

NAVIGATING THE MAZE OF CALIFORNIA AND LOCAL LEAVES OF ABSENCE LAWS



LANDEGGER BARON LAW GROUP

EXCLUSIVELY REPRESENTING EMPLOYERS

Presented by:
Roxana E. Verano, Esq.

Landegger Baron Law Group, ALC
Employment Law

*Exclusively Representing Employers
Advice, Litigation and Solutions*

ABOUT OUR SPEAKER

- ▶ **Roxana E. Verano, Esq.**
- ▶ **Partner with the Landegger Baron Law Group**
- ▶ **Over twenty years experience practicing employment law on behalf of management.**
- ▶ **Specializes in assisting businesses navigate complex employment law issues and avoid unnecessary litigation.**
- ▶ **Member of the Los Angeles County Bar Association and the Pasadena Bar Association.**
- ▶ **Received her J.D. from Pepperdine University School of Law.**



- **Federal: Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).**
- **State: California Family Rights Act of 1993(CFRA), Fair Employment and Housing Act (FEHA) and Pregnancy Disability Leave (PDL).**
- **Reasonable Accommodation (FEHA and ADA).**
- **State and Local Paid Sick Leave-Healthy Workplaces, Healthy Families Act of 2014.**
- **Labor C. Section 230.1 (Domestic violence, sexual assault and stalking).**
- **Organ donor/bone marrow donor leave.**
- **Labor C. Section 1025 - Voluntary drug and alcohol rehabilitation leave.**
- **Workers' Compensation**

LAWS PROTECTING DISABLED EMPLOYEES

Landecker Baron Law Group ALC

FMLA—BASIC ENTITLEMENT

Under the Family and Medical Leave Act (FMLA), covered employers must provide up to 12 weeks of unpaid, job-protected leave to eligible employees.

Who is an eligible employee?

- 1. has been employed by a covered employer for at least 12 months (does not have to be consecutive);**
- 2. has had at least 1,250 hours of service during the 12-month period immediately before the leave started; and**
- 3. be employed at a worksite where the employer employs 50 or more employees within 75 miles ((elementary and secondary school are covered employers)).**

FMLA—BASIC ENTITLEMENT

Under the FMLA, covered employers must provide up to to 12 weeks of leave for the following reasons:

- **A serious health condition that makes the employee unable to perform his job.**
- **Incapacity due to pregnancy, prenatal medical care, or child birth.**
- **Care for employee's child after birth, or placement for adoption or foster care. (within 1 year)**
- **Care for employee's spouse, son, daughter or parent with a serious health condition.**

FMLA DEFINITION OF SERIOUS HEALTH CONDITION

Definition of a “serious health condition” -

An illness, injury, impairment, or physical or mental condition that involves either,

-An overnight stay in a medical care facility, or

-Continuing treatment by a HCP for a condition that prevents the employee from performing his/her job, or prevents his/her qualified family member from participating in school or daily activities.

FMLA DEFINITION OF SERIOUS HEALTH CONDITION

“Continuing treatment” requirement may be met by:

A period of incapacity of more than 3 consecutive calendar days combined with at least 2 visits to HCP, or one visit and a regimen of continuing treatment.

Incapacity due to pregnancy

Incapacity due to a chronic condition

FMLA—USE OF LEAVE

- Leave can be taken intermittently when medically necessary.
- Employees must make reasonable efforts to schedule leave for planned medical treatment to not disrupt employer's operations.
- Employee must provide 30-day notice when foreseeable or notice as soon as possible.
- Employees must provide sufficient information for employer to determine if the leave qualifies and the anticipated timing and duration of leave.
- Employer can require medical certification (or re-certification) supporting the need for leave.

FMLA—SUBSTITUTION OF PAID LEAVE FOR UNPAID LEAVE- BENEFITS AND PROTECTION

- **Employees may choose or employers may require the use of accrued paid leave.**
- **Employer must maintain the employee's health coverage on the same terms.**
- **Employee must be restored to his/her original or equivalent (nearly identical) position with equivalent pay, benefits and other employment terms.**

- ▶ **Employer must inform employee whether they are eligible for FMLA.**
- ▶ **If so, the notice must specify the employee's rights and responsibilities.**
- ▶ **If employee is not eligible, employer must provide the reason for ineligibility.**

FMLA – EMPLOYER RESPONSIBILITIES

- ▶ CFRA is a state law found in the FEHA.
- ▶ CFRA mirrors the federal FMLA and run concurrently.
- ▶ Differences:
- ▶ CFRA include “registered domestic partners” in the definition of family member;
- ▶ Disability related to Pregnancy not considered a “serious health condition” and not covered under CFRA (See PDL); and
- ▶ Under CFRA, ER may not require EE to use “Sick Time” unless the leave is for EE’s own serious health condition. ER may require EE to use accrued vacation or other accrued paid leave, except sick leave.

