling, spouse, or domestic partner who has a serious health
condition be supported by a certification issued by the health care
provider of the individual requiring care. That certification shall
be sufficient if it includes all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.
(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(j) (1) An employer may require that an employee’s request for leave because of the employee’s own serious health condition be supported by a certification issued by the employee’s health care provider. That certification shall be sufficient if it includes all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee’s position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee’s serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer’s expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).
(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.
(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer’s expense, that the employee obtain the opinion of a third health care provider,
designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee’s return from leave taken because of the employee’s own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee’s health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(k) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual’s exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual’s giving information or testimony as to the individual’s own family care and medical leave, or another person’s family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(l) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(m) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(n) This section shall be construed as separate and distinct from Section 12945.

(o) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of
pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(q) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(r) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term “applicable monthly guarantee” means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule such employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay such employees on reserve status for any given month, as established in the collective bargaining agreement or, if none exists, in the employer’s policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

(s) This section shall become operative on January 1, 2021.

SEC. 5.

SEC. 3. Section 12945.6 of the Government Code is amended to read:
12945.6. (a) It shall be an unlawful employment practice for an employer to do any of the following:

(1) Refuse to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, upon request, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. If, on or before the commencement of this parental leave, the employer does not provide a guarantee of employment in the same or a comparable position upon the termination of the leave, the employer shall be deemed to have refused to allow the leave. The employee shall be entitled to utilize accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the employer, during the period of parental leave.

(2) Refuse to maintain and pay for coverage for an eligible employee who takes parental leave pursuant to this section under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date that the parental leave commences, at the level and under the conditions that coverage would have been provided if the employee had continued to work in the employee's position for the duration of the leave.

(b) An employee is entitled to take, in addition to the leave provided pursuant to this section, leave provided pursuant to Section 12945 if the employee is otherwise qualified for that leave.

(c) This section shall not apply to an employee who is subject to both Section 12945.2 and the federal Family and Medical Leave Act of 1993.

(d) An employer may recover the premium that the employer paid as required by this section for maintaining coverage for the employee under the group health plan, if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(2) The failure of the employee to return from leave is for a reason other than the continuation, recurrence, or onset of a serious
health condition or other circumstances beyond the control of the employee.

(e) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents parental leave totaling more than the amount specified in subdivision (a). The employer may, but is not required to, grant simultaneous leave to both of these employees.

(f) Parental leave taken pursuant to this section shall run concurrently to parental leave taken as described in Sections 44977.5, 45196.1, 87780.1, and 88196.1 of the Education Code.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual’s exercise of the right to parental leave provided by subdivision (a).

(2) An individual’s giving information or testimony as to the individual’s own parental leave, or another person’s parental leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) For purposes of this section, “employer” means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.

(2) The state, and any political or civil subdivision of the state and cities.

(j) To the extent that state regulations interpreting the Moore-Brown-Roberti Family Rights Act, also known as the California Family Rights Act (Sections 12945.2 and 19702.3), are within the scope of, and not inconsistent with this section or with other state law, including the California Constitution, the council shall incorporate those regulations by reference to govern leave under this section.
(k) This section shall take effect January 1, 2020. This section shall remain in effect only until January 1, 2021, and as of that date is repealed.