



FMLA California

Federal vs. California Family & Medical Leave Laws

	FEDERAL FMLA ELEMENTS	STATE ELEMENTS
Employers Covered	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, California has leave laws regarding: (1) family and medical leave, (2) pregnancy disability leave, (3) military spouse leave, (4) family sick leave, (5) leave for victims of domestic violence, sexual assault or stalking, (6) organ and bone marrow donation leave and (7) employee paid sick leave.</p> <p>Family and Medical: Employers with 50 or more employees, the state and any political or civil subdivision of the state and cities.</p> <p>New Parent Leave: Employers with 20 to 49 employees working within 75 miles of each other.</p> <p>Pregnancy Disability: Employers with five or more employees.</p> <p>Military Spouse: Employers with 25 or more employees. All employers, regardless of size, are prohibited from discriminating against, harassing or taking other adverse action against an employee because of a pregnancy or a perceived pregnancy.</p> <p>Family Sick Leave (Kin Care): Any employer that provides paid sick leave for employees</p> <p>Domestic Violence/Sexual</p>



		<p>Assault/Stalking Victims: Employers with 25 or more employees must provide leave in certain circumstances. All employers must provide reasonable accommodations for a victim of domestic violence, sexual assault or stalking who requests an accommodation for the safety of the victim while at work. An employer is not required to provide a reasonable accommodation to an employee who has not disclosed his or her status as a victim of domestic violence, sexual assault or stalking.</p> <p>In addition, all employers are prohibited from discharging or discriminating or retaliating against domestic violence, sexual assault or stalking victims:</p> <ul style="list-style-type: none"> • For taking time off work to obtain any relief to help ensure the health, safety or welfare of the employee or the employee’s child (notice and certification requirements must be met); • Because of the employee’s status as a victim of domestic violence, sexual assault or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status; or • For requesting a reasonable accommodation, regardless of whether the request was granted. <p>Organ and Bone Marrow Donation: Employers with 15 or more employees</p> <p>Paid Sick Leave: All employers</p>
<p>Employees Eligible</p>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p>Family, Medical and New Parent Leave: Employees with at least 12 months of service with employer who have worked at least 1,250 hours during the 12 months prior and who are employed at a worksite with 20 or more employees within 75 miles of the worksite.</p> <p>Pregnancy Disability: Female employees disabled by pregnancy, childbirth or a related medical condition. “Disabled by</p>

		<p>pregnancy” includes prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, childbirth, loss/end of pregnancy, or recovery from childbirth or the loss/end of pregnancy. There are no eligibility requirements, such as hours worked or length of service.</p> <p>Military Spouse: Spouse of military member who works an average of 20 or more hours per week.</p> <p>Kin Care: Employees with accrued and available paid sick leave.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Employees who are victims of domestic violence, sexual assault or stalking.</p> <p>Organ and Bone Marrow Donation: Employees who are organ or bone marrow donors and who have been employed for at least a 90-day period immediately prior to the leave.</p> <p>Paid Sick Leave: Employees who are employed in California for 30 or more days within a calendar year from the start date of their employment. Includes part-time and temporary workers. An employee may begin using accrued sick leave on his or her 90th day of employment.</p>
<p>Leave Amount</p>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>Family, Medical and New Parent Leave: 12 weeks during a 12-month period. Leave for birth, adoption or foster care of a child must be shared by parents working for the same employer. Runs concurrently with FMLA leave if eligible for both types of leave. Employer may limit leave increments to the shortest period of time that the employer’s payroll system will allow. Each leave period taken to care for a newborn child must be taken within one year of the birth or placement and be at least two weeks in duration (employer may grant up to two requests for a shorter leave period).</p> <p>Pregnancy Disability: For a reasonable period of time not to exceed four months</p>

