



## CA Leave Laws Guide

**\*Headcount is based on total employees in *and* outside of CA, unless otherwise specified.**

### ALL EMPLOYERS

#### Paid Sick Leave (PSL)

##### *Purpose, Amount, Eligibility*

- For the diagnosis, care or treatment of an existing health condition or preventative care, for employee or family member, or for bereavement leave or crime victim leave, if applicable. Family members: Child, parent, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, sibling, and designated person.
- Employers may choose: (1) lump sum of 5 days or 40 hours per year, whichever is greater OR (2) accrual method of one hour for every 30 hours worked, OR (3) alternative accrual method that guarantees at least 24 hours by 120<sup>th</sup> day and 40 hours by 200<sup>th</sup> day. If sick leave accrues, employers may cap bank at 80 hours or 10 days, whichever is greater. May cap *usage* to 5 days or 40 hours, whichever is greater, per year.
- All employees who have worked in CA for same employer for 30 or more days within a year from beginning of employment. Accrual begins on first day of employment. However, can restrict *usage* until employee completes 90 days of employment.

##### *Notice and Documentation*

- Employer must provide written notice of PSL amount available each pay period on itemized wage statement or separate writing furnished at time of pay. PSL, unlike vacation, is not considered wages, unless combined with vacation under a “PTO” plan. PSL (unless combined as PTO) is not paid out at termination, but must be reinstated if employee returns within a year.
- Law is silent whether employer can require medical certification. Based on Labor Commissioner guidance, it is not recommended.

##### *Additional Considerations*

- Many local ordinances have additional PSL requirements (e.g., Berkeley, Emeryville, Los Angeles City, Oakland, San Diego, San Francisco, Santa Monica).
- PSL can run concurrent with other leaves (e.g., Crime Victims, Workers’ Comp, Pregnancy Disability, Bereavement, CFRA/FMLA, Organ/Bone Marrow Donor).

#### Jury/Witness Duty Leave

- To perform jury duty or appear as a witness in compliance with a subpoena or court order.
- Time for non-exempt employees is unpaid, unless policy provides otherwise. Exempt employees must be paid their full salary if they perform any work for you in the workweek.
- Employees may choose to use vacation, personal leave, or compensatory time off.
- When reasonable, employers may require advance notice as well as certifying documentation (e.g., summons or proof of service).

### **Crime Victims Leave (Legal)**

- For victims of a “qualifying act of violence” to take time off to obtain or attempt to obtain relief, including, but not limited to: seeking a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety or welfare of employee or their child.
- Employer must maintain confidentiality to the extent possible.
- Employees may choose to use any accrued paid time off, including PSL and vacation/PTO.
- Reasonable advanced notice required when feasible. Cannot take action against employee for unscheduled absence if they provide certification within reasonable time, such as police report, court order, or other documentation. [Best practice: Do not require documentation if on PSL.]
- Runs concurrently with CFRA/FMLA.
- Must also provide reasonable accommodations if the employee or their covered family member is a crime victim, to ensure safety at work. Employer may require proof of crime victim status.
- *See below for employers with 25 or more employees\**

### **Voting Leave**

- If employee cannot make sufficient time outside of working hours to vote in statewide elections.
- Up to two hours of working time to vote, without loss of pay. At beginning or end of regular work shift, whichever allows for most free time for voting and least time off work, unless otherwise mutually agreed upon.
- Cannot require employee to use accrued vacation, PTO, or sick leave.
- Employee must provide notice at least two working days in advance.
- In event employee needs more time, can agree to additional unpaid time.
- Must post required poster at least 10 days before every statewide election.

