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By

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The following is a list of new laws that have recently gone into effect or will take effect in 2011:

Workers' Compensation Notice Requirements

The posting and notice requirements were amended in 2010 to require additional information about Managed Professional Networks (MPNs). Employers with MPNs that provide treatment for workers' compensation claims must display the required workers' compensation poster (Notice to Employees - Injuries Caused by Work) as well as additional information about the MPN(s) the employer uses. The workers' compensation pamphlet must also include information about MPNs.

Workers' Compensation for Roofing Contractors

AB 2305 extends the requirement that contractors with a C-39 roofing classification obtain and maintain workers' compensation insurance, even if they have no employees. This requirement was set to expire on January 1, 2011, and is now extended until January 1, 2013. Additionally, after January 1, 2011, any active license will be suspended if the C-39 roofing classification was removed and the licensee is found to have employees and lack a valid certificate of workers' compensation insurance.

Workers' Compensation Stop Orders

SB 1254 authorizes the registrar of contractors to issue a stop order (effective immediately on service of the order) to any contractor (licensed or unlicensed) who failed to secure workers' compensation coverage for his/her employees. Additionally, employees affected by the work stoppage must be paid by the employer for lost time, up to 10 days, while the employer seeks to comply with the law.

Failure to observe the stop order is punishable by a misdemeanor (up to 60 days in county jail) and/or a fine of up to $10,000. The legislation also implements a means by which the employer may protest the stop order and request a hearing on the matter.

Organ and Bone Marrow Donor Leave

California employers with 15 or more employees must now provide the following paid leaves to employees who choose to donate organs or bone marrow:

- Organ donors — must be provided a 30-day (workdays) leave of absence in any one-year period
- Bone marrow donors - must be provided a leave of absence up to five workdays in any one-year period

The statute says that such leave does not run concurrently with the Family and Medical Leave Act (FMLA). However, state law cannot override federal law. Therefore, leave for the purpose of donating bone marrow or an organ may run concurrently with FMLA if the employer is a covered employer and the employee is eligible for FMLA.

Heat Illness Regulations Revised

A revised heat illness standard went into effect November 4, 2010. In addition to revisions related to shade and other safety precautions, the new standard includes changes to training requirements for both supervisory and nonsupervisory employees. Such training is now required to be given before employees begin work that "should reasonably be anticipated to result in exposure to the risk of heat illness."

GINA Regulations Finalized

The U.S. Equal Employment Opportunity Commission (EEOC) issued final regulations on November 9 that implement the employment provisions (Title II) of the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA prohibits use of genetic information to make decisions about health insurance and employment, and restricts the acquisition and disclosure of genetic information. GINA applies to private employers with 15 or more employees and generally prohibits employers from requesting an applicant's or employee's genetic information, even if the employer never uses that information.

Wage Claim Appeal — Bond Requirement

According to AB 2772, an employer filing an unpaid wage claim appeal must post a bond with the court, in the amount of the judgment rendered in the administrative hearing. Employers must also provide written notification to the other parties and the Labor Commissioner of the bond posting.

AB 569 — Exemptions to Meal Breaks

This new law exempts construction workers, commercial drivers, certain security officers and employees of electrical and gas corporations or local publicly owned electric utilities from California's meal break requirements if those employees are covered by a valid collective bargaining agreement containing specified terms, including meal period provisions.

Investigating Serious Safety Violations

A revision to the California Labor Code establishes new procedures and standards for an investigation of a serious violation in the workplace and establishes a rebuttable presumption as to when a serious violation has been committed by an employer.

Under previous law, a serious violation was "deemed to exist if there was a substantial probability that death or serious physical harm could result from a violation." The change creates a "rebuttable presumption that a serious violation exists if Cal/OSHA demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation."

Health Clubs and Defibrillators

Under current law, health clubs must acquire an automatic external defibrillator and meet

specific training and maintenance standards. Under current law, when a health club uses an automatic external defibrillator, the owners, managers, employees or others are not liable for civil damages resulting from an act of omission in the course of rendering emergency care/treatment.

The new law eliminates that exemption if health club members have access to the facility during hours that trained employees are not in the facility. For facilities larger than 6,000 square feet, members must be denied access to the facility if a trained employee is not present.

Death Benefits for Minor Children

AB 1696 permits continuation of death benefits until the youngest child reaches 19 years of age if:

- The child is still attending high school
- The child is receiving the death benefits as a child of an active member of a police or fire department of a public or municipal entity or political subdivision killed in the performance of duty

The benefit continuation does not apply to a child of an employee whose principal duties are clerical or otherwise do not fall within the scope of active law enforcement or active firefighting services.

San Francisco Ordinance — Minimum Wage

The San Francisco 2011 city minimum wage will increase to $9.92 per hour, effective January 1, 2011. The ordinance requires a poster that must be displayed in each workplace in English, Spanish, Chinese and any other language spoken by at least five percent of the workforce. The poster is updated annually by the San Francisco Office of Labor Standards Enforcement. The ordinance further provides that a notice containing the employer's name, address and telephone number must also be given to every employee at the time of hire.

San Francisco Health Care Security Ordinance

An employee who is a manager, supervisor or confidential employee who earns at or above an annual salary of $81,450 (or $39.16/hour) in 2011 is exempt from coverage under the San Francisco Health Care Security Ordinance.

*From the California Chamber of Commerce

TITLE 2, SECTIONS 7291.2 – 7291.16
SEX DISCRIMINATION: PREGNANCY, CHILDBIRTH OR RELATED MEDICAL CONDITIONS

Proposed Amended Regulations as adopted May 8, 2008, amended August 24, 2010, and further amended at the
October 19, 2010 Fair Employment and Housing Commission Meeting

Amendments made at the October 19, 2010 Commission Meeting after Public Comments showing changes from the August 24, 2010 Regulations are indicated in yellow by italicized *underlining* or ~~*strikeout*~~

§ 7291.2 Definitions

The following definitions apply only to this subchapter:

~~(a) "Accrued leave," as that term is used in Government Code section 12945, subdivision (b)(1), and section 7291.11, subdivision (a)(1)(A), is any right of an employee, accumulated over the course of his or her employment, to leave work for a period of time with monetary compensation from the employer.~~

~~(b)~~ (a) "Affected by pregnancy~~,~~" ~~as that term is used in section 7291.6,~~ means that ~~a woman is pregnant or has a related medical condition and that, because of pregnancy, her health care provider has certified that~~ *because of a physical or mental condition related to pregnancy or childbirth,* it is medically advisable for ~~her~~ an employee to transfer~~, in accordance with the provisions of section 7291.2, subdivision (d)~~ or otherwise to be reasonably accommodated by her employer.

~~(c)~~ (b) "Because of pregnancy" ~~includes because of~~ means due to an employee's actual ~~*or perceived*~~ pregnancy, childbirth or a related medical condition ~~or because of an employer's or other covered entity's perception that a woman is pregnant or has a related medical condition~~.

~~(d) "Certification" means a written communication from the health care provider of the employee that either the employee is disabled due to pregnancy or that it is medically advisable for the employee to be transferred to a less strenuous or hazardous position or to less strenuous or hazardous duties.~~

~~(1) The certification indicating disability necessitating a leave should contain:~~

~~(A) The date on which the woman became disabled due to pregnancy;~~

~~(B) The probable duration of the period or periods of disability, and~~

~~(C) An explanatory statement that, due to the disability, the employee is unable to work at all or is 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.~~

~~(2) The certification indicating the medical advisability of the transfer should contain:~~

~~(A) The date on which the need to transfer became medically advisable;~~

~~(B) The probable duration of the period or periods of the need to transfer; and~~

~~(C) An explanatory statement that, due to the woman's pregnancy, the transfer is medically advisable.~~

~~(e)~~ (c) "CFRA" means the Moore-Brown-Roberti Family Rights Act of 1993. (California Family Rights Act, Gov. Code §§12945.1 and 12945.2.) "CFRA leave" means family care or medical leave ~~taken pursuant to CFRA~~ as those leaves are defined at section 7297.0.

~~(f)~~ (d) A "covered entity" is any person (as defined in Government Code section 12925, subdivision (d)), labor organization, apprenticeship training program, training program leading to employment, employment agency, governing board of a school district, licensing board or other entity to which the provisions of Government Code sections 12940, 12943, 12944 or 12945 apply.

~~(g)~~ (e) ~~A woman~~ An employee is "disabled by pregnancy" if, in the opinion of her health care provider, she is unable because of pregnancy ~~to work at all or is unable~~ to perform any one or more of the essential ~~her job~~ functions of her job or to perform any of these functions without undue risk to herself, ~~the~~ to her pregnancy's successful completion ~~of her pregnancy~~, or to other persons. ~~The term "essential functions" is defined in Government Code section 12926, subdivision (f). For purposes of this subdivision, a woman is~~ An employee also may be considered to be "disabled by pregnancy" if, in the opinion of her health care provider, she is suffering from severe "morning sickness" or needs to take time off for: prenatal or postnatal care; bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; childbirth; ~~or~~ loss or end of pregnancy; or recovery from childbirth, loss or end of pregnancy ~~stillbirth or miscarriage~~. The preceding list of conditions is intended to be non-exclusive and illustrative only. Protections under this law do not include any condition that may occur prior to conception.

~~(h)~~ (f) "Employer," as used in these regulations, except for section 7291.3, is any employer with five or more full or part time employees, who is an employer within the meaning of Government Code section 12926, subdivision (d), and section 7286.5, subdivision (a), of these regulations. ~~"Employer" includes "non-Title VII employers" and "Title VII employers," as those terms are defined below.~~ "Employer" includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. ~~The terms "all employers" and "any employer" refer to employers covered by the FEHA.~~

~~(1) A "non-Title VII employer" is any employer with five to 14 employees who is not subject to any provision of Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. section 2000e, et seq.~~

~~(2) A "Title VII employer" is any employer with 15 or more employees who is also subject to any provision of Title VII of the federal Civil Rights Act of 1964.~~

~~(i)~~ (g) "Employment in the same position" means employment in, or reinstatement to, the original position that an employee held before ~~being transferred and/or taking a disability leave, or both,~~ reasonable accommodation, transfer, or a disability leave, because of pregnancy.

~~(j)~~ (h) "Employment in a comparable position" means employment in a position which is virtually identical to the employee's ~~original~~ position held prior to reasonable accommodation, transfer, or disability leave in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from ~~where the employee was previously employed~~ the employee's prior position. It ordinarily means the same shift or the same or an equivalent work schedule.

~~(k)~~ (i) "FMLA" means the federal Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq., and its implementing regulations, 29 ~~CFR~~ Code of Federal Regulations, Part 825~~, issued January 6, 1995~~. "FMLA leave" means family care or medical leave taken pursuant to FMLA.

~~(l)~~ (j) "Four months~~,~~" ~~as that term is used in Government Code section 12945, subdivision (b)(2),~~ means the number of days the employee would normally work within four calendar months (one-third of a year equaling 17.3 weeks or 122 days), if the leave is taken continuously, following the commencement date of taking a pregnancy disability leave. ~~(See also section 7291.7, subdivision (a)(1).)~~ If an employee's schedule varies from month to month, a monthly average of the hours worked over the four months prior to the beginning of the leave period would be used for calculating the employee's normal work month.

~~(m)~~ (k) "Health Care Provider" means either:

~~(1) an individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the pregnancy, childbirth or related medical condition, or~~

(1) A medical or osteopathic doctor, physician, or surgeon, licensed in California, or in another state or country, who directly treats the employee or supervises the treatment of the pregnancy, childbirth or a related medical condition, or

(2) any other persons, including nurse practitioners, nurse midwives, *licensed midwives,* clinical psychologists, clinical social workers or others who meet the definition of "others capable of providing health care services" under FMLA and its implementing regulations, or ~~:~~

(3) A health care provider from whom an employer or a group health plan's benefits manager will accept medical certification of the existence of a health condition to substantiate a claim for benefits.

