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# **"LEAVES OF ABSENCE, TERMINATIONS & LAND MINES FOR EMPLOYERS"**

## **Employment Law Workshop**

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## **EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT**

### **A. POLICY AGAINST DISCRIMINATION.**

\_\_\_\_\_ (the “Company”) is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also, applies to non-employees of the Company including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religion (including religious dress practice and religious grooming practice), national origin, marital status, sex (including sexual harassment and gender identity), sexual orientation, disability (physical or mental including HIV/AIDS diagnosis), pregnancy (including breastfeeding and conditions related to breastfeeding), medical condition (cancer and genetic characteristics), age or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

### **B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT.**

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;

6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and
8. Physical conduct: touching, assault, impeding or blocking movement.

**C. COMPLAINT AND INVESTIGATION PROCEDURE.**

Any form of discrimination or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination or harassment should be brought immediately to the attention of the Human Resources Department of the Company which will thoroughly investigate the matter in confidence. After reviewing all the evidence, the Company will make a determination concerning whether reasonable grounds exist to believe that harassment has occurred.

Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in harassment.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith.

**HARASSMENT BY NON-EMPLOYEES.**

In addition, the Company will take all reasonable steps to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

**EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT  
EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT**

I have read and received a copy of the Company's Employee Relations Policy, including the policies against discrimination and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

## **PHYSICAL AND MENTAL DISABILITY POLICY**

The Company is an equal opportunity employer. This includes all individuals with a physical or mental disability. The Company will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant for employment or a current employee of the Company. The only limitation as to the Company's commitment to providing reasonable accommodation would be if an undue hardship would result to the Company.

Any applicant or employee who requests an accommodation in order to perform the essential functions of the job should contact the [Human Resources Department] and request such an accommodation. The employee must provide the details as to what accommodation is needed to perform the job. The Company will then review the situation to establish and identify what accommodation, if any, will help to eliminate the limitation of the employee's ability to perform the job.

If you believe that you have been subjected to discrimination as a result of any known physical or mental disability, please refer the matter to the [Human Resource Department] for investigation. Your complaint must be specific and should include all relevant information so that a thorough investigation may be conducted. The Company will immediately investigate the complaint, in confidence, to determine if discrimination has occurred. Upon conclusion of the investigation, the Company will take the necessary steps to remedy the situation. The Company will not tolerate any retaliation by any of its employees against any employee who files a complaint or participates in an investigation regarding a complaint of discrimination.

### Filing a Complaint

Employees or job applicants who believe that they have been discriminated against or harassed because of a disability may, within **one year** of the alleged discrimination, file a complaint with DFEH by calling (800) 884-1648. DFEH processes complaints filed by persons with terminal illnesses on a priority basis.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence of discrimination and settlement efforts fail, the Department may file a formal accusation. The accusation may lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission or court finds that discrimination has occurred, it can order remedies including:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see DFEH publication 159 "Guide for Complainants and Respondents."



State of California  
Department of Fair Employment & Housing

DFEH-184 (04/04)

## Employment Discrimination Based on Disability

The *Fair Employment and Housing Act* (FEHA), enforced by the California Department of Fair Employment and Housing (DFEH), prohibits employment discrimination and harassment based on a person's disability or perceived disability. It also requires employers to reasonably accommodate individuals with mental or physical disabilities unless the employer can show that to do so would cause an undue hardship.

The law covers mental or physical disabilities (including AIDS/HIV), regardless of whether the conditions are presently disabling. It also covers medical conditions, which are defined as either cancer or genetic characteristics.

Disability does **not** include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.

### FEHA vs. the Federal Americans with Disabilities Act

The FEHA provides broader protections for persons with disabilities than federal law. California employers with five or more employees must follow the FEHA. For example, California law has broad definitions of





mental disability, physical disability, and medical condition.

Under California law, a disability must only “limit” a major life activity. The disability does not have to involve a “substantial limitation” as under federal law, to be considered a disability. Whether a condition or disability “limits” a major life activity is determined regardless of any mitigating measure, such as medication, prosthesis, etc., unless the mitigating measure itself limits a major life activity.

### Employment Inquiries

The FEHA prohibits employers either verbally or in writing from:

- Requiring any medical/psychological examination/inquiry of any applicant or employee prior to making an offer of employment
- Inquiring directly or indirectly as to whether an applicant or employee has a mental/physical disability or medical condition
- Inquiring about the nature and severity of a mental/physical disability or medical condition

However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant’s request for reasonable accommodation.

Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical/psychological examination. However, the examination/inquiry must be job related and consistent with business necessity and all entering employees in the same job classification must be subject to the same examination or inquiry.

An employer may also conduct voluntary medical examinations, including medical histories, which are part of an employee health program. This information is retained separate and apart from employment and personnel records.

### Reasonable Accommodation

The employer is required to explore with the employee all possible means of reasonably accommodating a person prior to rejecting the person for a job or making any employment-related decision. The accommodation may arise from a mitigating measure, such as medication taken for the primary disability.

An accommodation is reasonable if it does not impose an undue hardship on the employer’s business. Reasonable accommodation can include, but is not limited to, changing job duties or work hours, providing leave, relocating the work area, and/or providing mechanical or electrical aids. An employer may obtain help from government agencies and outside experts to determine whether accommodation is possible.

Employees with disabilities may be covered by the *California Family Rights Act* or the federal *Family Medical Leave Act*.

### Independent Medical Opinion

An employer must allow an applicant the opportunity to submit an independent medical opinion if there is a dispute as to whether the person can perform the essential functions of a position. Failure to allow the submission of an independent medical opinion may be a separate violation of the law.

### Discrimination

Any employment-related or personnel decision based on either of the following reasons is not discriminatory:

- The person is unable to perform the essential functions of the job and no reasonable accommodation exists that would enable the person to perform the “essential functions” of the job.
- The person would create an imminent and substantial danger to self or others by performing the job and no reasonable accommodation exists that would remove or reduce the danger.

The following two reasons commonly raised by employers **are not** legally acceptable excuses for discriminating against persons with disabilities:

- Possibility of future harm to the person or to others
- Employing such individuals will cause an employer’s insurance rates to rise



# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

## Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 · Revised February 2013





It is unlawful for an employer to discriminate in terms of compensation, conditions, or privileges of employment because of pregnancy.



If a voluntary settlement cannot be reached, and there is sufficient evidence to establish a violation of the law, DFEH may issue an accusation and litigate the case before the Fair Employment and Housing Commission or in civil court. If the Commission or court decides in favor of the complaining party, remedies may include reinstatement, back pay, reasonable attorney's fees, damages for emotional distress, and administrative fines.

For more information, call toll free at  
(800) 884-1684  
Sacramento area & out-of-state at  
(916) 478-7200  
TTY number at (800) 700-2320  
or visit our Web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a reasonable accommodation for an individual with a disability.

To request a copy of this publication in an alternative format, please contact DFEH at the numbers above.



State of California  
Department of Fair Employment & Housing

DFEH-186 (07-07)

## Pregnancy Leave

The Fair Employment and Housing Act (FEHA) contains provisions relating to pregnancy leave. These provisions cover all employers with five or more employees. It is unlawful for an employer to discriminate in terms of compensation, conditions, or privileges of employment because of pregnancy. In addition, there are certain leave and transfer protections and guarantees provided under the FEHA and the *California Family Rights Act (CFRA)*.

All employers must provide information about pregnancy leave rights to their employees and post this information in a conspicuous place where employees tend to gather. Employers who provide employee handbooks must include information about pregnancy leave in the handbook.

### Leave Requirements

- An employee disabled by pregnancy is entitled to up to four months disability leave. If the employer provides more than four months of leave for other types of temporary disabilities, the same leave must be made available to women who are disabled due to pregnancy, childbirth, or a related medical condition.
- Leave can be taken before or after birth during any period of time the woman is physically unable to work because of pregnancy or a pregnancy-related condition. All leave



The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

taken in connection with a specific pregnancy counts toward computing the four-month period.

- Pregnancy leave is available when a woman is actually disabled. This includes time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, or any related medical condition.

- If an employee is disabled as the result of a condition related to pregnancy, childbirth, or associated medical conditions and requests reasonable accommodation upon the advice of her health-care provider, an employer must provide reasonable accommodation.

- As an accommodation, and with the advice of her physician, an employee can request transfer to a less strenuous or hazardous position for the duration of her pregnancy.

- Employees are entitled to take pregnancy disability leave in addition to any leave entitlement they might have under CFRA. For example, an employee could take four months pregnancy disability leave for her disability, and 12 weeks CFRA leave to bond with the baby; to bond with an adopted child; or to care for a parent, spouse, or child with a serious health condition. CFRA leave may also be taken for the employee's own serious health condition. For more information, see DFEH-188 "California Family Rights Act."

- If possible, an employee must provide her employer with at least 30 days advance notice of the date for which the pregnancy disability leave is sought or transfer begins and the estimated duration of the leave.

- If 30 days advance notice is not possible due to a change in circumstances or a medical emergency, notice must be given as soon as practical. The leave may be modified as a woman's changing medical condition dictates. If a woman desires to return earlier than agreed, an employer must reinstate her within two business days of her notice.

### Salary and Benefits During Leave

- Employers who provide health insurance coverage for employees who take leave for non-pregnancy-related, temporary disabilities must provide coverage for employees who take leave for pregnancy, childbirth or related medical conditions.
- An employer may require an employee to use her accrued sick leave during any unpaid portion of her pregnancy disability leave. The employee may also use vacation leave credits to receive compensation during an otherwise unpaid portion of her pregnancy disability leave. An employer may not require an employee to use vacation leave or other accrued time off during pregnancy disability leave.

### Return Rights

- After a pregnancy disability leave or transfer, employees are guaranteed a return to the same position and can

request the guarantee in writing.

- If her same position is no longer available, such as in a layoff due to plant closure, the employer must offer a position that is comparable in terms of pay, location, job content, and promotional opportunities, unless the employer can prove that no comparable position exists.

### Filing a Complaint

If you believe you are a victim of illegal discrimination, you can explore filing a complaint with the Department of Fair Employment and Housing (DFEH) by following these steps:

- Contact DFEH by calling the toll-free number at (800) 884-1684 to schedule an appointment or use our online appointment system at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- Be prepared to present specific facts about the alleged discrimination or denial of leave.
- Keep records and provide copies of documents that support the charges in the complaint, such as paycheck stubs, calendars, correspondence and other potential proof of discrimination.

