Sick Leave Management (CA)

A Practical Guidance® Practice Note by
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This practice note discusses various sick leave requirements and provides practical guidance to employers' attorneys on managing sick leave issues in California. The practice note covers the California Healthy Workplaces, Healthy Families Act of 2014, kin care leave, federal family and medical leave, pregnancy disability leave, paid family leave, and paid sick leave ordinances.

In particular, the practice note discusses:

- California's Healthy Workplaces, Healthy Families Act of 2014
- Kin Care Leave
- California Family Rights Act (CFRA)
- Pregnancy Disability Leave (PDL)
- Paid Family Leave (PFL)
- Local Paid Sick Leave Ordinances
- Best Practices for Sick Leave Management in California

For more information on leave laws in California, see Leave Law (CA). For sample California leave policies, see the California column of Attendance, Leaves, and Disabilities State Expert Forms Chart.

For detailed information on all state paid sick leave laws, see Paid Sick Leave State and Local Law Survey (Private Employers).

For information on sick leave and PTO issues, see Paid Time Off (PTO) Policies: Key Drafting Tips, Sick Leave Policies: Key Drafting Tips, and Paid Sick Leave Policies Checklist (Best Drafting Practices for Employers).

For information on sick leave in California during COVID-19, see Coronavirus (COVID-19) Federal and State Employment Law Tracker. Also see state and federal COVID-19 legislative, regulatory, and executive order updates from State Net, which are available here. For tracking of key federal, state, and local Labor & Employment non-coronavirus legal developments, see Labor & Employment Key Legal Development Tracker.

California's Healthy Workplaces, Healthy Families Act of 2014

The California Healthy Workplaces, Healthy Families Act (Cal. Lab. Code § 245 et seq.) requires employers to provide sick leave to certain employees.

Which Employers Must Comply with This Law?

All private and public employers of any size, including the state, political subdivisions, and municipalities, are required to comply with the California Healthy Workplaces, Healthy Families Act (Act). Cal. Lab. Code § 245.5(b).

An employer need not provide additional paid sick days under this Act if it:

- Has a paid leave policy or paid time off policy
- Makes available an amount of leave that can be used for the same purposes and conditions as specified in this section –and–
- Has a policy that satisfies accrual, carry over, and use requirements of this section or provides a minimum of 24 hours or three days of equivalent paid sick leave or paid time off for each year of employment

Cal. Lab. Code § 246(e).

Which Employees Are Covered under This Law?

Any employee who works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days under this Act. Cal. Lab. Code § 246(a). Certain employment has different requirements.

For example, a provider of in-home supportive services under Sections 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in Cal. Lab. Code § 246(e), which differs from the general requirements under the Act. Cal. Lab. Code § 246(a).

Employees Covered by Collective Bargaining Agreements (CBAs)

An employee covered by a valid collective bargaining agreement (CBA) is not required to comply with the California Healthy Workplaces, Healthy Families Act if the CBA expressly provides for:

- Wages, hours of work, and working conditions of employees
- Paid sick days or a paid leave or paid time off policy that permits use of sick days (the Act does not specify a minimum amount of sick time that employers must give to the employees covered under a valid CBA)
- Final and binding arbitration of disputes concerning application of paid sick day provisions; premium wage rates for all overtime hours worked –and–
- Regular hourly rate of pay not less than 30% more than state minimum wage rate

Cal. Lab. Code § 245.5(a).

Construction Industry

An employer in the construction industry covered by a valid CBA is also not required to comply with the California Healthy Workplaces, Healthy Families Act if:

- The agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30% more than the state minimum wage rate –and–
- The agreement either (1) was entered into before January 1, 2015, or (2) expressly waives the requirements of this article in clear and unambiguous terms
    - For purposes of this subparagraph, "employee in the construction industry" means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

Cal. Lab. Code § 245.5(a).

Employees of Air Carrier – Flight Deck or Cabin Crew Member

An individual employed by an air carrier as a flight deck or cabin crew member that is subject to the provisions of Title II of the federal Railway Labor Act (45 U.S.C. § 151 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the amount established in paragraph (1) of subdivision (b) of Section 246 is also not required to comply with the California Healthy Workplaces, Healthy Families Act. Cal. Lab. Code § 245.5(a).

Employee Who Is Recipient of Retirement Allowance and Employed without Reinstatement into Retirement System

An employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into his or her respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31680) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code is also not required to comply with the California Healthy Workplaces, Healthy Families Act. Cal. Lab. Code § 245.5(a).

Amount of Leave Required

Employers must provide employees a minimum of one hour of sick pay for every 30 hours actually worked. Cal. Lab. Code § 246(b).

While the determination of how many hours are worked by hourly employees is based on actual hours worked (including overtime), there are certain employees who are exempt from receiving overtime pay, and calculating the sick pay is different for these individuals (who include administrative, executive, or professional employees under wage order of the Industrial Welfare Commission).

While the rate of sick pay is still accruing at one hour minimum for every 30 hours worked, these employees who are exempt from overtime are deemed to work 40 hours per week for purposes of calculating sick time. However, if the normal workweek for an exempt employee is less than 40 hours, then the sick pay calculation will be based on how many actual hours are worked in a week. Cal. Lab. Code § 246(b).

An employer may use a different accrual method (other than providing one hour per every 30 hours worked) as long as the accrual is on a regular basis and the employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Cal. Lab. Code § 246(b).