~~(n) A "normal pregnancy, childbirth or related medical condition" is a pregnancy or childbirth that in the opinion of the woman's health care provider involves neither high risk nor complications.~~

(l) "Intermittent leave" means leave taken in separate periods of time because of pregnancy, rather than for one continuous period of time, and may include leave for periods from one hour or more to several weeks. ~~An employer may *limit account for increments of intermittent* leave *increments using an increment no greater than to* the shortest period of time that the employer *'s payroll system* uses to account for *absences or* use of *other forms of* leave, *provided it is not greater than one hour. For example, if an employer accounts for sick leave in 30-minute increments and vacation time in one-hour increments, the employer must account for pregnancy disability leave in increments of 30 minutes or less. If an employer accounts for other forms of leave in two-hour increments, the employer must account for pregnancy disability leave in increments no greater than one hour.*~~ Examples of intermittent leave include leave taken on an occasional basis for medical appointments, or leave taken several days at a time over a period of several months for purposes related to pregnancy, childbirth or a related medical condition.

(m) "Medical certification" means a written communication, as specified in section 7291.17, subdivisions (b)(6) and (b)(7), from the health care provider of the employee to the employer stating that one of these conditions applies: the employee is disabled because of pregnancy~~:~~, *or* it is medically advisable for the employee to be transferred to a less strenuous or hazardous position or duties or otherwise to be reasonably accommodated.

(n) "Perceived pregnancy" is being regarded or treated by an employer or other covered entity as being pregnant or having a related medical condition.

(o) "Pregnancy disability leave" is any leave, whether paid or unpaid, taken by an employee, for any period(s) up to a total of four months during which she is disabled by pregnancy.

(p) "Reasonable accommodation" because of pregnancy, may include, but is not limited to an employer:

(1) modifying work practices;

(2) modifying work duties;

(3) modifying work schedules to permit earlier or later hours;

(4) acquiring or modifying equipment or devices, and other similar actions;

(q) "Reduced work schedule" means permitting an employee to work less than the usual number of hours per work week, or hours per work day.

~~(p)~~ (r) A "related medical condition" is any medically recognized physical or mental condition that is related to ~~pregnancy or childbirth~~ pregnancy, childbirth or recovery from pregnancy or childbirth. This term ~~also~~ includes, but is not limited to, lactation; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression, loss or end of pregnancy; ~~stillbirth, miscarriage,~~ or recovery from loss or end of pregnancy ~~stillbirth or miscarriage. This term is not the same as the term "medical condition" defined in Government Code section 12926, subdivision (h), which means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.~~

~~(q)~~ (s) "Transfer~~,~~" ~~as that term is used throughout these regulations,~~ refers to reassigning temporarily ~~the transfer of~~ an employee because of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties.

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12926, subd. (d), 12940, 12943, 12944, 12945; Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (AB 2870); Family and Medical Leave Act, (FMLA) 29 U.S.C. §2601, et seq. and FMLA regulations, Code of Federal Regulations, tit. 29, part 825, issued January 6, 1995 (hereafter, 29 CFR 825); Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. §2000e; *J. E. Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal. 4th 226.

§7291.3 Prohibition Against Harassment

As set forth in Government Code sections 12926, subdivision (p), and 12940, subdivision (j)(1), it is an unlawful employment practice for any employer with one or more employees or other covered entities to harass an employee or applicant because of pregnancy *or perceived pregnancy.*

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12926, subds. (m) and (p), 12940, subd. (j), and 12945, subd. (c).

§ 7291.4 No Eligibility Requirements

There is no eligibility requirement, such as minimum hours worked or length of service, before an employee affected or disabled by pregnancy is eligible for reasonable accommodation, transfer, or disability leave.

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12945, subds. (a) - (c).

~~§ 7291.4~~ § 7291.5 Responsibilities of Covered Entities Other than Employers

Unless a permissible defense applies, discrimination because of pregnancy *or perceived pregnancy* by any covered entity other than employers constitutes discrimination because of sex under Government Code sections 12926, subdivisions ~~(o)~~ (m) and (p), 12940, subdivisions (b), (c), (d), ~~(f)~~, (g), (h), ~~and~~ (i), (j), and (k), 12943 and 12944.

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12926, subd. ~~(o)~~ (p), 12940, subdivisions (b), (c), (d), ~~(f)~~, (g), (h), ~~and~~ (i), (j), and (k), 12943, 12944, 12945, subd. ~~(d)~~ (c); Stats. 1990, c. 15 (SB 1027), §2; Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (AB 2870).

~~§ 7291.5~~ § 7291.6 Responsibilities of Employers

~~Discrimination by employers because of pregnancy constitutes discrimination because of sex under Government Code sections 12926, subdivision (o), and 12940, subdivisions (a), (d), (f), (g), (h), and (i).~~

(a) Employer Obligations

(1) Except as excused by a permissible defense, it is unlawful for any employer, because of pregnancy *or perceived pregnancy* of an employee or applicant, to:

~~(1)~~ *(A)* refuse to hire or employ the applicant;

~~(2)~~ *(B)* refuse to select the applicant or employee for a training program leading to employment or promotion~~, except for non-Title VII employers, as set forth at subdivision (c), below~~;

~~(3)~~ *(C)* refuse to promote the employee;

~~(4)~~ *(D)* bar or to discharge the applicant or employee from employment or from a training program leading to employment or promotion;

~~*(5) refuse to provide health benefits for pregnancy if the employer provides such benefits for other temporary disabilities*, except for non-Title VII employers, as set forth at subdivision (d), below;~~

~~*(6)*~~*(E)* discriminate against the applicant or employee in terms, conditions or privileges of employment~~, except for non-Title VII employers, as set forth at section 7291.11, subdivision (a)(1)(A), below~~;

~~*(7)*~~ *(F)* harass the applicant or employee because of pregnancy, as set forth in section 7291.3;

~~*(8)*~~ *(G)* retaliate~~, as set forth in section 7291.14,~~ against the employee because of pregnancy *or perceived pregnancy* or because *of pregnancy* that employee has exercised her right to reasonable accommodation, to transfer or to take a pregnancy disability leave ~~or transfer~~;

(H) otherwise discriminate against the applicant or employee by any practice that is prohibited on the basis of sex.

(I) transfer the employee against her wishes to a less strenuous or hazardous position because of perceived risk that the employee's current job will cause undue risk to herself or others.

1. The employer may ask the employee to provide a medical certification of fitness for duty from the employee's health care provider for her current position and may transfer her to a less strenuous or hazardous position if the employee's health care provider fails to certify promptly, within 15 days, that the employee cannot safely perform in her current position.

2. Nothing in this section prevents an employer from transferring an employee for the employer's operational needs.

~~(9) refuse to provide reasonable accommodation for accommodate the employee who is temporarily disabled affected by pregnancy as set forth at section *7291.6 7291.7*, below; to the same extent that other temporarily disabled employees are accommodated under the employer's policy, practice or collective bargaining agreement;~~

~~(10) refuse to transfer the employee affected by pregnancy, as set forth at section 7291.6, *7291.8*, below;~~

~~*(11) transfer the employee against her wishes when there is no legitimate medical reason for the transfer which would protect the employee against undue risk to herself, to the successful completion of her pregnancy or to other persons.*~~

~~*(11) (12)* refuse to grant the employee disabled by pregnancy a pregnancy disability leave, as set forth at section 7291.7, *7291.9,* below; or~~

~~*(12) (13)* otherwise discriminate otherwise against the applicant or employee by any practice that is prohibited by Government Code section 12940, subdivisions (a) and (c) through (l), on the basis of sex.~~

(2) Except as excused by a permissible defense, it is unlawful for any employer, because of pregnancy of an employee or applicant, to:

(A) refuse to provide employee benefits for pregnancy as set forth at section 7291.11 below, if the employer provides such benefits for other temporary disabilities;

(B) refuse to provide reasonable accommodation for the employee who is affected by pregnancy as set forth at section 7291.7, below; to the same extent that other temporarily disabled employees are accommodated under the employer's policy, practice or collective bargaining agreement;

(C) refuse to transfer the employee affected by pregnancy, as set forth at section 7291.8, below; or

(D) refuse to grant the employee disabled by pregnancy a pregnancy disability leave, as set forth at section 7291.9, below.

(a) Permissible defenses, as defined at section 7286.7, include a bona fide occupational qualification, business necessity or where the practice is otherwise required by law.

~~(b) Training Programs Leading to Promotion - Exception for non-Title VII Employers~~

~~It is lawful for a non-Title VII employer to refuse to select a pregnant employee for a formal training program leading to promotion if the employee is unable to complete the training program at least three months prior to the date, anticipated at the time she applies for the training program, on which she intends to depart on pregnancy disability leave.~~

~~(c) Provision of Medical Benefits - Exception for non-Title VII Employers~~

~~A non-Title VII employer with five to 14 employees is not required to provide its employees with health insurance coverage for the medical costs of pregnancy, childbirth, or related medical conditions even if the employer provides coverage for other temporary disabilities.~~

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12926, subds. (m) and ~~(o)~~ (p), 12940, subds. (a), (c) - (l), 12945, subds. ~~(a), (b)(1), (d) and (e)~~ (a) - (c); Stats. 1990, c. 15 (SB 1027), §2; Stats. 1999, c. 591 (A.B. 1670); Stats. 2004, c. 647 (A.B. 2870); Pregnancy Discrimination Act of 1978 (P.L. 95-555, 42 U.S.C. §2000e, §701(k)), an amendment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.); *Cal. Federal Sav. and Loan Ass'n v. Guerra* 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613]; Cal. Code of Regs., tit. 2, §7286.7.

§ 7291.7 Reasonable Accommodation

(a) It is unlawful for an employer to deny the request for reasonable accommodation made by an employee affected by pregnancy if:

(1) The employee's request is based on the ~~*medical certification*~~ *advice* of her health care provider that reasonable accommodation is medically advisable; and

(2) ~~*Such*~~ *The* employer has not demonstrated that the reasonable accommodation ~~*can be accomplished by the employer without*~~ would produce *an* "undue hardship," as defined at Government Code section 12926, subdivision (s).

(b) An employee taking reasonable accommodation, such as a change of work duties or job restructuring, shall not affect her independent right to take up to four months for a pregnancy disability leave. If the requested reasonable accommodation, however, involves a reduction in hours worked such as a reduced work schedule or intermittent leave, the employer may consider this as a form of pregnancy disability leave and credit the hours against the employee's four month leave ~~requirement~~ entitlement.

(c) An employer may, but need not, ~~*have a policy that requires*~~ *require* a medical certification substantiating the employee's need for reasonable accommodation, as set forth in sections 7291.16, subdivisions (a) and (b), and 7291.17, subdivision (b).

Authority Cited: Government Code section 12935, subd. (a).

Reference: Government Code sections 12926, subd. (s); 12945, subds. (a), and (b)(1), Stats. 1999, c. 591 (A.B. 1670); Stats. 2004, c. 647 (A.B. 2870).

~~§ 7291.6~~ § 7291.8 Transfer

(a) Transfer - All Employers

(1) It is unlawful for an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions or duties for the duration of the disability, *including disabilities or conditions resulting from on-the-job injuries,* to ~~refuse~~ *fail to apply the policy, practice or collective bargaining agreement* to transfer ~~*a pregnant employee*~~ *an employee who is disabled by pregnancy* ~~on~~ *and who so* request*s*.