Complaints must be filed within **one year** of the last act of discrimination.

DFEH will conduct an impartial investigation. We are not an advocate for either the person complaining or the person complained against. We represent the State of California. DFEH will, if possible, try to assist both parties to resolve the complaint.

**“NOTICE B”****FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE**

- Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.
- Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take pregnancy disability leave (PDL) of up to four months, or the working days in one-third of a year or 17½ weeks, depending on your period(s) of actual disability. Time off needed for prenatal or postnatal care; doctor-ordered bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; childbirth; postpartum depression; loss or end of pregnancy; or recovery from childbirth or loss or end of pregnancy would all be covered by your PDL.
- Your employer also has an obligation to reasonably accommodate your medical needs (such as allowing more frequent breaks) and to transfer you to a less strenuous or hazardous position if it is medically advisable because of your pregnancy.
- If you are CFRA-eligible, you have certain rights to take BOTH PDL and a separate CFRA leave for reason of the birth of your child. Both leaves guarantee reinstatement to the same or a comparable position at the end of the leave, subject to any defense allowed under the law. If possible, you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or a family member). For events that are unforeseeable, you must to notify your employer, at least verbally, as soon as you learn of the need for the leave.
- Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.
- Your employer may require medical certification from your health care provider before allowing you a leave for:
  - your pregnancy;
  - your own serious health condition; or
  - to care for your child, parent, or spouse who has a serious health condition.

NOTICE B  
FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE  
Page 2

- See your employer for a copy of a medical certification form to give to your health care provider to complete.
- When medically necessary, leave may be taken on an intermittent or a reduced work schedule. If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.
- Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. Contact your employer for more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). The FEHA prohibits employers from denying, interfering with, or restraining your exercise of these rights. For more information about your rights and obligations, contact your employer, visit the Department of Fair Employment and Housing's Web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov), or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

###

**"NOTICE A"****YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE**

If you are pregnant, have a related medical condition, or are recovering from childbirth, **PLEASE READ THIS NOTICE.**

- California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy"). California also law prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.
- Your employer has an obligation to:
  - reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);
  - transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
  - provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17 $\frac{1}{3}$  weeks) and return you to your same job when you are no longer disabled by your pregnancy or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from nonleave related employment actions, such as a layoff.
  - provide 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 Labor Code section 1030, et seq.
- For pregnancy disability leave:
  - PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.
  - Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position if you request a written guarantee. Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.
  - PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, "severe morning sickness," gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.

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YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE  
Page 2

- PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.
- Your leave will be paid or unpaid depending on your employer's policy for other medical leaves. You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.
- At your discretion, you can use any vacation or other paid time off during your PDL.
- Your employer may require or you may choose to use any available sick leave during your PDL.
- Your employer is required to continue your group health coverage during your PDL at the level and under the conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.
- Taking PDL may impact certain of your benefits and your seniority date; please contact your employer for details.

Notice obligations as an Employee:

- Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans – 30 days advance notice if the need for the reasonable accommodation, transfer or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.
- Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, your employer may require you to supply a written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer or PDL. If the need is an emergency or unforeseeable, you must provide this certification within the time frame your employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification. See your employer for a copy of a medical certification form to give to your health care provider to complete.
- PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact your employer, visit the Department of Fair Employment and Housing's Web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov), or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

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## **FAMILY MEDICAL LEAVE (FMLA) [50 EMPLOYEES OR MORE]**

1. Family Care or Medical Leave Defined. The Company will provide an unpaid family care or medical Leave of Absence for any employee who has at least twelve (12) months service and has worked one thousand two hundred and fifty (1,250) hours during the previous twelve (12) month period. If the employee has worked the required time for the Company, the reasons for requesting a family care or medical leave will determine whether the employee will receive such a leave. The following are reasons that will entitle an employee to a family care or medical leave:

- (i) Leave for reason of the birth of a child of the employee;
- (ii) Leave for reason of the placement of a child with the employee in connection with the adoption or foster care of a child;
- (iii) Leave for a serious health condition of a dependent child of the employee;
- (iv) Leave to care for a parent or spouse who has a serious health condition; and
- (v) Leave because of a serious health condition of the employee which prevents the employee from performing the essential functions of their position.

2. Maximum Amount of Family Care or Medical Leave. The maximum amount of time for family care or medical leave is three (3) months (12 work weeks) during a twelve (12) month period. This twelve-month period is a rolling period and dates back from the date the leave is first used. Leaves for the birth of a child or the placement of a child must be completed within twelve (12) months following the birth or placement of the child. When both spouses work for the Company, the maximum combined amount of leave for the birth or placement of a

child or to care for a parent is twelve (12) weeks in a twelve (12) month period. Intermittent leaves or leaves on a reduced work schedule are not permitted after the birth or placement of a child, unless the Company approves intermittent leaves in advance. This does not apply where the employee's child or the employee has a serious health condition requiring treatment. Leaves for the other reasons specified in the section above can be intermittent or on a reduced work schedule when medically necessary.

3. Position will be Held Open. At the termination of the leave, the employee will be returned to their former position or an equivalent one unless the employee's position has been eliminated. No break in service or loss of seniority occurs during the family care or medical leave. Employees on leave because they have a serious health condition must provide a release to return to work, signed by a health care provider.

4. Serious Health Condition Defined. A serious health condition requires inpatient care, subsequent treatment in connection with inpatient care, or continuing treatment by a health care provider. It includes absences which are on a recurring basis for treatment or recovery. Minor illness of brief durations (3 days or less) are not serious health conditions. Examples of serious health conditions are heart conditions, stroke, cancer, back injuries, pneumonia, emphysema, severe morning sickness, prenatal care, childbirth and recovery from childbirth. Serious health conditions do not include absence for substance abuse (except where treatment by a health care provider is sought), or routine physical exams.

5. Health Care Providers' Certificate Required for Family Care Leave. Employees are required to provide the Company with a certificate from a health care provider which certifies that the leave is required. Employees requesting a leave to care for other family

members or covered service member are required to provide a health care providers' certificate which states that the employee is needed to care for the individual or service member requiring care. In the case of an employee's illness, a health care provider certification is also required. The certificate must state that the employee is unable to perform the essential functions of the job. In the case of a serious health condition of the employee, the Company may require the employee to be examined by a different physician at the Company's cost. The exact information required is set forth on a form which will be provided to you.

6. Notice Required. Employees are required to give the Company thirty (30) days' advance notice of the date that their family care or medical leave will commence, unless the event that gives rise to the need for the leave was unforeseeable, in which case the employee shall give as much notice as practicable of the date when leave will be required. When planning medical treatment, employees are requested to consult with your supervisor in order to make a reasonable schedule, so as to not disrupt our operations, subject to the approval of your doctor.

7. Interpretations of this Family Care or Medical Leave policy shall be governed by state and federal law.

8. Medical Insurance Coverage. Employees on family care or medical leave who are covered by a Company-sponsored group health plan will continue to be covered during the time they would have been working for the Company, absent the family care or medical leave. If the employee was paying a co-payment prior to the family care or medical leave for coverage on the Company-sponsored group health plan, the employee is required to continue to make the co-payment to maintain coverage while on family care or medical leave. The Company is not required to cover employees who do not make the requisite co-payment for insurance.

Employees who do not return to the Company's employ after a family or medical leave shall reimburse the Company for all medical premiums paid on their behalf during the family care or medical leave.

9. Family care or medical leave is unpaid, and no benefits shall accrue during the period of the leave. However, employees may use any accrued vacation or sick time during such leave. Employees wishing to take a family or medical leave must fill out a request form and provide the required medical certification. These forms are available at the office and should be completed and submitted to your supervisor.

10. Military Exigency Leave and Military Care Leave under the FMLA: In 2013, the United States Department of Labor's Wage and Hour Division published its Final Rule to implement statutory amendments that were made to the Family and Medical Leave Act of 1993 (FMLA). The final rule expands the military family leave provisions that are covered below. The provisions above of the Company's FMLA Policy apply to all FMLA leaves of absences taken by employees, including the military family leave provisions, unless expressly set forth below. If you have any questions relating to your right to take FMLA, please see the Human Resources Department.

**A. Types of Leave:**

(1) Military Exigency Leave: When an employee's spouse, parent, son or daughter (of any age) experiences a Qualifying Exigency resulting from military service (applies to active service members deployed to a foreign country, National Guard and Reservists), an employee is entitled up to a combined total of twelve (12) weeks of unpaid FMLA leave per Leave Year; and

(2) Military Care Leave: To care for a an employee's spouse, parent, son, daughter (of any age) or next of kin who requires care due to an Injury or Illness incurred while on active duty or was exacerbated while on active duty. NOTE: A leave of up to 26 weeks of leave per twelve-month period may be taken to care for the injured/ill service member.

**B. Key Definitions Relating to Military Leave under the FMLA:**

(1) A "Son or Daughter" for the purposes of Parental or Family Leave is defined as a biological, adopted, foster child, step-child legal ward or a child for whom the employee stood in loco parentis to, who is (1) under eighteen years of age or, (2) eighteen years of age or older and unable to care for him/herself because of physical or mental disability. A "Son or Daughter" for the purposes of Military Exigency or Military Care leave can be of any age.

(2) "Next of Kin" for the purposes of Military Care leave is a blood relative other than a spouse, parent or child in the following order: brothers and sisters, grandparents, aunts and uncles, and first cousins. If a military service member designates in writing another blood relative as his/her caregiver, that individual shall be the only next of kin. In appropriate circumstances, employees may be required to provide documentation of next of kin status.

(3) "Qualifying Exigencies" for Military Exigency leave include

- Short-notice call-ups/deployments of seven days or less (NOTE: leave for this exigency is available for up to seven days beginning the date of call-up notice);
- Attending official ceremonies, programs or military events;

- Special childcare needs created by a military call-up including making alternative child-care arrangements, handling urgent and non-routine childcare situations, arranging for school transfers or attending school or daycare meetings;
- Making financial and legal arrangements;
- Attending counseling sessions for the military service member, the employee, or the military service members son or daughter who is under 18 years of age or 18 or older but is incapable of self care because a mental or physical disability;
- Rest and Recuperation (NOTE: fifteen (15) days of leave is available for this exigency per R&R event);
- Post-deployment activities such as arrival ceremonies, reintegration briefings and other official ceremonies sponsored by the military (Note: leave for these events is available during a period of 90-days following the termination of active duty status). This type of leave may also be taken to address circumstances arising from the death of a covered military member while on active duty;
- Parental care when the military family member is needed to care for a parent who is incapable of self-care (e.g. arranging for alternative care or transfer to a care facility); and,
- Other exigencies that arise that are agreed to by both the Company and employee.

