
California Pregnancy Disability And Child Bonding Leave



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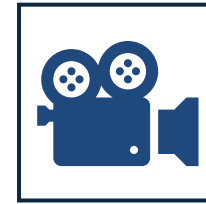
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Agenda

- Pregnancy Disability Leave (PDL).
- Pregnant Workers Fairness Act (PWFA).
- Child-Bonding Leave Under State and Federal Law.
- Lactation Accommodations.
- Leave Interactions.
- Best Practices.

Proper Leave Terminology

- Use proper terms for leave:
 - **Pregnancy Disability Leave:** time off for employees who are disabled by pregnancy.
 - **Child-bonding or parental leave:** time off for eligible employees to bond with a child after birth, adoption or foster care placement.

NOT:

- “Maternity Leave.”
- “Paternity Leave.”
- “Paid Family Leave.”

Pregnancy Disability Leave (PDL)

Overview Of Pregnancy Disability Leave (PDL)

- Applies to employers with **five or more employees**.
- Employees are eligible upon hire.
- Provides employees with up to 17 and 1/3 weeks (four months) of leave when they are “disabled by pregnancy.”
- Requires employers to reasonably accommodate or transfer employees who are “affected by pregnancy.”
- Prohibits harassment and discrimination because of pregnancy, perceived pregnancy, childbirth, breastfeeding or any related medical condition.

Posting Requirements

- Covered employers must post the required PDL notice in their workplace: *Your Rights and Obligations as a Pregnant Employee*.
 - Can be posted electronically in a conspicuous place where employees would tend to view it.
 - Translate the notice into languages spoken by at least 10 percent of the workforce.
- If an employee handbook describes transfers, reasonable accommodation or temporary disability leaves, it must also include information on PDL.
 - Alternatively, the PDL notice must be provided to employees at least annually.

Notice Requirements

- Provide the PDL notice to employees who disclose they are pregnant or request leave, accommodation or transfer.
- Employees must give advance notice when they need leave, accommodation or transfer.
 - If the need is foreseeable, 30 days' notice is required.
 - If 30 days' notice is not possible, then notice is required as soon as practicable.
- Respond to an employee's request as soon as practicable, but no later than 10 calendar days.

Notice Requirements, Cont.

- If an employee fails to give timely advance notice, an employer may delay leave, accommodation or transfer for 30 days from the date of notice.
- However, employers cannot deny leave, accommodation or transfer for lack of notice if the need is unforeseeable or because of an emergency.
- Delaying leave is also not allowed if it would endanger the employee's health or pregnancy, or the health of the employee's coworkers.

Scenario — “I’m Expecting!”

- Jolene was recently promoted to HR Manager at DesignWorks, a company with 60 employees.
- Jolene gets a visit from Layla, who says she has exciting news to share — she’s pregnant! It’s early in her pregnancy, and she doesn’t need anything from Jolene but just wanted to give her a “head’s up.” Does Jolene need to do anything in response to Layla’s announcement?
- What if Layla said she had a high-risk pregnancy, and her doctor said she needs to “take it easy”?

Reasonable Accommodations

- Employers must provide reasonable accommodations or transfers for employees who are “affected by pregnancy.”
 - “Affected by pregnancy” means that it is medically advisable, because of pregnancy, for an employee to transfer or otherwise be reasonably accommodated.
- Employers can request medical certification confirming the need for an accommodation or transfer.
- The employee’s healthcare provider determines if the employee is affected by pregnancy.

Reasonable Accommodations, Cont.

- Employers must engage in the interactive process with an employee who requests or needs an accommodation or transfer.
- Examples of accommodations include:
 - Modifications to work duties or work schedules.
 - Providing or modifying furniture or equipment.
 - Transfers to a less strenuous or hazardous job.
- Providing an accommodation won't affect the amount of leave available under PDL unless it involves reducing work hours or providing intermittent leave.

Transfers

- If an employee needs intermittent leave or a reduced schedule because of pregnancy, the employer can require a temporary transfer to another position if:
 - The new position accommodates the employee's leave requirements better than the employee's regular job;
 - The employee is qualified for the position; and
 - The position has an equivalent rate of pay and benefits.
- The employee must be reinstated to their same or comparable position once their healthcare provider certifies that intermittent leave or a reduced schedule is no longer medically advisable.

Medical Certification

- If requesting medical certification, an employer must do so within two days of when the employee gives notice of the need for leave, accommodation or transfer.
- Notify the employee of:
 - The requirement to provide medical certification;
 - The deadline for providing certification;
 - What constitutes sufficient certification; and
 - The consequences of failing to provide the certification.
- Provide a medical certification form for the employee's healthcare provider to complete.