Rate of Pay for Leave

The employer should calculate the paid sick leave in the same manner as the regular rate of pay for the workweek when the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Paid sick time for nonexempt employees will be calculated by dividing the employee's total wages (not including overtime premium pay) by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Paid sick time for exempt employees will be calculated in the same manner as the employer calculates wages for other forms of paid leave time. Cal. Lab. Code § 246(l).

Accrual and Caps

Employees begin to accrue the hours used to calculate sick pay on the first day of employment. Cal. Lab. Code § 246(b).

Employers can limit the accrual or "banking" of such paid sick time to 48 hours or 8-hour workdays at any given time, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited. Cal. Lab. Code § 246(j).

Any of these "banked" hours that an employee does not use will carry over to the following year of employment. Cal. Lab. Code § 246(d). In addition, an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. No accrual or carryover is required only if the full amount of leave (24 hours) is received at the beginning of each year of employment, calendar year, or 12-month period. Cal. Lab. Code § 246(d).

Employers may lend paid sick days to an employee before accrual, at the employer's discretion and with proper documentation. Cal. Lab. Code § 246(h).

Use of Sick Leave Hours

Employees may use sick hours that they have accrued beginning on the 90th day of employment. Cal. Lab. Code § 246(c).

Employers can cap the use of accrued paid sick days to 24 hours in each year of employment. Cal. Lab. Code § 246(d).

Employees decide how much sick time to use. Employers can set reasonable minimum increments, not to exceed two hours. Cal. Lab. Code § 246(k).

Employers cannot require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days the employee uses paid sick days. Cal. Lab. Code § 246.5(b).

Employees can use paid sick leave for:

- The diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or employee's family member (Cal. Lab. Code § 246.5(a)(1))
- An employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1 (Cal. Lab. Code § 246.5(a)(2))

Definition of Family Member

For purposes of sick leave, a family member means:

- A child (biological, adopted, foster child, stepchild, legal ward, or in loco parentis regardless of age or dependency status)
- Biological, adoptive, foster parent, stepparent, or legal guardian of the employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child
- Spouse
- Registered domestic partner
- Grandparent

- Grandchild –and–
- Sibling

Cal. Lab. Code § 245.5(c).

Required Notice from Employee

If the need for leave is foreseeable (if the employee knows ahead of time that he or she will be using sick time), the employee needs to provide reasonable notice to the employer. If it is unforeseeable, the employee should provide notice to the employer as soon as practicable. Cal. Lab. Code § 246(m).

Rehired Employees

If an employee is rehired within one year of separation, accrued sick time is reinstated. An employer is not required to reinstate accrued paid time off to an employee who was paid out at the time of termination, resignation, or separation of employment. Cal. Lab. Code § 246(g).

Payments to Employees

If employees use paid sick leave, employers need to pay the sick leave at the latest on the payday for the next regular payroll period. Cal. Lab. Code § 246(n).

An employer is not required to pay for unused sick time upon an employee's termination, resignation, retirement, or other separation from employment (except when an employee is rehired by the same employer within one year from the date of separation). Cal. Lab. Code § 246(g).

Recordkeeping Requirements

Employers must keep records of hours worked and paid sick days accrued and used by an employee for three years. Cal. Lab. Code § 247.5(a).

Employers must allow the Labor Commissioner access to such records. Cal. Lab. Code § 247.5(a).

If an employer doesn't maintain adequate records, it is presumed that the employee is entitled to the maximum number of hours accruable, unless it can be shown otherwise by clear and convincing evidence. Cal. Lab. Code § 247.5(a).

For more information on California recordkeeping requirements, see Recordkeeping Requirements under Major Employment Laws Chart (CA).

Protections against Retaliation and Discrimination

An employer cannot deny an employee his or her right to use paid sick days, discharge, threaten to discharge, suspend, or discriminate against an employee for using sick days, attempting to use sick days, filling a complaint, cooperating in an investigation, or opposing a policy prohibited by the California Healthy Workplaces, Healthy Families Act. Cal. Lab. Code § 246.5(c).

There is a rebuttable presumption of unlawful retaliation if an employer denies the right to use paid sick days, discharges, threatens to discharge, demotes, suspends, or discriminates within 30 days of any of the following:

- Alleging a violation or filing a complaint with the Labor Commissioner
- Cooperating with an investigation or prosecution of an alleged violation
- Opposing a policy, practice, or act prohibited by the California Healthy Workplaces, Healthy Families Act

Cal. Lab. Code § 246.5(c)(2).

For more information on discrimination, harassment, and retaliation in California, see Discrimination, Harassment, and Retaliation (CA). For other state discrimination, harassment, and retaliation laws, see Discrimination, Harassment, and Retaliation State Practice Notes Chart.

Potential Employer Liability and Penalties for Noncompliance

On September 9, 2020, the California Governor signed into law Assembly Bill 1867, amending Labor Code § 248.5 to expressly authorize the Labor Commissioner to enforce its requirements, including investigating alleged violations and ordering appropriate temporary relief to mitigate violations. AB 1867 also requires private employers that employ 500 or more employees in the United States to provide California employees with paid sick time for COVID-19-related absences, provides supplemental paid sick leave to food sector workers, and expands coverage to any employer that employs healthcare providers or emergency responders. The Act expires on December 31, 2020, unless there is a federal extension. If COVID-19 supplemental paid sick leave is unlawfully withheld, the employer may be subject to an administrative penalty of at least $250 per day, but not to exceed $4,000 in the aggregate. The state Labor Commissioner or attorney general may also bring civil action to collect other legal or equitable relief, including reinstatement, back pay, the payment of sick days unlawfully withheld, and liquidated damages.