(4) A “Serious Injury/Illness” incurred by a service member in the line of active duty or that is exacerbated by active duty is any injury or illness that renders the service member unfit



to perform the duties of his/her office, grade, rank or rating.

**C      Family Care, Personal Medical Leave, Military Exigency and Military Care**

**Leave:** Leave taken for these reason may be taken in a block or blocks of time. In addition, if a Health Care Provider deems it necessary or if the nature of a Qualifying Exigency requires, leave for these reasons can be taken on an intermittent or reduced schedule basis.

**D      Certification and Fitness For Duty Requirements:** Employees are typically required to comply with the certification requirements set forth in Section 5 above. In addition, employees requesting a Military Exigency leave may also be required to provide appropriate active duty orders and subsequent information concerning particular Qualifying Exigencies involved.

**E.      Spouse Aggregation of Leave:** A husband and wife employed by the Company will be limited to a combined total of 26-weeks of leave to care for a military service member. This 26-week leave period will be reduced, however by the amount of leave taken for other qualifying FMLA events. This type of leave aggregation does not apply to leave needed because of an employee's own serious health condition, to care for a spouse or child with a serious health condition or because of a Qualifying Exigency.

**PREGNANCY DISABILITY LEAVE OF ABSENCE [ 50 EMPLOYEES OR MORE]**

**(THIS POLICY IS FOR EMPLOYERS WHO HAVE AN FMLA POLICY) [OPTIONAL]**

Any employee who is disabled because of pregnancy or a pregnancy-related condition is entitled to up to four (4) months disability leave per pregnancy. The four (4) month leave is defined as one-third of a year or 17 1/3 weeks. A full time employee working 40 hours a week is entitled 693 hours of leave. A part-time employee working 20 hours per week is entitled to 346.6 hours of leave. This leave may be taken intermittently or all at once when medically advisable. During the disability leave, the employee is entitled to use whatever accrued vacation or sick benefits are available, but such benefits cannot be used to extend the four (4) month leave.

Such leave of absence is without pay, and no benefits shall accrue during the period of the leave. Health insurance coverage will be maintained during the Pregnancy Disability Leave.

Upon the completion of the disability leave, the employee shall be entitled to return to the same job previously held, or a comparable position if the employee is not entitled to reinstatement to the same position for legitimate business reasons unrelated to the pregnancy disability leave. If the employee cannot be returned to the same job, she must be given a comparable position for which she is qualified on her scheduled reinstatement date or within 60 calendar days. During the 60-day period, the company must provide notice to the employee of potential, available and comparable positions.

Employees must provide at least thirty (30) days' advance notice of the need for pregnancy leave if it is foreseeable. If thirty (30) days is not practicable, as much notice as is practicable should be given. Employees desiring a pregnancy leave must fill out a request form and provide a doctor's certification stating. (i) the commencement date; (ii) duration of such leave; and (iii) an explanatory statement that due to the disability, the employee is unable to

work at all or is unable to perform one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy or to other persons. Forms are available at the office and should be completed and submitted to your supervisor.

Employees who are eligible for our family and medical leave policy may be provided with up to twelve (12) weeks of coverage under our medical plan subject to the requirements and conditions of the “medical insurance coverage” section of our family and medical leave policy. The first twelve (12) weeks of leave for such employee is counted toward the employee’s FMLA leave entitlement under federal law, but not to leave under the California Family Rights Act (CFRA). CFRA leave is a separate and distinct entitlement from a pregnancy disability leave under this section. Employees may, under certain conditions, be eligible for twelve (12) additional weeks of CFRA leave at the end of the employee’s pregnancy disability or at the end of four (4) months pregnancy disability leave under this section, whichever occurs first.

Pregnancy Accommodation. In lieu of a pregnancy leave of absence, a pregnant employee may request a transfer to a less strenuous or less hazardous position. If such a transfer can be reasonably accommodated, a pregnant employee will be transferred for the duration of her pregnancy, provided that she submits a written request for such transfer, and, in addition, furnishes a doctor’s written certificate attesting that the transfer request is upon doctor’s advice. However, the company will not undertake to create additional employment within the company that would not otherwise be created to meet its own business needs, nor will the company be required to discharge any employee, transfer any employee with more seniority than the pregnant employee, or to promote an employee who is not qualified to perform the job. Upon transfer, an employee will receive the salary and benefits which are regularly provided to employees in the position to which the employee has been transferred.

Consequences of Failure to Return From the Leave of Absence. Employees should be advised that failure to return after a leave of absence on the scheduled date of return can result in termination.

**PREGNANCY DISABILITY LEAVE OF ABSENCE [LESS THEN 50 EMPLOYEES]**

**(THIS POLICY IS FOR EMPLOYERS WHO DO NOT HAVE AN FMLA POLICY)**

Any employee who is disabled because of pregnancy or a pregnancy-related condition is entitled to up to four (4) months disability leave per pregnancy. The four (4) month leave is defined as one-third of a year or 17 1/3 weeks. A full time employee working 40 hours a week is entitled 693 hours of leave. A part-time employee working 20 hours per week is entitled to 346.6 hours of leave. This leave may be taken intermittently or all at once when medically advisable. During the disability leave, the employee is entitled to use whatever accrued vacation or sick benefits are available, but such benefits cannot be used to extend the four (4) month leave.

Such leave of absence is without pay, and no benefits shall accrue during the period of the leave. Health insurance coverage will be maintained during the Pregnancy Disability Leave, not to exceed four (4) months in a 12-month period.

If the need for disability leave is foreseeable, an employee must provide at least thirty (30) days' advance notice. If thirty (30) days is not possible, notice must be given by the employee as soon as practicable. Pregnancy Disability forms are available from the [corporate office].

Pregnancy Disability leave will be granted on the basis of a physician's written statement that an employee is no longer able to work due to a pregnancy related disability. Employees requiring a Pregnancy Disability leave must submit a written request to the [corporate office] and a physician's certification stating: a) the date on which the employee became disabled due to pregnancy; b) the probable duration of the period(s) of disability; and c) a statement that, due to the disability, the employee is unable to work at all or to perform any one or more of the essential functions of the employee's position without undue risk to herself, the successful

completion of the pregnancy or to other persons. The certification shall also provide the Company with the expected return to work date. Employees returning to work after a Pregnancy Disability leave must have a written release from a physician verifying that they are able to return to work and safely perform their duties.

An employee who is granted a Pregnancy Disability leave of absence will be entitled to utilize any accrued vacation or sick/personal leave benefits during the period of disability for which the employee may be eligible. However, employees are not eligible to accrue vacation or sick pay during the leave of absence, nor are they eligible to receive paid holiday benefits.

Pregnancy Accommodation.

In lieu of a pregnancy leave of absence, a pregnant employee may request a transfer to a less strenuous or less hazardous position. If such a transfer can be reasonably accommodated, a pregnant employee will be transferred for the duration of her pregnancy, provided that she submits a written request for such transfer, and, in addition, furnishes a doctor's written certificate attesting that the transfer request is medically necessary. However, the Company will not create additional employment within the Company that would not otherwise be created to meet its own business needs, nor will the Company be required to discharge any employee, transfer any employee with more seniority than the pregnant employee, or to promote an employee who is not qualified to perform the job. Upon transfer, an employee will receive the salary and benefits which are regularly provided to employees in the position to which the employee has been transferred.

At the conclusion of the employee's Pregnancy Disability Leave, the employee shall be entitled to return to the same job previously held, or a comparable position if the employee is not entitled to reinstatement to the same position for legitimate business reasons unrelated to the



pregnancy disability leave. If the employee cannot be returned to the same job, she must be given a comparable position for which she is qualified on her scheduled reinstatement date or within 60 calendar days. During the 60-day period, the company must provide notice to the employee of potential, available and comparable positions.

Consequences of Failure to Return From the Leave of Absence.

Employees should be advised that failure to return to work upon the expiration of your approved leave of absence without written notification and approval from the Department will constitute job abandonment.



## Fast facts about Paid Family Leave

- Provides benefits but does not provide job protection or return rights.
- Provides eligible workers partial wage replacement when taking time off work to care for a parent, child, spouse, registered domestic partner or to bond with a new child.
- Covers employees who are covered by SDI (or a voluntary plan in lieu of SDI).
- Offers up to 6 weeks of benefits in a 12-month period.
- Provides benefits of approximately 55 percent of lost wages.
- Paid Family Leave benefits are considered taxable income.

## In California, it's the law. **Paid Family Leave** Benefits

The time to care. 1-877-238-4373

To apply online or for more information, visit:

[www.edd.ca.gov/disability](http://www.edd.ca.gov/disability)

1-877-238-4373 (English)  
1-877-379-3819 (Español)  
1-866-692-5595 (Cantonese)  
1-866-692-5596 (Vietnamese)  
1-866-627-1567 (Armenian)  
1-866-627-1568 (Punjabi)  
1-866-627-1569 (Tagalog)  
1-800-445-1312 (TTY)

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 1-877-238-4373 (voice), or TTY 1-800-445-1312.