### **Military Service (USERRA) Leave**

#### *Protections*

- USERRA protects employees who are absent from work due to “service in the uniformed services” (e.g., Army, Navy, Air Force, Marine Corps, Coast Guard, and Reserves for all branches, Army and Air National Guard, etc.) for up to 5 years. Military service may be consecutive or intermittent.
- Guaranteed re-employment after returning from service, as well as full seniority as if they were actively working for you during the absence. (E.g., Leave time counts for seniority, CFRA/FMLA eligibility, benefits vesting, etc. However, vacation/PTO accrual is not required during the leave, unless policies provide otherwise.)
- Exceptions to reinstatement: impossibility, unreasonableness, undue hardship, or brief, non-recurring nature of employment. Consult legal counsel.

#### *Accrued Time & Benefits*

- Time off is generally unpaid, but employee may choose to supplement time with vacation, annual or similar leave. Cannot require use.
- Benefits Continuation: If lasts 30 days or fewer, health benefits continue and cannot require employee to pay more than normal share of premium. Beyond 30 days, USERRA provides COBRA-like continuation of benefits. Upon reemployment, must permit employee and dependents to resume coverage without waiting period or exclusion.

### **School Appearance Leave**

- Employers are prohibited from discriminating against an employee who takes time off because they are required—pursuant to Educational Code 48900.1—to appear in the school from which the employee’s child or ward was suspended.
- Can require reasonable advance notice.

Volunteer Civil Service
<ul style="list-style-type: none"> <li>• Must provide unlimited leave time to employees who are required to perform emergency duty. Refusing to provide leave time is a misdemeanor.</li> <li>• Applies to volunteer firefighters, reserve peace officers, as well as emergency rescue personnel (e.g., fire departments/agencies and sheriffs and police departments).</li> <li>• See below for employers with 50 or more employees*</li> </ul>

Workers' Compensation
<p><i>Protections</i></p> <ul style="list-style-type: none"> <li>• Leave of absence due to a work-related injury or illness. No other eligibility requirements</li> <li>• Other leaves may also apply and run concurrently (e.g., PSL, CFRA/FMLA, FEHA reasonable accommodation, etc.).</li> <li>• No right to reinstatement, but employers should proceed with caution to avoid Labor Code section 132(a) retaliation claims.</li> <li>• There are required employer forms and notices.</li> </ul> <p><i>Accrued Benefits</i></p> <ul style="list-style-type: none"> <li>• Employees can receive payments for vacation, sick leave, or PTO without affecting eligibility for worker's compensation payments.</li> <li>• Per employer policy, can require employee to use vacation, sick pay and PTO during disability leave for unpaid leaves, or to supplement partially unpaid leaves. (Proceed with caution if other leaves are running concurrently.) Note, the law is unclear whether employers can require <i>mandatory</i> paid sick leave, but employers may require sick leave provided in excess of requirements.</li> </ul>

## 5 OR MORE

Pregnancy Disability Leave (PDL)
<p><i>Purpose, Amount, Protections</i></p> <ul style="list-style-type: none"> <li>• For employees who are disabled by pregnancy. No other eligibility requirements.</li> <li>• Employees are eligible for up to four months, which is equivalent to 17 and 1/3 weeks (or 693 hours for 40 hours per week) of PDL. PDL is pro-rated for employees working <i>more or less</i> than 40 hours per week. (Beyond that, may need to consider FEHA reasonable accommodation leave if disability continues.)</li> <li>• The employee's health care provider determines the actual amount of time that the employee is considered disabled by pregnancy, childbirth or a related medical condition. Disability may occur before, during, or after the pregnancy. <ul style="list-style-type: none"> <li>◦ In a normal pregnancy, a worker will typically be disabled 4 weeks before the expected due date and 6 weeks after for a vaginal birth or 8 weeks after for a cesarean section.</li> </ul> </li> <li>• Employee must be reinstated to their position or a virtually identical position (typically within two business days of request to return).</li> </ul> <p><i>Notice and Documentation</i></p> <ul style="list-style-type: none"> <li>• If possible, an employee must provide their employer with at least 30 days' advance notice of need for leave. Employer can request medical certification.</li> <li>• There are required employer forms/notices.</li> </ul> <p><i>Accrued Time and Benefits</i></p> <ul style="list-style-type: none"> <li>• Employees may choose to use sick leave, vacation, or PTO. Employees may also receive SDI (which has a 7-day waiting period). Accrued time may supplement SDI payments, but employee cannot receive more than 100% of their wages.</li> <li>• Employers cannot require employee to use vacation/PTO, but can require sick leave for unpaid portions of leave only. Note, the law is unclear whether employers can require mandatory paid sick leave, but employers may require sick leave provided in excess of requirements.</li> <li>• The employee's health care benefits continue as if currently working during PDL. Employers may arrange for employee to pay their share of premiums.</li> </ul>

