

CALIFORNIA

EMPLOYMENT LAW

Employee Leave Laws – Pregnancy Disability Leave



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STATE RESOURCES

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California Department of Fair Employment and Housing [website](#)

California Labor Commissioner's Office [website](#)

California Health and Human Services Agency [website](#)

California Employment Development Department [website](#)

The federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees, provides eligible employees with up to 12 weeks of unpaid leave in any 12-month period after the birth or adoption of a child.

In addition to these federal leave requirements, California law requires employers in the state that have **five or more employees** to provide eligible employees with **job-protected leave** for pregnancy- and childbirth-related disabilities under certain circumstances.

When the FMLA and California law both apply, employers must comply with the provisions of each law that are most generous to the employee.

This Employment Law Summary provides an overview of California's law.

ELIGIBLE EMPLOYEES

To be eligible for the rights granted under California's pregnancy disability law, an employee must be:

- **Female;** and
- **Disabled by pregnancy, childbirth or any related medical condition.**

There are no additional eligibility requirements, such as minimum hours worked or length of service. However, an employee may be required to provide certification from her health care provider to prove that she is disabled.

An employee is considered disabled if she:

- Is unable to perform one or more of the essential duties of her job;
- Is unable to perform essential duties of her job without undue risk to herself, her pregnancy or others; or
- Suffers from severe morning sickness.

In addition, an employee may be considered disabled if, in the opinion of her health care provider, she needs to take time off from work for **any purpose** related to pregnancy or childbirth.

This includes, but is not limited to, the following:



- Prenatal or postnatal care
- Bed rest
- Gestational diabetes
- Pregnancy-induced hypertension
- Preeclampsia
- Post-partum depression
- Childbirth
- Loss or end of pregnancy
- Recovery from childbirth or the loss or end of pregnancy
- Breastfeeding

LEAVE ENTITLEMENT

Eligible employees may take job-protected leave for a reasonable amount of time due to any pregnancy- or childbirth-related disability, subject to a limit of **up to four months** per pregnancy. This leave period is calculated using the number of hours the employee would normally work within four calendar months.

The leave period an employer allows must be at least as generous as any leave the employer provides for other temporary disabilities.

Eligible employees may break up the allowed amount of leave into more than one period of time. To account for leave increments, an employer may use the shortest period of time that the payroll system uses to account for other forms of leave, as long as it is not greater than one hour.

Finally, employers must provide pregnancy disability leave in addition to the leave required under the California Family Rights Act (CFRA). If an employee is eligible for both FMLA leave and pregnancy disability leave, however, these leave periods may run concurrently.

REASONABLE ACCOMMODATION ENTITLEMENT

Eligible employees are entitled to reasonable accommodation in the workplace if they request it, as long as a health care provider certifies that a reasonable accommodation is medically advisable. A reasonable accommodation is any change in the work environment or the way a job is customarily done to enable an employee to perform the essential functions of a job. This may include, but is not limited to:

- Temporarily transferring the employee to a less stressful or hazardous position for the duration of her pregnancy, so long as the transfer is feasible for the employer;
- Modifying work schedules to provide earlier or later hours;
- Providing stools for the employee to sit on while she works; or
- Providing additional break time for lactation or trips to the rest room.

However, an employer is **not** required to:

- Create additional employment that otherwise would not have been created;
- Discharge any other employee;
- Transfer any other employee with more seniority; or
- Promote or transfer any employee who is not qualified to perform the job.



PAYMENT ON LEAVE

An employer is **not required to pay** an employee during a pregnancy disability leave, unless the employer pays for other temporary disability leaves for similarly situated employees.

However, employers must **maintain and pay** for an employee's **group health plan coverage** for up to four months while she is on pregnancy disability leave. The health coverage must be continued under the same conditions as those provided prior to leave.

OTHER TYPES OF LEAVE

An employer may require an employee, or an employee may elect, to substitute any accrued **sick leave** for the period of the employee's pregnancy disability leave. In addition, an employee may elect to use any **vacation or other accrued personal time off** available to her for her pregnancy disability leave.