FMLA V CFRA

- ▶ Under CFRA, EE guaranteed return to the same or “comparable” position and can request the guarantee in writing (versus “equivalent”).
- ▶ “Comparable” in terms of pay, location, job content, and promotional opportunity.
- ▶ Under FMLA, intermittent bonding only allowed if ER agrees. Under CFRA, EE does not need ER agreement to take intermittent bonding leave, ER can require that leave be taken in 2-week minimum increments (but must grant shorter increments on 2 occasions).

FMLA V CFRA

- ▶ Employers with five (5) or more FT or PT employees.
- ▶ No length of service or hours worked requirement.
- ▶ EE disabled by pregnancy is entitled to up to 4 months of leave (the number of working days EE would normally work in 1/3 of the year or 17.3 weeks or 122 days).
- ▶ Leave can be taken before or after birth, during any period of time the EE is physically unable to work b/c of pregnancy or a pregnancy-related condition.
- ▶ Disabled: prenatal/ postnatal care, severe morning sickness, bed rest, childbirth, recovery, loss or end of pregnancy.
- ▶ Transfer to a less strenuous or hazardous position/duties, if available.

PREGNANCY DISABILITY LEAVE

- ▶ EE must provide 30 day notice if possible or as soon as practicable.
- ▶ Continuation of health insurance coverage.
- ▶ ER may require use of accrued sick leave.
- ▶ EE may choose to use accrued vacation.
- ▶ ER may not require EE to use vacation or other paid accrued time off.
- ▶ Entitled to PDL in addition to CFRA. EE could take 4 months of PDL and 12 weeks CFRA to bond with the baby, adopted child, or to care for a parent, spouse or child with a serious health condition.

PREGNANCY DISABILITY LEAVE

- Employer may not interfere with an employee's FMLA/CFRA/PDL rights or retaliate for using or trying to exercise rights.
- Discouraging employee from using FMLA leave (i.e. suggestion that delay of surgery would better accommodate needs of business).
- Mischaracterizing leave.
- Entitled to medical diagnosis?? Not under state law.
- Failing to send out appropriate forms and notices.
- Failure to guarantee leave in writing as required by CFRA.
- **All too often, employers make the mistake that they can terminate an employee who has exhausted their 12 weeks FMLA/CFRA or the 4 months PDL entitlements.**

CAUTIONARY TALES

- ▶ FEHA applies to ER with 5+ employees and ADA to ER with 15+ employees.
- ▶ Prohibit discrimination, harassment and retaliation on the basis of a disability.
- ▶ Requires employers to make reasonable accommodations to enable a disabled individual to perform the essential functions of the job, unless it would create an undue hardship.
- ▶ The employer is also required to initiate the interactive process to determine what reasonable accommodations, if any, are needed.
- ▶ The ADA/FEHA do not provide job security (compare with FMLA/CFRA).

FAIR EMPLOYMENT AND HOUSING ACT (FEHA) AND THE AMERICANS WITH DISABILITIES ACT (ADA)

LEAVE OF ABSENCE AS A REASONABLE ACCOMMODATION

- **The ADA/FEHA are anti-discrimination laws and operate independently of the FMLA/CFRA but also provide leave entitlement rights.**
- **A qualified individual with a disability is entitled to additional leave time beyond the twelve weeks permitted under the FMLA/CFRA so long as that additional leave time would not constitute an undue hardship on the employer.**

Begin the process when triggered – do not delay

- ✓ **Employer is required to engage in a “timely, good faith, interactive” process**
- ✓ **Meet with employee in person, if possible**
- ✓ **Interview others and obtain pertinent medical information**
- ✓ **Complete any necessary forms, reports, claims, etc. and document your file**
- ✓ **Make sure company policies are up to date, comply with the law and are applied consistently**
- ✓ **Obtain job descriptions and update if necessary**

HOW TO EFFECTIVELY IMPLEMENT THE INTERACTIVE PROCESS

**Begin the process when triggered – do not delay
(continued)**

- ✓ **Examine all reasonable accommodations**
- ✓ **Stay in contact with the employee**
- ✓ **Do not forget the process is “on going” and must be revisited**
- ✓ **If no reasonable accommodation is available for the employee to return, consider a further leave of absence.**
- ✓ **Don't forget to document the process.**

HOW TO EFFECTIVELY IMPLEMENT THE INTERACTIVE PROCESS

- **Requires “significant difficulty or expense.”**
- **Consider:**
 - **Financial resources of the facility and the company**
 - **Number of employees**
 - **Nature and net cost of the accommodation**
 - **Impact accommodations place on the operation**



VERY DIFFICULT TO PROVE

UNDUE HARDSHIP

LEAVE POLICIES

- Because the employer has an obligation to assess each requested accommodation on a case-by-case basis, it may not apply a maximum leave policy.
- A “no fault” attendance policy can violate the ADA/FEHA.
- Leaves of varying durations have been deemed reasonable – difficult to tell what “reasonable” means.