The Labor Commissioner enforces the California Healthy Workplaces, Healthy Families Act and may order any appropriate relief, including reinstatement, back pay, payment of sick days unlawfully withheld, and administrative penalty. Cal. Lab. Code § 248.5(b)(1).

If the Labor Commissioner determines that paid sick days were unlawfully withheld, the employee will be paid the amount of paid sick days multiplied by 3, or $250 total (whichever is greater), not to exceed an aggregate amount of $4,000. Cal. Lab. Code § 248.5(b)(2).

If there is other harm to an employee or person (such as discharge), the administrative penalty will include $50 for each day the violation continued, with a cap of $4,000. Cal. Lab. Code § 248.5(b)(3).

If the employer doesn't promptly comply, the Labor Commissioner can file a civil action against the employer. Cal. Lab. Code § 248.5(c).

Are There Any Defenses?

Isolated and unintentional payroll errors or written notice errors that are clerical or inadvertent mistakes regarding the accrual or available use of paid sick leave may be excused. In reviewing compliance, the factfinder may consider as a relevant factor whether the employer, before an alleged violation, has adopted and complied with a set of policies, procedures, and practices under the California Healthy Workplaces, Healthy Families Act. Cal. Lab. Code § 248.5(h).

Impact on Other Laws

The California Healthy Workplaces, Healthy Families Act does not lessen or preempt any other legal obligation; it only sets a minimum. Cal. Lab. Code § 249. It does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee. Cal. Lab. Code § 249.

If an employee's own illness or injury or the illness of a covered family member continues past the period of protected sick leave, the employer should consider whether the employee qualifies for leave or accommodation under the federal Family and Medical Leave Act (FMLA) / California Family Rights Act (CFRA), the Americans with Disabilities Act (ADA), or the California Pregnancy Disability Leave Act.

Employers should also monitor any new federal, state, and local laws that may impact leave. For example, federal and state emergency legislation has recently been passed in response to the COVID-19 pandemic providing certain workers with additional sick leave time and protection.

For more guidance on a wide variety of COVID-19 legal issues, see Coronavirus (COVID-19) Resource Kit. For a resource kit focused on employees returning to work and broken up by key employment law topics, see Coronavirus (COVID-19) Resource Kit: Return to Work. For tracking of key federal, state, and local COVID-19-related Labor & Employment legal developments, see Coronavirus (COVID-19) Federal and State Employment Law Tracker. Also see state and federal COVID-19 legislative, regulatory, and executive order updates from State Net, which are available here. For tracking of key federal, state, and local Labor & Employment non-coronavirus legal developments, see Labor & Employment Key Legal Development Tracker. For articles on COVID-19 and the workplace by Castle Publications, as published on Practical Guidance, see Returning to Work during and after COVID-19, CDC Guidance and the Return to Work during COVID-19, Wage and Hour Obligations for California Employers during COVID-19, Wage and Hour Obligations for New York Employers during COVID-19, and Leaves of Absence under Federal Law before and after the Families First Coronavirus Response Act (FFCRA).

Kin Care Leave

This section provides guidance on California's kin care leave law. Cal. Lab. Code § 233(a).

Which Employers Are Required to Comply with This Law?

Under California law, any employer that provides sick leave to employees must permit an employee to use part of his or her sick leave time to care for the illness of a child, parent, or spouse of the employee. Cal. Lab. Code § 233(a).

Amount of Leave Required

The total amount of available sick leave is not extended by Section 233, but instead this section designates a certain amount of already accrued leave that may be used for kin care leave. Cal. Lab. Code § 233(a).

The amount of sick leave to be made available for the illness of a child, parent, or spouse is specified as "an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement" per year. Cal. Lab. Code § 233(a).

What Is Covered?

Kin care time can be used when the employee is absent for any of the reasons covered under the California Healthy Workplaces, Healthy Families Act. This includes time off for:

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member
- Victims of domestic violence, sexual assault, or stalking (Cal. Lab. Code § 246.5(a))

Kin care can be used for any of the individuals covered by the California Healthy Workplaces, Healthy Families Act:

- A biological, adopted, or foster child, stepchild, legal ward, or child to whom the employee stands in loco parentis
    - "In loco parentis" means standing in the place of a parent, or acting as a parent to someone.
    - This definition of a child is applicable regardless of age or dependency status.
- A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor
- A spouse
- A registered domestic partner
- A grandparent
- A grandchild
- A sibling

Cal. Lab. Code § 233(a); Cal. Lab. Code § 245(c).

Potential Employer Liability and Penalties for Noncompliance

An employer cannot deny an employee the right to use kin care, or discharge, threaten to discharge, demote, suspend, or discriminate in any manner against an employee for using or attempting to use sick leave to attend to the illness of a family member included in the kin care law. Violations can lead to an order of reinstatement and actual damages, or one day's pay, whichever is greater, and any other relief a court may award. Cal. Lab. Code § 233(c).

An employee can file a complaint with the Labor Commissioner or bring a civil action. If the employee prevails, the court may award reasonable attorney's fees. Cal. Lab. Code § 233(e).

Applicability to Unlimited Sick Leave Policies

Kin care leave does not apply to unlimited sick leave policies. McCarther v. Pacific Telesis Group, 48 Cal. 4th 104 (2010).

