



Leave of Absence – PDL/CFRA/FMLA

Pregnancy Disability Leave (PDL)

PDL covers employers with five or more employees. There is no length of service requirement before becoming entitled to PDL. An employee disabled by pregnancy, childbirth, or related medical condition has up to 4 months (“four months” means 693 hours of leave entitlement, based on 40 hours per week times 17 1/3 weeks) per pregnancy. This time is prorated for employees who work more or less than full-time. The employee’s healthcare provider determines the actual amount of time the employee is disabled. An employee can take time off all at once or any time throughout and after the pregnancy for morning sickness, prenatal visits, recovery, etc.

The employee’s health care benefits continue as if currently working during PDL, and they must be reinstated to their position or a virtually identical position. Employees are entitled to use accrued time during the leave, including sick leave and PTO/vacation. If you provide sick leave beyond mandatory paid sick leave requirements, you may require the employee to use the additional, non-mandatory sick leave during the waiting period (seven days) before State Disability Insurance (SDI) benefits start. You cannot require the use of vacation or PTO.

California Family Rights Act (CFRA)

CFRA covers employers with five or more employees. Eligible 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. CFRA provides up to 12 weeks of unpaid leave in a 12-month period, in which group health benefits continue and the employee has a right to reinstatement to the same or virtually identical job position upon return. CFRA may be used for the birth or placement of a child for adoption or foster care, to care 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, if the employee is unable to work because of their own serious health condition, or for 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.

Pregnancy disability is not considered a “serious health condition” under CFRA regulations. This means that an employee may be eligible for up to four months of PDL for disability-related issues *in addition to* up to 12 weeks of CFRA leave for baby bonding purposes, resulting in up to about seven months of leave.

The Family and Medical Leave Act (FMLA)

FMLA covers employers with 50 or more employees. Eligible employees must have (1) worked for you for 12 months, (2) worked 1250 hours in the 12 months prior to the need for the leave, and (3) must work at a site with 50 or more employees within a 75-mile radius. Generally, FMLA provides up to 12 weeks of unpaid leave in a 12-month period, in which group health benefits continue and the employee has a right to reinstatement to the same or virtually identical job position upon return. FMLA may be used for the birth or placement of a child for adoption or foster care, to care for an immediate family member, defined as a spouse, child or parent with a serious health condition, if the employee is unable to work because of their own serious health condition, and for any qualifying exigency because the employee is the spouse, son, daughter, 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. Additionally, an

employee who is the spouse, son, daughter, parent, or next of kin of a covered service member is entitled to a combined total of 26 weeks of leave during a 12-month period to care for the service member.

Under FMLA, pregnancy disability is considered a “serious health condition.” This means that depending on company size and employee eligibility, PDL and FMLA may run concurrently when the employee is unable to perform the essential functions of the job because of pregnancy, childbirth or a related medical condition. The employee’s health care provider determines the actual amount of time the employee is disabled.

Concurrent Leave – FMLA/CFRA

CFRA and FMLA run concurrently when leave is for an employee’s own serious health condition, or to care their children, parents, and spouses, or time for bonding with a newborn baby, or child placed for adoption/foster care, or for any qualifying exigency because the employee is the spouse, 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. As discussed, CFRA is not used when an employee is considered disabled because of pregnancy.

There may be situations when an employee may utilize CFRA for one covered leave reason and FMLA for another covered reason.

Note: If you are a covered employer (which means that you have five or more employees for CFRA, and 50 or more employees for FMLA), but none of your employees are eligible for leave, you are still required to post a notice in a conspicuous area of your workplace regarding family and medical leave rights, as well as implement a CFRA/FMLA leave policy, as applicable.

FMLA Only – Caring for Service Member

Under FMLA only, when a spouse, son, daughter, parent or next of kin is a service member injured while on active duty, the employee is entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member. This leave does not exist under California law, so when this leave is exhausted, an employee may still have CFRA time available for a covered reason.

CFRA Only – Caring for Registered Domestic Partners, Grandparents, Grandchildren, Siblings, Parent-in-Laws, and Designated Persons

Under CFRA only, an employee may use leave to care for a registered domestic partner, child of a registered domestic partner, grandchild, grandparent, sibling, parent-in-law, and designated person with a serious health condition. These persons are not covered under FMLA, so when this leave is exhausted, an employee may still have FMLA time available for a covered reason.