#### *Additional Considerations*

- Leave can be taken intermittently, in shortest period of time payroll system uses for other absences/leaves, so long as increment is not greater than one hour.
- PDL may run concurrently with FMLA, but not CFRA (i.e., pregnancy is not considered a “serious health condition” under CFRA regulations).

### **California Family Rights Act (CFRA)**

#### *Purpose, Amount, Protections*

- Up to 12 weeks of unpaid leave in a 12-month period. (Beyond that, may need to consider FEHA reasonable accommodation leave.)
- Employees must have (1) worked for you for 12 months and (2) worked 1250 hours in the 12 months prior to the need for the leave.
- For (1) birth or placement of a child for adoption or foster care (“baby bonding”), (2) employee’s own serious health condition, (3) caring for an immediate family member, defined as a spouse, registered domestic partner, child, child of a registered domestic partner, grandchild, grandparent, sibling, parent, parent-in-law, or designated person with a serious health condition, or (4) any qualifying exigency because the employee is the spouse, registered domestic partner, child, or parent of an individual on active military duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- Employee must be reinstated to their position or a virtually identical position upon return.

#### *Notice and Documentation*

- If possible, an employee must provide their employer with reasonable advance notice of need for leave. Employer can request medical certification.
- There are required employer forms/notices.

#### *Accrued Time and Benefits*

- Employees may choose to use sick leave (for own serious health condition), vacation, or PTO. Employees may also receive SDI (which has a 7-day waiting period) or PFL, as appropriate. Accrued time may supplement SDI/PFL payments, but employee cannot receive more than 100% of their wages.
- Employer can require sick leave (for own serious health condition), vacation, or PTO for unpaid portions of leave only. Note, the law is unclear whether employers can require mandatory paid sick leave, but employers may require sick leave provided in excess of requirements.
- The employee’s health care benefits continue as if currently working during CFRA. Employers may arrange for employee to pay their share of premiums.

#### *Additional Considerations*

- Leave can be taken intermittently, in shortest period of time payroll system uses for other absences/leaves, so long as increment is not greater than one hour.
- CFRA may run concurrently with FMLA, but not PDL (i.e., pregnancy is not considered a “serious health condition” under CFRA regulations).
- Baby bonding must be used within one year of birth, adoption, placement, etc. Employers can require that CFRA leave for baby bonding purposes is used in two-week increments, subject to two exceptions. Employers should not request medical certification for baby bonding purposes.
- If CFRA leave for baby bonding is taken directly after PDL, there is a special employee eligibility rule: when determining whether the employee meets the 1,250 hour requirement, employers must look at the 12-month period immediately preceding the employee’s first day of PDL, not the first day of subsequent CFRA leave. This only applies if the employee elects baby bonding CFRA right after PDL.

### **Bereavement Leave**

- Up to five days of unpaid leave upon death of a covered family member or reproductive loss event. Covered family members include: spouse, domestic partner, child, parent, parent-in-law,

sibling, grandparent, and grandchild. Reproductive loss event defined as a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction.