The California Supreme Court in McCarther stated that the statute limits the amount of sick leave that can be used for kin care purposes and that the "reach of the statute is limited to employers that provide measurable, banked amounts of sick leave." McCarther, 48 Cal. 4th at 111. The court found that the uncapped sick leave policy made it impossible to determine the amount of compensated time for sick leave to which an employee might be entitled within six months and, thus, impossible to determine the amount of time an employee could use for kin care. McCarther, 48 Cal. 4th at 112–17.

Impact on Other Laws

The California Healthy Workplaces, Healthy Families Act already includes coverage for the care of family members. However, if an employer provides paid time off beyond what is required under the California Healthy Workplaces, Healthy Families Act (but it is not an unlimited policy), the employer can limit employees to using only half of that additional sick leave as kin care leave.

Employers should also monitor any new federal, state, and local laws that may impact leave. For example, federal and state emergency legislation has recently been passed in response to the COVID-19 pandemic providing certain workers with additional sick leave time and protection, which includes additional time off for the care of certain family members.

California Family Rights Act (CFRA)

The CFRA allows eligible employees up to 12 weeks of leave in a 12-month period for the birth of a child, the adoption of a child, or the placement of a child in foster care. It also allows leave to care for a seriously ill family member or for the employee's own health condition, other than pregnancy-related disability.

For more information on the CFRA, see Leave Law (CA) — Family and Medical Leave and Flexible Leave.

Which Employers Are Required to Comply with This Law?

The CFRA covers any person that directly employs 50 or more persons to perform services for a wage or salary. It also covers the state and any political or civil subdivision of the state and cities. Cal. Gov't Code § 12945.2(c)(2).

Note: Senate Bill 1383 (effective January 1, 2021) lowers the private sector employer threshold to five or more employees. Under SB 1383, all public agencies are still considered an "employer" under the CFRA. SB 1383 also eliminates the 50 or more employees in a 75-mile radius definition for an employee to qualify for CFRA leave. Under this bill, an employee only has to meet the following criteria to qualify for CFRA leave: (1) he or she has worked for the employer for at least 12 months of service (can be nonconsecutive work for employer over a 7-year period, except that any military

leave time while employed counts towards this 12 months of service); and (2) he or she has worked at least 1,250 hours in the 12-month period prior to taking CFRA leave.

Which Employees Are Covered under This Law?

An employee must have worked for a covered employer for at least 12 months and must have worked for 1,250 hours in the 12 months before the start of the leave. The employee must also work at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite where the employee is employed. Cal. Gov't Code § 12945.2(b).

An employee of an air carrier who is either a flight deck or cabin crew member meets the eligibility requirements specified in subsection (u). Cal. Gov't Code § 12945.2(a).

Amount of Leave Required

Full-time employees may take leave of up to 12 workweeks in a 12-month period. The leave does not need to be taken in one continuous period of time. Cal. Gov't Code § 12945.2(a). If both parents entitled to leave are employed by the same employer, the employer is not required to grant leave for the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the 12 weeks combined. Cal. Gov't Code § 12945.2(q).

What Can Employees Use CFRA Leave For?

CFRA leave can be used for:

- The birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee
- The care of a family member (child, parent, spouse, or registered domestic partner) with a serious health condition
- The employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions

Cal. Gov't Code § 12945.2(c)(3).

Note: Under SB 1383, beginning January 1, 2021, covered family members include grandparent, grandchild, and sibling—in addition to the existing parent, child, spouse, or registered domestic partner. It also adds leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, registered domestic partner, child, or parent in the U.S. Armed Forces. It eliminates the previous restrictions that an employee could not take leave to care for their adult child over 18 years of age with a serious health condition unless that child was incapable of self-care because of a physical or mental disability and the existing restriction that allows an employer who employs both parents to limit their total amount of CFRA leave for both individuals to a total of 12 weeks for bonding with a newborn child, adopted child, or foster care placement.

Notice Required

If the employee's need for a leave pursuant to this section is foreseeable, the employee must provide the employer with reasonable advance notice of the need for the leave. Cal. Gov't Code § 12945.2(h).

If the employee's need for leave pursuant to Cal. Gov't Code § 12945.2 is foreseeable due to a planned medical treatment or supervision, the employee needs to make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the healthcare provider of the individual requiring the treatment or supervision. Cal. Gov't Code § 12945.2(i).

Medical Certification

This section addressed medical certification requirements under the CFRA.

Care for a Child, Spouse, or Parent

The employer may require that a request for leave to care for a child, spouse, or parent who has a serious health condition be supported by a certification issued by the healthcare provider. The certification must contain:

- The date the serious health condition commenced
- The probable duration of the condition
- An estimate of the amount of time that the healthcare provider believes the employee needs to care for the individual requiring the care –and–
- A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care

Cal. Gov't Code § 12945.2(j).

Employee's Own Health Condition

An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by the employee's healthcare provider. The certification should include:

- The date the serious health condition commenced
- The probable duration of the condition –and–
- A statement that, due to the serious health condition, the employee is unable to perform the function of the employee's position

The employer may ask for recertification upon expiration of the time provided by the healthcare provider if additional leave is required. Cal. Gov't Code § 12945.2(k).

Second and Third Opinions

If the employer has reason to doubt the validity of the certification provided by the employee, the employer may require, at the employer's expense, that the employee obtain the opinion of a second healthcare provider, designated or approved by the employer, concerning any information on the certification. The healthcare provider cannot be employed on a regular basis by the employer.