Contents Of Medical Certification

- The employee's healthcare provider completes the certification.
- The medical certification must state:
 - The employee is disabled by pregnancy and needs time off work; or
 - An accommodation or transfer is medically advisable because the employee is affected by pregnancy.
- If an employee needs leave, the certification should include the date the employee became disabled and the duration of the leave.
- For accommodations or transfers, the certification should describe what is needed and for how long.
- A doctor's note will suffice if it contains the required information.

Return Of Medical Certification

- An employee must return the medical certification:
 - Before leave begins if the leave is foreseeable; or
 - Within the time frame given by the employer if leave is unforeseeable (allow at least 15 calendar days).
- If the employee doesn't return the certification, the employer may delay granting leave, accommodation or transfer until certification is received.
- If the certification is incomplete or inadequate, the employer should advise the employee and allow reasonable time to provide sufficient certification.

Pregnant Workers Fairness Act (PWFA)

Federal Pregnant Worker's Fairness Act (PWFA)

- Applies to employers with **15 or more employees**.
- Imposes accommodation requirements that differ from PDL.
- Reasonable accommodations can include the temporary suspension of essential functions during the employee's pregnancy.
- The U.S. Equal Employment Opportunity Commission (EEOC) says that certain accommodations ("predictable assessments") will be reasonable in "virtually all cases," including:
 - Carrying and drinking water as needed during the workday;
 - Additional restroom breaks;
 - Sitting when work requires standing and standing when work requires sitting; and
 - Breaks as needed to eat and drink.

Federal Pregnant Worker's Fairness Act (PWFA), Cont.

- Employers can require documentation only if reasonable under specific circumstances to “confirm the physical or mental condition” related to pregnancy, childbirth or related conditions, and a description of the adjustment that is needed.
 - More specific than what California law allows.
- Per the EEOC rule, documentation is not reasonable when:
 - The known limitation and need for accommodation are obvious;
 - The employee has already provided sufficient information, such as prior medical certification;
 - The employee requests a “predictable assessment”; or
 - The employee is requesting lactation accommodations.

Scenario — Request For Accommodation

- Three months after disclosing her pregnancy, Layla asks to be permitted to sit during her work time, as well as take one additional 15-minute break per shift because prolonged standing and fatigue endanger her pregnancy. Jolene wants to ask Layla for a doctor's note — can she?
- Two months before her due date, Layla tells Jolene that she needs to work remotely because her doctor is putting her on bedrest. The company has a “no remote work” policy — can Jolene deny the request?
- If Layla's job duties cannot be performed remotely, what are her options once her doctor places her on bedrest?

Leave Rights Under PDL

- An employee is entitled to up to 17 and 1/3 weeks (four months) of unpaid, job-protected leave when “disabled by pregnancy.”
- No eligibility requirements — employees can take leave upon hire.
- Leave is available per pregnancy.
- Leave can be taken continuously or intermittently.
- Employers may require intermittent leave be taken in a minimum increment of no more than one hour, unless other leave can be taken in smaller increments.

“Disabled By Pregnancy”

- An employee is “disabled by pregnancy” when they are unable to perform:
 - One or more essential functions of the job; or
 - Any function without undue risk to themselves, other people or the successful completion of their pregnancy.
- The employee’s healthcare provider determines when the employee is disabled by pregnancy.
 - An employee can be disabled both before and after the child is born.
- Leave can be taken continuously or intermittently.

“Disabled By Pregnancy,” Cont.

- Covers a variety of conditions, including but not limited to:

- Severe morning sickness.
- Prenatal or postnatal care.
- Bed rest.
- Gestational diabetes.
- Pregnancy-induced hypertension.

- Preeclampsia
- Postpartum depression.
- Childbirth.
- Loss or end of pregnancy.
- Recovery from childbirth, loss or end of pregnancy.

Scenario — It's Time For Leave

- Layla provides a doctor's note confirming the need to work remotely, and the company was able to allow her to do so as a reasonable accommodation.
- After one month of remote work — and two months before her due date — Layla tells Jolene that she wants to start her leave ASAP and be out for “the full four months.”
- Can Layla decide when her leave will start and how long she'll be out? Can Jolene ask for a new medical certification?
- Layla also has questions for Jolene about how she'll be paid while on leave, which Jolene says she'll need to look into and get back to her about.