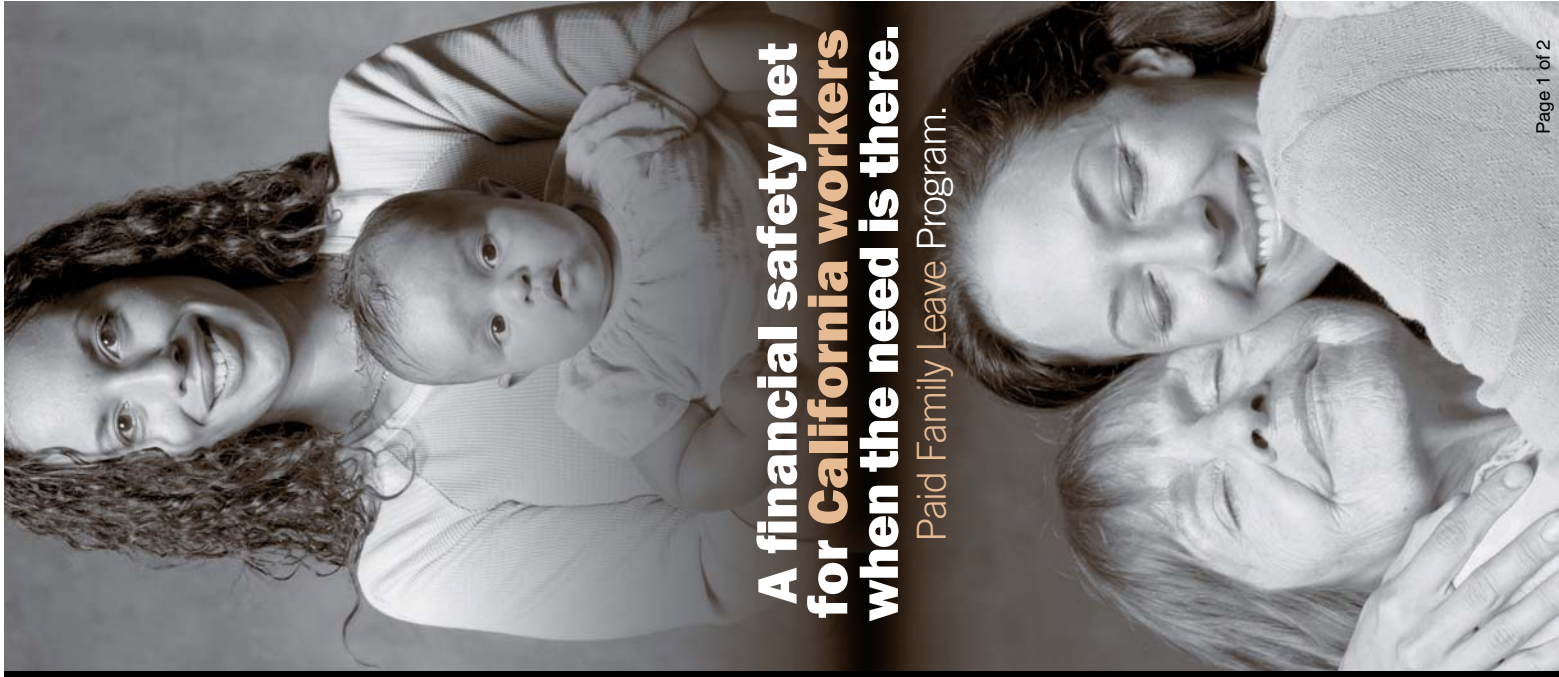
This pamphlet is for general information only and does not have the force and effect of law, rule or regulation.

State of California



**A financial safety net  
for California workers  
when the need is there.**

Paid Family Leave Program.



## Paid Family Leave benefits for California workers

There may be times in the life of a working person when they need to care for a loved one. Whether it's a working parent bonding with a newborn, or an employee caring for a seriously ill parent, child, spouse, or registered domestic partner, California's Paid Family Leave program was created for these times (**Note:** Registered domestic partners must meet requirements and register with the California Secretary of State to be eligible for benefits).



## A program benefiting you and your family

California leads the nation as the first state to make it easier for employees to balance the demands of the workplace and family care needs at home. Paid Family Leave (PFL) benefits are based on the claimant's (care provider's) past quarterly earnings. For more information regarding maximum benefit amounts paid, view the link to the *Disability Insurance (DI) & Paid Family Leave (PFL) Weekly Benefit Amounts in Dollar Increments* form, DE 2589 at [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability).

## Paid Family Leave for California employees

**Paid Family Leave benefits do not provide job protection or return rights.** Job protection **may** be provided if your employer is subject to the federal Family Medical Leave Act and the California Family Rights Act. Notify your employer of the reason for taking leave in a manner consistent with your company's leave policy.

To qualify for Paid Family Leave benefits, you must meet the following requirements:

- Be covered by State Disability Insurance (SDI) (or a voluntary plan in lieu of SDI) and have earned at least \$300 in your base period from which deductions were withheld.
- Supply medical information supporting your claim that the care recipient has a serious health condition and requires your care.
- Submit your claim no earlier than 9 days, but no later than 49 days after the first day your family care leave began.
- Provide documentation to support a claim for bonding with a new biological, adopted, or foster child.
- Use up to two weeks of any earned but unused vacation leave or paid time off (PTO) if required by your employer prior to the initial receipt of benefits.
- Serve a 7-day unpaid waiting period before benefits begin for each different care recipient within the 12-month period.

**You may not** be eligible for benefits if:

- You are receiving Disability Insurance, Unemployment Insurance, or Workers' Compensation benefits.
- You are not working or looking for work at the time you begin your family care leave.
- You are not suffering a loss of wages.
- The need for care is not supported by the certificate of a treating physician or practitioner.
- You are in custody due to conviction of a crime.

You are entitled to:

- Know the reason and basis for decision affecting your benefits.
- Appeal decisions about your eligibility for benefits (Appeals must be sent to Paid Family Leave in writing.)

(INTERNET)



- A hearing of your appeal before an Administrative Law Judge (ALJ). Decisions may be further appealed to the California Unemployment Insurance Appeals Board and the courts.
- Privacy — Information about your claim will be kept confidential except for the purposes allowed by law.

## Apply for benefits

Apply for Paid Family Leave benefits online at [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability). Employers and physicians/practitioners can submit claim information through SDI Online. You may also file a paper form. To request a claim form visit [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability).

If you are currently receiving SDI pregnancy-related benefits, it is not necessary to request a PFL claim form. PFL claim filing information will be sent through your SDI Online account or via mail when your pregnancy-related disability claim ends.

## Contact Paid Family Leave

For questions about Paid Family Leave benefits, please visit [www.edd.ca.gov/Disability/Paid\\_Family\\_Leave.htm](http://www.edd.ca.gov/Disability/Paid_Family_Leave.htm).

**1-877-238-4373 (English)** **1-877-379-3819 (Español)**  
**1-866-692-5595 (Cantonese)** **1-866-692-5596 (Vietnamese)**  
**1-866-627-1567 (Armenian)** **1-866-627-1568 (Punjabi)**  
**1-866-627-1569 (Tagalog)** **1-800-445-1312 (TTY)**

For more information, visit: [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability)  
Claim forms should be mailed to Paid Family Leave at:  
P.O. Box 997017, Sacramento, CA 95799-7017

## **CALIFORNIA PAID FAMILY LEAVE OF ABSENCE**

Employees are entitled to up to six weeks of leave benefits over a 12-month period when an employee cannot work due to the serious health condition of a family member or the birth, adoption, or foster placement of a child with the employee or the employee's domestic partner. Employees may be eligible to collect Family Temporary Disability Insurance ("FTDI") benefits provided through the California State Disability Insurance ("SDI") system during such a leave. As the program will be administered by the California Employment Development Department ("EDD"), please contact your local EDD office for additional information.

Employees are eligible for family care benefits if they provide a certification to the EDD establishing that either : (1) a "serious health condition" of a child, parent, spouse or registered domestic partner "warrants the participation of the employee to provide care," or (2) the employee is taking leave for reason of the birth, adoption or foster care placement of a minor child with the employee or the employee's domestic partner, and the leave is taken within one year of the birth or placement. "Serious health condition" is given the same definition as contained in the California Family Rights Act ("CFRA"). Situations that "warrant the participation of the employee to provide care" include providing psychological comfort and arranging third party care for the family member, as well as directly providing or participating in medical care. However, an employee is not eligible for family care benefits for any day that another family member is able and available to provide the required care.

Beginning on July 1, 2014, employees will be eligible for family care benefits if they need to take care of seriously ill grandparents, grandchildren, siblings, or parents-in-law.

The first seven (7) consecutive days of leave taken for family care are deemed a “waiting period,” during which no benefits are payable. Employees are required to use one [or two] week(s) of vacation leave prior to receiving benefits. The vacation time will be applied to the waiting period.

[Employees who are entitled to leave under the Family and Medical Leave Act (“FMLA”) or the CFRA must take FTDI leave concurrent with their FMLA and/or CFRA leave.]

An employee may not receive FTDI benefits if he or she is also eligible, or already receiving, State Disability Insurance, Unemployment Compensation Insurance, or Workers’ Compensation.

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM | FMLA Regulations: (29 C.F.R. § 825.100, et seq.) | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.) |
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### FOUR BIG DIFFERENCES

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| <b>Pregnancy as a “Serious Health Condition” (SHC)</b>                                     | Covered as a Family and Medical Leave Act (FMLA) serious health condition.<br>No change with new regulations.   | ** Not covered under CFRA. Instead, in CA, a pregnant employee is entitled to a pregnancy disability leave (PDL) of up to 4 months. Employer need have only 5 or more employees & no eligibility period for employee. Eligible CFRA employee can then take a 12 week CFRA baby bonding leave. First 12 weeks of PDL can run concurrently with FMLA for eligible employees, and for that period, employer needs to maintain health benefits. |
| <b>Registered Domestic Partners Equal Spouses</b>  | Not covered under FMLA.<br>No change with new regulations.  | ** Covered under CFRA, just like spouses. (Fam. Code §297.5.) Note that this may give a domestic partner more family leave, as the domestic partner will not have exhausted his/her FMLA leave taking CFRA leave to care for a domestic partner.  |
| <b>“Qualifying Exigency” because of employee’s or family member’s active military duty</b> | ** Eligible FMLA employees are entitled to up to 12 weeks of leave for “any qualifying exigency” arising because the spouse, son, daughter or parent of the employee is on <b>active military duty</b> , or has been notified of an impending call to active duty status, in support of a contingency operation. Health benefits are included. The family member must be a member of the Guard, Reserve or be a retired member of the Armed Services. (825.126) | Not covered under CFRA. Thus, CFRA leave not exhausted when FMLA used.<br><br>Note: under a 2007 California military spouse leave law (Mil. & Vet. Code § 395.10), an employee who works 20+ hours per week for an employer with 20+ employees can take an unpaid leave of up to 10 days while the military spouse is on leave from deployment. Some or all of this may run concurrently with exigency leave.                               |
| <b>Care for Ill or Injured Service Member</b>  | ** An employee who is the spouse, child, parent or <b>next of kin</b> of a covered service member may take a total of <b>26 weeks</b> of leave during a 12 month period to care for a covered service member who is ill or injured in the line of duty on active duty. Health benefits are included. (825.127)  | Covered under CFRA if family member is a covered CFRA employee, i.e., a spouse, child or parent. (7297.0(h)(2).) If “next of kin” is not within these categories, CFRA leave would not be exhausted when FMLA used. Furthermore, CFRA leave is only 12 weeks, so last 14 weeks would be FMLA only.  |



## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

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| <b>TERM</b> | <b>FMLA Regulations: (29 C.F.R. § 825.100, et seq.)</b> | <b>CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)</b> |
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### PREGNANCY & BABY BONDING: FMLA/CFRA DIFFERENCES

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| <input type="checkbox"/> <b>Minimum Duration of Bonding Intermittent Leave</b> | Eligible employees may work an intermittent or reduced schedule for baby bonding <i>only if the employer agrees</i> . (825.120(b) & 825.121(b)) No change with new regulations. | ** No requirement that employer agrees. Basic minimum leave duration is two weeks for CFRA-only baby bonding leave. But, employer must grant a request for leave of less than two weeks' duration on any two occasions. |
| <input type="checkbox"/> <b>Reinstatement</b>                                  | Reinstatement required to the same or equivalent position. (825.214) No change with new regulations.  | CFRA has same reinstatement rights as FMLA. (7297.2(a).)<br><br>** Pregnancy disability leave (PDL) requires reinstatement to same position (not just comparable). (7291.9(a).)   |

### LIMITATIONS ON LEAVE FOR SPOUSES/PARENTS WORKING FOR SAME EMPLOYER

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| <b>Family leave to care for parent, for child's birth; to care for child after birth, or for placement of a child through foster care or adoption</b> | <p>If both <i>husband and wife</i> work for same employer, leave is limited to 12 weeks between the spouses:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> to care for a parent's SHC (new regulations);</li> <li><input type="checkbox"/> for child's birth;</li> <li><input type="checkbox"/> to care for the child after birth; or</li> <li><input type="checkbox"/> for placement of a child through adoption or foster care.</li> </ul> <p>Each spouse's unused portion of FMLA leave would still be available for other purposes, such as employee's or child's SHC. If one spouse employee is not FMLA-eligible, other eligible FMLA employee would have entire 12 weeks of leave. (825.120(a)(3); 825.201(b).) No change with new regulations.</p> <p>** Unmarried parents (including same sex parents) are not subject to these restrictions.</p> | <p>Employer may limit leave to a combined total of 12 weeks if both <i>parents</i> work for the same employer and leave is for the birth, adoption or foster care placement of their child. The CFRA regulations specifically state, "The employer may not limit their entitlement to CFRA leave for <i>any other qualifying purpose</i>." (7297.1(c).)</p> <p>** No CFRA limitation on spouses caring for parents.</p> |
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## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM | FMLA Regulations: (29 C.F.R. § 825.100, et seq.) | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.) |
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### ESTABLISHING COVERAGE

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| <b>ESTABLISHING A SERIOUS HEALTH CONDITION (SHC)</b>            | <p>No change under the new regulations except for the following clarifications (825.113 &amp; 825.115): An employee establishes that he/she has a SHC by:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Visiting a Health Care Provider (HCP) on <u>2</u> occasions <u>&amp;</u> having more than 3 days of incapacity associated with the condition.</li> <li><input type="checkbox"/> The 1st visit establishing a SHC must occur in person within 7 days of the incapacity along with treatment (e.g., prescription medication).</li> <li><input type="checkbox"/> The 2 visits must occur within a 30-day period from the onset of the initial incapacity; &amp;</li> <li><input type="checkbox"/> The HCP, not the employee, must determine if a 2nd visit is needed during the 30 day period.</li> <li><input type="checkbox"/> New regulations: For purposes of establishing a chronic condition, “periodic” visits to a HCP means visiting a HCP twice or more per year for the same condition.</li> </ul> | <p>CFRA reference old FMLA regulations to establish a SHC. (7297.0(o)(2).)</p> <p>Note: CFRA does NOT include Pregnancy as a SHC (7297.6(b)) and that is why a disabled, pregnant woman in California is eligible for up to seven months of leave pregnancy disability leave (PDL)/FMLA (for own pregnancy-related disability) and then CFRA (bonding) (7297.6(d).)</p> |
| <b>ESTABLISHING NEED TO CARE FOR A FAMILY MEMBER WITH A SHC</b> | <p>New regulations: Clarify that “incapable of self-care because of a mental or physical disability” is determined at the time the FMLA leave commences, not later. As the ADA has been amended to make it easier to establish a disability, more conditions might be determined to be disabilities which would qualify employee to take FMLA leave. (825.122 &amp; 825.124.)</p>  | <p>CFRA regulations state that employee may take leave for a covered family member when the family member’s SHC “warrants the participation of the employee.” (7297.0(a)(1)(D)(1).) The definition of SHC does not reference the term disability, instead uses the terms “illness, injury, impairment, or physical or mental condition.” (7297.0(o).)</p>               |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

|             |   |   |
|-------------|---|---|
| <b>TERM</b> | <b>FMLA Regulations: (29 C.F.R. § 825.100, et seq.)</b> | <b>CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)</b> |
|-------------|---|---|

### EMPLOYEE ELIGIBILITY FOR LEAVE

|   |   |   |  |
|---|---|---|--|
| <input type="checkbox"/> <b>Break in service</b>  | The new regulations clarify that an employee is eligible for FMLA leave so long as the employee has worked for an employer for a total of 12 months, even with a break in service. The break can be up to 7 years & even longer in certain circumstances, .e.g., where the break occurred because of military obligations. (825.110(b)(1).)   | ** Employee is eligible for leave so long as employee has worked for employer a total of 12 months (even if there's been a break in service) & worked 1250 hours in past year. (7297.0(e).) |  |
| <input type="checkbox"/> <b>Re-qualifying for leave</b>   | The new regulations clarify that an employee does not need to meet the eligibility tests again to requalify for extra intermittent leave within the 12-month period if the additional leave is requested for the same qualifying reason. (825.110(e).) No change from interpretation of old regulations.  | Same. (7297.0(e)(1).)   |  |
| <input type="checkbox"/> <b>Counting Leave as FMLA Leave When Eligibility Commences "Midstream"</b> | If an employee is not eligible for FMLA leave at the start of a leave because the employee has not met the 12 month length-of-service requirement, the employee may nonetheless meet this requirement while on FMLA leave, because leave time counts toward length of service (although not for the 1,250 hour requirement). The employer should designate the portion of the leave where the employee has met the one year requirement as FMLA leave. (825.110.) | No comparable guidance in CFRA regulations.   |  |

### COMPUTATION OF TIME PERIODS

|                              |  |   |  |
|------------------------------|--|---|--|
| <b>Treatment of Holidays</b> | New regulations: When a holiday occurs during an employee's scheduled workweek and the employee is taking a full week of leave, the holiday counts against the employee's 12-week leave entitlement. | CFRA regulations have no similar provision for leave taken in less-than-a-week increments.<br>CFRA regulations do follow the remaining part of this FMLA regulation, 825.200(h), which provides that if a |  |
|------------------------------|--|---|--|

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)  | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)   |
|------|---|--|
|      | <p>If the employee is taking FMLA leave in increments of less than a week, the time counts against the FMLA entitlement only if the employee was required to work on the holiday. (825.200(h).)</p> | <p>holiday falls within a CFRA leave week, the entire week is counted as CFRA leave. If however, the employer's business activity has temporarily ceased for some reason and the employees are not expected to report for work for 1 or more weeks (e.g., a two week holiday school closing, summer vacation or a plant retooling closing), the days the employer's activities have ceased do not count against the employee's CFRA entitlement. (7297.3(c)(3).)</p> |

### INTERMITTENT LEAVE

|                                       |  |   |
|---------------------------------------|--|---|
| <b>SCHEDULING INTERMITTENT LEAVE</b>  | New regulations: Employees who need intermittent or reduced schedule leave for planned medical treatment must make a "reasonable effort" to schedule the treatment not to unduly disrupt their employer's operations. (825.202.)   | ** No comparable CFRA requirement.  |
| <b>INTERMITTENT LEAVE INCREMENTS</b>  | New regulations: Employer may use a time increment for absences or leave use no greater than the <i>shortest</i> time period that the employer uses for other forms of leave provided that it is not greater than 1 hour & that an employee's FMLA leave entitlement is not reduced by more than the leave amount actually taken. Limited exception where it is physically impossible for the employee to begin/end work mid-shift (e.g., flight attendant); then entire period that employee is forced to be absent is FMLA leave. (825.205.) | An employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave. (7297.3(e).)   |
| <b>CALCULATING INTERMITTENT LEAVE</b> | New regulations: To calculate an employee's leave entitlement when an employee works a schedule that varies from week to week, employers are required to use a 12-month average of hours worked prior to the commencement of the employee's FMLA leave. (825.205(b).)  | CFRA regulations: Employee is entitled to 12 of the employee's "normally scheduled workweeks" for intermittent leave with no guidance on how to average those hours to come up with a "normally scheduled workweek." (7297.3(c).) |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

|             |   |   |
|-------------|---|---|
| <b>TERM</b> | <b>FMLA Regulations: (29 C.F.R. § 825.100, et seq.)</b> | <b>CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)</b> |
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|  |  |  |
|--|--|--|
| <b>OVERTIME &amp; INTERMITTENT LEAVE</b> | New regulations: If an employee would have been required to work overtime hours but could not because of a FMLA-qualifying condition, the employee may be charged FMLA leave for the hours not worked. Employers cannot discriminate in the assignment of OT to deplete FMLA leave takers from their FMLA leave entitlement. (825.205(c).) | ** No comparable CFRA requirement.   |
| <b>DOCKING PAY OF EXEMPT EMPLOYEES</b>   | Employers may dock exempt employees' pay for FMLA intermittent leave/reduced work schedule when paid leave exhausted. (825.206(a).)  | ** CFRA does not cover this issue. CA's DLSE has not provided guidance on this issue & Ca. employers dock exempt employees' pay at their own risk. |