If the second opinion differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third healthcare provider, designated or approved jointly by the employer and the employee. The opinion of the third healthcare provider will be considered to be final and will be binding on the employer and the employee. Cal. Gov't Code § 12945.2(k)(3).

Pay and Benefits

Employers are not required to pay employees during CFRA leave. If the employer provides health benefits under a group plan, the employer must continue to make these benefits available during the leave. Cal. Gov't Code § 12945.2(f). The employee is entitled to continue accruing seniority and participate in other benefit plans. Cal. Gov't Code § 12945.2(g).

Reinstatement Rules

After CFRA leave, employees are guaranteed a return to the same or comparable position and can request the guarantee in writing. Cal. Gov't Code § 12945.2(a).

"Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave. Cal. Gov't Code § 12945.2(c)(4).

An employee is not entitled to reinstatement if the employee would have been otherwise laid off or terminated. An employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

- The employee is a salaried employee who is among the highest-paid 10% of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed. Note: AB 1383 eliminates this "key employee" exception to an employee's right to reinstatement effective January 1, 2021.
- The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.
- The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary.

Cal. Gov't Code § 12945.2(r).

In any case in which the leave has already commenced, the employer must give the employee a reasonable opportunity to return to work following the notice above. Cal. Gov't Code § 12945.2(r).

Protections against Retaliation and Discrimination

It's unlawful for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under Cal. Gov't Code § 12945.2.

For more information on discrimination, harassment, and retaliation in California, see Discrimination, Harassment, and Retaliation (CA). For other state discrimination, harassment, and retaliation laws, see Discrimination, Harassment, and Retaliation State Practice Notes Chart.

Impact on Other Laws

An employee may choose, or the employer may require the employee, to use accrued vacation time or other accrued time off while the employee is on CFRA leave. Cal. Gov't Code § 12945.2(e). The time off will still count against the employee's overall FMLA/CFRA leave entitlement. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. 29 U.S.C. § 2612(d)(2)(B); Cal. Gov't Code § 12945.2(e).

The CFRA allows for leave for a registered domestic partner. Cal. Fam. Code § 297.5.

In circumstances when a leave qualifies for both FMLA and CFRA leave, the leaves will run concurrently.

Under the FMLA, a disabling condition related to pregnancy is considered a serious medical condition. Therefore, if a woman needs time off before the birth of the child due to her pregnancy, that time will count toward her 12-week leave

under the FMLA. However, pregnancy disability is excluded from the CFRA. This leave can be used by an employee only following the birth of a child for bonding.

For a comparison of the federal FMLA and CFRA, see Family and Medical Leave Laws (FMLA) Comparison Chart (CA and Federal). Also see Leave Law (CA) — Family and Medical Leave and Flexible Leave and FMLA Leave: Guidance for Employers and Employees.

Note: Effective January 1, 2021, under SB 1383, an employee's CFRA leave does not run concurrently with FMLA under the following circumstances: leave to care for a serious health condition of a registered domestic partner, adult child who is not incapable of self-care, grandparent, grandchild, or sibling; and leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's registered domestic partner in the U.S. Armed Forces.

Pregnancy Disability Leave (PDL)

Pregnancy disability leave (PDL) is the leave a woman takes while she is disabled by her pregnancy or the childbirth. An employee who has a disability related to her pregnancy or the birth of her child can receive up to four months of maternity leave while that disability continues.

For more information, see Leave Law (CA) — Pregnancy Leave and California Employment Law § 8.12. For an annotated pregnancy leave policy, see Pregnancy and Parental Leave Policy (with Acknowledgment) (CA). For an annotated CFRA and PDL combined policy, see California Family Rights Act (CFRA) Leave and Pregnancy Disability Leave (PDL) Combined Policy. For an annotated certification of healthcare provider form for PDL, see Certification of Health Care Provider for Pregnancy Disability Leave, Transfer, and/or Reasonable Accommodation (CA).

Which Employers Must Comply with This Law?

All employers with five or more full or part-time employees must comply with the PDL. Cal. Code Regs., tit. 2, § 11035. California state government, counties, cities, and any other political or civil subdivision of the state must make PDL available, regardless of the number of employees. Id.

Which Employees Are Eligible for PDL?

There are no length of service requirements before becoming entitled to PDL. If the employer is a covered employer, PDL eligibility begins on the employee's first day on the job.

What Are the Eligible Reasons to Take PDL?

An employee who is disabled by pregnancy, childbirth, or a related medical condition is entitled to PDL for a reasonable period of time not to exceed four months. The employee will be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition. Cal. Gov't Code § 12945(a)(1).

An employee is "disabled by pregnancy" if a healthcare provider deems that the employee is unable, because of pregnancy, to perform any one or more of the essential job functions, or to perform any of these functions, without undue risk to the employee, the successful completion of the pregnancy, or other people. The employee's healthcare provider must determine that the employee is disabled by pregnancy. Cal. Code Regs., tit. 2, § 11035(f).

"Disabled by pregnancy" includes time when the employee suffers from severe morning sickness or needs time off for:

- Prenatal or postnatal care
- Bed rest
- Gestational diabetes
- Pregnancy-induced hypertension
- Preeclampsia
- Postpartum depression
- Childbirth
- Loss or end of pregnancy
- Recovery from childbirth, loss, or end of pregnancy

Cal. Code Regs., tit. 2, § 11035(f).