(2) It is unlawful for an employer to deny the request of an employee affected by pregnancy to transfer provided that:

~~(1)~~ (A) The employee's request is based on the ~~*certification*~~ *advice* of her health care provider that a transfer is medically advisable; and

~~(2)~~ (B) Such transfer can be reasonably ~~accommodated~~ effected by the employer. ~~No employer is required to~~ To provide a transfer, an employer need not create additional employment that the employer would not otherwise have created, discharge another employee, violate the terms of a collective bargaining agreement, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job. ~~Nothing in these regulations is intended to prevent an employer from accommodating a~~ An employer may accommodate a pregnant employee's transfer request by transferring another employee, but there is no obligation to do so.

(C) An employer may, but need not, ~~*have a policy that*~~ *requires* a medical certification substantiating the employee's need for transfer, as set forth in sections 7291.16, subdivisions (a) and (b), and 7291.17, subdivision (b).

(b) Burden of Proof

The burden shall be on the employer to prove, by a preponderance of the evidence, that such transfer cannot be reasonably accommodated for one or more of the enumerated reasons listed in section ~~7291.6~~ *7291.8*, subdivision (a)(2).

(c) Transfer to Accommodate Intermittent Leave or a Reduced Work Schedule

~~If it is medically advisable for an employee to take intermittent leave or leave on a reduced work schedule and it is foreseeable based on planned medical treatment because of pregnancy, the employer may require the employee to transfer temporarily to an available alternative position.~~ If an employee's health care provider provides medical certification that an employee has a medical need to take intermittent leave or leave on a reduced work schedule because of pregnancy, the employer may require the employee to transfer temporarily to an available alternative position which meets the needs of the employee. The employee must meet the qualifications of the alternative position. ~~This~~ The alternative position must have the equivalent rate of *pay and* ~~*hourly pay,*~~ benefits, ~~the employee must be qualified for the position,~~ and ~~it~~ must better accommodate ~~recurring periods of leave~~ the employee's leave requirements than ~~the employee's~~ her regular job. It does not have to have equivalent duties. ~~Transfer to an alternative position may include altering an existing job to accommodate better the employee's need for intermittent leave or a reduced work schedule.~~

(d) Right to Reinstatement After Transfer

When the employee's health care provider certifies that there is no further medical advisability for the transfer, intermittent leave, or leave on a reduced work schedule, the employer must reinstate ~~her~~ the employee to her same or comparable position in accordance with the requirements of section *7291.10* ~~*7291.9*~~.

~~(e) No Eligibility Requirement~~

~~There is no length of service requirement before an employee affected by pregnancy is eligible for a transfer.~~

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code section 12945, subds. ~~(c)(1) and (2)~~ (b)(2) and (3); Stats. 1992, c. 907 (AB 2865), § 1; Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (AB 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825. ~~*DFEH v. Save Mart* (1992) FEHC Dec. No. 92-01 [1992-93 CEB 1]~~.

~~§ 7291.7~~ § 7291.9 Pregnancy Disability Leave

The following provisions apply to leave taken for disability because of pregnancy.

(a) Four-Month Leave Requirement for all Employers

All employers must provide a leave of up to four months, as needed, for the period(s) of time ~~a woman~~ an employee is actually disabled by pregnancy even if an employer has a policy or practice which provides less than four months of leave for other similarly situated temporarily disabled employees.

(1) A "four month leave~~,~~" ~~as that term is defined in section 7291.2, subdivision (l),~~ means time off for the number of days the employee would normally work within the four calendar months (one-third of a year, or 17.3 weeks or 122 days), following the commencement date of taking a pregnancy disability leave. For a full time employee who works five eight-hour days per week, or 40 hours per week, "four months" means ~~88 working and/or paid eight hour days~~ 692 hours of leave entitlement, based on an average of ~~22 working days per month for~~ 17.3 weeks in four months times 40 hours per week.

(2) For employees who work more or less than five days a week, or who work on ~~alternative~~ variable work schedules, the number of working days which constitutes "four months" is calculated on a pro rata or proportional basis.

(A) For example, for an employee who works ~~half time, "four months" may mean 44 eight hour days or 88 four hour days, or four months of whatever is the employee's normal half time work schedule~~ a four hour day, five days per week, or 20 hours per

week, "four months" means 346 hours of leave entitlement. For an employee who normally works six eight-hour days in a week, or 48 hours per week, "four months" means ~~104 working and/or paid days~~ 830 hours of leave entitlement.

(B) If an employee takes leave on an intermittent leave or a reduced work schedule,~~, only the amount of leave actually taken may be counted toward the four months of leave to which the employee is entitled. For example, if an employee misses two hours of work in a morning because of "morning sickness," only two hours would be charged against her pregnancy disability leave entitlement.~~ *An employer may account for increments of intermittent leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave, provided it is not greater than one hour. For example, if an employer accounts for sick leave in 30-minute increments and vacation time in one-hour increments, the employer must account for pregnancy disability leave in increments of 30 minutes or less. If an employer accounts for other forms of leave in two-hour increments, the employer must account for pregnancy disability leave in increments no greater than one hour.*

(B) If a holiday falls within a week taken as a pregnancy disability leave, the week is nevertheless counted as a week of pregnancy disability leave. If, however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation or an employer closing the plant for retooling), the days the employer's activities have ceased do not count against the employee's pregnancy disability leave entitlement.

(3) Although all pregnant employees are eligible for *up to* four months of leave, if that leave is taken in one period of time, taking intermittent or reduced work schedule throughout an employee's pregnancy will differentially affect the number of hours remaining that an employee is entitled to take a pregnancy disability leave leading up to and after childbirth, depending on the employee's regular work schedule.

(A) For example, a full-time employee, who normally works a 40-hour work week is entitled to 692 working hours of leave. If that employee takes 180 hours of intermittent leave throughout her pregnancy, she would still be entitled to take 512 hours, or 64 days of leave, or approximately three months leading up to and after her childbirth.

(B) In contrast, a part-time employee who normally works 20 hours per week (four hours per day, five days per week), would be entitled to 346 hours of leave. If that employee takes intermittent leave of 180 hours throughout her pregnancy, she would be entitled to only 166 more hours of leave, or 41.5 days of leave, approximately two months of leave, leading up to and after her childbirth.

~~(2)~~ (4) Minimum Duration

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by the health care provider of the employee. An employer may ~~limit leave~~ account for increments of intermittent leave using ~~to~~ the shortest period of time that the employer's payroll system uses to account for ~~absences or use~~ other forms of leave, provided it is not greater than one hour, as set forth in *section ~~7291.2, subdivision (l)~~ 7291.9(a)(2)(B)*.

(b) Employers With More Generous Leave Policies

If an employer has a more generous leave policy for similarly situated employees with other temporary disabilities than is required ~~under section 7291.7, subdivision (a), above,~~ for pregnancy purposes under these regulations, the employer must provide ~~such~~ the more generous leave to employees temporarily disabled by pregnancy. If the employer's more generous leave policy exceeds four months, the employer's return policy after taking the leave would govern, not the return rights specified in these regulations.

~~(c) No Eligibility Requirement~~

~~There is no length of service requirement before an employee disabled by pregnancy is entitled to a pregnancy disability leave.~~

(c) Denial of Leave is Unlawful Employment Practice

It is an unlawful employment practice for an employer to refuse to grant a pregnancy disability leave to an employee disabled by pregnancy

(1) who has provided the employer with reasonable advance notice of the medical need for the leave, and

(2) whose health care provider has ~~medically certified~~ advised that the employee is disabled by pregnancy. The employer may require medical certification of the medical advisability of the leave, as set forth in sections 7291.16, subdivisions (a) and (b), and 7291.17, subdivision (b).

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code sections 12940, subd. (a), 12945, subds. ~~(b)(2), (d) and (e)~~ (a) and (c); Stats. 1990, c. 15 (SB 1027), §2; Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; *Cal. Federal Sav. & Loan Ass'n v. Guerra* (1987) 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613].

~~§7291.8 Denial of Leave~~

~~(a) Unlawful Employment Practice~~

~~It is an unlawful employment practice for an employer to refuse to grant a pregnancy disability leave to an eligible employee.~~

~~(b) Burden of Proof~~

~~Denial of a request for pregnancy disability leave is established if the Department or the employee proves, by a preponderance of the evidence, the following elements.~~

~~(1) The employer was an employer under the FEHA with five or more employees.~~

~~(2) The employee was disabled by pregnancy.~~

~~(3) The request was reasonable.~~

~~(4) The employer denied the request for pregnancy disability leave.~~

~~(c) Reasonable Request~~

~~A request to take a pregnancy disability leave is reasonable if it complies with any applicable notice requirements, as specified in section 7291.10, and if it is accompanied, where required, by a certification, as that term is defined in section 7291.2, subdivision (d).~~

~~Authority Cited: Government Code section 12935, subd. (a).~~

~~Reference: Government Code section 12945, subd. (b)(2); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825.~~

~~§ 7291.9~~ § 7291.10 Right to Reinstatement from Pregnancy Disability Leave

The following rules apply to reinstatement from any leave or transfer taken for disability because of pregnancy.

(a) Guarantee of Reinstatement

~~Upon granting the pregnancy disability leave or transfer, the employer shall guarantee to reinstate the employee~~ An employee who exercises her right to take a pregnancy disability leave is guaranteed a right to return to the same position, or, if the employer is excused by section ~~*7291.9*~~ 7291.10, subdivisions (c)(1)(A) or (c)(1)(B), to a comparable position, and the employer shall provide the guarantee in writing upon request of the employee. It is an unlawful employment practice for any employer, after granting a requested pregnancy disability leave or transfer, to refuse to honor its guarantee of reinstatement unless the refusal is justified by the defenses below in subdivisions (c)(1) and (c)(2). If the employee takes intermittent leave or a reduced work schedule, only one written guarantee of reinstatement is required.

(b) Refusal to Reinstate

(1) Definite Date of Reinstatement

Where a definite date of reinstatement has been agreed upon at the beginning of the leave or transfer, a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that the leave or transfer was granted by the employer and that the employer failed to reinstate the employee by the date agreed upon to the same position or, where applicable to a comparable position, by the date agreed upon, as specified below in subdivisions (c)(1) and (c)(2).

(2) Change in Date of Reinstatement

If the reinstatement date differs from the employer's and the employee's original agreement or if no agreement was made, ~~a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that~~ the employer ~~failed to~~ must reinstate the employee within two business days, where feasible, after the employee notifies the employer of her readiness to return, to the same, or, where applicable, to a comparable position, as specified below in subdivisions (c)(1) and (c)(2).

(c) Permissible Defenses – Employment Would Have Ceased

(1) Right to Reinstatement to the Same Position

An employee has no greater right to reinstatement to the same position or to other benefits and conditions of employment than ~~if the employee~~ those *rights* she would have had if she had been continuously ~~employed in this position~~ at work during the pregnancy disability leave or transfer period. This is true even if the employer has given the employee a written guarantee of reinstatement. A refusal to reinstate the employee to her same position or duties is justified if the employer proves, by a preponderance of the evidence, either of the following:

(A) That the employee would not otherwise have been employed in her same position at the time reinstatement is requested for legitimate business reasons unrelated to the employee taking a pregnancy disability leave or transfer (such as a layoff pursuant to a plant closure).

(B) That each means of preserving the job or duties for the employee (such as leaving it unfilled or filling it with a temporary employee) would substantially undermine the employer's ability to operate the business safely and efficiently.

(2) Right to Reinstatement to a Comparable Position

An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated. If the employer is excused from

reinstating the employee to her same position, or with the same duties, a refusal to reinstate the employee to a comparable position is justified if the employer proves, by a preponderance of the evidence, either of the following:

(A) That there is no comparable position available. A position is "available" if there is a position open on the employee's scheduled date of reinstatement or within ~~10 working~~ 60 calendar days thereafter for which the employee is qualified, or to which the employee is entitled by company policy, contract, or collective bargaining agreement. *An employer has an affirmative duty to make known to the returning employee and to determine whether the employee is interested in, and qualified for, other suitable job opportunities with the employer, if the employer can do so without undue hardship or if the employer has a policy or offers similar assistance or benefit to other disabled or nondisabled employees. An employer may provide notice of available positions to the employee in person, by letter, telephone or email, by postings on the company's website if there is a section for job openings, or by other means reasonably calculated to inform the employee of available job openings during the requirement period.*

(B) For an employer whose employee takes a pregnancy disability leave which does not qualify as a FMLA leave, that a comparable position is available, but filling the available position with the returning employee would substantially undermine the employer's ability to operate the business safely and efficiently.