- Employed at least 30 days before the start of bereavement leave.
- Right is per death/event. No limit on number of times employee may take bereavement leave for family member death. Reproductive loss events: can limit to 20 days in a 12-month period.
- The leave need not be consecutive. However, employees may generally be required to use the leave within three months of the date of the death.
- Employees may elect to use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.
- For death of family member only, employer may request certifying documentation, to be provided within 30 days from first day of leave (e.g., death certificate, published obituary, documentation from mortuary, religious institution or governmental agency).

#### **FEHA Reasonable Accommodation**

- Employers are required to reasonably accommodate employees with disabilities and/or medical conditions, and for religious reasons, unless it would cause undue hardship. This includes going through the interactive process with the employee to determine whether they can perform the essential functions of their job with a reasonable accommodation.
- An appropriate reasonable accommodation may include a leave of absence.
- Similar ADA requirements also apply if employer has 15 or more employees.
- Employers should assess this option, including when no other leave protections apply.

### **15/16 OR MORE**

#### **Organ and Bone Marrow Donor Leave (15 or More)**

- Organ Donors: paid leave of up to 30 business days in any one-year period, calculated from the date the employee begins their leave (not one calendar year). An additional unpaid leave of up to 30 business days in any one-year period. Can require employee to use up to two weeks of accrued paid sick, PTO or vacation time. Note, the law is unclear whether employers can require mandatory paid sick leave, but employers may require sick leave provided in excess of requirements.
- Bone Marrow Donors: paid leave of up to five business days in any one-year period, calculated from the date the employee begins their leave (not one calendar year). Can require employee to use up to five days of accrued paid sick, PTO or vacation time. Note, the law is unclear whether employers can require mandatory paid sick leave, but employers may require sick leave provided in excess of requirements.

For either leave:

- Must use time to donate for another person and provide written verification of donation's medical necessity. Must be employed at least 90 days prior to beginning of leave. Can take leave in one or more periods at a time.
- For purposes of seniority, leave is not considered a break in service. Employee has right to reinstatement to position held before leave.
- Employer must continue group health benefits coverage during the leave. Employers may arrange for employees to pay their share of the premiums.
- Does not run concurrently with CFRA/FMLA.

#### **Civil Air Patrol (16 or More)**

- Up to 10 days of leave per year for Civil Air Patrol duty. A single emergency mission cannot exceed three days.
- Must be employed for at least 90 days prior to beginning of leave, and a volunteer member of the California Wing of the civilian auxiliary of the U.S. Air Force Civil Patrol, responding to an emergency operation mission. Employer can require certification.

- Leave is unpaid. Employer cannot require employees to use accrued vacation, personal time, PTO or other available leave.
- Employees must be reinstated to the position held before the leave, or an equivalent position.

## 25 OR MORE

### **School Activities Leave (25 or More at Same Location)**

- Up to 40 hours per year to attend certain school and childcare activities, including to find, enroll, or reenroll child, or participate in activities (e.g., conferences, award ceremonies), and child care provider or school emergency (e.g. closures/pick up requests, behavioral/discipline problems, natural disasters). Can limit to eight hours in a calendar month, except for an emergency (no monthly limit).
- Can require reasonable prior notice for planned absence, as well as documentation.
- For “parents,” which includes guardians, grandparents, step and foster parents, and in loco parentis, for children of the age to attend kindergarten through grade 12, or a licensed childcare provider.
- If more than one parent is employed, can limit to parent who first gave notice.
- May require employee to use vacation, PTO, or other personal leave.

### **Alcohol/Drug Rehabilitation Leave**

- Must reasonably accommodate any employee who volunteers to enter an alcohol or drug rehabilitation program, unless it causes an undue hardship.
- May include time off without pay. Employee may use paid sick leave.