Reasonable Accommodations

A reasonable accommodation may also be required when an employee is affected by pregnancy and needs a change in the work environment or job duties to enable the employee to perform the essential job functions. Some examples of accommodations include:

- Modifying work practices or policies
- Modifying work duties
- Modifying work schedules to permit earlier or later hours, or to permit more frequent breaks (e.g., to use the restroom)
- Providing furniture (e.g., stools or chairs) or acquiring or modifying equipment or devices –or–

- Providing a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in the Labor Code

Cal. Code Regs., tit. 2, § 11035(s).

Amount of Leave Required

An employee disabled by pregnancy, childbirth, or a related medical condition may take a leave for a reasonable period of time not to exceed four months. Cal. Gov't Code § 12945(a)(1). PDL generally is not paid leave, but the employee can use an accrued vacation leave during this period of time. Id. The four months of leave is allowed for each pregnancy and is not an annual limit. Cal. Code Regs., tit. 2, § 11042(a)(1). For employees who work more or less than 40 hours per week, or who work on variable work schedules, the number of working days that constitutes four months is calculated on a pro rata or proportional basis. Cal. Code Regs., tit. 2, § 11042(a)(2).

The employee does not need to take all PDL concurrently; it can be taken intermittently. Cal. Code Regs., tit. 2, § 11042(a).

Notice Required

An employer may require an employee who plans to take pregnancy leave to give the employer reasonable notice of the date the leave will commence and the estimated duration of the leave. Cal. Gov't Code § 12945(a)(1).

If possible, an employee should provide verbal or written notice within 30 days before leave. If 30-days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances, a medical emergency, or other good cause, notice must be given as soon as practicable. Cal. Code Regs., tit. 2, § 11050(a).

If an employee fails to give timely notice when the need for reasonable accommodation or transfer is foreseeable, the employer may delay the reasonable accommodation or transfer until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. However, under no circumstances may the employer delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her coworkers. Cal. Code Regs., tit. 2, § 11050(a).

Medical Certification

This subsection addresses medical certification under the PDL.

Employer Must Notify Employee of Medical Certification

The employer may require written medical certification for PDL. The employer must notify the employee of:

- The need to provide medical certification
- The deadline for providing certification
- What constitutes sufficient medical certification –and–
- The consequences for failing to provide medical certification

Cal. Code Regs., tit. 2, § 11050(b).

An employer must notify the employee of the medical certification requirement each time a certification is required and provide the employee with any employer-required medical certification form for the employee's healthcare provider to complete. The employer may use the form provided, or it can develop its own form. Notice can be oral in certain circumstances such as if the employee is already out on pregnancy disability leave because the need for the leave was unforeseeable. Cal. Code Regs., tit. 2, § 11050(b).

When the leave is foreseeable and at least 30 days' notice has been provided, the employee must provide medical certification before the leave begins. When advance notice is not practicable, the employee should provide the requested certification to the employer within the time frame requested by the employer (which must be at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances. Id.

When the employer requires medical certification, the employer must request (and also advise the employee of the anticipated consequences of an employee's failure to provide adequate medical certification) that an employee furnish medical certification from a healthcare provider at the time the employee gives notice of the need for reasonable accommodation, transfer, or leave or within two business days thereafter, or in the case of unforeseen leave, within two business days after the leave commences. The employer may request certification at a later date if the employer later has reason to question the appropriateness of the reasonable accommodation, transfer, or leave or its duration. Id.

The employer needs to tell the employee whether the medical certification is inadequate or incomplete, and provide a reasonable opportunity to cure any deficiency. Id.

If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent, and the

employee or employer elects to substitute sick, vacation, personal, or family leave for unpaid pregnancy disability leave, the less stringent leave certification should apply. Id.

Medical Certification for a Reasonable Accommodation or Transfer

The medical certification for a reasonable accommodation or a transfer should include:

- A description of the requested reasonable accommodation or transfer
- A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy –and–
- The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer

Id.

Medical Certification for Disability

The medical certification for disability necessitating a leave should include:

- A statement that the employee needs to take pregnancy disability leave because she is disabled by pregnancy, childbirth, or a related medical condition –and–
- The date on which the employee became disabled because of pregnancy and the estimated duration of the leave

Recertification

Upon expiration of the period of the medical certification, the employer may require the employee to obtain recertification if additional time is requested. Id.

Failure to Provide Medical Certification When Leave Is Foreseeable

If the employee fails to provide medical certification when leave is foreseeable, an employer may delay granting the reasonable accommodation, transfer, or leave to an employee who fails to provide timely certification after the employer has requested the employee to furnish such certification until the required certification is provided. Cal. Code Regs., tit. 2, § 11050(c).

Failure to Provide Medical Certification When Leave Is Not Foreseeable

If the employee fails to provide medical certification when leave is not foreseeable, an employee must provide certification (or recertification) within the time frame requested by the employer (which must be at least 15 days after the employer's request) or as soon as reasonably possible under the circumstances.

Medical Emergency

In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may delay the employee's continuation of the reasonable accommodation, transfer, or pregnancy disability leave. Id.

For an annotated certification of healthcare provider form for PDL, see Certification of Health Care Provider for Pregnancy Disability Leave, Transfer, and/or Reasonable Accommodation (CA).

