

Taking Leave From Work

Pregnancy / Prenatal Care / Bonding with a New Child

YOUR LEGAL RIGHTS

1. What legal rights do pregnancy disability and family/medical leave laws provide?

You may be entitled under law to take up to seven months unpaid leave—without being terminated from your job—by combining pregnancy leave with leave to care for your newborn child. In most cases, your employer must reinstate you to the same or comparable position after your leave, including the same pay, benefits and working conditions.

In addition, your employer must provide the same benefits to pregnant workers who need temporary disability leave as it provides to other workers who have other forms of temporary disability. For example, if your employer provides disability leave for non-pregnant workers who are confined to bed rest, your employer must also provide disability leave for pregnant employees confined to bed rest. In some circumstances, your employer must continue your health care benefits during your leave.

It is illegal for your employer to interfere with your right to take a leave for pregnancy, childbirth or related conditions, and/or to care for your newborn child. Your employer may not harass you for taking such a leave, deny a valid leave request, or refuse to hire or promote you because you will take or have taken a leave. It is also illegal for your employer to retaliate against you for requesting a leave or for complaining about a violation of these laws.

Your employer may not fire you, force you to quit, or force you to take a leave because you are pregnant. Also, your employer may not take away seniority or accrued retirement benefits because of maternity leave; or force you to take a pregnancy leave if you are able to work.

2. Pregnant women may be entitled to family/medical leave and pregnancy disability leave.

Family/Medical Leave

You are eligible for family/medical leave under the federal Family and Medical Leave Act (FMLA) and the state California Family Rights Act (CFRA) if all of the following are true:

- you have worked for your employer for at least 12 months (even if temporary or part-time);
- you have worked at least 1,250 hours (an average of 25 hours per week) during the 12 months before the leave; and
- your employer employs at least 50 people within a 75-mile radius of your worksite.

Under the family/medical leave laws, you may take a leave of up to 12 weeks in a 12-month period for the birth of your child, or the placement of a child with you for adoption or foster care.

(If you qualify for a family/medical leave, you are also entitled to take time off for your own serious health condition or to care for a family member with a serious health condition. See the section “Other Publications Regarding Family/Medical Leave” in this Fact Sheet if you would like further information about the right to take a leave for those reasons.)

Pregnancy Disability Leave

Even if you are not eligible for family/medical leave, you still are entitled to take unpaid pregnancy disability leave (PDL) if:

- you are disabled due to pregnancy, childbirth or related medical conditions; and
- your employer employs at least five employees.

Eligibility for pregnancy disability leave does not depend on how long you have worked for your employer nor on the number of hours you have worked.

Generally, health care providers will certify a pregnancy disability leave of up to 10 weeks for a normal pregnancy--4 weeks before childbirth and 6 weeks after a vaginal delivery, or 8 weeks after delivery by cesarean section. However, you may take up to 4 months of pregnancy disability leave for complications, severe morning sickness, or other disabilities related to pregnancy, childbirth, or a related medical condition. The specific duration of disability leave that you will be eligible for must be determined by your health care provider. (See Section 12 for information regarding disability payments during such leave.)

If you are disabled by pregnancy for more than 4 months before your baby is born and therefore need more than 4 months of pregnancy disability leave, your employer may—but is not required to—allow you to use additional leave provided by the California family/medical leave law (CFRA) for the rest of your pregnancy.

Pregnant employees who are also eligible for a family/medical leave may take both a pregnancy disability leave (PDL) for the time they are disabled and a CFRA leave to care for and bond with their child. To qualify for a CFRA leave for the birth of your child that immediately follows a leave for pregnancy disability, you need to have worked 1,250 hours prior to the first day of your pregnancy disability leave, not prior to the first day of your CFRA parental leave (and meet the other requirements in Section 2).

Even if you use any CFRA leave time before the birth of a child to extend a 4-month pregnancy disability leave, your employer must allow you to use any remaining CFRA leave you may have to care for your new child after he or she is born.