### **Crime Victims Leave (Medical/Expanded)\***

- For an employee who is (or has a family member who is) a victim of a qualifying act of violence to take time off for:
  - obtaining or attempting to obtain relief (e.g., restraining order, injunctive relief etc.);
  - seeking or obtaining medical attention or to recover from injuries;
  - seeking or obtaining services from a domestic violence shelter, rape crisis center, or similar services;
  - seeking or obtaining psychological counseling or other mental health services;
  - participating in safety planning;
  - relocating or securing a new residence, including temporary or permanent housing or enrolling children in a new school (*time off for this reason can be limited to 5 days in certain circumstances*);
  - providing care to a family member who is recovering from injuries;
  - seeking or obtaining civil or criminal legal services;
  - preparing for, participating in, or attending any civil, administrative, or criminal legal proceeding; or
  - seeking, obtaining, or providing childcare or care to a care-dependent adult if necessary to ensure the safety of the child or dependent adult.
- Total combined time off is limited to 12 weeks, and the leave runs concurrently with CFRA/FMLA when applicable. When the victim is an employee’s family member only, time off may be limited to 10 days, unless the family member is deceased.
- Family member is defined as: a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person.
- Employer must maintain confidentiality to the extent possible.
- Employees may choose to use any accrued paid time off, including PSL and vacation/PTO.
- Reasonable advanced notice required when feasible. Cannot take action against employee for unscheduled absence if they provide certification within reasonable time, such as police report, court order, or other documentation. [Best practice: Do not require documentation if on PSL.]

Military Spousal Leave
<ul style="list-style-type: none"> <li>• Leave for up to 10 days for spouses and registered domestic partners of qualifying military personnel (on deployment during military conflict). Employee must work an average of 20 or more hours per week.</li> <li>• Unpaid for non-exempt employees; exempt employees must be paid for any day in which they perform any work.</li> <li>• Cannot require employee to use vacation, PTO, or other similar accrued annual leave. This includes exempt employees who may only work a partial day.</li> <li>• Can require notice of leave, to be provided two business days after receiving official notice of deployment. Can also require written documentation certifying deployment/duration.</li> <li>• May run concurrently with CFRA/FMLA.</li> </ul>

## 50 OR MORE

Family and Medical Leave Act (FMLA)
<ul style="list-style-type: none"> <li>• Up to 12 weeks of unpaid leave in a 12-month period. (Beyond that, may need to consider FEHA reasonable accommodation leave.)</li> <li>• FMLA may run concurrently with CFRA and PDL.</li> </ul> <p><i>There is a lot of overlap between CFRA (the state version, referenced above) and FMLA (the federal version), but some key distinctions <b>unique to FMLA include:</b></i></p> <ul style="list-style-type: none"> <li>• Eligibility: Must have (1) worked for you for 12 months, (2) worked 1250 hours in the 12 months prior to the need for the leave, <i>and (3) must work at a site with 50 or more employees within a 75-mile radius.</i></li> <li>• Family members: Defined <i>only</i> as spouse, child or parent when caring for family member with serious health condition.</li> <li>• Military Caregiver Leave: In addition to the covered reasons under CFRA, FMLA also provides a combined 26 weeks of leave during a 12-month period for an employee who is the spouse, son, daughter, parent, or next of kin of a covered service member.</li> <li>• Baby Bonding: For FMLA only, employers can require parents who work for the same employer to take a <i>combined 12 weeks of baby bonding leave.</i></li> <li>• Key Employee Exception: For FMLA only, if an employee is considered a “key employee,” (among highest-paid 10% of the employer’s workforce within 75-mile radius) employer may deny reinstatement to position if it would cause “substantial and grievous economic injury” to the employer’s operations. Consult legal counsel.</li> <li>• Intermittent Leave: For FMLA only, typically need employer approval for intermittent leave.</li> </ul> <p><b>Proceed with caution if CFRA runs concurrently!</b></p>

Training Leave for Emergency Rescue Personnel*
<ul style="list-style-type: none"> <li>• Must allow up to a total of 14 days per calendar year for emergency rescue personnel to engage in fire, law enforcement or emergency rescue training.</li> <li>• Applies to volunteer firefighters, reserve peace officers, and emergency rescue personnel.</li> </ul>