Managing Leaves of Absence

This material is provided for general information and is not legal advice.
Consult your own attorney for advice concerning specific situations.

California Employers Association™

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Leave of Absence Best Practices

Start the documentation process immediately

One of the most important steps in the Leave of Absence process is often the most overlooked. Many business owners fail to get leave of absence requests in writing, resulting in inaccurate information regarding when a leave begins or ends and the reason for the leave. It is critical to know exactly what your employee is asking for and why they are requesting it.

Documentation can save you a great deal of time and frustration down the road and help clear up any miscommunication regarding leave needs and rights. Understanding the request will allow you to respond appropriately and will determine whether or not you are legally required to grant a leave at all. In some circumstances, certain leave forms are required.

What is your policy?

CEA encourages all employers to have a California-compliant employee handbook and to update their existing handbook at least on a yearly basis. Often, business owners have employee handbooks they do not fully understand, have not updated in several years, or that they have copied from someone else and never reviewed. Any of these situations can lead to them having leave of absence policies in place that may not apply to them or that they are not legally mandated to include.

Once you include a leave of absence policy in your handbook, whether it applies to you or not, you are likely obligated to offer that leave. For example, if you are an employer with less than 50 employees, FMLA does not apply to you. However, if your handbook has language stating FMLA leave would be granted, you may need to honor that policy. It is essential that all employers know what policies (if any) have been communicated to your employees and what leaves you may need to grant. Refer to CEA's comprehensive California Leave Laws Guide for leave of absence information by staff size to help you determine your obligations.

Determine the leave and job protection available to the employee

Numerous factors come into play when an employee requests a leave of absence and each leave should be evaluated on a case by case basis. Some of the questions the employer should ask include:

- Was the request made due to an injury or a planned surgery or procedure?
- Is the individual asking for time off for a protected reason or is it for a personal leave of absence?

Once you have the basic information regarding the requested leave, the next step will be to determine what forms you should provide to the employee and what documents they need to submit in order for the request to be processed. Please refer to the checklist in this toolkit below.

Communicate with the employee

Once the type of leave that an employee is requesting and their eligibility has been determined, you should meet with the employee and review all of the information regarding their leave. Some specific points to touch on are:

- When the leave begins,
- Benefit continuation (and any associated monies that may be due to the employer while out on leave),
- Expected return to work date, as well as any medical documentation that is required prior to the employee's return.

You should also discuss the employee's current workload and any pending projects.

- Do you have the employee's username and password information for any company devices?
- Do they need assistance finishing up any projects before the leave begins?
- What work should be transitioned to another employee to take over when the employee is gone?

Keep in mind while an employee is out on leave you should not contact them for work related issues. It should be clear to management and to the employee that they should only resume work duties once they have been released from their medical provider's care. You may ask the employee to turn in any company property prior to the start of their leave or temporarily suspend any network access to make sure they are not engaged on any work related issues. To prevent any misunderstanding, make sure you notify the employee and explain why you are taking those steps.

Pay while on leave

Most, but not all, leaves of absence are unpaid. Refer to our California Leave Laws Guide for more information. If the employee requests to use PTO/vacation pay during their leave and will be applying for state disability insurance and/or paid family leave, the employee should provide you with the amount they will be receiving so that you can ensure they do not receive more than 100% of their usual pay during the time off from work.

Benefits while on leave

If your employee is on a PDL, FMLA/CFRA or bone marrow/organ donation leave, you are required to maintain their benefits at the same level during the leave. The employee will still be responsible for their portion of the premium cost and the deductions can be taken out of their pay if they have requested PTO/vacation during their leave. If they will not receive any pay during the leave, you should create an invoice for each month of benefit premium and present it to the employee prior to them starting the leave of absence.

If the leave of absence is due to an injury sustained while working, you need to file a claim with your worker's compensation insurance carrier so they can cover the cost of maintaining benefits.

Prepare for the employee's return

Expectations for a return to work date should be discussed with the employee at the beginning of their leave and, ideally, prior to their return. You should make sure that the employee receives a return to work release from their medical provider and submits it before they resume any work duties, in accordance with your policies. Sometimes an employee may need reasonable accommodations due to medical issues, including additional time off beyond their protected leave. Anytime an employee requests an additional leave, consider your obligations under the California Fair Employment and Housing Act (FEHA) and Americans with Disabilities Act (ADA). Refer to CEA's Reasonable Accommodations Toolkit for more information.

You should communicate with the staff regarding the employee's return and determine which projects should be transitioned back to the returning employee. Someone should also be responsible for getting the employee back up to speed upon their return and make sure they receive any necessary training or retraining.

If any premiums are owed for benefit coverage while on leave, have a conversation with the employee and make payment arrangements consistent with company policy.

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For All Leaves – Paperwork and Process

Ensure the following items are completed and/or tracked during the leave.

☐ Have employee complete "***Application – Leave of Absence.***" (date given) _____(date received)_____.
**An employer's obligation to provide timely employee notices relating to Pregnancy Disability leave, CFRA and FMLA leave may begin prior to the receipt of a written leave application. See discussion of PDL, CFRA and FMLA below.*

Provide employee with a copy of applicable pamphlets:

☐ **DE 2515 – State Disability Insurance** & ☐ **DE 2511 – California Paid Family Leave**

☐ If employee is receiving SDI or PFL, obtain weekly benefit amount from employee $_____.

☐ If employee is requesting any type of parental leave, provide copy of ***Lactation Accommodation Notice***.

