Family Medical Leave in California:

Options for job-protected leave and wage replacement while taking time off to care for yourself or your family member

Rachael Langston, Senior Staff Attorney, Legal Aid Society – Employment Law Center

- Employee’s own serious health condition
- Care for a child, parent, spouse or domestic partner with a serious health condition
- Bond with a newborn child, adopted child or foster child (within 1 yr)
Driving to doctor’s appointments
Providing psychological comfort and care
Providing medical, hygienic, nutritional needs & safety
Making arrangements for changes in care
12 weeks – all at once or in parts

Health insurance continuation

Employee notice

Medical certification
  - Privacy: In CA, need not disclose diagnosis.

Who is eligible?
  - 1 year of service
  - 1250 hours in prior year
  - Employer has 50 or more employees w/in 75 miles
An employee may take 12 weeks of leave intermittently when medically necessary

- Leave in short increments
- To work a reduced schedule
- For bonding with a new child (Employer may require that bonding leave be taken in 2-week increments. Employee is entitled to two exceptions to this rule.)

Intermittent leave is especially important for people with chronic, episodic illnesses such as asthma or migraines.
Right to return to the same or “equivalent” job

- **Equivalent** = equivalent pay, benefits, and other terms and conditions of employment
- An employee retains seniority while on leave but does not accrue additional seniority during the leave

Exceptions:

- job was eliminated for **legitimate business reason**
- “key” employees
During FMLA/CFRA leave, employer must continue employee’s health benefits in same manner as if employee had continued to work.

Voluntarily deciding not to return to work allows employer to seek reimbursement of premiums paid for continuation of benefits.

- Exception: Employer may not seek reimbursement if decision not to return is beyond employee’s control, e.g., if the serious health condition makes it impossible for her to return to work.
CFRA covers registered domestic partners, but FMLA does not. Thus, leave taken to care for a seriously ill domestic partner counts against CFRA, not FMLA. An employee taking CFRA leave to care for a domestic partner may be entitled to an additional 12 weeks of leave under FMLA for some other qualifying reason.
A separate California law (PDL) covers pregnancy.

CFRA excludes pregnancy as a serious health condition so that leave taken for pregnancy-related conditions counts against FMLA entitlement, but not CFRA.

This grants pregnant women in CA an additional 12 weeks of leave to bond with a newborn child.
26 weeks of leave per year to care for injured or ill service members. 29 C.F.R. § 825.127(c).

Family members: spouse, child, parent, or next of kin of covered service member.
12 weeks of leave per year to help service member or employee during qualifying exigency.

Covered family members: spouse, child, parent.

Qualifying exigency:
- Short-notice deployment
- Military events or related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities
Post notice
Include leave information in employee handbook
Provide detailed information to eligible employees who request leave
Designate the leave and notify employee of designation
Employees’ Notice Requirements

Time:
- Foreseeable Leave: 30 days notice.
  - 2009 FMLA regs: If <30 days notice given, employer can require explanation; should give notice within 1 day of learning of need for leave
- Unforeseeable Leave: as soon as practicable (1-2 business days)
  - 2009 FMLA regs: within time prescribed by employer’s usual and customary procedures.

Content:
- Need not expressly assert rights under FMLA/CFRA, but it is recommended.
- Enough information to put employer on notice that the leave may qualify under FMLA/CFRA.
- Employer must inquire further if necessary to determine whether FMLA/CFRA leave is being sought.
Employer may require medical certification.

- Date condition began, probable duration, statement that due to serious health condition, employee is temporarily unable to perform essential function(s) of job, or needed to care for serious health condition of family member.

Employer must:

- Request certification in writing and explain consequences of not providing certification;
- Allow employee at least 15 days to comply;
- Notify employee if certification is inadequate and give reasonable opportunity to correct.
Medical Certification:

- Because of California’s strict privacy laws, employer may not require employee to disclose diagnosis.
  - COMPARE FMLA which allows for appropriate medical facts supporting need for leave.
- Employer may not demand release of medical records as condition for obtaining leave.
- Employer may not request more information than is specified on the CFRA sample certification form.
For employee’s own health condition:

- An employer with reason to doubt medical certification may request a second opinion from a doctor of its choice at its expense.
  - The doctor may not be regularly employed by the employer.
- If the employee’s doctor and the second doctor’s opinions conflict, the employer may require a third opinion from a mutually agreed upon doctor, at the employer’s expense.
  - 2d opinion is binding.
Other FMLA/CFRA Protections

- **No retaliation** for requesting leave or for complaining about a violation of leave laws
- **No harassment** for taking leave
- **No denial** of valid leave request
- **No interference** with leave (refusal to designate, for example)
- **No refusal to hire or promote** an employee who will take or has taken leave
Employees are entitled to use half annual sick leave to attend to an illness of a:

- Child
- Parent
- Spouse
- Domestic partner

Retaliation prohibited.
Options for Wage Replacement
Governor Brown signed AB 1522 (2014), which requires employers to provide at least 3 paid sick days per year.

Can be used for own illness, to care for family member, or to seek care or services related to domestic violence, sexual assault or stalking.

Excludes IHSS workers.

Effective July 2015.
SF Paid Sick Days

- Paid time off for own illness, or to care for family or designated person who is ill, injured, receiving care, treatment or diagnosis.
- Family: child, parent, legal guardian, sibling, grandparent/child, spouse, registered DP.
- Accrue 1 hour for every 30 hours worked:
  - 0-9 ees: 6 days max
  - 10+ ees: 9 days max
Wage Replacement Programs

- State Disability Insurance
  - For patients

- Paid Family Leave
  - For caregivers

- Unemployment Insurance
  - For those who lose job through no fault of own

Apply online at www.EDD.ca.gov
Partial wage replacement while unable to work due to cancer or other non-workplace disabilities.

- Funded by workers through payroll deductions.
- 55% of weekly wage, up to $1,104 per week, up to 52 weeks.
- 1-week waiting period.
- Medical certification required.
- Apply through EDD
  - within first day of disability, up to 49 days retroactively (or later with good cause).
Extended job-protected leave of absence may be a reasonable accommodation for a disability, regardless of whether employee was qualified for or has exhausted FMLA/CFRA leave entitlement.

State Disability Insurance SDI

1 week waiting period, then up to 52 weeks benefits

12 weeks job protection + health benefits

ADA / FEHA
Paid Family Leave

- **Partial wage replacement** while:
  - caring for a seriously ill close family member, or
  - bonding with a new child.
- Funded by workers through payroll deductions.
- **55%** of weekly wage, up to **$1,104 per week**, up to 6 weeks.
- All at once or in parts; 1-week waiting period.
- Medical certification required.
- Apply through EDD.
  - first day of leave, up to 49 days retroactively (or later with good cause)
SB 770 expands the definition of family to include grandparents, grandchildren, parents-in-law, and siblings. The new law went into effect July 1, 2014.

Previously, only children, spouses, domestic partners and parents were considered “family”.

FMLA/CFRA Leave and PFL

PFL

1 week waiting period, then 6 weeks benefits

12 weeks job protection + health benefits

Job Protection:

FMLA/CFRA
Legal Aid Society – Employment Law Center
www.las-elc.org
Work & Family Helpline: (800) 880-8047
Rachael Langston, rlangston@las-elc.org