		<p>per pregnancy (calculated as the number of hours the employee normally would work in four calendar months). Runs concurrently with FMLA leave if eligible for both types of leave, but must be provided in addition to state family and medical leave.</p> <p>Military Spouse: Up to 10 days during military member’s leave from deployment.</p> <p>Kin Care: Up to six months of employee’s accrued paid sick leave may be used each year for any reason allowed under California’s paid sick leave law. This means that an employee may use accrued sick leave for the diagnosis, care or treatment of an existing health condition of (or preventive care for) the employee’s family member. An employee’s family member includes his or her child, parent, stepparent, parent-in-law, spouse, domestic partner, grandparent, grandchild or sibling.</p> <p>Does not extend maximum leave period under the FMLA or state family and medical leave.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: No specific duration. Does not extend the maximum leave period under the FMLA.</p> <p>Organ and Bone Marrow Donation:</p> <ul style="list-style-type: none"> • Organ donor: up to 30 business days in any one-year period for the purpose of donating an organ to another person. • Bone marrow donor: Up to five business days in any one-year period for the purpose of donating bone marrow to another person. <p>Organ and bone marrow donation leave does not run concurrently with FMLA leave or California family and medical leave.</p> <p>Paid Sick Leave: At least 24 hours (or three workdays) of accrued paid sick leave per year. Employees must accrue at least one hour of sick leave for every 30 hours worked. An employer may limit an employee’s total sick leave accrual to 48</p>
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<p>Type of Leave</p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee’s newborn child; • Placement of child with employee for adoption or foster care; • Providing care for employee’s parent, child or spouse with serious health condition; • Employee’s own serious health condition; • Any qualifying exigency when employee’s spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or • Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	<p>Family, Medical and New Parent Leave: Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee’s child; • Placement of a child with employee for adoption or foster care; • Providing care for employee’s child, parent, spouse or registered domestic partner with a serious health condition; or • Employee’s own serious health condition that makes the employee unable to perform the functions of his or her position. <p>Does not cover leave taken for disability on account of pregnancy, childbirth or a related medical condition.</p> <p>Pregnancy Disability: Unpaid leave for a female employee disabled by pregnancy, childbirth or a related medical condition, except leave must be paid to the extent the employer pays for other temporary disability leaves for similarly situated employees. In addition to the leave entitlement, an employer must also provide an employee who is disabled by pregnancy a reasonable accommodation in certain circumstances.</p> <p>Military Spouse: Unpaid leave for the spouse of a military member who is on leave from deployment during a period of military conflict</p> <p>Kin Care: An employee may use</p>

		<p>accumulated paid sick leave to care for a child, parent, spouse, registered domestic partner, grandparent, grandchild and sibling.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Unpaid leave for an employee to:</p> <ul style="list-style-type: none"> • Seek medical attention for injuries caused by domestic violence, sexual assault or stalking; • Obtain services from a domestic violence shelter, program or rape crisis center as a result of domestic violence, sexual assault or stalking; • Obtain psychological counseling related to an experience of domestic violence, sexual assault or stalking; or • Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault or stalking, including temporary or permanent relocation. <p>Victims of domestic violence, sexual assault or stalking may also request reasonable accommodations for their own safety while at work.</p> <p>Organ and Bone Marrow Donation: Paid leave for an employee to donate an organ or bone marrow.</p> <p>Paid Sick Leave: Paid leave for an employee to obtain preventive care or diagnosis, care or treatment of an existing health condition of the employee or a family member. A “family member” includes a child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling. Paid sick leave may also be used by employees who are victims of domestic violence, sexual assault or stalking.</p>
<p>Serious Health Condition/Serious Injury or Illness</p>	<p>Serious Health Condition: Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in</p>	<p>Serious Injury or Illness: No provision</p>

	<p>hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> • A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment; • A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective; • Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or • Any incapacity related to pregnancy or for prenatal care. <p>Serious Injury or Illness:</p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and</p>	
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	that manifested itself either before or after the member became a veteran.	
Health Care Provider	Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.	Similar to federal FMLA
Intermittent Leave	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>Family, Medical and New Parent Leave: Permitted. An employee who needs intermittent or reduced schedule leave for planned medical treatment must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations.</p> <p>Paid Sick Leave: An employee may determine how much paid sick leave he or she needs to use. An employer may set a reasonable minimum increment, not to exceed two hours.</p>
Substitution of Paid Leave	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases.</p> <p>Employee must follow terms and conditions of employer's normal paid leave policies.</p>	<p>Family, Medical and New Parent Leave: Employee may elect, or employer may require, substitution of accrued vacation leave, other accrued time off or other paid or unpaid time off negotiated with employer. For employee's own serious health condition (but not other purposes,</p>

