



Covered Employers Fact Sheet

Headcount Overview

In California, there are many leaves of absence and other laws that apply on the basis of an employer's "headcount," which refers to the company's total number of employees on payroll. For example, while mandatory paid sick leave applies to all employers regardless of size, laws like pregnancy disability leave (PDL), the California Family Rights Act (CFRA), and others only cover employers that meet the threshold of five or more employees. Additional laws apply to those with 15 or more employees, 25 or more employees, 50 or more employees, and so on.

Therefore, it is important for employers to understand how to determine headcount. While laws do vary on how to define headcount, *most California laws* require that employers count all of their employees on payroll – both inside and outside of California – unless stated otherwise. This includes full and part-time employees, as well as temporary employees, and those out on a leave of absence.

While you should count all employees, both in and out of the State, for determining headcount, California's protections generally apply to employees *performing work in California*. For example, let's say you have one California employee and four employees located in Nevada. Your one California employee would be entitled to California's pregnancy disability leave if eligible because you have a total of five or more employees. However, your Nevada employees may not be subject to California's protections (especially if they work solely outside of California). For multi-state employers, it is best to consult legal counsel on coverage questions.

Determining Applicable Laws

CEA has a number of resources to assist employers in determining laws that apply to them. Refer to the comprehensive [Employment Laws and Employers They Affect Chart](#) as well as the [California Leave Laws Guide](#) for more information.

There are a few exceptions to the general rules above for determining headcount. One example is California's School Activities Leave, which applies to employers that have 25 or more employees *working at the same location*.

Also note, government employers, such as those who fall under the State, cities, or subdivisions, sometimes have different applicability requirements. For example, many laws that have a headcount threshold for private employers will often apply to certain government employers regardless of size. In other cases, laws may not apply to certain government employers at all.

Fluctuating Headcounts

For employers who have fluctuating headcounts throughout the year or hire seasonal employees, it can be more complicated to properly determine headcount. This is especially important for smaller employers who hover around five or more employees, as many more California laws are triggered once an employer meets this threshold. Below, we have outlined headcount considerations for some of the most common leaves of absence, including Pregnancy Disability Leave, California Family Rights Act Leave, and the federal Family and Medical Leave Act.

Pregnancy Disability Leave (PDL)

As noted above, PDL applies to private employers with five or more employees. PDL regulations clarify this includes those who employ five or more employees on a *regular basis*, which refers to when the nature of a business is recurring, rather than constant.

For example, in an industry that typically has a three-month season during a calendar year, an employer that employs five or more employees during that season “regularly employs” the requisite number of employees, and would be covered by the PDL law.

This means that PDL requirements may apply to an employer that has five or more employees at only *certain times of the year*. It is not required that the employer has five or more employees working every day throughout the year to fall under the law’s requirements. Therefore, if you will have at least five employees regularly on your payroll during seasonal work, it is recommended to have a Pregnancy Disability Leave policy in your handbook and assume you are covered by the law.

California Family Rights Act (CFRA)

CFRA regulations have similar language regarding covered private employers. They include an employer who “maintains an aggregate of at least five part- or full-time employees,” on a “regular basis.” Again, the term “regular basis” is defined as described above under PDL. Those who may have five employees on a recurring basis are recommended to have a CFRA policy in your handbook and assume you are covered by the law.

Family and Medical Leave (FMLA)

FMLA covers all private employers with 50 or more employees. Under FMLA regulations, a private employer is covered if it maintained 50 or more employees on the payroll during 20 or more calendar workweeks (not necessarily consecutive workweeks) in either the current or the preceding calendar year. This means that once a private employer meets the 50 employees/20 workweeks threshold, the employer remains covered until it reaches a future point where it no longer has employed 50 employees for 20 (consecutive or nonconsecutive) workweeks in the **current and preceding calendar year**.

For example, if an employer who met the 50 employees/20 workweeks test in the calendar year as of September 1, 2026, then dropped below 50 employees before the end of 2026 and continued to employ fewer than 50 employees in all workweeks throughout calendar year 2027, the employer would continue to be a covered employer through December 31, 2027, and must offer FMLA benefits to eligible employees because it met the coverage criteria for 20 workweeks of the preceding (*i.e.*, 2026) calendar year.