(3) If an employee is laid off during a pregnancy disability leave or transfer, for legitimate business reasons unrelated to her leave or transfer, the employer's responsibility to continue the pregnancy disability leave or transfer, maintain ~~group health plan~~ benefits, and reinstate the employee ceases at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise.

(d) Right to Reinstatement to Job If *Additional Leave Taken Following End of* Pregnancy Disability Leave ~~*Exceeds Four Months*~~; *Equal Treatment*

If an employee disabled by pregnancy ~~has taken a~~ *remains on some form of leave following the end of her* pregnancy disability leave *(e.g., employer's disability leave plan, etc.)* ~~for longer than four months~~, an employer must ~~treat~~ grant the employee ~~the same regarding~~ reinstatement rights ~~as it treats any~~ that are the same as any other similarly situated employee who has taken a similar length disability leave *under the employer's policy, practice or collective bargaining agreement*. For example, if the employer has a policy which allows reinstatement to other temporarily disabled employees who are disabled for *up to* six months, the employer must also allow reinstatement to ~~a woman~~ an employee disabled by pregnancy for six months. An employer and employee also may agree to a later date of reinstatement.

(e) Right to Reinstatement to Job If CFRA Leave is Taken Following Pregnancy Disability Leave

At the expiration of a pregnancy disability leave, if an employee takes a CFRA leave for reason of the birth of her child, the employee's right to reinstatement to her job is governed by CFRA and not sections ~~*7291.9,*~~ *7291.10,* subdivisions (c)(1) and (c)(2), above. Under CFRA, an employer may reinstate an employee either to her same or a comparable job.

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code sections 12940, subd. (a), 12945, subds. ~~(b)(2) and (d)~~ (a) and (c); Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; *Cal. Federal Sav. and Loan Ass'n v. Guerra* (1987) 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613].

~~§7291.10 Requests for Pregnancy Disability Leave or Transfer; Advance Notice; Certification; Employer Response~~

~~The following rules apply to any pregnancy disability leave or transfer.~~

~~(a) Advance Notice~~

~~(1) Verbal Notice~~

~~An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs a pregnancy disability leave or transfer, and the anticipated timing and duration of the leave or transfer.~~

~~(2) 30 Days Advance Notice~~

~~An employee must provide the employer at least 30 days advance notice before pregnancy disability leave or transfer is to begin if the need for the leave or transfer is foreseeable because of pregnancy. The employee shall consult with the employer and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the operations of the employer. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee.~~

~~(3) When 30 Days Not Practicable~~

~~If 30 days advance notice is not practicable, such as because of a lack of knowledge of approximately when leave or transfer will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.~~

~~(4) Prohibition Against Denial of Leave or Transfer in Emergency or Unforeseeable Circumstances~~

~~An employer shall not deny a pregnancy disability leave or transfer, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide advance notice of the need for the leave or transfer.~~

~~(5) Employer Obligation to Inform Employees of Notice Requirement~~

~~An employer shall give its employees reasonable advance notice of any notice requirements which it adopts. The employer may incorporate its notice requirements in the general notice requirements in section 7291.16 and such incorporation shall constitute "reasonable advance notice." Failure of the employer to give or post such notice(s) shall preclude the employer from taking any adverse action against the employee, including denying pregnancy disability leave, for failing to furnish the employer with advance notice of a need to take pregnancy disability leave.~~

~~(6) Employer Response to Leave or Transfer Request~~

~~The employer shall respond to the leave or transfer request as soon as practicable and in any event no later than ten calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.~~

~~(b) Medical Certification~~

~~As a condition of granting a pregnancy disability leave or transfer, the employer may require medical certification, as defined in section 7291.2, subdivision (d), if the employer requires certification of other similarly situated employees. If the certification satisfies the requirements of section 7291.2, subdivision (d), the employer must accept it as sufficient. Upon expiration of the time period which the health care provider originally estimated that the employee needed, the employer may require the employee to obtain recertification if additional time is requested if the employer has similar requirements for other similarly situated employees.~~

~~(1) The employer may not ask the employee to provide additional information beyond that allowed by these regulations.~~

~~(2) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information requested.~~

~~(c) Release to Return to Work~~

~~As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require that the employee obtain a release to "return to work" from her health care provider stating that she is able to resume her original job duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly~~

~~situated employees returning to work after a non-pregnancy related disability leave or transfer.~~

~~Authority Cited: Government Code sections 12935, subd. (a).~~

~~Reference: Government Code sections 12940, subd. (a), 12945, subd. (b)(2); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825.~~

§ 7291.11 Terms of Pregnancy Disability Leave

(a) Paid Leave

An employer is not required to pay an employee during ~~a~~ pregnancy disability leave ~~except:~~ unless the employer pays for other temporary disability leaves for similarly situated employees. An employee may be entitled to receive state disability insurance for a period of disability because of pregnancy and may check with the California Employment Development Department for more information.

~~(1) If the employer pays for other temporary disability leaves.~~

~~(A) A non-Title VII employer with five to 14 employees must pay an employee disabled by pregnancy only six weeks of accrued, paid leave for a normal pregnancy regardless of its paid leave policy for other disabled employees.~~

~~1) A "six-week leave," means the equivalent of six of the employee's normally scheduled workweeks. For a full-time employee working five eight-hour days per week, this means 30 working and/or paid eight-hour days of leave entitlement. For employees who work less than full time, or who work full time but on alternative work schedules, the number of working days which constitutes "six weeks" is calculated on a pro rata or proportional basis.~~

~~2) This exception does not apply to any employee disabled by pregnancy that is not normal as defined at section 7291.2, subdivision (n).~~

(b) Accrued Time Off

(1) Sick Leave

An employer may require an employee to use, or an employee may elect to use, any accrued sick leave during the otherwise unpaid portion of her pregnancy disability leave.

(2) Vacation Time and Other Accrued Time Off

An employee may elect, at her option, to use any vacation time or other accrued personal time off (including undifferentiated paid time off ("PTO")) ~~that~~ for which the employee

is ~~otherwise~~ eligible ~~to take during the otherwise unpaid portion of the pregnancy disability leave~~.

(c) Other Benefits and Seniority Accrual

During ~~the period of~~ her pregnancy disability leave, the employee ~~is entitled to accrual of~~ shall accrue seniority and ~~to~~ participate in health plans, employee benefit plans, including, but not limited to, life, short-term and long-term disability or accident insurance, pension and retirement plans, stock options and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to any other unpaid disability leave granted by the employer for any reason other than a pregnancy disability.

(1) If the employer's policy allows seniority to accrue when employees are on paid leave, such as paid sick or vacation leave, and/or unpaid leave, then seniority will accrue during any part of a paid and/or unpaid pregnancy disability leave~~, consistent with the employer's policy~~.

(2) The employee returning from a pregnancy disability leave shall return with no less seniority than the employee had when the leave commenced ~~for purposes of layoff, recall, promotion, job assignment, and seniority related benefits such as vacation~~.

(d) Employee Status

The employee shall retain employee status during the period of the pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, ~~et cetera~~ or other qualifying provisions.

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code sections 12926, subd. (p), 12940, subd. (a), 12945, ~~subds.~~ subd. (b)(1)~~, (b)(2)~~; Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; Pregnancy Discrimination Act of 1978 (P.L. 95-555, 42 U.S.C. §2000e, §701(k)), an amendment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.).

§ 7291.12 Relationship Between Pregnancy Leave and FMLA Leave

(a) A Pregnancy Leave May Also Be a FMLA Leave

If the employer is a covered employer and the employee is eligible for leave under the federal Family Care and Medical Leave Act (FMLA), the employer may be able to count the

employee's pregnancy disability leave under this subchapter, up to a maximum of 12 weeks, against her FMLA leave entitlement.

(b) FMLA Coverage

For more specifics on rights and obligations under FMLA, consult the FMLA regulations regarding family care and medical leave (Title 29, Part 825 of the Code of Federal Regulation).

~~(b) Pregnancy a "Serious Health Condition" under FMLA~~

~~Any period of incapacity or treatment due to pregnancy, including prenatal care, is included as a "serious health condition" under FMLA.~~

~~(c) Employer Obligation under FMLA to Continue Group Health Plan Benefits~~

~~During any part of the pregnancy disability leave which is also a FMLA leave, if the employer provides health benefits under any "group health plan," the employer may have a FMLA obligation to continue providing such benefits.~~

~~(d) FMLA Coverage~~

~~In general, only employees working for employers with 50 or more employees are eligible to take a family care leave under FMLA. For more specifics on rights and obligations under FMLA, consult the FMLA regulations regarding family care and medical leave (Title 29, Part 825 of the Code of Federal Regulations, issued January 6, 1995).~~

(c) Employer Obligation under FMLA to Continue Group Health Plan Benefits

If the employer provides health benefits under any "group health plan," the employer may have an obligation under FMLA to continue providing such benefits during any part of the pregnancy disability leave which is also a FMLA leave.

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code section ~~12940~~ 12945, subd. ~~(b)(2)~~ (a); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq., and FMLA regulations, 29 CFR 825.

§ 7291.13 Relationship Between CFRA and Pregnancy Leaves

(a) Separate and Distinct Entitlements

The right to take a pregnancy disability leave under Government Code section 12945, subdivision (b)(2), and these regulations is separate and distinct from the right to take a

leave under the California Family Rights Act ("CFRA"), Government Code sections 12945.1 and 12945.2.

(b) "Serious Health Condition" - Pregnancy

An employee's own disability due to pregnancy, childbirth or related medical conditions is not ~~*included* as~~ a "serious health condition" under CFRA.

(c) CFRA Leave after Pregnancy Disability Leave

At the end of the employee's period(s) of pregnancy disability, or at the end of four months pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of her child, if the child has been born by this date. ~~There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for reason of the birth of her child.~~

(1) There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave for the birth of her child. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for the birth of her child.

~~(1)~~ (2) ~~As provided in section 7297.6, subdivision (c)(1), where~~ Where an employee has utilized four months of pregnancy disability leave prior to the birth of her child, and her health care provider determines that a continuation of the leave is medically necessary, an employer may, but is not required to, allow an eligible employee to utilize CFRA leave prior to the birth of her child. No employer shall, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled under CFRA.

(d) Maximum Entitlement

The maximum ~~possible combined~~ statutory leave entitlement for ~~CFRA/FMLA~~ California employees, provided they qualify for CFRA, for both pregnancy disability leave ~~(under FMLA and Government Code section 12945, subdivision (b)(2))~~ and CFRA leave for reason of the birth of the child and/or the employee's own serious health condition is ~~four months and 12~~ the working days in 29 1/3 workweeks. This assumes that the employee is disabled by pregnancy for four months (the working days in 17.3 weeks or 122 days) and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of her child.

~~(e) CFRA Coverage~~

~~In general, employers who are covered by CFRA and employees who are eligible to take CFRA leave are the same as under FMLA. For more specifics on rights and obligations under CFRA, consult the CFRA regulations (Cal. Code of Regs., tit. 2, §7297.0, et seq.).~~

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code section 12940, subd. ~~(b)(2)~~ (a); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq., and FMLA regulations, 29 CFR 825.