		<p>unless employer and employee agree), employee may use accrued sick leave.</p> <p>For an employee’s own serious health condition, the employee may also substitute leave taken pursuant to a short- or long-term disability leave plan, as determined by the terms and conditions of the employer’s leave policy, during otherwise unpaid family and medical leave. Paid disability leave runs concurrently with family and medical leave. An employee receiving any form of disability payment may not be required by the employer to use paid time off, sick leave or accrued vacation.</p> <p>Pregnancy Disability: Employee may elect, or employer may require, substitution of accrued sick leave. Employee is entitled to use any accrued vacation leave or other personal time off.</p> <p>Military Spouse: Leave does not affect or prevent employer from allowing employee to take a leave that he or she is otherwise entitled to take.</p> <p>Kin Care: No provision</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Employee may elect, or employer may require, substitution of available vacation, personal leave or compensatory time.</p> <p>Organ and Bone Marrow Donation: Employer may require that employee take up to five days of accrued sick leave, vacation or paid time off for bone marrow donation and up to two weeks of accrued sick leave, vacation or paid time off for organ donation.</p> <p>Paid Sick Leave: Employer can provide sick leave through its own plan or establish different plans for different categories of workers as long as each plan meets the minimum accrual, carryover and use requirements of the law or puts the full amount of leave into an employee’s leave bank at the beginning of each year in accordance with a paid time off (PTO) policy.</p>
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<p>Reinstatement Rights</p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p>Family, Medical and New Parent Leave: Similar to federal FMLA</p> <p>Pregnancy Disability: Similar to federal FMLA. Employer must provide notice of available positions to any employee who is terminated after pregnancy disability leave for 60 days following the employee's scheduled date of reinstatement.</p> <p>Military Spouse: No specific provision. Employer may not retaliate against employee for taking leave.</p> <p>Kin Care: Employer may not threaten to discharge, demote, suspend or in any manner discriminate against employee for using family sick leave.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Employer may not discharge or in any manner discriminate or retaliate against the employee:</p> <ul style="list-style-type: none"> • For taking time off work to obtain any relief to help ensure the health, safety or welfare of the employee or the employee's child (notice and certification requirements must be met); • Because of the employee's status as a victim of domestic violence, sexual assault or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status; or • For requesting a reasonable accommodation, regardless of whether the request was granted. <p>Organ and Bone Marrow Donation: Similar to federal FMLA</p> <p>Paid Sick Leave: An employer may not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using accrued sick days.</p>
<p>Key Employee</p>	<p>Limited exception for salaried</p>	<p>Family, Medical and New Parent Leave:</p>

<p>Exception to Reinstatement Rights</p>	<p>employees if among highest-paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met</p>	<p>Similar to federal FMLA.</p>
<p>Maintenance of Health Benefits During Leave</p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p>Family, Medical and New Parent Leave: Similar to federal FMLA. Any length of time an employer may have continued health benefits for a pregnancy disability leave does not count toward its obligation to provide for continued health benefits for family and medical leave.</p> <p>Pregnancy Disability: Similar to federal FMLA</p> <p>Military Spouse: No specific provision. Employer may not retaliate against employee for taking leave.</p> <p>Kin Care: Employer may not threaten to discharge, demote, suspend or in any manner discriminate against employee for using family sick leave.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Employer may not discharge or in any manner discriminate or retaliate against the employee:</p> <ul style="list-style-type: none"> • For taking time off work to obtain any relief to help ensure the health, safety or welfare of the employee or the employee's child (notice and certification requirements must be met); • Because of the employee's status as a victim of domestic violence, sexual assault or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status; or • For requesting a reasonable accommodation, regardless of whether the request was granted. <p>Organ and Bone Marrow Donation: Similar to federal FMLA</p> <p>Paid Sick Leave: An employer may not discharge, threaten to discharge, demote,</p>