UNCERTAIN AND INDEFINITE LEAVE

- An employer is not required to provide an indefinite leave of absence.
- A leave request is not “indefinite” simply because the nature of the employee’s condition is such that only an approximate return date is provided.
- An indefinite leave must be distinguished from one where an employee gives an approximate return date or where the situation changes and the original return date has been revised.
- “Intermittent” leaves and modified schedules can be reasonable accommodation.

- ▶ **Provide employee with a claim form if they put you on notice of a potential work related injury – don't wait for them to ask.**
- ▶ **Evaluate whether the employee is eligible for FMLA/CFRA leave and provide all required notices.**
- ▶ **Manage the workers' compensation leave in keeping with the requirements of ADA/FEHA.**
 - **Engage in the interactive process**
 - **Provide reasonable accommodations**

WORK RELATED INJURIES

- ▶ California Labor Code sections 230 and 230.1-
- ▶ Employers with 25+ employees must provide victims of domestic violence, sexual assault or stalking up to 12 weeks of unpaid time off for 1) to obtain court assistance, 2) medical attention or psychological counseling, 3) shelter services, or 4) safety planning.
- ▶ Employer must provide reasonable accommodation for their safety while on the premises.

VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING

- ▶ Applies to employers with at least 15 employees.
- ▶ Eligible employee – at least 90 days period of employment immediately preceding the date of leave.
- ▶ Employer must provide up to 30 days of paid leave per year for an organ donation in 1-year period, and up to 5 days of paid leave per year for bone marrow donation.
- ▶ Employee entitled to equivalent position and continuation of all benefits.
- ▶ ER may required use of up to 2 weeks of sick or vacation leave for organ donation and up to 5 for bone marrow donation.

ORGAN AND BONE MARROW DONOR LEAVE

- ▶ Applies to employers with 25 +
- ▶ Must provide unpaid time off to employees voluntarily attending a drug or alcohol rehabilitation programs, absent undue hardship, as a form of reasonable accommodation.
- ▶ No amount of time is specified.
- ▶ EE may use accrued paid sick leave.
- ▶ ER may permit the use of PTO or vacation leave.
- ▶ May run concurrently with FMLA/CFRA.

VOLUNTARY DRUG OR ALCOHOL REHABILITATION LEAVE

Healthy Workplace, Healthy Family Act of 2014 went into effect July 1, 2015.

- **California employers (at least 1 employee) must provide a paid sick leave benefit to ALL employees.**
- **Only exceptions:**
 - ❖ Certain union employees
 - ❖ Certain in-home services
 - ❖ Airline cabin/flight deck crews

CALIFORNIA PAID SICK LEAVE

California State and City Paid Sick Leave (PSL) Laws

ACCRUAL METHODS

CALIFORNIA PSL

- ▶ Option 1: Provide one hour of PSL for every 30 hours worked.
- ▶ Option 2: Provide a lump sum of 3 days or 24 hours of PSL at the start of each employment year, calendar year, or 12-month period.

CITY OF LOS ANGELES PSL

- ▶ Option 1: One hour for every 30 hours worked in the City.
- ▶ Option 2: Provide a lump sum of 48 PSL hours at the start of each employment year, calendar year, or 12-month period.

California State and City Paid Sick Leave (PSL) Laws, contd.

ACCRUAL CAPS

CALIFORNIA PSL

48 hours or 6 days per year
(whichever is greater.)

CITY OF LOS ANGELES PSL

72 hours

California State and City Paid Sick Leave (PSL) Laws, contd.

USE CAPS

CALIFORNIA PSL

24 hours or three days (whichever is more for the particular employee) per employment year, calendar year, or 12-month period.

CITY OF LOS ANGELES PSL

48 hours per employment year, calendar year, or 12-month period.

California State and City Paid Sick Leave (PSL) Laws, contd.

CARRY OVER

CALIFORNIA PSL

Accrued, unused PSL carries over into the next year but is limited by the employer's accrual cap.

CITY OF LOS ANGELES PSL

Accrued, unused PSL, including unused "front-loaded" PSL, carries over year-to-year but is limited by the employer's accrual cap.

THANK YOU FOR ATTENDING!

LANDEGGER BARON LAW GROUP

Roxana E. Verano, Esq.

Roxana@landeggeresq.com

15760 Ventura Blvd., Suite 1200
Encino, California 91436

751 Daily Drive, Suite 325
Camarillo, California 93010

Los Angeles Office: 818.986.7561
Ventura County Office: 805.987.7128