~~§7291.14 – Retaliation~~

~~In addition to the retaliation prohibited by Government Code section 12940, subdivision (f), and section 7287.8 of the regulations, it shall be an unlawful employment practice for any person to discharge, fine, suspend, expel, punish, refuse to hire, or otherwise discriminate against any individual, except as otherwise permitted in this subchapter, because:~~

~~(a) of the individual's pregnancy and/or~~

~~(b) because that individual has exercised her right to take a pregnancy disability leave or transfer and/or~~

~~(c) because that individual has given information or testimony regarding her pregnancy disability leave, in any inquiry or proceeding related to any right guaranteed under this subchapter.~~

~~Authority Cited: Government Code section 12935, subd. (a).~~

~~Reference: Government Code section 12940, subd. (f); California Code of Regulations, title 2, section 7287.8; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825.~~

§ 7291.14 Relationship Between Pregnancy Disability Leave and Leave of Absence as Reasonable Accommodation to Physical or Mental Disability – Separate and Distinct Rights

The right to take a pregnancy disability leave under Government Code section 12945, subdivision (a), and these regulations is separate and distinct from the right to take a leave of absence as a form of reasonable accommodation under Government Code section 12940, subdivision (m). At the end of an employee's pregnancy disability leave, an employee who has ~~*developed*~~ a physical or mental disability may be entitled to reasonable accommodation under Government Code section 12940, subdivision (m). *Entitlement to leave under section 12940, subdivision (m), must be determined on a case-by case basis, using the standards appropriate to analysis under that subdivision.*

§ 7291.15 Remedies

Upon determining that an employer has violated Government Code sections 12940, 12943, or 12945, the Commission may order any remedy available under Government Code section 12970, and section 7286.9 of the regulations. The remedy, however, for a violation of section 7291.16,

subdivision (c)(2), ~~subdivision (b) 7291.14, subdivision (a),~~ (failure to provide notice) shall be an order that the employer provide such notice.

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code section 12970.

~~§7291.16 Notice of Right to Request Pregnancy Disability Leave or Transfer~~

§ 7291.16 Employer Notice to Employees of Rights and Obligations for Reasonable Accommodation, To Transfer and To Take Pregnancy Disability Leave

~~(a) Employers to Post Notice~~

(a) Employers to Provide Reasonable Advance Notice Advising Employees Affected by Pregnancy of Their FEHA Rights and Obligations

~~All~~ An employers shall ~~provide~~ give its employees reasonable advance notice of employees' FEHA rights and obligations regarding pregnancy, childbirth or related medical conditions ~~to their employees of the right to request pregnancy disability leave or transfer under the Fair Employment and Housing Act as specified~~ as set forth below at section *7291.16,* ~~subdivisions (d) and (e) *7291.14,*~~ subdivisions (e) and (f), and as contained in "Notice A" and "Notice B", or their equivalents. ~~Employers shall post the appropriate notice in a conspicuous place or places where employees tend to congregate. If the employer publishes an employee handbook which describes other kinds of temporary disability leaves or transfers available to its employees, that employer shall include a description of pregnancy disability leave or transfer in the next edition of its handbook which it publishes following adoption of these regulations. If an employer qualifies as a CFRA employer, the employer may include both pregnancy disability leave and CFRA leave requirements in a single notice. An employer is also required to give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of her pregnancy or sooner if the employee inquires about pregnancy disability leaves or transfers.~~

~~(b) Employers to Give Notice~~

~~Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.~~

(b) Content of Employer's Reasonable Advance Notice

An employer shall provide its employees with information about:

(1) an employee's right to request reasonable accommodation, transfer, or pregnancy disability leave;

(2) employees' notice obligations, as set forth in section ~~*7291.14*~~ *7291.16*, to provide adequate advance notice to the employer of the need for reasonable accommodation, transfer or pregnancy disability leave; and

(3) the employer's requirement, if any, for the employee to provide medical certification to establish the medical advisability for reasonable accommodation, transfer, or pregnancy disability leave, as set forth in section*s* 7291.1*6*, subdivisions (a) and (b), and 7291.17, subdivision (b).

~~(c) Non-English-Speaking Workforce~~

~~Any CFRA-covered employer whose work force at any facility or establishment contains ten percent or more of persons who speak a language other than English as their primary language shall translate the notice into the language or languages spoken by this group or these groups of employees.~~

(c) Consequences of Employer Notice Requirement

(1) If the employer follows the requirements in section ~~*7291.14*~~ *7291.16*, subdivision (d), below, such compliance shall constitute "reasonable advance notice" to the employee of her notice obligations.

(2) Failure of the employer to provide reasonable advance notice shall preclude the employer from taking any adverse action against the employee, including denying reasonable accommodation, transfer or pregnancy disability leave, for failing to furnish the employer with adequate advance notice of a need for reasonable accommodation, to transfer, or to take pregnancy disability leave.

(d) Distribution of Notices

(1) Employers shall post and keep posted the appropriate notice in a conspicuous place or places where employees congregate. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section.

(2) If the employer publishes an employee handbook that describes other kinds of reasonable accommodation, transfers or temporary disability leaves available to its employees, that employer shall include a description of reasonable accommodation, transfer, and pregnancy disability leave in the next edition of its handbook that it publishes following adoption of these regulations. In the alternative, the employer may distribute to its employees a copy of its Notice at least annually (distribution may be by electronic mail).

(3) An employer is also required to give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of her pregnancy or sooner if the employee inquires about reasonable accommodation, transfer, or pregnancy disability leaves.

(4) Non-English Speaking Workforce

Any CFRA-covered employer whose work force at any facility or establishment contains ten percent or more of persons who speak a language other than English as their primary language shall translate the notice into the language or languages spoken by this group or these groups of employees.

~~(d)~~ (e) "Notice A"

The text below in "Notice A" should be used ~~contains only the minimum requirements of the Fair Employment and Housing Act's provisions regarding pregnancy, childbirth or related medical conditions. This Notice is suitable for use~~ by employers with less than 50 employees and who are therefore not subject to CFRA or FMLA. ~~Nothing in this notice requirement prohibits an~~ An employer ~~from providing~~ may provide a leave policy ~~which~~ that is more generous than that required by this ~~act~~ Act if that more generous policy is provided to all similarly situated disabled employees. An employer ~~may provide its own notice of its own policy. Employers~~ may develop ~~their~~ its own notice or ~~they~~ it may choose to use the text provided below, unless it does not accurately reflect ~~their~~ its own policy.

~~(e)~~ (f) "Notice B"

The text below in "Notice B" should be used by employers with 50 or more employees who are subject to CFRA or FMLA. "Notice B" combines notice of both an employee's rights regarding pregnancy and CFRA leave rights and ~~pregnancy disability leave rights~~. ~~Adoption of this notice, or a comparable notice,~~ satisfies the ~~employer's~~ notice obligations ~~under~~ of both this subchapter and section 7297.9 of the regulations. ~~This notice is suitable for use by all employers with 50 employees or more.~~

~~"Notice A"~~

~~PREGNANCY DISABILITY LEAVE~~

~~Under the California Fair Employment and Housing Act (FEHA), if you are disabled by pregnancy, childbirth or related medical conditions, you are eligible to take a pregnancy disability leave (PDL). If you are affected by pregnancy or a related medical condition, you are also eligible to transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties, if this transfer is medically advisable.~~

- ~~The PDL is for any period(s) of actual disability caused by your pregnancy, childbirth or related medical conditions up to four months (or 88 work days for a full time employee) per pregnancy.~~

- ~~The PDL does not need to be taken in one continuous period of time but can be taken on an as needed basis.~~

- ~~Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth would all be covered by your PDL.~~

- ~~Generally, we are required to treat your pregnancy disability the same as we treat other disabilities of similarly situated employees. This affects whether your leave will be paid or unpaid.~~

  - ~~You may be required to obtain a certification from your health care provider of your pregnancy disability or the medical advisability for a transfer. The certification should include:~~

    ~~1) the date on which you became disabled due to pregnancy or the date of the medical advisability for the transfer;~~

    ~~2) the probable duration of the period(s) of disability or the period(s) for the advisability of the transfer; and,~~

    ~~3) a statement that, due to the disability, you are unable to work at all or to perform any one or more of the essential functions of your position without undue risk to yourself, the successful completion of your pregnancy or to other persons or a statement that, due to your pregnancy, the transfer is medically advisable.~~

- ~~At your option, you can use any accrued vacation or other accrued time off as part of your pregnancy disability leave before taking the remainder of your leave as an unpaid leave. We may require that you use up any available sick leave during your leave. You may also be eligible for state disability insurance for the unpaid portion of your leave.~~

- ~~Taking a pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave, the impact of the leave on your seniority and benefits, and our policy for other disabilities, please contact~~
  ~~.~~

"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, harassment or retaliation because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy").

- Your employer has an obligation:

  - to reasonably accommodate your medical needs (such as allowing more frequent rest breaks);
  - to transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
  - to provide you with a pregnancy disability leave (PDL) of up to four months (the working days in one-third of a year or 17.3 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 a PDL, however, does not make you immune from non-leave related employment actions, such as a layoff.

- For a pregnancy disability leave:

  - The 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~~, *through a medical certification,*~~ how much time you will need.
  - Once your employer has been informed that your health care provider has determined that your pregnancy disability leave is medically advisable, your employer must guarantee in writing that you can return to work if you request this written guarantee. Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.
  - The PDL may include, *but is not limited to,* 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*, or post-partum depression.
  - The 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 for 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, administered by the California Employment Development Department.
  - At your discretion, you can use any vacation or other time off credits as part of your PDL.
  - Your employer may require or you may choose that you use up any available sick leave during your leave.
  - Taking a 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 a 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 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 ~~*your*~~ 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, look at the Department of Fair Employment and Housing's website at 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 Fair Employment and Housing Commission's website at www.fehc.ca.gov.*

"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 us 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 a pregnancy disability leave (PDL) of up to four months, or the working days in one-third of a year or 17.3 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, ~~and recovery~~

~~from childbirth, stillbirth, miscarriage~~; 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 rest 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 a PDL and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of 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 of a family member). For events which are unforeseeable, we need you to notify us, 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.

We may require medical certification from your health care provider before allowing you a leave for:

- your pregnancy; ~~or~~
- your own serious health condition; or ~~certification from the health care provider of~~
- to care for your child, parent, or spouse who has a serious health condition.

We have a medical certification form that you can take to your health care provider to fill out and return to us. 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. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact .

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, contact your employer, look at the Department of Fair Employment and Housing's website at 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 Fair Employment and Housing Commission's website at www.fehc.ca.gov.*

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code sections 12940, subd. (a), 12945, ~~subd. (b)(2)~~ subds. (a) and (b); Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 ~~CFR~~ Code of Federal Regulations 825.

~~§ 7291.10~~ § 7291.17 Employee Requests for Reasonable Accommodation, Transfer or Pregnancy Disability Leave ~~or Transfer~~: Advance Notice; Medical Certification; Employer Response

The following rules apply to any request for reasonable accommodation, transfer, or ~~*pregnancy*~~ disability leave ~~or transfer~~, because of pregnancy.

(a) Adequate Advance Notice

(1)Verbal or Written Notice

An employee shall ~~provide at least verbal notice~~ advise her employer, either orally or in writing, with timely notice sufficient to make the employer aware that the employee needs reasonable accommodation, a transfer, or a pregnancy disability leave ~~or transfer~~, and, where practicable, the anticipated timing and duration of the reasonable accommodation, transfer or pregnancy disability leave ~~or transfer~~.

(2) 30 Days Advance Notice

An employee must provide the employer at least 30 days advance notice before the start of reasonable accommodation, transfer, or pregnancy disability leave ~~or transfer is to begin~~ if the need for the reasonable accommodation, transfer, or leave ~~or transfer~~ is foreseeable ~~because of pregnancy~~. The employee shall consult with the employer and make a reasonable effort to schedule any planned appointment or medical treatment ~~so as~~ to minimize disruption to the employer's operations ~~of the employer. Any such scheduling, however, shall be~~ subject to the health care provider's approval ~~of the health care provider of the employee~~.