Pregnancy Disability Leave (PDL) – 5 Employees or more

An employee is eligible for Pregnancy Disability Leave (PDL) if the company has 5 or more employees. If you have 50 or more employees, and the employee qualifies for FMLA, PDL and FMLA will run concurrently while the employee is disabled due to their pregnancy. An employee is eligible for FMLA if the company has 50 or more full- and/or part-time employee within a 75-mile radius of the employee's location, has worked for the company for a total of 12 months and at least 1250 hours in the previous 12 months. Complete the following steps:

☐ Date ***Application – Leave of Absence*** received _____

☐ Provide employee with ***Pregnancy Disability Leave Poster/Notice – CRD*** (in English or Spanish) as soon as practicable after employee informs you of pregnancy, or inquires about accommodation, transfer or leave

☐ Provide employee with ***Certification Health Care Provider for PDL and/or Reasonable Accommodation*** (in either English or Spanish) within 2 business days. Date provided _____ (employee has at least 15 calendar days to provide a completed certification to you.)

☐ Provide employee with ***Pregnancy Disability Leave Notice*** (within 10 calendar days of receiving request, but if FMLA also applies you must provide this notice within 5 business days)

☐ Provide correspondence to employee regarding granting or denial of leave

☐ Provide employee with ***Change in Relationship Notice*** at beginning of leave

☐ Employee has requested to use their accrued PTO/Vacation/Sick Leave _____Yes _____No
☐ Number of PTO/Vacation hours at time of leave ___Number of PSL hours at time of leave___.

Determine coordination of paid time with SDI benefits so employee does not receive more than 100% of their usual compensation. Employee's weekly benefit amount is $_____.

Notify the employee of whether they are eligible or not for CFRA leave (if you have 5 or more employees) and FMLA leave (if you have 50 or more employees). (See, CFRA and FLMA below. Note, PDL runs concurrently with FMLA, but not CFRA. CFRA may follow PDL for baby bonding.)

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CFRA Leave – 5 Employees or More

An employee is eligible for CFRA if the employee has worked for the company for a total of 12 months and at least 1250 hours in the previous 12 months.

☐ Date ***Application – Leave of Absence*** received _____

☐ If leave is for a medical reason (and NOT baby bonding), provide ***CFRA Medical Certification Form*** – (in English or Spanish) date provided _____(employee must return this form completed within 15 calendar days). Received from employee's physician on _____(date)

☐ ***CFRA Notice of Eligibility Rights and Responsibilities*** upon request for CFRA leave or learning an employee's request may qualify for CFRA, as soon as practicable, but no later than 5 business days)

☐ ***CFRA Leave Designation Notice*** within 5 business days of receiving sufficient information that employee qualifies for CFRA leave (e.g., after receiving medical certification)

☐ Provide employee with ***Change in Relationship Notice*** at beginning of leave

☐ Employee has requested to use their accrued PTO/Vacation/Sick Leave _____Yes _____No

_____ Number of PTO/Vacation hours at time of leave _____Number of PSL hours at time of leave.

Determine coordination of paid time with SDI or PFL benefits so employee does not receive more than 100% of their usual compensation. Employee's weekly benefit amount is $_____.

FMLA Leave – 50 Employees or more

An employee is eligible for FMLA if the company has 50 or more full- and/or part-time employee within a 75 mile radius of the employee's location, has worked for the company for a total of 12 months and at least 1250 hours in the previous 12 months.

☐ Date ***Application – Leave of Absence*** received _____

☐ Provide ***Certification of Healthcare Provider Form*** – (in English or Spanish) date provided _____ (employee must return this form completed within 15 days). Received from employee's physician on _____(date)

☐ ***FMLA/CFRA Notice of Eligibility and Rights and Responsibilities Form*** (upon request for CFRA/FMLA leave or learning an employee's request may qualify, as soon as practicable, but no later than 5 business days)

☐ ***FMLA/CFRA Leave Designation Notice*** within 5 business days of receiving sufficient information that employee qualifies for FMLA/CFRA leave (e.g., after receiving medical certification)

☐ Provide employee with ***Change in Relationship Notice*** at beginning of leave

☐ Employee has requested to use their accrued PTO/Vacation/Sick Leave _____Yes _____No

_____ Number of PTO/Vacation hours at time of leave ____Number of PSL hours at time of leave. Determine coordination of paid time with SDI or PFL benefits so employee does not receive more than 100% of their usual compensation. Employee's weekly benefit amount is $_____.

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Other Medical Leave

An employee may be eligible for a medical leave of absence for their own medical condition under the provisions of FEHA (Fair Employment and Housing Act) or the ADA (Americans with Disability Act). Refer to CEA's Reasonable Accommodations Toolkit for more information.

☐ Date ***Application – Leave of Absence*** received _____

☐ Provide employee with ***Reasonable Accommodation Packet and Certification*** (in either English or Spanish). Date provided _____
(employee has at least 15 days to provide a completed certification to you) _____(date received)

☐ Provide response letter to employee regarding granting or denial of leave

☐ Provide employee with ***Change in Relationship Notice*** at beginning of leave

☐ Employee has requested to use their accrued PTO/Vacation/Sick Leave _____Yes _____No
☐ Number of PTO/Vacation hours at time of leave _____Number of PSL hours at time of leave_____.

Determine coordination of paid time with SDI or PFL benefits so employee does not receive more than 100% of their usual compensation. Employee's weekly benefit amount is $_____.

Return to Work

☐ If extension of leave or accommodation is requested, obtain updated medical certification from physician. Provide employee with ***Reasonable Accommodation Packet and Certification*** (in either English or Spanish). Date provided _____
(employee has at least 15 days to provide a completed certification to you) _____(date received)

☐ If baby bonding time is requested following FMLA/PDL, update paperwork
_____Date baby bonding began

☐ Employee provides release to return to work from physician
_____Date received _____Date employee can return to work

☐ Employee reinstated to former position _____(date)