3. Any new parent may take a leave of absence.

You do not have to be the mother of a new child to take parental leave. Any employee who qualifies for family/medical leave (see Section 2 above) may take up to 12 weeks of unpaid leave for the birth of the employee's child or for the placement of a child with the employee for adoption or foster care. This leave must be taken within one year of the birth, adoption or foster care placement of the child.

Where both parents have the same employer, the employer is required to grant only a total of 12 weeks of leave in connection with the birth or placement of a new child. The parents may divide the 12 weeks between them in any manner. After dividing a family/medical leave, each of the parent/employees has the right under CFRA to take additional leave for their own serious health condition or to care for an ill family member until he or she has used a total of 12 weeks of leave in a 12-month period.

4. Is your employer required to continue health benefits during a leave?

Employers who have a policy or practice of continuing to pay for health care benefits for employees who take unpaid leaves for disabilities other than pregnancy must also continue to pay for health care benefits for employees who take pregnancy disability leaves. In addition, if you qualify for family/medical leave (see Section 1), the law requires that your employer continue your health care benefits for the first 12 weeks of your unpaid leave. Continuation of health care benefits includes any benefits your employer provides for your family members or dependents.

5. Does your employer have to accommodate a request for an intermittent or reduced work schedule?

Pregnancy disability leave does not have to be used in a single, large block of time, but may be taken in short increments as needed. You are “disabled” under the law and may take leave if, for example, you are suffering from severe morning sickness or need to take off time for prenatal care.

You may also take intermittent leave after the birth or placement of your child if you do not want to take all of your parental leave at once. You may use your CFRA parental leave in two-week blocks of time, provided that all of your parental leave is taken in the first year after the birth or placement of your child. However, your employer must grant leaves of at least one day but less than two weeks duration only on two occasions during that time.

If you and your employer agree, you may be able to take Family/Medical Leave on an intermittent or part-time schedule. If you qualify for family/medical leave and take intermittent leave or a reduced work schedule for pregnancy or for the birth or placement of your child, your employer can temporarily transfer you to an alternative position with equivalent pay and benefits if that position better accommodates your need for intermittent leave. Once you no longer need a reduced schedule, your employer must reinstate you to the same or equivalent position that you held before taking intermittent leave.

6. Is your employer required to accommodate a health-related request for transfer or duty restriction?

Employers who have a policy, practice, or collective bargaining agreement allowing the transfer of temporarily disabled employees to less strenuous or hazardous positions must grant requests for this kind of temporary transfer to employees who are disabled because of pregnancy. In addition, if your doctor advises you that you need a transfer to a less strenuous or hazardous position or to be restricted to less strenuous or hazardous duties, your employer must grant your request for a temporary transfer or duty restriction if that change can be reasonably accommodated.

For example, if your doctor finds that a restriction against lifting is medically advisable, your employer cannot force you to take pregnancy leave if, instead, you can be restricted to less strenuous or hazardous duties or transferred to a less strenuous position. Your employer is not required under these circumstances, however, to create additional employment, discharge another employee, transfer another employee with more seniority, or promote you to a job for which you are not qualified.

7. What are your employer's obligations in notifying you of your leave rights?

Employers with 5 or more employees must do the following:

- post a notice explaining employees' right to request pregnancy disability leave or transfer; and
- provide a copy of the notice explaining employees' rights to any employee who requests or inquires about pregnancy disability leaves or transfers.

Employers with 50 or more employees must also do the following:

- post a notice explaining rights and responsibilities under the family/medical leave laws;
- provide detailed, written information about these rights and responsibilities to any eligible employee who requests leave;
- include employees' rights and responsibilities under the family/medical leave laws in the employee handbook, if the employer has one; and
- designate a leave, whether paid or unpaid, as one covered by the family/medical leave laws and notify the employee of this designation.

If you have not been notified of your rights to pregnancy disability or family/medical leave and you think your employer is covered by these laws, ask your employer for information about your rights.