### SUBSTITUTION OF PAID LEAVE FOR FMLA/CFRA

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|--|--|--|
| <b>VACATION, PERSONAL TIME OFF (PTO), SICK LEAVE &amp; DISABILITY BENEFITS</b> | <p><u>Employer has a paid leave policy:</u> Employer may <i>require</i> that employees meet the terms &amp; conditions (e.g., give requisite notice or use leave in certain increments) of using paid leave if they want to substitute it for unpaid FMLA leave (i.e., have the paid leave run concurrently). (825.207(a).)</p> <p><u>No paid leave policy:</u> the <i>employee may elect</i> to use vacation or PTO at his/her option. (825.207(a).)</p> <p><u>Supplementing disability benefits:</u> Employer &amp; employee may agree (but can't require) that other forms of accrued time (sick leave, vacation &amp; PTO) can augment paid disability payments while on FMLA. (825.207(d) &amp; (e).)</p> | <p>** No distinction made in CFRA regulations between employers with/without paid leave policies. Employer or employee may <i>require</i> use of vacation, other PTO (7297.5(b)(1) &amp; (b)(2)) or sick leave (for employee's own SHC). Employer or employee may mutually agree to use sick leave for any other reason. (7295.5(b)(3).)</p> <p>No regulation on supplementing disability benefits with other forms of paid leave.</p> <p>** Employees can elect to use vacation/PTO during PDL; but employers cannot require it. Employers can require using sick leave. (Gov. Code §12945(a) &amp; 7291.11(b)(2).)</p> <p>CA employers must give employees notice of SDI/PFL benefits at hire &amp; when given notice of qualifying event.</p> |
|--|--|--|

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM   | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)  |   | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.) |
|--|---|---|--|
| <b>IF EMPLOYEE REQUESTS TIME OFF:</b>  |   |   |  |
| <input type="checkbox"/> <b>No mention of qualifying leave reason</b>                                    | If employee does not give “sufficient information” for the employer to know requested leave is potentially FMLA-qualifying (whether paid or unpaid), the employee will not be entitled to have the leave designated as FMLA protected. New regulations clarify what is “sufficient information.” (825.301(b).)  | If an employee requests vacation or PTO without reference to a qualifying purpose, the employer may not ask whether the employee is taking the time off for a CFRA-qualifying purpose. (7297.5(b)(2)(A).) |  |
| <input type="checkbox"/> <b>Denied leave request, employee then gives family leave-qualifying reason</b> | If the employer denies the employee’s request, and the employee then provides information that the requested time off is (or may be) for FMLA leave, the employer may inquire further into the reasons for the absence. If it’s a FMLA purpose, employer must grant leave but can then charge it against employee’s vacation or PTO. (825.301(b).)  | Same. (7297.5(b)(2)(A)(1).)   |  |
| <input type="checkbox"/> <b>Sufficient Notice of Leave</b>   | Calling in sick in the case of unforeseeable leave is not enough to trigger an employer’s obligation to determine if the leave is possibly FMLA-protected. When an employee seeks leave due to a FMLA-qualifying reason for which the employer has previously provided FMLA-protected leave, the employee must <i>specifically reference</i> the qualifying reason for leave in notifying the employer. (825.302(d).) | No comparable CFRA regulation.  |  |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

|             |   |   |
|-------------|---|---|
| <b>TERM</b> | <b>FMLA Regulations: (29 C.F.R. § 825.100, et seq.)</b> | <b>CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)</b> |
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### EMPLOYER NOTICE REQUIREMENTS

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|--|--|---|
| <input type="checkbox"/> <b>For All Types of Leave</b>                                     | <p>Employers must post a specific notice for employees explaining their leave rights. (825.300.) New regulations now clarify electronic posting is okay.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Notice must be posted in a conspicuous place where applicants and employees tend to congregate. (825.300(a)(1).)</li> <li><input type="checkbox"/> If the employer publishes an employee handbook or other written guidance to employees on employee benefits or leave rights, employers must include all information contained in the poster in the handbook/guidance. If no written guidance exists, all of the poster's information must be distributed to employees upon hiring in writing or electronically. (825.300(a)(3).)</li> </ul> | <p>Same posting requirements. (7297.9.)</p> <p>In addition to the required notification, California's Department of Fair Employment and Housing (DFEH) provides informational brochures that may, but are not required, to be distributed to employees. A sample copy of the DFEH brochures, <u>California Family Rights Act Brochure - English</u>, or the <u>California Family Rights Act Brochure - Spanish</u>, may be viewed on DFEH's website, <a href="http://www.dfeh.ca.gov">www.dfeh.ca.gov</a>. This may be copied and distributed to employees.</p> |
| <input type="checkbox"/> <b>Notice Req'ts: Employers Subject to PDL &amp; Family Leave</b> | <p>Federal law requires posting WH 1420 (FMLA Poster) (App. C to Part 825.)</p>  | <p>State law requires a combined <b>PDL/CFRA</b> notice. (7297.9(a) &amp; (d).)</p>   |

### LEAVE DESIGNATION

|  |   |   |
|--|---|---|
| <b>NOTIFYING EMPLOYEE LEAVE WAS APPROVED</b> | <p>** When the employee puts the employer on notice of the need for leave, the employer must provide employee with notice of their rights &amp; responsibilities if leave taken should qualify for FMLA. When the employee has sufficient information to determine whether leave is FMLA protected (e.g., once medical certification is</p> | <p>CFRA regulations require <u>10 business days</u> notice. (7297.4(a)(6).)</p> <p>CFRA regulations don't require employer to give reason for failure to grant CFRA leave nor to provide employee with a list of employee's essential job functions to give to the employee's health care provider.</p> |
|--|---|---|

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM                           | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)   |  | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)   |
|--------------------------------|--|--|--|
|                                | returned), an employer must notify an employee within <u>5 business days</u> (old regulations, 2 days) whether the employee is leave eligible and, if not, state at least one reason why not. If the employer wants a fitness for duty certification before employee can return to work, the designation notice must include this requirement and a statement of the employee's essential job functions. (825.300(d).) |  |  |
| <b>RETROACTIVE DESIGNATION</b> | New regulations: Employers may retroactively designate leave as FMLA leave, so long as there is no individualized harm. If there is harm, employer may be liable. (825.301.)   |  | CFRA regulations follow FMLA regulations:<br>“Employers may not retroactively designate leave as ‘CFRA leave’ after the employee has returned to work, except under those same circumstances provided for in FMLA & its implementing regulations for retroactively counting leave as ‘FMLA leave.’” (7297.4(a)(1)(B).) |

### MEDICAL CERTIFICATION

|   |  |   |
|---|--|---|
| <input type="checkbox"/> <b>Identifying the employee's own serious health condition (SHC)</b> | <p>New regulations allow employers to ask for a diagnosis of what is the SHC. (825.306(a)(3).)</p> <p>If additional leave is requested at the end of the period that the health-care provider originally estimated the employee needed for family leave, the employer may require the employee to obtain recertification. (825.307.)</p> | <p><b>** CFRA regulations specify that an employer <i>cannot</i> ask for a diagnosis, but it may be provided at employee's option. (7297.4(b)(2).)</b></p> <p>Employees have provided sufficient information to make a determination under the CFRA if they provide:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The date, if known, on which the SHC began;</li> <li><input type="checkbox"/> The probable duration of the condition; and</li> <li><input type="checkbox"/> A statement that, due to the SHC, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his/her position.</li> </ul> |
|---|--|---|



## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM   | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)  | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)   |
|--|---|--|
| <input type="checkbox"/> <b>Second &amp; Third Opinions for Employee's SHC</b>           | <p>If the employer doubts the validity of the employee's medical certification, the employer may require a second health care opinion, designated &amp; paid for by employer. If first &amp; second opinions conflict, then require and pay for a third opinion (with a provider mutually selected by employer &amp; employee). Third opinion is final &amp; binding. (825.307(b).)</p> | <p>Employers can use CFRA regulations "Certification of Health Care Provider" form (at 7297.11) or its equivalent, such as the U.S. Dept. of Labor Form WH-380, revised Dec. 1994 ("Certification of Health Care Provider/Family &amp; Medical Leave Act of 1993") provided that the provider does not disclose the underlying diagnosis of the employee's SHC without consent.</p> <p>Same requirements.</p>  |
| <input type="checkbox"/> <b>Identifying the family member's serious health condition</b> | <p>Certification may identify the SHC involved. (825.306(a)(3).)</p>  | <p>The certification need not but, at the employee's option, may identify the <u>serious health condition</u> involved. (7297.(b)(1).)</p> <p>Employees have provided sufficient information to make a CFRA eligibility determination if they provide:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The date, if known, on which the SHC came into existence</li> <li><input type="checkbox"/> The probable duration of the condition</li> <li><input type="checkbox"/> An estimate of the amount of time the health care provider believes the employee needs to care for the child, parent or spouse; and</li> <li><input type="checkbox"/> A statement that the SHC warrants the participation of the employee to provide care during a period of</li> </ul> |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM   | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)   |  | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)   |
|--|--|--|--|
|  |  |  | <p>treatment or supervision of the child, parent or spouse, including providing psychological comfort and arranging “third party” care for the child, parent or spouse and directly providing, or participating in, the medical care.</p> <p>Employers may use same certification forms as described for employee’s own SHC, see above.</p> <p>** No such authorization is allowed under CFRA regulations. Even if the employer doubts the medical certification for an employee needed to care for a family member, the employer must accept the certification. (7297.4(b)(1).)</p> <p>No comparable CFRA regulation.</p> <p>** No comparable provisions in CFRA regulations.</p> |
| <input type="checkbox"/> <b>Second Opinion to Care for Family Member</b> | New FMLA regulations authorize employers to get second and third medical opinions regarding the serious health condition of a family member, same as for an employee. (825.307(b).)  |  |  |
| <b>Background Information for Second &amp; Third Opinion Providers</b>   | Employees (or family members) are required to authorize the release of relevant background medical information regarding the condition for which leave is sought from the employee’s (or family member’s) healthcare provider to the second or third opinion provider. (825.308.)  |  |  |
| <b>Time Frame to Correct Deficient Certification</b>                     | If certification is incomplete or insufficient, the employer must state in writing what additional info is necessary and allow the employee 7 calendar days to cure the deficiency. Employee can have extra time to fix medical certification if the employee notifies the employer within the 7 day period that she/he is unable to obtain the additional info despite diligent, good faith efforts. If the deficiencies are not fixed in the resubmitted certification, the employer may deny leave. (825.305(c).) |  |  |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM  | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)   | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)  |
|---|--|---|
| <b>Employer Contact with Health Care Provider</b> | Employer representative (but not employee's direct supervisor) may contact the provider to authenticate a certification or to obtain clarification of the provided information after employer has given employee 7 days to fix deficiencies (or employee waives this period). Employee or family member must sign a HIPAA release for HCP to discuss employee's or family member's condition. If HIPAA release is not signed & employer does not have sufficient information to establish a SHC, leave can be denied. (825.307.)   | ** No comparable CFRA provisions.   |
| <b>Frequency of Recertification</b>               | <p>New regulations: An employer may request recertification:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Every 30 days in connection with an absence unless the medical certification indicates that the minimum duration is more than 30 days.</li> <li><input type="checkbox"/> If a longer period is provided, certification cannot occur before the time period expires, unless circumstances change, or an employer has reason to doubt the validity of the initial certification.</li> <li><input type="checkbox"/> In all cases, employers will be able to request recertification every 6 months, even where the certification states a longer period. A certification which indicates a "lifetime" condition exists is info that indicates the condition will last more than 6 months.</li> <li><input type="checkbox"/> Each new year gives the employer the opportunity to obtain a new "initial" certification, and thus obtain a second and third opinion if there's reason to doubt the validity of the certification. (825.308.)</li> </ul> | <p>** CFRA regulations provide that "Upon expiration of the time period which the health care provider originally estimated that the employee needed to take care of the employee's child, parent or spouse, the employer may require the employee to obtain recertification if additional leave is requested." (7297.4(b)(1).)</p> <p>** No provision that a new year gives the employer the opportunity to start over with the certification process.</p> |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM  | FMLA Regulations: (29 C.F.R. § 825.100, et seq.)  | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)  |
|---|---|---|
| <b>Fitness for Duty<br/>Returning from<br/>Medical Leave for<br/>Employee's Own<br/>SHC</b> | <p><u>Intermittent Leave:</u> Employer may require an employee to furnish a fitness-for-duty statement every 30 days if employee's has used intermittent leave &amp; reasonable safety concerns to return exist, provided that the employer includes that requirement in its designation notice. Employer cannot terminate the employee's employment while awaiting the fitness for duty certification for an intermittent or reduced schedule leave of absence.</p> <p><u>Return from a Block of Leave:</u> With new regulations, when an employer provides the employee with a list of the employee's essential job functions in its designation notice, and advises the employee that the certification must address the employee's ability to perform the essential functions of the job, the employer may require the employee's health care provider to certify the employee can perform those duties. (825.312.)</p> | <p>CFRA regulations are silent about fitness for duty statements for intermittent medical leave.</p> <p>CFRA regulations provide that as a condition of an employee's return from medical leave, the employer may require that the employee obtain a release to "return-to-work" from his/her health care provider stating that he/she is able to resume work only if the employer has a uniformly applied practice or policy of requiring such releases from other employees returning to work after illness, injury or disability. (7297.4(b)(2)(E).)</p> |