EMPLOYEE NOTICE REQUIREMENTS

Employers may require an employee who requests pregnancy disability leave to provide **reasonable advance notice** of the date her leave will begin and the estimated duration of leave. Notice may be verbal, but must be sufficient to make the employer aware that the employee needs pregnancy disability leave.

If the need for the leave or transfer is foreseeable because of **pregnancy**, the employee must provide the employer at least **30 days advance notice** before pregnancy disability leave or transfer is to begin. If 30 days advance notice is not possible, notice must be given **as soon as practicable**.

Employers must respond to an employee's pregnancy disability leave request as soon as practicable but no later than **10 calendar days** after receiving the request.

Employees must also make reasonable efforts to schedule any planned medical treatment in a manner that minimizing any disruption to the employer's business.

MEDICAL CERTIFICATION REQUIREMENTS

Employers may require an employee who requests leave or a reasonable accommodation to provide **medical certification** of the need for leave or reasonable accommodation. The employer may also require recertification for leave that continues beyond the initial leave period.

Before permitting an employee to return from pregnancy disability leave or transfer, employers may require the employee to provide medical certification stating that she is able to resume her original job duties. An employer that requires medical releases must apply the requirement uniformly for all types of disability leave.

REINSTATEMENT RIGHTS

After an employee returns from pregnancy disability leave, she must be restored to her previous position (or a comparable position with the same duties), at her previous pay and in her previous geographic location. An employer that fails to reinstate an employee must prove that:

- The employee would not otherwise have been employed in the same position at the time of reinstatement due to legitimate business reasons that are unrelated to pregnancy disability leave;



- The employer would not have offered a comparable position to the employee if she would have been continuously at work during the pregnancy disability leave or transfer period; or
- There is no comparable position available on the employee’s scheduled date of reinstatement or within 60 calendar days.

Employers must provide any employee who is terminated after pregnancy disability leave with **notice of any available positions** for **60 days** following her scheduled date of reinstatement.

EMPLOYEE PROTECTIONS

Pregnancy disability leave may not be considered a break in the employee’s continuous service affecting the employee’s rights to salary adjustments, benefits or seniority.

An employer may not discharge, fine, suspend, expel, punish, harass, refuse to hire or otherwise discriminate against any individual because of the individual’s pregnancy, childbirth or related medical condition or because the individual:

- Exercised a right or attempted to take leave; or
- Gave information about her pregnancy disability leave in an investigation.

In addition, **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. “Perceived pregnancy” means being regarded or treated as being pregnant or having a related medical condition.

ENFORCEMENT

Any violation of pregnancy disability leave or nondiscrimination requirements is considered an unlawful employment practice. If an employer violates the pregnancy disability leave or nondiscrimination requirements, an affected employee may file a complaint with the Fair Employment and Housing Commission. The Commission may require the employer to:

- Hire, reinstate or upgrade the employee, with or without back pay;
- Pay damages for any injuries suffered, if the Commission files a civil action;
- Refrain from committing any further violations; or
- Pay a fine of up to \$25,000 for any discrimination.

Employers may also be liable for any civil suit that an employee may file.

POSTING AND EMPLOYEE HANDBOOK REQUIREMENTS

California law makes employers primarily responsible for informing employees of their right to request pregnancy disability leave.

EMPLOYEE HANDBOOK

Employers must include a description of pregnancy disability leave in any employee handbook that the employer provides to his or her employees, or distribute a notice at least annually.

REQUIRED POSTERS AND NOTICES

Employers are required to post a [notice](#) in a conspicuous place, or in places where employees tend to congregate, informing employees of their right to request pregnancy disability leave. Electronic posting is sufficient to meet this



requirement as long as it is posted electronically in a conspicuous place or places where employees would tend to view it in the workplace.

In addition, employers must give a pregnant employee a copy of the required pregnancy disability notice as soon as practicable after learning of the pregnancy.

If 10 percent or more of the employer's workforce speaks another language as their primary language, the employer must provide the required notice in that language.

MORE INFORMATION

For more information on employee leave laws in California, please contact your Better Business Planning, Inc. representative.