State Disability Insurance (SDI)

- Employees can apply for SDI benefits from the Employment Development Department (EDD).
- SDI is a partial wage replacement benefit.
- There is a seven-day waiting period before benefits begin.
- Employers provide the SDI pamphlet to employees when they request leave, but employees must apply for the benefits directly with the EDD.
- Employees can use sick, vacation or paid time off (PTO) to supplement SDI benefits. If so, coordinate with the employee to ensure SDI benefits and paid time do not exceed 100 percent of wages.

Pay During PDL

- PDL is **unpaid** leave.
- No obligation to pay an employee on PDL unless the employer pays for other temporary disability leaves.
- Employers **may** require employees to use sick pay during PDL unless the employee is receiving any benefits (e.g., SDI benefits) if the employer provides sick leave **beyond** California's mandatory sick leave.
 - Reminder: Healthy Workplaces, Healthy Families (California's paid sick leave (PSL) law) prohibits employers from requiring an employee to use California paid sick leave.
- Employers **may not** require employees to use vacation or PTO during PDL, but employees can choose to do so.

PDL And Health Benefits

- Employers must continue providing health benefits during PDL at the same level and under the same conditions as when the employee was working.
 - Employers can require that employee pays their share of premiums.
 - Make arrangements with the employee before leave begins for how to do so.
- Employers cannot stop coverage because an employee doesn't pay premiums during leave.
- Continuation of benefits during PDL is in addition to the obligation to continue benefits under the CFRA/FMLA for child-bonding leave.

Returning From PDL

- Employees must be returned to the same or “comparable position” at the end of the leave.
 - Comparable position means **virtually identical** in terms of pay, benefits and working conditions.
- However, an employee has no greater right to reinstatement than if employed (i.e., reinstatement not required if the employee would have lost their job if not on leave).
- No obligation to grant requests from employees to return from PDL to a part-time schedule or different position — unless needed as a reasonable accommodation.

Leave As Accommodation After PDL Exhausted

- PDL is separate from the right to a leave of absence as a reasonable accommodation under the California Fair Employment and Housing Act (FEHA).
- If an employee exhausts PDL and cannot work because of a pregnancy-related disability, the employee may be entitled to additional leave as a reasonable accommodation.
- Engage in the interactive process with the employee to determine if additional leave is needed.

Scenario — Returning to Work

- Layla's doctor confirmed she was disabled by pregnancy for three and a half months (two months before birth and 1.5 months after). One week before her scheduled return date, Layla provided a note for four more weeks of leave. Must the company provide the leave?
- A temporary employee was hired to fill Layla's position during her leave. The manager prefers the temp employee. Can the company keep the temp employee in the position and find another position for Layla?
- Layla asks if she can return to work part time. Does Jolene have to grant her request? Does the reason for the request matter?

PDL And Family And Medical Leave Laws

- Pregnant employees may also qualify for leave under the FMLA.
- FMLA: up to 12 weeks of leave for pregnancy disability.
- If eligible, FMLA leave will run concurrently with leave under PDL.
- Pregnancy is not a disability under the CFRA.
- Bonding leave under the CFRA is not available until after the employee is no longer disabled by pregnancy.



Child-Bonding Leave Under State and Federal Law

Child-Bonding Leave Under CFRA/FMLA

- Provides 12 weeks of job-protected leave to bond with a newborn, adopted child or child placed for foster care.
 - Leave must be completed within one year of the birth, adoption or foster placement.
- Pregnant employees can take bonding leave when no longer disabled by pregnancy; leave occurs after PDL ends.
- The FMLA allows employers to limit married couples to a combined 12 weeks, but the CFRA does not.
 - Under the CFRA, each parent gets the full 12 weeks of leave.
- If an employee is not eligible under the CFRA/FMLA, they don't have a legal right to take bonding leave.

Covered Employers And Eligible Employees

- Covered employers:
 - **CFRA**: five or more employees.
 - **FMLA**: 50 or more employees.
- Eligible employees:
 - Employed for a total of 12 months; and
 - Worked at least 1,250 hours in the 12 months before leave begins.
 - **[FMLA only]** Works at a worksite with 50 or more employees within a 75-mile radius.
- For pregnant employees who take bonding leave immediately after PDL, look at hours worked in the 12 months preceding PDL.

Posting Requirements

- Covered employers must post CFRA/FMLA notices in a conspicuous place where applicants and employees tend to congregate.
 - **CFRA:** *Family Care and Medical Leave and Pregnancy Disability Leave Notice.*
 - **FMLA:** *Federal Family and Medical Leave Act Poster.*
- If 10 percent or more of a workforce speaks any language other than English, the notices must be posted in each language.
- If an employee handbook describes other types of leaves, it must include a description of family and medical leave.
 - If no handbook, distribute applicable notices to employees at time of hire.