(3) When 30 Days Is Not Practicable

If 30 days advance notice is not practicable, ~~such as~~ because of a lack of knowledge of ~~approximately~~ when reasonable accommodation, transfer, or leave ~~or transfer~~ will be required to begin, a change in circumstances, ~~or~~ a medical emergency, or other good cause, notice must be given as soon as practicable.

(4) Prohibition Against Denial of Reasonable Accommodation, Transfer, or Leave ~~or Transfer~~ in Emergency or Unforeseeable Circumstances

An employer shall not deny reasonable accommodation, transfer, or a pregnancy disability leave ~~or transfer~~, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide adequate advance notice of the need for the reasonable accommodation, transfer, or leave ~~or transfer~~.

~~(5) Employer Obligation to Inform Employees of Notice Requirement~~

~~An employer shall give its employees reasonable advance notice of any notice requirements which it adopts. The employer may incorporate its notice requirements in the general notice requirements in section 7291.16 and such incorporation shall constitute "reasonable advance notice." Failure of the employer to give or post such notice(s) shall preclude the employer from taking any adverse action against the employee, including denying pregnancy disability leave, for failing to furnish the employer with advance notice of a need to take pregnancy disability leave.~~

~~(6)~~ (5) Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave ~~or Transfer~~ Request

The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave ~~or transfer~~ request as soon as practicable, and, in any event no later than ten calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

(6) Consequences for Employee Who Fails to Give Her Employer Adequate Advance Notice of Her Need for Reasonable Accommodation or Transfer

If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the employer may delay the reasonable accommodation or transfer, until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. However, under no circumstances may the employer delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of other co-workers.

(7) Direct notice to the employer from the employee rather than from a third party regarding the employee's need for reasonable accommodation, transfer, or pregnancy disability leave is preferred, but not required. The content of any notice must meet the requirements of this section *and the employer may require medical certification.*

(b) Medical Certification

As a condition of granting reasonable accommodation, transfer, or a pregnancy disability leave ~~or transfer~~, the employer may require medical certification ~~as defined in section 7291.2, subdivision (d), if the employer requires certification of other similarly situated employees. If the certification satisfies the requirements of section 7291.2, subdivision (d), the employer~~

~~must accept it as sufficient. Upon expiration of the time period which the health care provider originally estimated that the employee needed, the employer may require the employee to obtain recertification if additional time is requested if the employer has similar requirements for other similarly situated employees~~. The employer must notify the employee ~~or her health care provider~~ of the need to provide medical certification; the deadline for providing such certification; what constitutes sufficient medical certification; and the consequences for failing to provide medical certification.

~~(1) The employer may not ask the employee to provide additional information beyond that allowed by these regulations.~~

(1) An employer must ~~*give written notice to*~~ *notify* the employee of the medical certification requirement each time a certification is required~~, *along with a*~~ *and provide the employee with any employer-required* medical certification form for the employee's health care provider to complete. An employer may use the form provided at section 7291.17, subdivision (e), or may develop its own form. Such notice to the employee of the need for medical certification may be oral if the employee is already out on a pregnancy disability leave because the need for the leave was unforeseeable. The employer shall thereafter mail or send via electronic mail or by facsimile a copy of the medical certification form to the employee or to her health care provider, whomever the employee designates.

~~(2) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information requested.~~

(2) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(3) In most cases, the employer should request that an employee furnish medical certification from a health care provider at the time the employee gives notice of the need for reasonable accommodation, transfer or leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the reasonable accommodation, transfer, or leave or its duration.

(4) At the time the employer requests medical certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate medical certification. The employer shall advise an employee whenever the employer finds a medical certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(5) If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the medical certification requirements of these regulations, and the employee or employer elects to substitute sick, vacation, personal or family leave for unpaid pregnancy disability leave, only the employer's less stringent leave certification requirements may be imposed.

(6) The medical certification indicating the medical advisability of reasonable accommodation or a transfer is sufficient if it contains:

(A) A description of the requested reasonable accommodation or transfer;

(B) A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy; and

(C) The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of that reasonable accommodation or transfer.

(7) The medical certification indicating disability necessitating a leave is sufficient if it contains:

(A) A statement that, the employee needs to take pregnancy disability leave because she is disabled by pregnancy, childbirth or a related medical condition;

(B) The date on which the employee became disabled because of pregnancy and the estimated duration of the leave.

(8) If the certification satisfies the requirements of section ~~7291.15,~~ 7291.17, subdivision (b), the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations. Upon expiration of the time period which the health care provider originally estimated that the employee needed for her reasonable accommodation, transfer, or leave, the employer may require the employee to obtain recertification if additional time is requested.

(9) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information ~~requested~~ received.

(c) Failure to Provide Medical Certification

(1) In the case of foreseeable reasonable accommodation, transfer, or pregnancy disability leave, an employer may delay granting the reasonable accommodation, transfer or taking the leave to an employee who fails to provide timely certification after being requested by the employer to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(2) When the need for reasonable accommodation, transfer or leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the employer (which must allow at least 15 days after the employer's request) or as soon as reasonably possible under the circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may delay the employee's continuation of the reasonable accommodation, transfer or pregnancy disability leave. If the employee never produces the certification, the transfer or pregnancy disability leave is not protected under Government Code section 12945 and the employer may refuse to return the employee to work.

(d) Release to Return to Work

As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require that the employee obtain a release to "return-to-work" from her health care provider stating that she is able to resume her original job or duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

(e) Medical Certification Form

The Medical Certification form below may be used by employers requiring written medical certification from their employees seeking reasonable accommodation, transfer or disability leave because of pregnancy. An employer may develop its own form, utilize one provided by the employee's health care provider or it may choose to use the form provided below.

FAIR EMPLOYMENT & HOUSING COMMISSION

CERTIFICATION OF HEALTH CARE PROVIDER
FOR PREGNANCY DISABILITY LEAVE, TRANSFER AND/OR REASONABLE ACCOMMODATION

Employee's Name:

_____

Please certify that, because of this patient's pregnancy, childbirth, or a related medical condition (including, *but not limited to,* recovery from pregnancy, childbirth, ~~*stillbirth, miscarriage loss or end of pregnancy,*~~ or post-partum depression), this patient needs (check all appropriate category boxes):

☐ Time off for medical appointments.
Specify when and for what duration:

_____

_____

☐ A disability leave. [Because of a patient's pregnancy, childbirth or a related medical condition, she cannot perform *one or more of* the *essential* functions of her job or cannot perform them without undue risk to herself, the successful completion of her pregnancy, or other persons.]
Beginning (Estimate): _____
Ending (Estimate): _____

☐ Intermittent leave. Specify ~~*medical reasons*~~ *medically advisable intermittent leave schedule*:

_____

_____

~~*Needed intermittent leave schedule:*~~

_____

_____

Beginning (Estimate): _____
Ending (Estimate): _____

☐ Reduced work schedule. [Specify ~~*medical reason and*~~ medically advisable reduced work schedule.]

_____

_____

Beginning (Estimate): _____
Ending (Estimate): _____

☐ Transfer to a less strenuous or hazardous position or to be assigned to less strenuous or hazardous duties [specify what would be a medically advisable position/duties].

_____

_____

Beginning (Estimate): _____
Ending (Estimate): _____

☐ Reasonable accommodation(s). [Specify medically advisable needed accommodation(s). These could include, but are not limited to, modifying lifting requirements, *or* providing more frequent breaks, *or providing a stool or chair to sit.*]

_____

_____

Beginning (Estimate): _____
Ending (Estimate): _____

Name, address and telephone number [printed] of health care provider.

_____

_____

_____

Name, address and ~~telephone number~~ *medical license number* [printed] of health care provider.

Signature of health care provider:

Date:

Authority Cited: Government Code sections 12935, subd. (a).

Reference: Government Code sections 12940, subd. (a), 12945, ~~subd. (b)(2)~~ subds. (a) – (c); Stats. 1999, c. 591 (AB 1670); Stats. 2004, c. 647 (A.B. 2870); FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 ~~CFR~~ Code of Federal Regulations 825.306.

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.)
	FOUR BIG DIFFERENCES	
Pregnancy as a "Serious Health Condition" (SHC)	Covered as a Family and Medical Leave Act (FMLA) serious health condition. 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.
Registered Domestic Partners Equal Spouses	Not covered under FMLA. 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.
"Qualifying Exigency" because of employee's or family member's active military duty	** 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 **active military duty**, 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. 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 25+ 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.
Care for Ill or Injured Service Member	** An employee who is the spouse, child, parent or **next of kin** of a covered service member may take a total of **26 weeks** 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.

** 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.)

PREGNANCY & BABY BONDING: FMLA/CFRA DIFFERENCES

☐ **Minimum Duration of Bonding Intermittent Leave**	Eligible employees may work an intermittent or reduced schedule for baby bonding *only if the employer agrees.* (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.
☐ **Reinstatement**	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).) ** 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

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	If both *husband and wife* work for same employer, leave is limited to 12 weeks between the spouses: ☐ to care for a parent's SHC (new regulations); ☐ for child's birth; ☐ to care for the child after birth; or ☐ for placement of a child through adoption or foster care. 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. ** Unmarried parents (including same sex parents) are not subject to these restrictions.	Employer may limit leave to a combined total of 12 weeks if both *parents* 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 *any other qualifying purpose.*" (7297.1(c).) ** No CFRA limitation on spouses caring for parents.

** 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.)
	ESTABLISHING COVERAGE	
ESTABLISHING A SERIOUS HEALTH CONDITION (SHC)	No change under the new regulations except for the following clarifications (825.113 & 825.115): An employee establishes that he/she has a SHC by: □ Visiting a Health Care Provider (HCP) on **2** occasions **&** having more than 3 days of incapacity associated with the condition. □ The 1st visit establishing a SHC must occur in person within 7 days of the incapacity along with treatment (e.g., prescription medication). □ The 2 visits must occur within a 30-day period from the onset of the initial incapacity; & □ The HCP, not the employee, must determine if a 2nd visit is needed during the 30 day period. □ 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.	CFRA reference old FMLA regulations to establish a SHC. (7297.0(o)(2).) 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).)
ESTABLISHING NEED TO CARE FOR A FAMILY MEMBER WITH A SHC	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 & 825.124.)	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).)

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.)
	EMPLOYEE ELIGIBILITY FOR LEAVE	
☐ **Break in service**	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).)
☐ **Re-qualifying for leave**	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).)
☐ **Counting Leave as FMLA Leave When Eligibility Commences "Midstream"**	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	
Treatment of Holidays	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. CFRA regulations do follow the remaining part of this FMLA regulation, 825.200(h), which provides that if a

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

INTERMITTENT LEAVE

SCHEDULING INTERMITTENT LEAVE	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.
INTERMITTENT LEAVE INCREMENTS	New regulations: Employer may use a time increment for absences or leave use no greater than the *shortest* 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).)
CALCULATING INTERMITTENT LEAVE	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).)

** 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.)
OVERTIME & INTERMITTENT LEAVE	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.
DOCKING PAY OF EXEMPT EMPLOYEES	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. But in a CA DLSE Opinion Letter 2002-03-01, the then-Labor Commissioner stated that CA employers may treat exempt employees like non-exempt employees for the amount of CFRA leave taken (for leave that runs concurrently with FMLA).