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

|             |   |   |
|-------------|---|---|
| <b>TERM</b> | <b>FMLA Regulations: (29 C.F.R. § 825.100, et seq.)</b> | <b>CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)</b> |
|-------------|---|---|

### OTHER FMLA CHANGES WITH NO COMPARABLE CFRA PROVISIONS

**Note:** CFRA regulation section 7297.10 provides:

*To the extent that they are not inconsistent with this subchapter, other state law or the California Constitution, the Commission incorporates by reference the federal regulations interpreting FMLA issued January 6, 1995 (29 CFR 825), which governs any FMLA leave which is also a leave under this subchapter.*

| <b>TERM</b>   | <b>FMLA REGULATION</b>   |
|---|--|
| <b>Interplay of Information Required for Disability Plans or Workers' Compensation Benefits</b><br>(825.207 & 825.306.) | If an employer's disability benefit plan or workers' compensation requires the employee to provide more or different medical information than that permitted under the FMLA's medical certification requirements, an employer can require an employee to provide this additional information as long as the employer makes clear that the failure to provide this additional information only jeopardizes receipt of disability benefits/workers' compensation, not the entitlement to unpaid FMLA leave. Note, the employer may use this additional information to determine whether the need for leave qualifies under FMLA. |
| <b>Joint Employer Coverage</b><br>(825.106.)  | An individualized assessment is required to determine if joint employment status exists with a professional employer organization (PEO). If the PEO only performs administrative functions for an employer, such as providing payroll services, it is not a joint employer. If it has authority to hire or fire, it would be covered.  |
| <b>“Worksite” Definition</b><br>(825.111.)  | For an employee jointly employed by 2 or more employers, the employee's primary worksite is the primary office where the employee is assigned or reports except that after an employee is stationed at a fixed worksite for a period of at least one year, the employee's worksite for purposes of the employee's eligibility is the actual physical place where the employee works.<br>Employees who work out of their home do not have their personal residence as their “worksite.” Telecommuting employees are considered to work in the office to which they report and from which assignments are made.                  |
| <b>Light Duty</b><br>(825.220(d).)  | If an employee accepts light duty assignment, this position does not count against the employee's FMLA entitlement. The right to restoration is held in abeyance during the  |

Fair Employment and Housing Commission

\*\* Indicates which law/regulation is more generous to employee.

## Comparison Between New Family & Medical Leave Act (FMLA) & Ca. Family Rights Act (CFRA) Regulations

| TERM   | FMLA Regulations: (29 C.F.R. § 825.100, et seq.) | CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)   |
|--|--|--|
|  |  | light duty period. But, if the employee uses the full FMLA allotment, and then accepts a light duty assignment because he/she is unable to resume working in the original position, that employee no longer has a FMLA right to restoration.   |
| <b>Enforcement of Employer Call-In Procedures</b><br>(825.302(d).) |  | When leave is unforeseeable, providing notice “as soon as practicable” includes following the employer’s usual call-in procedures for calling in absences and requesting leave absent “unusual circumstances” (e.g., no one answers the call-in number). Where an employee does not comply with the employer’s usual procedure and no unusual circumstances justify that failure, the employer may delay or deny FMLA leave. |
| <b>Perfect Attendance Awards</b><br>(825.215(c)(2).)               |  | Employers may disqualify an employee from a bonus or award predicated on the achievement of a specific goal (e.g., hours worked) where the employee fails to achieve that goal because of a FMLA absence, as long as the disqualification standards are not discriminating against FMLA uses. This includes attendance bonuses.  |
| <b>Waiver and Release of FMLA Claims</b><br>(825.220(d).)          |  | Employers and employees may voluntarily agree to a settlement of past claims without first having to obtain the permission or approval of the Department of Labor or a court.  |

## REQUEST FOR LEAVE OF ABSENCE

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Employee's Name: \_\_\_\_\_

Date of Request: \_\_\_\_\_

Employee's Position: \_\_\_\_\_

Department: \_\_\_\_\_

Date Leave is to Begin: \_\_\_\_\_

Date of Hire: \_\_\_\_\_

Anticipated Date of Return: \_\_\_\_\_

I request a leave of absence for the following reason:

- ☐ Personal                      ☐ Military                      ☐ Medical                      ☐ Jury Duty
- ☐ Pregnancy Disability                      ☐ Family Care (See attached pages)
- ☐ Other (Please explain): \_\_\_\_\_
- 

### BENEFITS

I have ☐ days of accrued vacation. I request to use this accrued time at the start of my leave. Any remaining time off will be unpaid.

I have ☐ days of accrued sick time. I request to use this accrued time at the start of my leave. Any remaining time off will be unpaid.

Medical insurance premiums will be paid by the Company through \_\_\_\_\_ for continuation of coverage under the same terms and conditions as if I were working full-time; after, I understand that I must pay one hundred percent (100%) of the premiums for continuation of coverage.

I understand that I am bound by the personnel policies governing leaves of absence as set forth in the Employee Handbook for the type of leave I have requested.

I understand that in order to maintain my leave status, I must notify my immediate supervisor on a regular basis as outlined in the Employee Handbook concerning the continuing status of my leave of absence and my anticipated date of return.

I also understand that:

- (1) I must notify the Company of my intent to return to work within 2 weeks of my anticipated date of return;
- (2) I must not accept outside employment without the Company's prior approval; and
- (3) I may be terminated if I have falsified the purpose of the leave.

**REQUEST FOR LEAVE OF ABSENCE****Page 2**

Attached is my certification (physician placing me on disability leave, jury summons, military notice, etc.) verifying my need for the leave of absence. I understand that I must submit a physician's release to return to work upon the conclusion of my disability and upon the expiration of my leave of absence.

I understand that the granting of this leave is within the discretion of management unless otherwise provided by law. I also understand that extensions of this leave are at the sole discretion of management. I further understand that my reinstatement is governed by the leave of absence policy set forth in the Employee Handbook.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Employee Signature

☐ Approved      ☐ Denied (If denied, see attached.)

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Supervisor

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Administrator

☐ Received physician's certification.



## REQUEST FOR FAMILY AND MEDICAL CARE LEAVE OF ABSENCE

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### A. PURPOSE OF LEAVE:

☐ Self (Go directly to B)

☐ Spouse      ☐ Registered Domestic Partner      ☐ Child      ☐ Parent  
(If Spouse, Registered Domestic Partner, Child or Parent is marked, go directly to C)

☐ Newborn/Adopted Child (Go to D)

### B.

- (1) Due to my own serious health condition<sup>1</sup>, I am unable to work at all, or to perform any one or more of the essential functions of my position. (See definition of "Serious Health Condition" below).
- (2) Attached is the physician's certification stating (a) the date of the serious health condition commenced, (b) the probable duration of the condition, and (c) a statement that, due to my serious health condition, I am unable to work at all or I am unable to perform any one or more of the essential functions of the position.
- (3) Go to E.

### C.

- (1) The Serious Health Condition of my spouse, registered domestic partner, parent, or child (designated above) warrants my participation to provide care during a period of treatment or supervision of the spouse, registered domestic partner, parent, or child.
- (2) Attached is the physician's certification stating (a) the date the serious health condition commenced, (b) the probable duration of the condition, (c) an estimate of the amount of time I will be needed to care for my family member, and (d) a statement that I am needed to care for my family member or that I must participate in the care and supervision of treatment of my family member.
- (3) Go to E.

---

<sup>1</sup> "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition of the employee or a child, parent or spouse or registered domestic partner of the employee which involves either:

- (1) Inpatient care in a hospital, hospice, or residential health care facility, or
- (2) Continuing treatment or continuing supervision by a health care provider, as detailed in FMLA and its implementing regulations.

**REQUEST FOR FAMILY AND MEDICAL CARE  
LEAVE OF ABSENCE**

**Page 2**

**D.**

- [ ] (1) The leave is requested in connection with the birth of my child or the placement of an adopted child or foster child.
- [ ] (2) Date of birth, adoption, or foster placement: \_\_\_\_\_
- (3) Go to E.