Notice And Designation

- Employees must give notice of the need for bonding leave; verbal notice is sufficient.
 - Employers may require 30 days' advance notice if the need for leave is foreseeable.
 - If not foreseeable, provide notice as soon as it is feasible.
- Employers must provide CFRA/FMLA notices within five business days of employee requesting leave and designate the leave within five business days of confirming eligibility.
- No medical certification is required for bonding leave — if requiring proof of birth/adoption/foster placement, be consistent and require for all parents and all child-bonding leave requests.

Scenario — Am I Eligible?

- Layla requests eight weeks of bonding leave to begin when PDL ends. She works full-time and has been with the company for over five years.
- Layla's husband, Adam, is also employed by the company and requests leave. He works full-time but was hired 11 months ago. Jolene confirms that Layla is eligible for 12 weeks of bonding under the CFRA/FMLA and approves her leave request. Adam is not currently eligible because he has not worked for 12 months.
- Once Adam is eligible in one month, can he take leave? Can Jolene require them to share the 12 weeks? Can she require they stagger their leave so they are not out at the same time?

Scenario — Am I Eligible?, Cont.

- When their child is six months old, Lala and Adam request six weeks of child-bonding leave to be taken in one-week increments. Adam is now eligible for leave under the CFRA/FMLA. Does Jolene have to approve intermittent leave on the requested schedule?
- Jolene and Adam modify their request and ask to take leave in three two-week increments over the next six months, which includes the company's busy season when employees cannot use vacation time. Can the company deny their request or ask them to reschedule?

Intermittent Bonding Leave

- Under the **CFRA**, employers must allow employees to take bonding leave intermittently.
 - Employers can require that employees take intermittent leave in a minimum duration of two weeks.
 - However, employers must allow employees to use intermittent leave in less than two-week increments on at least two occasions.
- Under the **FMLA**, intermittent bonding leave is only available if the employer agrees.

Paid Family Leave (PFL) Benefits

- Employees on bonding leave can apply for PFL benefits from the EDD.
- PFL provides eight weeks of partial wage replacement benefits in a 12-month period.
- No waiting period before benefits begin.
- Employers can't require that employees use two weeks of vacation before receiving PFL benefits.
- PFL is **NOT** a leave of absence and does not give employees a legal right to take leave.

Pay During CFRA/FMLA Bonding Leave

- Bonding leave under the CFRA/FMLA is **unpaid**.
- Employees can choose to use vacation or PTO during leave to supplement PFL benefits.
- Employers may require employees to use vacation or PTO during any unpaid portion of child-bonding leave.
 - Don't require the use of PTO if the PTO policy includes mandatory PSL.
- Leave is not “unpaid” if an employee is receiving any benefits, including PFL benefits.

Bonding Leave And Health Benefits

- Employers must continue providing health benefits for employees on bonding leave under the CFRA/FMLA at the same level and under the same conditions as if the employee had not taken leave.
- Employers can require employees to pay their share of premiums during leave.
 - Make arrangements with the employee before leave begins for how to do so.
- Continuation of benefits for bonding leave is in addition to the obligation to continue benefits for pregnant employees during PDL.

Returning To Work After Bonding Leave

- An employee must be returned to the same or “comparable position” (virtually identical in terms of pay, benefits and working conditions) once CFRA/FMLA bonding leave concludes.
- Exception to right to reinstatement:
 - Employment would have ended regardless of leave (e.g., layoff or plant closing).
 - If leave is FMLA-only (rare for California employees) and the employee is designated as a “key” employee under the FMLA.
- No obligation to grant an employee’s request to return to different schedule or position after bonding leave.

Lactation Accommodations

Lactation Accommodations

- Employers must provide employees with a reasonable amount of break time to express milk and a private place to do so that is near the employee's work area (cannot be a bathroom).
- The lactation space must also:
 - Be safe, clean and free of toxic or hazardous substances;
 - Have seating, a surface to place a breast pump and personal items, and access to electricity; and
 - Be near a sink and refrigerator/other cooling device to store milk.
- The location doesn't have to be dedicated to lactation.
- There is a narrow undue hardship exemption for employers with fewer than 50 employees. Consult with legal counsel.

Lactation Accommodations, Cont.

