

Six Key Laws for Working Parents in California¹⁵

1

Pregnancy Disability Leave Law (PDL): Job Protected Leave

In California, people who work for employers with 5 or more employees are entitled under California's Pregnancy Disability Leave (PDL) Law to take up to 4 months per pregnancy of **job protected leave** during the period that they are disabled by pregnancy, childbirth or a related condition, including but not limited to lactation.¹⁸ This includes time off for routine prenatal care, time off for pregnancy complications when medically advisable, and time off to recover from childbirth and any associated complications. In California, the PDL has been amended to cover transgender individuals who are pregnant.¹⁶

Employees who want to take Pregnancy Disability Leave need to give their employers at least 30 days notice when the need for the leave is anticipated and as much notice as possible if the need for leave is unexpected.

An employee may also need to provide a doctor's note certifying the need for leave. A note does not need to identify the specific condition, but it should say:

1. anticipated start and end dates of the leave;
2. that the condition is related to pregnancy or childbirth; and
3. that the leave is medically advised due to the employee's inability to perform one or more essential job functions or is unable to do so without undue risk to self, others, or the completion of the pregnancy.¹⁷

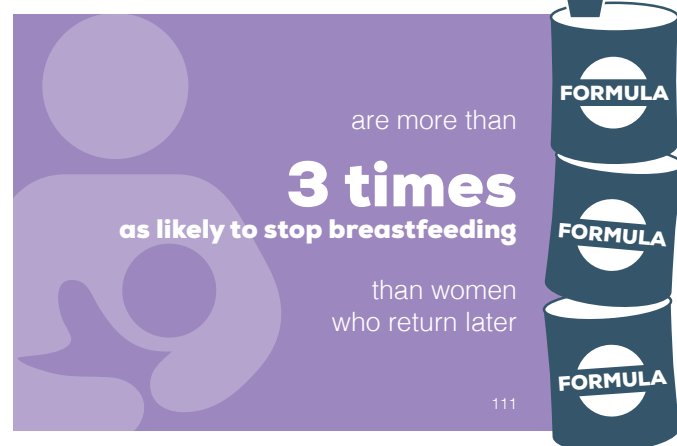
Some workers with pregnancy complications who are unable to work for an extended period of time may exhaust their available pregnancy disability leave before they give birth. To avoid exhausting available leave prior to childbirth, pregnant employees and their healthcare providers should always explore whether a reasonable accommodation would permit the employee to continue working. Detailed resources for employees and healthcare providers relating to pregnancy accommodations can be found at www.pregnantatwork.org.

Most employees in California who have sufficient remaining leave will be able to take around 6-8 weeks of job protected leave to recover from an uncomplicated vaginal or cesarean section birth.

In California, Pregnancy Disability Leave (PDL) Law also guarantees employees the right to reasonable accommodations of any disability caused by pregnancy, childbirth or a related medical condition. Lactation is specifically defined in the PDL regulations as a "related medical condition" covered by the law. Lactation without complications is not generally considered a disability requiring PDL. An employee who is breastfeeding with or without complications is entitled to reasonable accommodations to enable the person to work safely and effectively while breastfeeding.¹⁶ Employees who experience lactation complications on the other hand are eligible for PDL leave if they are unable to perform one or more essential functions of their jobs and leave is medically advisable.¹⁹

See *Breastfeeding at Work* section on the toolkit on page 17.

Mothers who return to work before six weeks postpartum



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FMLA/CFRA: Job Protected Leave

The Federal Family Medical Leave Act (FMLA) provides up to 12 weeks of **unpaid, job-protected leave**. There are requirements for both the employer and the employee to qualify for FMLA.

An employee can take FMLA for the following reasons:

- to bond after the birth or placement of a child,
- to care for a child, spouse, or parent with a serious health condition, or
- the employee's own serious health condition.