SUBSTITUTION OF PAID LEAVE FOR FMLA/CFRA

VACATION, PERSONAL TIME OFF (PTO), SICK LEAVE & DISABILITY BENEFITS	Employer has a paid leave policy: Employer may *require* that employees meet the terms & 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).) No paid leave policy: the *employee may elect* to use vacation or PTO at his/her option. (825.207(a).) Supplementing disability benefits: Employer & employee may agree (but can't require) that other forms of accrued time (sick leave, vacation & PTO) can augment paid disability payments while on FMLA. (825.207(d) & (e).)	** No distinction made in CFRA regulations between employers with/without paid leave policies. Employer or employee may *require* use of vacation, other PTO (7297.5(b)(1) & (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).) No regulation on supplementing disability benefits with other forms of paid leave. ** Employees can elect to use vacation/PTO during PDL; but employers cannot require it. Employers can require using sick leave. (Gov. Code §12945(a) & 7291.11(b)(2).) CA employers must give employees notice of SDI/PFL benefits at hire & when given notice of qualifying event.

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

TERM	FMLA Regulations: (29 C.F.R. § 825.100, et seq.)	CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)
IF EMPLOYEE REQUESTS TIME OFF:		
☐ **No mention of qualifying leave reason**	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).)
☐ **Denied leave request, employee then gives family leave-qualifying reason**	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).)
☐ **Sufficient Notice of Leave**	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 *specifically reference* 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

TERM	FMLA Regulations: (29 C.F.R. § 825.100, et seq.)	CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)
EMPLOYER NOTICE REQUIREMENTS		
☐ **For All Types of Leave**	Employers must post a specific notice for employees explaining their leave rights. (825.300.) New regulations now clarify electronic posting is okay. ☐ Notice must be posted in a conspicuous place where applicants and employees tend to congregate. (825.300(a)(1).) ☐ 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).)	Same posting requirements. (7297.9.) 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, California Family Rights Act Brochure - English, or the California Family Rights Act Brochure - Spanish, may be viewed on DFEH's website, www.dfeh.ca.gov. This may be copied and distributed to employees.
☐ **Notice Req'ts: Employers Subject to PDL & Family Leave**	Federal law requires posting WH 1420 (FMLA Poster) (App. C to Part 825.)	State law requires a combined **PDL/CFRA** notice. (7297.9(a) & (d).)
LEAVE DESIGNATION		
NOTIFYING EMPLOYEE LEAVE WAS APPROVED	** When the employee puts the employer on notice of the need for leave, the employer must provide employee with notice of their rights & 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	CFRA regulations require 10 business days notice. (7297.4(a)(6).) 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.

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

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 5 business days (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).)	
RETROACTIVE DESIGNATION	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: "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

☐ **Identifying the employee's own serious health condition (SHC)**	New regulations allow employers to ask for a diagnosis of what is the SHC. (825.306(a)(3).) 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.)	** CFRA regulations specify that an employer *cannot* ask for a diagnosis, but it may be provided at employee's option. (7297.4(b)(2).) Employees have provided sufficient information to make a determination under the CFRA if they provide: ☐ The date, if known, on which the SHC began; ☐ The probable duration of the condition; and ☐ 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.

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

TERM	FMLA Regulations: (29 C.F.R. § 825.100, et seq.)	CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)
		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 & Medical Leave Act of 1993") provided that the provider does not disclose the underlying diagnosis of the employee's SHC without consent.
☐ **Second & Third Opinions for Employee's SHC**	If the employer doubts the validity of the employee's medical certification, the employer may require a second health care opinion, designated & paid for by employer. If first & second opinions conflict, then require and pay for a third opinion (with a provider mutually selected by employer & employee). Third opinion is final & binding. (825.307(b).)	Same requirements.
☐ **Identifying the family member's serious health condition**	Certification may identify the SHC involved. (825.306(a)(3).)	The certification need not but, at the employee's option, may identify the serious health condition involved. (7297.(b)(1).) Employees have provided sufficient information to make a CFRA eligibility determination if they provide: ☐ The date, if known, on which the SHC came into existence ☐ The probable duration of the condition ☐ An estimate of the amount of time the health care provider believes the employee needs to care for the child, parent or spouse; and ☐ A statement that the SHC warrants the participation of the employee to provide care during a period of

TERM	FMLA Regulations: (29 C.F.R. § 825.100, et seq.)	CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)
		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. Employers may use same certification forms as described for employee's own SHC, see above.
□ **Second Opinion to Care for Family Member**	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).)	** 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).)
Background Information for Second & Third Opinion Providers	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.)	No comparable CFRA regulation.
Time Frame to Correct Deficient Certification	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).)	** No comparable provisions in CFRA regulations.

** 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.)
Employer Contact with Health Care Provider	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.
Frequency of Recertification	New regulations: An employer may request recertification: ☐ Every 30 days in connection with an absence unless the medical certification indicates that the minimum duration is more than 30 days. ☐ 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. ☐ 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. ☐ 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.)	** 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).) ** No provision that a new year gives the employer the opportunity to start over with the certification process.

TERM	FMLA Regulations: (29 C.F.R. § 825.100, et seq.)	CFRA Regs (Cal. Code Regs., tit. 2, § 7297.0, et seq.)
Fitness for Duty Returning from Medical Leave for Employee's Own SHC	Intermittent Leave: Employer may require an employee to furnish a fitness-for-duty statement every 30 days if employee's has used intermittent leave & 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. Return from a Block of Leave: 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.)	CFRA regulations are silent about fitness for duty statements for intermittent medical leave. 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).)

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

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.*

TERM	FMLA REGULATION
Interplay of Information Required for Disability Plans or Workers' Compensation Benefits (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 such 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.
Joint Employer Coverage (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.
"Worksite" Definition (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. 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.
Light Duty (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

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.
Enforcement of Employer Call-In Procedures (825.302(d).)		When leave in 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.
Perfect Attendance Awards (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.
Waiver and Release of FMLA Claims (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.

Comparison of the ADA, the ADA Amendments Act & the FEHA

Term	Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101. et seq.) and Subsequent Court Decisions	ADA Amendments Act of 2008 (Eff. 1/1/09) (ADAAA) (Pub. Law 110-325; 42 U.S.C. § 12101, et seq., as amended)	Fair Empl. & Hous. Act (FEHA) (Gov. Code § 12900, et seq., as amended by the Prudence K. Poppink Act of 2000)
"Disability" Definition	An employee or applicant is "disabled" if s/he: (1) has an actual physical or mental impairment that *substantially limits* a major life activity; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. [§ 12102(2).] U.S. Supreme Court and circuit court cases narrowed this definition, excluding many medical impairments from the definition of "disabilities."	Congress reaffirmed that the definition of "disability" should be construed in favor of *broad coverage* of individuals, specifically disapproving U.S. Supreme Court cases which had narrowed coverage. [See Congressional findings at Pub. Law 110-325, §2(a) & (b); 42 U.S.C. § 12102(1) & see rules of construction language at § 12102(4).]	A person is "disabled" if s/he has a physical or mental impairment that *limits* a major life activity; has a record of such an impairment, is regarded as having or having had such an impairment, or is regarded or treated as having an impairment that has no present disabling effect but might become a future disability. [§§ 12926(i) & (k), 12926.1(c).] Definitions of physical and mental disabilities are to be *broadly construed.* [§ 12926.1(b)] FEHA is specifically distinguished from the ADA. [§ 12926.1(a) & (d).]
"Mitigating Measures"	Mitigating measures which ameliorate disabilities' effects such as medication or medical supplies are considered in determining whether a person is substantially limited in a major life activity. [*Sutton v. United Airlines* (1999) 527 U.S. 471; *Murphy v. United Parcel Service* (1999) 527 U.S. 516 & *Albertson's, Inc. v. Kirkingburg* (1999) 527 U.S. 555.).]	Mitigating measures are *not* considered in determining whether an individual has an impairment that substantially limits a major life activity [§ 12102(4)(E)], but "ordinary eyeglasses or contact lenses" may be taken into account. [§ 12102(4)(E)(i)(I).]	Mitigating measures are not considered in determining whether an individual has an impairment that "limits" a major life activity unless the mitigating measure itself limits a major life activity. [§§ 12926(i)(1)(A) & (k)(1)(B), 12926.1(c).] No mention of eyeglasses or contact lenses.

Comparison of the ADA, the ADA Amendments Act & the FEHA

Term	ADA	ADAAA	FEHA
"Substantially Limits"	An impairment "substantially limits" a "major life activity" if it prevents or severely restricts the individual from performing the activity. [*Toyota Motor Mfg. of Kentucky v. Williams* (2002) 534 U.S. 184, 198.] EEOC regulations provide: "substantially limits" means "significantly restricts." [29 C.F.R. § 1630.2(j)(ii).]	The ADAAA's Congressional findings provide that the EEOC and the Supreme Court have incorrectly interpreted the term "substantially limits" to establish a greater degree of limitation than Congress intended. [ADAAA of 2008, Pub. Law 110–325, § 2(a)(4)-(8) & (b)(6).]	FEHA requires that the physical or mental condition "limits" one or more major life activities, making "the achievement of the major life activity "difficult." [§§ 12926(i)(1)(B) & (k)(1)(B)(ii), 12926.1(c).]
"Major Life Activity"	A "major life activity" must be an activity that is "of central importance to most people's daily lives." [*Toyota Motor Mfg. of Kentucky v. Williams*, *supra,* 534 U.S. at p. 184.] Some lower courts had required that individuals must be limited in more than one major life activity to be considered "disabled." [See, e.g., *E.E.O.C. v. HBH Inc.* (E.D.La. Dec. 9, 1999) 1999 WL 11385333; *E.E.O.C. v. J. B. Hunt Transport, Inc.* (2d Cir. 2003) 321 F.3d 69; *McClure v. General Motors Corp.* (5th Cir. 2003) 2003 WL 21766539.]	Disavows *Toyota v. Williams* and gives a non-exhaustive list of major life activities, including seeing, hearing, eating, sleeping, walking, learning and concentrating, as well as the operation of "major bodily functions" such as the immune and endocrine systems and normal cell growth. [§ 12102(2).] Only one major life activity is needed to establish a limitation. [§ 12102(4)(C)]	Major life activities are to be "broadly construed" and include physical, mental, and social activities and working. [§§ 12926(i)(1)(C) & (k)(1)(B)(iii), 12926.1(c)] An employee's impairment need affect only a particular job, not a class or broad range of employment, to "limit" the major life activity of "working." [§ 12926.1(c)]

Comparison of the ADA, the ADA Amendments Act & the FEHA

Term	ADA	ADAAA	FEHA
"Episodic Conditions"	Some federal courts had held that episodic or intermittent impairments, such as epilepsy or post-traumatic stress disorder, were not covered as disabilities. [See, e.g., *Chenoweth v. Hillsborough County* (11th Cir. 2001) 250 F.3d 1328 and *Todd v. Academy Corp.* (1999) 57 F.Supp.2d 488. [epilepsy]; *Schriner v. Sysco Food Serv.* (M.D. Pa. 2005) 2005 WL 1498497 & *Hewitt v. Alcan Aluminum Corp.* (N.D.N.Y.2001), 185 F.Supp.2d 183, 189 [post-traumatic stress disorder].]	Clarifies that impairments that are episodic or in remission are considered disabilities if the impairment while in its active phase substantially limits a major life activity. [§ 12102(4)(D).]	Specifically states that chronic or episodic conditions are covered as disabilities. [§ 12926.1(c).]
"Regarded as Having a Disability"	In *Sutton*, the U.S. Supreme Court required an individual to prove that the employer actually believed that the individual was disabled and also believed that many other employers would have discriminated against the individual also.	ADAAA focuses on how an individual is treated rather than proving the employer's perception. ADAAA provides that an individual meets the "regarded as having such an impairment" if the individual establishes that s/he has been subjected to an ADA-prohibited action because of an actual or perceived physical or mental impairment whether or not that impairment is actually a disability (that is, the impairment limits or is perceived to limit a major life	FEHA still focuses on an employer's perception. An individual is protected if s/he is "regarded or treated as" having or having had any physical or mental condition that (1) makes achievement of a major life activity difficult; or (2) has no present disabling effect but may become a future qualifying physical or mental condition. [§ 12926(i)(4)-(5) & (k)(4)-(5).] There is no durational limit to be a disability in FEHA. Note that FEHA provides that when the ADA's definition of "disability"

Comparison of the ADA, the ADA Amendments Act & the FEHA

Term	ADA	ADAAA	FEHA
		activity, so long as the impairment lasts more than six months). [§ 12102(3)(A).]	results in "broader protection" of the civil rights of disabled individuals than the FEHA's, then "that broader protection" or coverage prevails over conflicting FEHA provisions. [§ 12926(l).]
		Employers have no duty to provide a reasonable accommodation or modification to individuals who fall solely under the "regarded as" prong. [§ 12201(h).]	Employer has a duty to engage in interactive process to explore reasonable accommodation with an employee *regarded as* disabled. [*Gelfo v. Lockheed Martin* (2006) 140 Cal.App.4th 34.]
Findings and Construction	The terms "substantially limits" and "major life activity" must be "interpreted strictly to create a demanding standard for qualifying as disabled." [*Williams*, 534 U.S. at p. 197.]	Reaffirms that the ADA should be broadly construed. [ADAAA of 2008, Pub. Law 110–325, § (a); 12102(4).]. In ADA cases, whether an individual's impairment is a disability should not demand extensive analysis. Instead, courts' attention should be on whether covered entities have complied with their obligations. And, EEOC should adopt new regulations consistent with ADAAA's broad coverage intent. [ADAAA of 2008, Pub. Law 110–325, § (b)(5)-(6).]	FEHA provides protections independent of ADA, containing broad definitions of what is considered a disability. [12926.1.]