8. Under what terms do you take and return from leave?

If your employer has **at least 5 but less than 50 employees** and you take a pregnancy disability leave:

- Pregnancy leave is unpaid leave unless another type of paid leave (such as vacation time or short-term disability pay) is applied during the leave.
- Generally, you must be reinstated to the same or comparable position after your leave. However, if your job was eliminated for legitimate business reasons unrelated to your leave, or if reinstating you would substantially undermine your employer's ability to operate the business safely and efficiently, you are not entitled to reinstatement to the same position or to a comparable position.

If your employer has **50 or more employees** and you take a pregnancy disability leave and/or a family/medical leave:

- Pregnancy or family/medical leave is unpaid leave unless another type of paid leave is used in conjunction with the leave.
- In most cases, you must be reinstated to the same or equivalent position (same pay, benefits, and working conditions) after your leave. Although you are not entitled to be reinstated if your job was eliminated for legitimate business reasons unrelated to your taking leave, your employer may not refuse to reinstate you because it has filled your job or because of business necessity.
- Your employer must continue your health insurance benefits, if you have them, for up to 12 weeks of leave. This provision includes benefits you receive for your dependents or family members.

9. Are you required to notify your employer that you need a family/medical leave?

You must give your employer notice 30 days before taking a pregnancy disability leave or a parental leave, or before a transfer is to begin, if the need for the leave or transfer is foreseeable because of pregnancy, adoption, or foster care placement of a child. If you do not know approximately when the leave will begin (when the timing of the adoption or approximate due date for baby is unknown, for example), you must give notice as soon as you are able. If the need for leave is not foreseeable (such as in the case of a medical emergency), you must give notice as soon as possible, normally within one or two days of learning of the need for leave.

The notice you give your employer, whether written or spoken, must be sufficient to make your employer aware that you need leave for pregnancy, childbirth or related medical conditions, or for the birth, placement or adoption of a child. You should notify your employer in writing of your need for a family/medical leave, and make sure to have documentation of your employers' response.

10. What information may your employer request about your leave?

For a pregnancy disability leave, your employer may require medical certification that you are unable to work due to pregnancy. In the case of a transfer or duty restriction, your employer may require certification that it is medically advisable for you to be transferred to a less strenuous or hazardous position, or restricted to less strenuous or hazardous duties.

Your employer may require you to obtain a "fitness for duty" certification from your health care provider only if your employer requires this kind of certification from employees returning from leaves for disabilities unrelated to pregnancy.

If you qualify for family/medical leave, your employer may require periodic reports about your status and intent to return to work. If you fail to return from leave, your

employer may recover from you the cost of continuing your health care benefits during your leave, unless the reason you cannot return is beyond your control. Choosing to stay home to care for a well, newborn child after the employee's leave entitlement has expired is not a reason beyond the employee's control.

Be sure that you understand your employer's rules for leave before you take leave. Ask your employer for a written description of your rights and responsibilities for pregnancy leave and parental leave.

11. What information should medical certification contain?

Your employer may require a certification of your need for leave, transfer or duty restriction due to pregnancy, childbirth or related medical conditions if your employer requires medical certification from employees who request leaves or transfers for disabilities other than pregnancy.

A certification for a *pregnancy disability leave* should contain:

- the date you became disabled due to pregnancy;
- the probable duration of the period or periods of disability; and
- an explanatory statement that due to your disability you are temporarily unable to work at all or temporarily unable to perform any one or more of the essential functions of your position.

Certification for a *duty restriction* or *transfer* to a less strenuous or hazardous position should contain:

- the date on which the need for a duty restriction or transfer became medically advisable;
- the probable duration of the need for the duty restriction or transfer; and
- an explanatory statement that, due to your pregnancy, the duty restriction or transfer is medically advisable.

Your employer cannot ask you or your doctor for more than this basic information. If your certification contains this basic information, your employer must accept it as sufficient. **Your employer must keep any medical information provided in a certification confidential.**

12. How do pregnancy and family/medical leave relate to other kinds of leave?

Both pregnancy disability leave and family/medical leave are unpaid leaves. However, you may be able to use other forms of paid time off during your pregnancy and/or parental leave.