Baby bonding leave under FMLA must be taken within one year after the child's birth or placement. Leave to care for a child with a serious health condition does not need to be taken within the first year after birth or placement, but the child must be either a minor or be unable to care for themselves due to a disability.^{20,21}

An employee must meet **all three** of the following qualifications to be eligible for FMLA leave:²⁰

- Have worked for the employer for at least 12 months (not required to be consecutive).
- Have worked at least 1,250 hours for the employer during the 12 month period immediately preceding the leave.
- Must work at a location where the employer has 50 or more employees within 75 miles.

This means that even if an employee works for a company with 1000 employees but there are only 20 employees at the location where the employee works, that employee is not eligible for FMLA.

An employee who wishes to take FMLA leave to bond with a newborn baby (rather than for their own serious health condition) generally should not have to provide a doctor's note, but does need to provide advance notice to their employer. Notice should be given to the employer at least 30 days in advance when the need for leave is foreseeable and as soon as possible in all other cases.

The California Family Rights Act (CFRA) is the California version of FMLA and is identical in most respects, including leave length and eligibility requirements. There are however, some key ways in which CFRA provides more protection to California employees than FMLA. Under FMLA, baby bonding leave has to be taken in one, continuous length of time unless the employer agrees to allow the employee to take it intermittently. Under CFRA, unlike under FMLA, an employee can take baby bonding leave intermittently regardless of the employer's agreement. In general, CFRA leave for baby bonding must be taken in periods of at least two weeks, but an employer can approve requests for shorter increments of CFRA baby bonding leave on up to two occasions.²³ In addition, while FMLA leave runs at the same time as PDL leave, CFRA baby bonding leave is a separate and distinct right from PDL.

This means that employees who are eligible for CFRA baby bonding leave can take both up to 12 weeks of baby bonding leave and up to 4 months of leave under PDL for any time that the employee is disabled by pregnancy, childbirth or a related condition.²²



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Paid Family Leave: Wage Replacement²⁵

In California, Paid Family Leave (PFL) provides up to six weeks of partial pay to employees who take time off from work to bond with a new child entering the family.

To be eligible for California PFL benefits, the parent must have:

- welcomed a new child into the family in the past 12 months,
- paid into State Disability Insurance (noted as “SDI” on pay stubs) in the past 5 to 18 months, and
- not already taken the maximum six weeks of PFL in the past 12 months.

After filing a PFL claim online or by mail, there is a seven day waiting period. The employee must have at least \$300 in wages that are subject to SDI contributions during the 12-month base period of the claim.²⁶ The employee must provide proof of relationship for bonding claims (birth certificate or record, adoption paperwork, etc.). Eligible workers can receive up to 55% of their weekly earnings based on the applicable base period (maximum reimbursement amount is \$1,173 per week) for up to six weeks within any 12-month period. The six weeks of Paid Family Leave can be broken up throughout the 12 months and do not have to be taken all at once.

An employee can go to the EDD website for more information and to use a benefits calculator to estimate their weekly paid family leave benefits. The website also has resources for employers:

www.edd.ca.gov/Disability/Paid_Family_Leave.htm

A new California law²⁶ was passed that will take effect in January 2018. This law provides greater economic security and equity in California’s Paid Family Leave (PFL) and State Disability Insurance (SDI) programs by raising the current wage replacement rates to 60-70% of the employee’s salary on a sliding scale for both programs, extending PFL from six to eight weeks, and eliminating the current waiting period when applying for PFL benefits.

San Francisco Paid Parental Leave Ordinance²⁷

People who are employed in the city of San Francisco are eligible to receive additional compensation through the San Francisco Paid Parental Leave Ordinance (SF PPLO). The SF PPLO requires the employer to provide supplemental compensation that is equal to the difference between the employee’s pay and what the employee receives through the California PFL program for six weeks. The law currently covers all employers in San Francisco who employ at least 35+ employees, and as of January 1, 2018, will cover all companies who have at least 20+ employees.