**E.**

- (1) If Family Care Leave is to be taken in conjunction with Pregnancy Disability Leave of Absence:

Date Pregnancy Disability Leave is to begin: \_\_\_\_\_

Date Pregnancy Disability Leave is to conclude: \_\_\_\_\_

Date Family Care Leave is to begin: \_\_\_\_\_

Date Family Care Leave is to conclude: \_\_\_\_\_

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Employee

## ATTENDING PHYSICIAN'S CERTIFICATE

To Accompany Request for Family Care Leave  
For the *Employee's* Own Serious Health Condition

---

### EMPLOYEE INFORMATION (to be completed by Employee):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

I give my permission for this information concerning my medical condition to be provided to the employer from whom I am requesting a Family Care Leave.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Patient's Signature

---

### PHYSICIAN INFORMATION (to be completed by Physician):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

- 
- ☐ I hold a physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.
- ☐ I hold an osteopathic physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.
- Note that one of the above certifications is required.

---

### INFORMATION CONCERNING PATIENT CONDITION/STATUS

(to be completed by Physician):

Date on which the serious health condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

## ATTENDING PHYSICIAN'S CERTIFICATE

To Accompany Request for Family Care Leave For the  
Employee's Own Serious Health Condition

Page 2

Please answer the following question only if the employee is asking for intermittent leave or a reduced work schedule:

Yes                      No

[ ]                      [ ]      Is it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule in order to deal with the serious health condition of the employee or family member?

If the answer is "yes," please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment, either by the health care practitioner or another provider of health services, upon referral from the health care provider: \_\_\_\_\_

►      [NOTE]      **THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT.**

I hereby certify that due to the Employee's serious health condition<sup>2</sup>, the Employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Physician's Signature

<sup>2</sup> "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition of the employee or a child, parent, spouse or registered domestic partner of the employee which involves either:

- (1) Inpatient care in a hospital, hospice, or residential health care facility, or
- (2) Continuing treatment or continuing supervision by a health care provider, as detailed in FMLA and its implementing regulations.

Please see the attached sheet for a further description of "Serious Health Condition."

**ATTENDING PHYSICIAN'S CERTIFICATE**  
To Accompany Request for Family Care Leave To Care for the  
Serious Health Condition of a *Spouse, Registered Domestic Partner, Child, or Parent*

---

**EMPLOYEE INFORMATION** (to be completed by Employee):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

**PATIENT INFORMATION** (to be completed by Employee):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

Relationship to employee:    ☐    Parent                      ☐    Registered Domestic Partner

☐    Spouse                      ☐    Child

I give my permission for this information concerning my medical condition to be provided to the employer for whom my relative is requesting a Family Care Leave.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Patient's Signature (Or Guardian's signature if patient  
is a minor)

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**PHYSICIAN'S INFORMATION** (to be completed by Physician):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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☐ I hold a physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

☐ I hold an osteopathic physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

► Note that one of the above certifications is required.

## ATTENDING PHYSICIAN'S CERTIFICATE

To Accompany Request for Family Care Leave To Care for the  
Serious Health Condition of a *Spouse, Registered Domestic Partner, Child, or Parent*

Page 2

### INFORMATION CONCERNING PATIENT CONDITION/STATUS

(to be completed by Physician):

Date on which the serious health condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

Estimated length of time employee needs to care for patient: \_\_\_\_\_. (If an extension of this period results in an additional leave request from the employee, you will be asked to submit an update of the information provided on this form.)

Please answer the following question only if the employee is asking for intermittent leave or a reduced work schedule.

Yes                      No

☐                      ☐ Is it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule in order to deal with the serious health condition of the employee or family member?

If the answer is "yes," please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment, either by the health care practitioner or another provider of health services, upon referral from the health care provider: \_\_\_\_\_

---

▶ **[NOTE]                      THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT.**

---

I hereby certify that the serious health condition<sup>3</sup> suffered by the patient warrants the participation of the employee<sup>4</sup> to provide care during a period of treatment or supervision of the individual requiring care. I certify that this patient requires the care of a family member during this period of treatment/supervision.

DATE: \_\_\_\_\_ By: \_\_\_\_\_  
Physician's Signature

---

<sup>3</sup> "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition of the employee or a child, parent, spouse or registered domestic partner of the employee which involves either:

- (1) Inpatient care in a hospital, hospice, or residential health care facility, or
- (2) Continuing treatment or continuing supervision by a health care provider, as detailed in FMLA and its implementing regulations.

Please see the attached sheet for a further description of "Serious Health Condition."

<sup>4</sup> "Warrants the Participation of the Employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, spouse or registered domestic partner, as well as directly providing, or participating in, the medical care.

## REQUEST FOR PREGNANCY DISABILITY LEAVE OF ABSENCE

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### A.

- (1) Due to my pregnancy disability, I am unable to work at all or I am unable to perform any one or more of the essential functions of my position without undue risk to myself, the successful completion of my pregnancy, or to other persons.
- (2) Attached is the physician's certification, stating (a) the date on which I became disabled due to pregnancy, (b) the probable duration of the period or periods of disability, and (c) a statement that, due to the disability, I am unable to work at all or I am unable to perform any one or more of the essential functions of my position without undue risk to myself, the successful completion of my pregnancy, or to other persons.
- (3) I have provided thirty (30) days advance notice of my need for Pregnancy Disability Leave, or Notice was provided as soon as practicable because I lacked sufficient knowledge of my need for Pregnancy Disability Leave in order to provide thirty (30) days notice thereof.

### B.

- (1) If Family Care Leave will be taken immediately after the conclusion of the Pregnancy Disability Leave in order to care for the newborn child.

Date Pregnancy Disability is to end: \_\_\_\_\_

Date Family Care Leave is to begin: \_\_\_\_\_

Date Family Care Leave is to conclude: \_\_\_\_\_

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Employee

## ATTENDING PHYSICIAN'S CERTIFICATE

To Accompany Request for *Pregnancy Disability Leave*

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### EMPLOYEE INFORMATION (to be completed by Employee):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

I give my permission for this information concerning my medical condition to be provided to the employer for the purpose of requesting a Pregnancy Disability Leave.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Patient's Signature

---

### PHYSICIAN INFORMATION (to be completed by Physician):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

[ ] I hold a physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

[ ] I hold an osteopathic physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

► Note that one of the above certifications is required.

---

### INFORMATION CONCERNING PATIENT CONDITION/STATUS

(to be completed by Physician):

Date on which Pregnancy Disability commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_



## ATTENDING PHYSICIAN'S CERTIFICATE

To Accompany Request for *Pregnancy Disability Leave*

Page 2

I hereby certify that due to the Employee's pregnancy disability, the Employee is unable to work at all or unable to perform any one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Physician's Signature

## REQUEST FOR PREGNANCY DISABILITY TRANSFER

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1. Due to my pregnancy disability, my doctor has advised me that I must be transferred to a position that is less strenuous or hazardous, or that requires the performance of duties that are less strenuous or hazardous.
2. Attached is the physician's certification, stating (a) the date on which the transfer became advisable, (b) the probable duration of the period or periods of the need to transfer, and (c) an explanatory statement that, due to my pregnancy, the transfer is medically advisable.

Date Pregnancy Disability Transfer is to begin: \_\_\_\_\_

Date Pregnancy Disability Transfer is to end: \_\_\_\_\_

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Employee

**ATTENDING PHYSICIAN'S CERTIFICATE**  
To Accompany Request for *Pregnancy Disability Transfer*

---

**EMPLOYEE INFORMATION** (to be completed by Employee):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

I give my permission for this information concerning my medical condition to be provided to the employer for the purpose of requesting a Pregnancy Disability Transfer.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Patient's Signature

---

**PHYSICIAN INFORMATION** (to be completed by Physician):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

---

Telephone: \_\_\_\_\_

☐ I hold a physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

☐ I hold an osteopathic physician's or surgeon's certificate issued pursuant to Article 4 of Chapter 5 of Division 2 of the Business and Professions Code.

► **Note that one of the above certifications is required.**

---

**INFORMATION CONCERNING PATIENT CONDITION/STATUS**  
(to be completed by Physician):

Date on which Pregnancy Disability Transfer became medically advisable: \_\_\_\_\_

The probable duration of the period or periods of the need to transfer: \_\_\_\_\_

I hereby certify that due to the Employee's pregnancy, the transfer is medically advisable.

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Physician's Signature

## REASON FOR DENIAL (Pregnancy Disability)

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- ☐ Leave request is not certified by attending physician.
- ☐ Attending physician is not properly certified.
- ☐ Need for the leave was foreseeable, and no reasonable advance notice of the leave was given.
- ☐ Employer is unable to accommodate the employee's need for leave due to business necessity<sup>5</sup>.

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<sup>5</sup> "Business Necessity" means that the requirement of non-pregnancy must have a manifest relationship to the employment in question. In order to qualify as a business necessity, the employment practice must predict or significantly correlate with, important methods of work behavior that comprise, or are relevant to, the job.

## REASON FOR DENIAL (Family Care Leave)

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- [ ] Employee has not completed one year of service.
- [ ] Employee does not have 1,250 hours of service in the previous twelve (12) month period.
- [ ] Leave request for illness of family member is not certified by attending physician.
- [ ] Employee is a salaried employee, is in the highest 10% of wage earners within 75 miles of employee's work site, whose subsequent reinstatement will cause substantial and grievous economic injury to the operations of the employer. Notice of intent not to reinstate has been provided, along with notice of reasonable opportunity to return to work.
- [ ] Attending physician is not properly certified.
- [ ] The need for leave was foreseeable, and no reasonable advance notice of the leave was given. (30 days' notice is required, unless impracticable).
- [ ] The validity of the physician's certification is in doubt. Employer will require that the employee obtain the opinion of a second health care provider, at the employer's expense, designated or approved by the employer.

## SERIOUS HEALTH CONDITION

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A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

(1) **HOSPITAL CARE.**

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

(2) **ABSENCE PLUS TREATMENT.**

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) **PREGNANCY.**

► **NOTE:** An employee's own incapacity due to pregnancy is covered as a Serious Health Condition under FMLA but not under CFRA.]

Any period of incapacity due to pregnancy, or for prenatal care.

(4) **CHRONIC CONDITIONS REQUIRING TREATMENT.**

A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

**(5) PERMANENT LONG-TERM CONDITIONS REQUIRING SUPERVISION.**

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

**(6) MULTIPLE TREATMENTS (NON-CHRONIC CONDITIONS).**

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).