Internet Social Networking and Blogging Policy for Employees

Social media have become an extremely important communications channel. This technology, and the capabilities of the World Wide Web, blurs the line between personal and professional communications. While this creates new opportunities for communications and collaboration, it also creates new responsibilities for individuals. Posted material can, when matched with an identity or photograph, reflect not only on the individual, but also on that individual's employer, clients, associates and profession. When you participate in social networking or use social media, use common sense and good judgment when posting or sharing material. There may be consequences that can include, among other issues, negative publicity, regulatory attention and confidentiality or copyright concerns. This policy is not meant to infringe on your personal interaction or commentary online, inasmuch as it does not pertain to [COMPANY] or create a negative image for the Company, its employees, clients, vendors and other such parties.

You should also understand that any posted material will be available on the Internet indefinitely—it is virtually impossible to recall or permanently or completely delete material once posted. The overall goal of social media participation from a business perspective is one of adding value and providing worthwhile information and perspectives. The Company's brand is best represented by our people; what you post may reflect on our brand whether you intend for it to or not.

In general, [COMPANY] views social networking sites (e.g., MySpace, Facebook), personal Web sites, and Blogs positively and respects the right of employees to use them as a medium of self-expression. However, an employee who chooses to use such social networking site should not identify himself or herself as an employee of [COMPANY] of any of its affiliates on such Internet venues because some readers of such websites or blogs may view the employee as a representative or spokesperson of [COMPANY] or its affiliates or, depending on the content of the website or blog, may view the Company, its employees, and its affiliates negatively. In addition to the foregoing, [COMPANY] requires that employees observe the following guidelines:

1. Employees must be respectful in all communications and blogs. Employees should not use obscenities, profanity, or vulgar language.
2. Employees must not use blogs or personal websites to disparage the [COMPANY], its employees, its clients, vendors and other such parties.
3. Employees must not use blogs or personal websites to disclose any confidential information of [COMPANY], its current, former or prospective clients, consumers, contacts, business partners, service recipients, vendors, its employees or its affiliates.
4. Employees must not use blogs or personal websites to harass, bully, or intimidate other employees. Behaviors that constitute harassment and bullying include, but are not limited to, comments that are derogatory with respect to age, race, religion, gender, sexual orientation, color, or disability; sexually suggestive, humiliating, or demeaning comments; and threats to stalk, haze, or physically injure another employee.

5. Employees must not use blogs or personal web sites to discuss engaging in conduct that is prohibited by Company policies and MERIT principles, including, but not limited to, the improper or illegal use of alcohol and drugs, sexual behavior and sexual harassment, and bullying.
6. Employees must not post pictures of employees, staff members, or clients, consumers, contacts, business partners, service recipients on a web site without obtaining written permission. Employees should be aware that pictures posted on a web site are often available for viewing by third parties and could be considered detrimental to the Company and its character and reputation and that of its employees.
7. The use of any copyrighted [COMPANY] name or logo is not allowed without written permission.

Any employee found to be in violation of any portion of this Social Networking and Blogging Policy will be subject to immediate disciplinary action, up to and including termination of employment.

[ADDITIONAL OPTIONAL LANGUAGE]

[COMPANY] requires that employees observe the following guidelines:

1) **You are responsible for what you post.** Even if your employment with the Company is not explicitly stated when using a social media site, your use of the site reflects on the Company. Represent yourself and the Company well. Be professional, respectful, discreet and authentic. Remember that you can't control what happens to your content once you hit "update." Employees and attorneys should not use obscenities, profanity, or vulgar language nor should they engage in threatening or racially/ethnically hateful behavior online or make defamatory or offensive statements under an identity that can be tied to your employment with the Company. This includes any posting under a screen name behind which is a profile – even if "private" – that includes your actual identity, whether or not that profile itself identifies you as an employee of the Company.

2) **For non-business participation on social media sites, you must use a personal e-mail address and must not attribute to or imply personal opinions or statements are endorsed or supported by the Company.** If you choose to list your work affiliation on a social network, then you should regard all communication on that network as you would in a professional network. Online lives are ultimately linked, whether or not you choose to mention the Company in your personal online networking activity. If you identify yourself as being affiliated with [COMPANY], you must state that entries are your personal opinion and do not represent the position of the Company. If you extol the virtues of the Company on a social media site, you must identify yourself as having an affiliation with the Company.

3) **When participating in social networking sites in a professional context and when writing personal blogs, make an explicit statement that the views expressed by the author represent the author's alone and do not represent the views of the Company.** Write or speak in the first person to help identify that you speak for yourself and not the Company.

4) **Employees must not use social media to disparage the Company, its employees, clients, competitors or vendors.**

5) **Employees must not use social media to disclose any confidential or proprietary information of the Company or its clients, including financial information.** Honor the terms of your contracts with the Company and contracts we have with any client. Employees must at all times keep client matters confidential and must not discuss ANY client-related business via social media, from identification of clients to discussion of their matters. Employees should also refrain from commenting on the business or practices of any Company client. Any such discussion will be considered a serious violation of the Company's social media policy.

6) **Employees must not use social media to harass, bully or intimidate other employees.** Behaviors that constitute harassment and bullying include, but are not limited to, comments that are derogatory with respect to race, religion, gender, sexual orientation, color, or disability; sexually suggestive, humiliating, or demeaning comments; and threats to stalk, haze, or physically injure another employee.

7) **Employees must not use social media to discuss engaging in conduct that is prohibited by Company policies,** including, but not limited to, the improper or illegal use of alcohol and drugs, sexual behavior and sexual harassment and bullying.

8) Follow the rules of privacy/confidentiality.

9) **Employees should comply with any applicable state and federal, trademark, copyright and other intellectual property laws.** The use of any copyrighted Company name or logo is not allowed without written permission.

10) **Do not give advice or form client relationships when using social media.** The Company's standard intake procedures should be used to avoid conflict or other ethical problems.

11) **Employees must not post pictures of or comments made by employees or clients on a website without obtaining permission.** Employees should be aware that pictures posted on a web site are often available for viewing by third parties and could be considered detrimental to the Company and its character and reputation and that of its employees. Therefore, employees are cautioned to review their privacy settings on the various social media sites they use.

12) **Never be false and misleading in your online credentials.** Maintain complete accuracy in all online bios and ensure there is no embellishment. For example – a employee attends a conference at Harvard for a weekend and states in his/her bio - "Harvard trained" - this is inaccurate and noncompliant. Use the words "expert" or "specialized" very sparingly and only when such claims can be substantiated and are approved for usage by the appropriate association.

13) Follow the terms and conditions of use that have been established by each site or application used for your social networking activities.

14) **If a member of the news media contacts you about an Internet posting that concerns the Company's or a client's business, treat it as any other media inquiry, and do not respond to them directly.** Please refer that person to your supervisor.

15) **If a negative post or comment is found online about the Company, a client or you in a business context, do not counter with another negative post.** You should seek assistance from the marketing department before forming a response, if one is warranted. If you are uncertain about any post on a social media site, contact the marketing department for additional guidance.

16) Violation of this policy **may result in disciplinary action** up to and including termination.

Personal Blogs

Employees should feel free to create and maintain their own personal blogs, keeping in mind the rules and guidelines contained in this policy. However, while a blog itself is not subject to state or federal regulations governing advertising for a product or service, the content of a blog can be. For any business-related blog, the content must be informative only, and nothing in the content should propose a commercial transaction or be for the purpose of directly gaining a commercial transaction. The threshold question to ask is – does the content articulate commercial speech (i.e., attempting to sell services) in any way? If so, it's likely that it will be subject to state rules.

If you have a personal blog that mentions your employment or have a blog that discusses industry issues, your personal blog must contain a disclaimer that all content is solely the personal opinion of the author and is not endorsed by the Company with the following language: *The information and opinions expressed herein are solely the work and opinion of the author, and do not represent the position of [COMPANY].*

Company Social Media Accounts

The Company is currently expanding the use of social media for marketing purposes. These current and future accounts and profiles may include, but are not limited to blogs, LinkedIn, Twitter and Facebook. No employee may create a social media account on behalf of the Company, nor can they act on behalf of [COMPANY] through any online channels, including social media and social networking, without the express consent of the Company.

Company Blogs

Company blogs, as with all Company publications, are overseen or approved through the marketing department and/or the President of the Company. Employees are not permitted to make comments on Company blogs that disagree with the blog author's position or make posts that could be considered inappropriate or detrimental to the Company and its reputation. Comments are monitored, and the Company reserves the right to not publish any comment for any reason.

LinkedIn

Employees may and are encouraged to be active in their own personal LinkedIn accounts for personal and professional development reasons. However, only the marketing department may alter the Company's overall LinkedIn profile. If you have questions or concerns about the [COMPANY] LinkedIn profile, please contact your supervisor.

If you are connected on LinkedIn to a [COMPANY] employee who then leaves the Company for a competitor, it is wise to disconnect from that person after his or her departure so he or she no longer has LinkedIn access to your current clients, prospects and other connected contacts.

Twitter

The Company has reserved an overall Company Twitter account. Marketing is in control of tweets coming from this account, which is used for disseminating [COMPANY] and industry news, as well as for interacting with the media. If you have suggestions for tweets, we encourage you to contact your supervisor to discuss potential content. We welcome thoughts on industry happenings that our clients, potential clients, the media and other parties might be interested in. If you have found an interesting article or see a new workplace legal trend, please contact her to discuss how the Company might share this via Twitter. You are encouraged to re-tweet tweets from the Company's Twitter account *so long as your personal Twitter account and its content conforms to the rules and guidelines in this document.*

Facebook

The Company has also established a Company Facebook page for sharing news on Company events and happenings and interacting with clients and other interested parties. Comments are not currently allowed, but may be allowed in the future. Please feel free to "share" events and posts from the Company's official Facebook page to your own personal Facebook page and network, if you would like, *so long as your personal profile follows the rules and guidelines in this document.* We encourage staff to "suggest" the Company Facebook page to clients who are already in your social media networks to alert them of our new page, and you are encouraged to "like" posts on the Company's Facebook page as well.