- Employees can be required to use paid rest breaks to express milk, but employers must provide additional reasonable unpaid breaks if needed.
- An employer's failure to provide breaks or a location for lactation triggers rest break premium pay.
- All employers must have a lactation policy that includes required information.
 - Can be a standalone policy or part of an employee handbook.
 - Must be given to all employees at hire, as well as when an employee asks about or requests parental leave.

Leave Interactions

Leave Available To Pregnant Employees

- While disabled by pregnancy:
 - Up to 17 1/3 weeks under PDL.
 - If eligible, the FMLA runs concurrently with PDL for 12 weeks.
- **For child-bonding — after PDL ends:**
 - 12 weeks of leave under the CFRA/FMLA, if eligible.
 - If not eligible under the CFRA/FMLA, no right to leave.
- **Total amount of job-protected leave available:**
 - Up to 17 and 1/3 weeks when disabled by pregnancy (PDL and the FMLA, if eligible) and 12 weeks for bonding (the CFRA and FMLA, if eligible).
 - Continue benefits throughout duration of leave.

Pregnancy And Bonding Leave Interaction Examples



Leave Available For Child Bonding (Non-Pregnant Employees)

- If eligible under the CFRA/FMLA, employees are entitled to 12 weeks of job-protected child-bonding leave:



- Employees who aren't eligible under the CFRA/FMLA don't have a legal right to take time off for bonding; defer to company policy.
- Remember, PFL is not a right to leave!

Best Practices

Best Practices

- Provide required notices to employees in a timely manner and post notices in the workplace.
- Never harass, discriminate or retaliate against an employee because of pregnancy or related conditions, or because the employee requested accommodations or took protected leave.
- Consult legal counsel before denying accommodations or leave to a pregnant employee, or denying reinstatement after pregnancy disability, CFRA or FMLA leave.
- Maintain compliant policies.
- Train supervisors on leave requirements and protections, and how to respond to requests for leave or accommodation.



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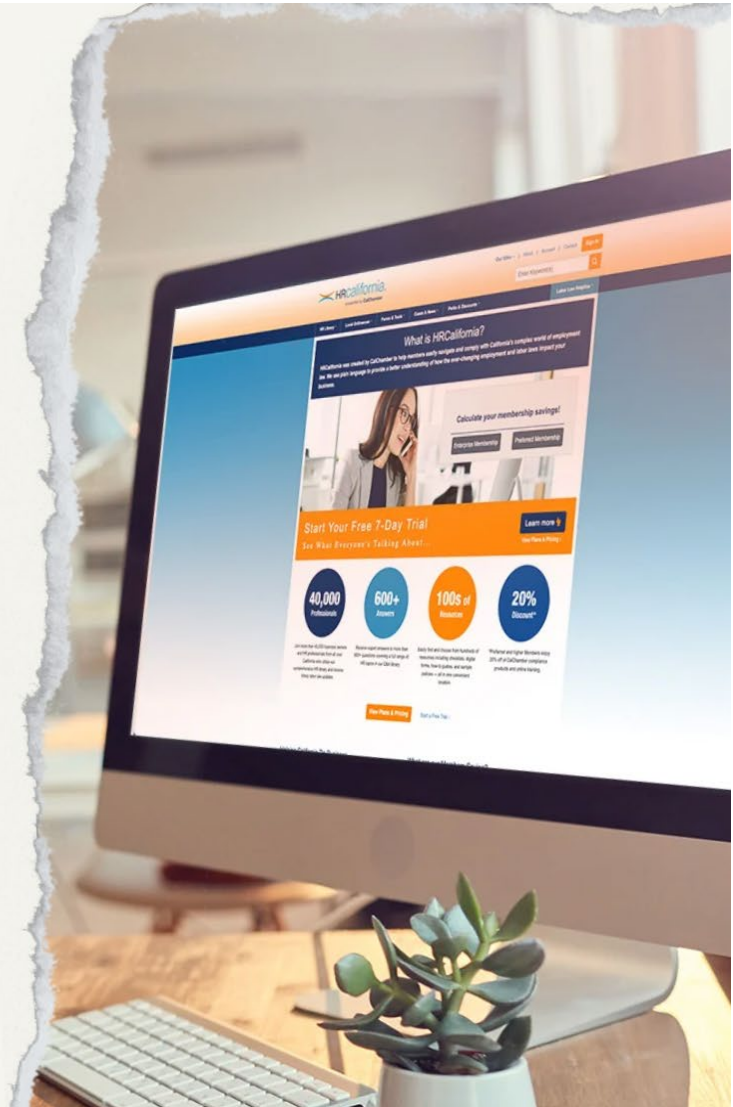


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