Pay and Benefits

An employer is not required to pay an employee during PDL unless the employer pays for other temporary disability leaves for similarly situated employees. An employee may be entitled to receive state disability insurance for a period of disability because of pregnancy through the California Employment Development Department (EDD). Cal. Code Regs., tit. 2, § 11044(a).

An employer may require an employee to use, or an employee may elect to use, any accrued sick leave during the otherwise unpaid portion of her pregnancy disability leave. An employee may elect to use any vacation time or other accrued personal time off for which the employee is eligible. Cal. Code Regs., tit. 2, § 11044(b).

An employer must maintain and pay for group health coverage for an eligible female employee who takes PDL for the duration of the leave, not to exceed 4 months over the course of a 12-month period per pregnancy, beginning on the date the PDL begins, at the same level and under the same conditions that coverage would have been provided if the employee had not taken PDL. Cal. Code Regs., tit. 2, § 11044(c).

An employer may recover from the employee the premium paid while the employee was on PDL if both of the following conditions occur:

- **Failure to return to work after leave.** The employee fails to return at the end of her pregnancy disability leave.
- **Failure to return from leave for reasons other than those listed.** The employee's failure to return from leave is for a reason other than one of the following:

- **CFRA leave.** Taking CFRA leave, unless the employee chooses not to return to work following the CFRA leave.
- **Pregnancy-related health condition.** The continuation, recurrence, or onset of a health condition that entitles the employee to pregnancy disability leave, unless the employee chooses not to return to work following the leave.
- **Non-pregnancy-related medical conditions.** Non-pregnancy-related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave.
- **Circumstance beyond the control of the employee.** Any other circumstance beyond the control of the employee, including:
  - Circumstances where the employer is responsible for the employee's failure to return (e.g., the employer does not return the employee to her same position or reinstate the employee to a comparable position) –or–
  - Circumstances where the employee must care for herself or a family member (e.g., the employee gives birth to a child with a serio us health condition)

Cal. Code Regs., tit. 2, § 11044(c)(3).

Reinstatement Rules

When an employer grants an employee's request for PDL, it must guarantee to reinstate the employee to the same position or in some circumstances to a comparable position. This guarantee must be put in writing if the employee requests a written guarantee. Cal. Code Regs., tit. 2, § 11043(a).

When a definite date of reinstatement has been agreed upon at the beginning of the leave or transfer, a refusal to reinstate is established if the EDD or employee proves, by a preponderance of the evidence, that the leave or transfer was granted by the employer and that the employer failed to reinstate the employee to the same position or, where applicable, to a comparable position by the date agreed upon. Cal. Code Regs., tit. 2, § 11043(b)(1).

If the reinstatement date differs from the original agreement or if no agreement was made, the employer must reinstate the employee within two business days, or when two business days is not feasible, as soon as it is possible for the employer to expedite the employee's return. Cal. Code Regs., tit. 2, § 11043(b)(2).

An employee has no greater right to reinstatement to the same position or to other benefits and conditions of employment than those rights she would have had if she had been continuously at work during the PDL or transfer period. Cal. Code Regs., tit. 2, § 11043(c)(1). This is true even if the employer has given the employee a written guarantee of reinstatement.

Impact on Other Laws

An employer may require that an employee use any earned paid sick leave. An employee may elect to use vacation or paid time off during pregnancy disability leave, but an employer cannot require an employee to do so.

An employee still disabled at the end of four months can request additional time off. The employer should then engage in the interactive reasonable accommodation process under the ADA and California's Fair Employment and Housing Act (FEHA).

For more information on ADA and disability management, see The ADA and Disability Management practice notes page. For more information on FEHA, see California Fair Employment and Housing Act (FEHA).

PDL and FMLA

PDL runs concurrently with FMLA leave, but not with CFRA leave. Cal. Code Regs., tit. 2, § 11045. Pregnancy is not covered or considered a serious health condition under the CFRA. Disabilities related to pregnancy are covered under PDL and the FMLA, and sometimes the ADA or FEHA as a reasonable accommodation.

PDL and CFRA

The time that an employer maintains and pays for group health coverage during PDL will not be used to meet an employer's obligation to pay for 12 weeks of group health coverage during leave taken under the CFRA. Cal. Code Regs., tit. 2, § 11044.

At the end of the employee's period(s) of pregnancy disability, or at the end of four months of pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 weeks for reason of the birth of her child, if the child has been born by this date. The employee and child do not need to have a serious health condition. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for the birth of her child.

Where an employee has utilized four months of pregnancy disability leave prior to the birth of her child, and her healthcare provider determines that a continuation of the leave is medically necessary, an employer may, as a reasonable accommodation, allow the employee to utilize CFRA leave prior to the birth of her child.

No employer will, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled under the CFRA. The maximum statutory leave entitlement for California employees, provided they qualify for CFRA leave, for both PDL and CFRA leave for reason of the birth of the child and/or the employee's own serious health condition is the working days in 29 and 1/3 workweeks. This assumes that the employee is disabled by pregnancy for four months (the working days in 17 and 1/3 weeks) and then is eligible for a 12-week CFRA leave for reason of the birth of her child. Cal. Code Regs., tit. 2, § 11046(c).

Paid Family Leave (PFL)

Paid family leave (PFL) is a state-sponsored insurance program within the state disability insurance program, administered by the California Employment Development Department (EDD). See Cal. Unemp. Ins. Code §§ 3300–3308.

Which Employers Are Required to Comply with This Law?