Calculating the 12-Month Period – CFRA & FMLA

CFRA and FLMA provide up to 12 weeks of leave in a “12-month period.” The employer must define how to calculate the 12-month period in their policy. For all CFRA/FMLA leaves (with the exception of FMLA’s military caregiver leave discussed below), employers may choose among the following options to calculate the 12-month period:

- The calendar year;
- Any fixed 12-month leave year (i.e., fiscal year, employee’s anniversary date, etc.);
- The 12-month period *measured forward* from the date an employee’s leave begins; or,
- A “rolling” 12-month period *measured backward* from the date an employee uses the leave (*generally the preferred method for employers*).

There are pros and cons to each calculation method. The calendar and fixed leave year methods are the easiest to track/administrate. However, these methods permit an employee to “stack” leave time. For example, under the calendar year method, an employee can take 12 weeks of leave at the end of one calendar year, and then take another 12 weeks starting on January 1st of the following year (which could equate to a 24-week leave of absence). The same is true of the fixed year method.

While perhaps more challenging to explain/administer, the employee will not be able to “stack” as much leave time under the third method. Under this method, the employee would be eligible for 12 weeks *measured forward* from the date the employee’s leave begins. For example, if an employee began leave on December 2, 2032, they would be eligible to take 12 weeks of leave between December 2, 2032 and December 1, 2033. The next leave period would start on the first day of leave beginning on December 2, 2033, or thereafter.

While also challenging to explain/administer, the “rolling” 12-month period is the preferred method for the employer because the employee will not be able to “stack” any leave time. Instead, the employer will determine whether the employee took any CFRA/FMLA leave in the 12 months prior to the date of the requested leave. For example, if an employee took leave on December 2, 2032, the employer would tally how much time the employee took since December 3, 2031. If the employee used 6 weeks of CFRA/FMLA leave in those prior 12 months, then they would only have 6 weeks of CFRA/FMLA left to use.

Note: For the FMLA’s military caregiver leave only, the employer is **required** to use the third method, which *measures forward* from the date the employee’s leave begins. Remember, this leave provides up to 26 weeks of leave time for a covered reason.

An employer may choose to change to one of the other “12-month period” methods, but it must: (1) give at least 60 days’ advance notice to all employees, and (2) ensure the transition occurs in a way that employees retain the full benefits of 12 weeks of leave under whichever method would give them the greatest benefit. However, the 12-month period must apply to all employees.

State Disability Insurance (SDI)

While CFRA/FMLA leave is unpaid, an employee may be able to apply for State Disability Insurance (SDI) benefits through the state when they are on leave due to their own serious illness/injury. There is a seven-day waiting period before an employee can receive SDI benefits. During that one-week waiting period, depending on the leave type, they may request or the employer may require them to use accrued time. An employee may receive up to 52 weeks of SDI.

For pregnancy related leaves, SDI is often used by employees during the time the employee is under a doctor’s care who has classified them as disabled because of their pregnancy.

Paid Family Leave (PFL)

While CFRA/FMLA leave is unpaid, an employee may be able to apply for Paid Family Leave (PFL) benefits through the state when they are on leave to care for a seriously ill child, spouse, registered domestic partner, grandparent, grandchild, sibling, parent, or parent-in-law, to bond with a new child (either by birth, adoption, or foster care placement), or for participation in a qualifying exigency related to the active duty or call to active duty of the individual’s spouse, registered domestic partner, child, or parent in the Armed Forces of the United States. An employee may be eligible for up to eight weeks of PFL wage replacement benefits. There is no waiting period before an employee can receive PFL benefits.

For pregnancy related leaves, PFL is used when the employee is no longer disabled and is utilizing baby bonding time.

Employees cannot receive PFL and SDI at the same time.

Refer to our [Leave of Absence Toolkit](#) for a detailed reference guide of managing the leave of absence process. The toolkit contains checklists for various leaves as well as links to forms that employers must provide to employees when a leave issue arises, as well as several leave of absence examples and how the various leaves interact.

For more information or assistance, please call CEA at 800.399.5331 or visit our website at: www.employers.org.