Employees must meet all of the following requirements to receive SF PPLO

- The employee has worked for a covered employer for at least 180 days before taking California PFL
- The employee works for the covered employer for at least 8 hours per week
- The employee works for the covered employer for at least 40% of their weekly hours
- The employee is currently receiving CA PFL benefits

For example, if the employee is receiving 55% of their salary through PFL, but works in the city of San Francisco, the employee will then receive an additional 45% of their income through the SF PPLO program. For more information about this law and how to apply for benefits visit:

www.sfgov.org/olse/sites/default/files/FAQ%20August%202017.pdf.

Note: It is important to understand that Paid Family Leave is a wage replacement program and not a job protection program like FMLA, CFRA and PDL. Being approved for paid family leave does not automatically protect the employee’s job, so it is important for the employee to talk to their supervisor or human resources about whether they qualify for FMLA, CFRA and/or PDL even if the employee has received state approval for Paid Family Leave.

4

Using Sick Leave for Family Care: Wage Replacement²⁸

California law provides that employees who accrue sick leave are entitled to use up to half of the sick leave they accrue each year to take care of a sick family member or to attend a family member's preventative care appointment (for example, taking a child to a well baby visit).

"Family members" are broadly defined to include:

- Children (including foster children, legal wards, stepchildren, or children to whom the employee stands in loco parentis, meaning that they provide significant financial or caregiving support). Note: Unlike CFRA and FMLA, the child can be either a minor or an adult.
- Parents (including biological, adoptive, foster and stepparents, legal guardians, and individuals who stood in loco parentis when the employee was a minor child).
- Spouses and registered domestic partners.
- Grandparents.
- Grandchildren.
- Siblings.

Employers may not fire, demote, suspend, or otherwise discriminate against an employee for using or attempting to use up to half of the employee's annual accrued sick leave to care for a sick family member or to attend a family member's preventative care appointment.²⁹

Note: The City of Los Angeles passed a sick days ordinance that allows all employees who work in the city of Los Angeles to take paid sick leave. Employers must provide sick leave either by:

1. providing the entire 48 hours to an employee at the beginning of each year of employment, calendar year, or 12-month period (lump-sum/front-loading); or
2. providing the employee one hour of sick leave per every 30 hours worked (accrual method).³⁰

The employee can begin using the sick leave after 90 days of employment. The employee is eligible to take a maximum of 48 accrued hours of paid sick leave in each calendar year, and any unused sick leave rolls over to the following year.³⁰ The employer can choose to cap the total number of sick hours at 72 or set a higher cap, or set no cap at all.



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Family-School Partnership Act: Job Protected Leave³¹

Employees who work for employers with more than 25 employees working *at the same location* are entitled to take up to 40 hours of **job-protected leave** per year for certain school-related activities. Employees can take a maximum of 8 hours of leave in a single month.

Employees who are eligible for the Family-School Partnership can take job-protected leave for the following reasons:

- finding a school or licensed child care for the employee's child;
- enrolling a child in a school or licensed child care;
- participating in the activity of a school or licensed childcare; or
- attending to a school or child care related emergency.

“Emergencies” include unexpected closure of a school or child care facility, natural disasters, behavioral and disciplinary problems, or a request by the child care provider that the child be picked up early (e.g. due to illness). According to this law, planned school and child care holidays are not considered emergencies.

An employee must give the employer reasonable notice in order to take time off for school or child care related activities or emergencies.³¹

6

Lactation Accommodation Provisions of the California Labor Code

In California all employers are required to provide reasonable break time to employees who need to express breast milk. The law states that break times should be as close to regularly scheduled paid breaks as possible. If the employee needs more time to express milk, that time would be given unpaid, unless the employer allows the employee to use paid time to express breast milk. The law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private. The law applies to all employees regardless of the breastfeeding employee's immigration status and an employer who violates this law will face a civil fine of \$100.

For a more detailed discussion of these laws and the ways that they interact with similar Federal laws, see the *Breastfeeding at Work* section of this Toolkit (page 17).

IN CALIFORNIA

The median duration of **breastfeeding doubled** among new mothers who took family leave

An increase of



5-9 WEEKS

in lower-paying jobs



5-11 WEEKS

in higher-paying jobs