Paid Disability Leave

When you are disabled because of pregnancy, your employer must treat you the same as other workers with temporary disabilities unrelated to pregnancy. If, for example, your employer offers paid short-term disability leave for conditions requiring bed rest, your employer must also give you paid short-term disability leave if you are unable to work due to pregnancy, childbirth or related medical conditions requiring bed rest. Check your benefits to see what your employer provides.

You may also qualify for State Disability Insurance payments during your leave if you participate in the state plan and your health care provider certifies that you are disabled due to pregnancy, childbirth, or a related medical condition and unable to work, both before and/or after delivery. You should be entitled to receive disability payments for the **entire duration** of your disability leave, before and/or after delivery, as long as the leave is medically necessary. For more information, contact the Employment Development Department (check the California State Government listing at the front of your local telephone directory).

Paid Family Leave

Paid Family Leave entitles employees who participate in the State Disability Insurance (SDI) system to receive a maximum of six weeks of partial pay each year when they take off work to bond with a newborn, newly adopted or newly placed foster child. Mothers who are receiving SDI benefits for pregnancy disability will automatically receive a claim form for Paid Family Leave benefits. Both mothers and fathers can apply for Paid Family Leave benefits anytime within the first year of the child's birth.

An employee may receive Paid Family Leave benefits while taking family/medical leave. However, employees who are not eligible for job-protected family/medical leave may still be eligible to receive Paid Family Leave benefits. All employees who pay into SDI are eligible for Paid Family Leave to bond with a new child, regardless of the size of the employer or length of employment. For more information about Paid Family Leave, see our Fact Sheet titled "**Paid Family Leave Benefits**" at www.las-elc.org/factshtinvent.html or contact the Employment Development Department at 1-877-BE-THERE.

Sick Time and Vacation Time

Either you or your employer may choose to apply your accrued sick leave during any unpaid leave you take for pregnancy, childbirth or related medical conditions. You may also choose to use your paid vacation or personal time during a pregnancy disability leave, but your employer may not require you to do so against your will.

The rules for using paid time off during a parental leave to bond with your new child are different than those for pregnancy. For example, you may use your accrued sick leave during your parental leave only if you and your employer mutually agree to it. Either you or your employer may choose to apply your vacation or personal time during a parental leave. Finally, either you or your employer may choose to use your accrued family/medical leave during your parental leave, if your employer provides family leave for this purpose.

Compensatory (“Comp”) Time

Your employer may not require you to use accrued compensatory time off during any of your leave.

13. Where can you get help regarding your family/medical leave rights?

For information about the application of pregnancy disability and family/medical leave laws to your particular situation, call:

The Work & Family Project Information Line:

(800) 880-8047 Toll-free in California

(415) 593-0033 From outside California

If you think your employer has discriminated against you because of your gender or your pregnancy, you can file a charge with your local office of the Equal Employment Opportunity Commission (EEOC) (check the U.S. Government listing at the front of your local telephone directory) or with the California Department of Fair Employment and Housing (for information, call (800) 884-1684).

If you sue your employer for violating pregnancy or family/medical leave laws, the court may reinstate you to your job and award you wages you should have been paid or a promotion you should have received, as well as reimbursement for legal costs.

Time limits apply. You should take action immediately if you think your rights have been violated.

14. Other publications regarding family/medical leave

The Legal Aid Society - Employment Law Center has produced the publications listed below to educate workers about their rights relating to family/medical leave. To request any of these publications or to get information regarding your specific legal rights, please call the LAS-ELC's Work & Project Information Line toll-free at (800) 880-8047 (statewide in California), or view the Fact Sheets at www.las-elc.org/factshtinvent.html.

- “FMLA - Caring for a Family Member”
- “FMLA - Your Own Health Condition”
- “Pregnancy Discrimination”
- “Paid Family Leave Benefits”

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, call:

The Work and Family Project
(800) 880-8047 or (415) 593-0033

The Work and Family Project is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems. For information, call the LAS-ELC's 24-hour Direct Services Information Line at (415) 864-8208.