PFL covers all employers, regardless of size. Cal. Unemp. Ins. Code §§ 3301 and 3303.

Which Employees Are Covered under This Law?

PFL covers all employees. Cal. Unemp. Ins. Code §§ 3301 and 3303.

What Does the PFL Cover?

This subsection addresses the benefits that the PFL covers.

Partial Wage Replacement

PFL does not create the right to a leave of absence or guarantee reinstatement rights other than those already mandated by law. Instead, it provides employees with partial wage replacement for up to eight weeks in any 12-month period while absent from work to care for a seriously ill or injured family member, or bonding with a minor child within one year of the child's birth or placement in connection with foster care or adoption. Cal. Unemp. Ins. Code § 3301.

The EDD determines if the absence qualifies for benefits and can require medical and other documentation in support of the claim. Cal. Unemp. Ins. Code § 3300(g).

FMLA and CFRA

An employee who is entitled to a leave of absence to care for a family member or bond with a child under the FMLA or the CFRA can receive PFL benefits during leave. Cal. Unemp. Ins. Code § 3303.1.

Pay and Benefits

An employee is eligible to receive benefits equal to one-seventh of the individual's PFL weekly benefit amount for each full day during which the individual is unable to work for qualifying reasons. Cal. Unemp. Ins. Code § 3301(b). The maximum amount payable to an individual during any disability benefit period is eight times the individual's weekly benefit amount, but not more than the total wages paid to the individual during the disability base period. Cal. Unemp. Ins. Code § 3301(c).

Amount of Leave Required

No more than eight weeks of PFL benefits are required to be paid within any 12-month period. Employees are not required to take all of their PFL benefits at one time. Cal. Unemp. Ins. Code § 3301(d).

Periods of leave for the same care recipient within a 12-month period, periods of disability for pregnancy, and periods of leave for bonding associated with the birth of that child are each considered one disability benefit period. Cal. Unemp. Ins. Code § 3302.1.

As a condition of an employee's initial receipt of PFL benefits during any 12-month period, an employer can require an employee to take up to two weeks of earned vacation leave prior to the employee's initial receipt of these benefits. Cal. Unemp. Ins. Code § 3303.1(c).

Reinstatement Rights

Employees who receive PFL payments have no additional protected leave of absence rights. Cal. Unemp. Ins. Code §§ 3300–3308.

Local Paid Sick Leave Ordinances

Several cities in California, including, among others, San Francisco, Oakland, Los Angeles, and San Diego, have local paid sick leave laws that are more favorable to employees than California's Healthy Workplaces, Healthy Families Act. Employers in cities that have paid sick leave laws must ensure that they provide paid sick leave benefits required by local law that may go beyond the California's Healthy Workplaces, Healthy Families Act.

For detailed information on all state and local paid sick leave laws for private employers, including for California and its cities that have such laws, see Paid Sick Leave State and Local Law Survey (Private Employers).

Best Practices for Sick Leave Management in California

This section advises employers on how to manage sick leave and other related laws in California.

Best Practices for Employers to Manage and Administer Sick Leave

Employers should make sure to determine the sick leave requirements applicable to their workforce, including state and local requirements. The local ordinances often differ from the California state requirements. Employers should also review any posting requirements and ensure compliance in the workplace.

Employers should then determine under which method its employees will earn sick leave (accrual, lump sum, under an existing policy that complies with the requirements). Employers should also determine any limitations of use, applicable accrual caps, and increments that sick leave may be used under the law. Employers should also make sure to maintain accurate records for at least three years. Employers should track sick leave separately from other types of leave to ensure compliance.

Employers need to educate managers on the sick leave laws, including what the employees are entitled to, what sick leave covers, when employers can ask for documentation, and anti-retaliation laws.

To avoid employee abuse and fraud, employers should have a written sick leave policy. The policy should explain what types of situations are covered, how much leave is provided, the procedure for using sick leave, and any consequences/discipline for abusing the policy.

Third-Party Administrators

Third-party administrators (TPA) can make sick leave management easy. Many employers, especially those with large workforces use TPAs to manage and track leave. However, employers are ultimately responsible for complying with sick leave laws and should regularly review sick leave to ensure compliance.

Accrual Methods Employers Should Use

Employers have a few options on accrual methods for sick leave. Depending on the circumstances, employers should determine which method to use. For example, employers can use the standard accrual method in which employees are provided with at least one hour of paid sick leave for each 30 hours worked on an accrual basis beginning on the first day of employment. Employers can implement their own accrual methods so long as sick leave is accrued on a regular basis and the employee has accrued no less than 24 hours (or three days of paid sick leave) within 120 calendar days from the date of hire. Employers should keep in mind that tracking sick time under the accrual method (including carryover of certain accrued sick leave), especially with differing hire dates for each employee, is sometimes more onerous than providing sick leave in a lump sum. Employers may opt for the lump-sum method, providing a lump sum of at least 24 hours or three days of sick leave up front at the beginning of each 12-month period.

Key Potential Pitfalls

Employers should keep in mind that employers must allow employees to carry over unused sick leave, but can cap the total accrual at 48 hours (or six days of paid sick leave). Additionally, under the law, if an employee is terminated and is rehired by the same employer within one year from the date of separation, the employer must reinstate previously accrued and unused paid sick days to the employee (unless the employer paid out the unused leave at the time of termination).

Additionally, the paid sick leave laws in California (and under local ordinances) are constantly changing so employers should be sure to keep up to date with the changing laws.

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