		<p>suspend or in any manner discriminate against an employee for using accrued sick days.</p>
<p>Leave Requests</p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p>Family, Medical and New Parent Leave: If need for leave is foreseeable, employee must provide reasonable advance notice.</p> <p>Pregnancy Disability: Employer may require employee to give reasonable notice of the date leave will begin and estimated length of leave.</p> <p>Military Spouse: Employee must provide notice of leave within two business days of receiving official notice of the military member's leave from deployment.</p> <p>Kin Care: All conditions and restrictions placed by employer upon the use of sick leave also apply to the use of sick leave to care for an employee's family member.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: Employee must give reasonable advance notice of his or her intent to take time off, unless advance notice is not feasible.</p> <p>An employer may require an employee requesting a reasonable accommodation to provide a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for an authorized purpose authorized under this subdivision. If an employee no longer needs an accommodation, the employee must notify the employer that the accommodation is no longer needed.</p> <p>Organ and Bone Marrow Donation: Employee must provide written verification to employer that he or she is an organ or blood marrow donor and that there is a medical necessity for the donation.</p> <p>Paid Sick Leave: Employee to provide oral or written request. If the need for leave is foreseeable, the employee must give reasonable advance notice, but where the need is unforeseeable the employee need only give notice as soon as practicable. An employer may not require an employee to</p>

		<p>find a replacement worker as a condition for using paid sick leave.</p>
<p>Certification Requirement</p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury;</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces; or</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p>Family, Medical and New Parent Leave: Employer may require certification in the following instances:</p> <ul style="list-style-type: none"> • For a request for leave because of a serious health condition; or • To demonstrate employee's fitness to return to work from medical leave as long as practice of requesting a certificate is uniformly applied. <p>Pregnancy Disability: Employer may require employee to provide medical certification.</p> <p>Military Spouse: Employee must provide written documentation certifying that the military member will be on leave from deployment during the time employee requests leave.</p> <p>Domestic Violence/Sexual Assault/Stalking Victims: When advance notice is not possible, the employee must provide certification to the employer within a reasonable time after the absence.</p> <p>An employer may request certification from an employee requesting a reasonable accommodation demonstrating the employee's status as a victim of domestic violence, sexual assault or stalking, and recertification of an employee's status as a victim of domestic violence, sexual assault or stalking every six months after the date</p>

		<p>of the previous certification.</p> <p>Organ and Bone Marrow Donation: Employee must provide written verification to employer that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation.</p> <p>Paid Sick Leave: No provision</p>
Executive, Administrative, and Professional Employees	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p>No specific provision</p>
Other		<p>Registered domestic partners must be treated the same as spouses for most purposes under California law, including for employee leave purposes.</p>
Statutes	29 USC 2601	<p>California Statutes, Government Code § 12945.2 (family and medical leave); § 12945 (pregnancy disability leave)</p> <p>California Statutes, Military and Veterans Code § 395.10 (military spouse leave)</p> <p>California Statutes, Labor Code § 233 (Kin Care); §§ 230 and 230.1 (domestic violence and sexual assault victims); §§ 1508-1513 (organ and blood donation leave); §§ 245-249 (paid sick leave)</p>

Paid Family Leave Insurance Program

The California Paid Family Leave insurance program provides up to six weeks (eight weeks, effective July 1, 2020) of wage replacement benefits when an employee takes time off from work to care for a newborn, a newly adopted child or foster child or a seriously ill child, spouse, parent or registered domestic partner. Partial wage replacement is also provided for employees who take time off to care for seriously ill grandparents, grandchildren, siblings and parents-in-law.

Under this program, employees are eligible to receive a percentage of their wages during their absence, up to a certain maximum per week. Workers who are covered by the State Disability Insurance (SDI) fund are eligible for the Paid Family Leave insurance program.

The Paid Family Leave insurance program is a wage replacement program. It is separate from the federal FMLA and California's family and medical leave laws, which govern the terms of employee family and medical leaves. More information on the Paid Family Leave insurance program is available on the [California Employment Development Department's website](#).

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