

KNOW YOUR RIGHTS!

Family Leave Laws in California

A GUIDE FOR UNIONS



Labor Project *for* Working Families

Know Your Rights!

Family Leave Laws in California

A Guide for Unions

Labor Project for Working Families

© Copyright 2009 by the Labor Project for Working Families

Any part of this publication can be used or reproduced with acknowledgement.

Founded in 1992, the Labor Project is a national non-profit organization that educates and empowers unions to organize, bargain and advocate for family friendly workplaces. We build broad based coalitions that unite labor, community and advocacy groups to advance policies that put families first.

For more information:

Labor Project for Working Families

2521 Channing Way # 5555

Berkeley, CA 94720

Phone: (510) 643-7088

info@working-families.org

www.working-families.org

Acknowledgements:

This guide was produced in partnership with the Paid Family Leave Collaborative:

Labor Project for Working Families

Legal Aid Society — Employment Law Center

Equal Rights Advocates

California Women's Law Center

Funded by a grant from The California Wellness Foundation

Produced and Edited by Jenya Cassidy and Brenda Muñoz

Design by Jason Justice

Cartoons by José Luis Pavón

Printed by Autumn Press, Berkeley

Online version available at www.working-families.org

WHY THIS GUIDE?

This guide is for you. If you are a union member, this guide will provide the basics of California's family leave laws, and where you can go for more information. If you are a shop steward or union representative, use this guide to educate members about their rights when taking family leave.

Like most workers in California, you have probably heard of the Family and Medical Leave Act (FMLA) or California's version of the FMLA, the California Family Rights Act (CFRA). While the FMLA and CFRA provide job-protected leave for qualifying workers, this time is generally unpaid. And even if you qualify, you may not take it if you can't afford unpaid time. In 2002, a union-led coalition passed the California Paid Family Leave Act — the first program to provide wage replacement for workers caring for a close family member or bonding with a newborn or newly adopted child. We created this guide because many California workers do not know about this benefit or how the different family leave laws in California interact with each other.

In this guide, you will learn about:

✓ Income Replacement:

- Paid Family Leave (PFL)

✓ Job Protected Leave:

- Family Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- Pregnancy Disability Leave Law (PDL)

✓ Where to Get More Information:

- Contacts and Resources

INCOME REPLACEMENT

TRACY IS ALMOST 7 MONTHS PREGNANT.



I CAN'T WAIT TO BE A MOM. BUT HOW CAN I TAKE TIME OFF TO BE WITH MY BABY? I HAVE BILLS TO PAY.

HOW WILL I PAY MY RENT? WHAT ABOUT MY BILLS?

DON'T WORRY MAMA, I'LL COME TAKE CARE OF YOU.



MARIO'S MOM HAD A STROKE.



Paid Family Leave (PFL)

What is Paid Family Leave?

Paid Family Leave is a California law that provides you with income replacement if you:

- pay into the State Disability Insurance (SDI) program **and**
- are taking leave to bond with a newborn baby, newly adopted or foster child, or to care for a parent, child, spouse or registered domestic partner with a serious health condition.

What DOES the law provide?

- Up to six weeks of partial pay — 55% of your weekly wage up to a maximum benefit. (For example, the maximum benefit in 2009 is \$959.00. This amount changes each year).

What DOESN'T the law provide?

- The law does not guarantee your job. However, many workers qualify for 12 weeks of job-protected leave under Family Medical Leave (FMLA) and the California Family Rights Act (CFRA). In this case, PFL should be taken concurrently with FMLA and/or CFRA to guarantee job protection.

How do I apply for PFL?

Request an application by contacting the Employment Development Department (EDD):

- Call 1-877-BE THERE (877-238-4373)
- Visit www.edd.ca.gov to order an application online
- If you are a union representative, you can order applications to keep in the union office for members.

NOTE:

Paid Family Leave is administered by EDD, not by your employer.



Frequently Asked Questions about PFL

1. Do I have to work a minimum number of hours or days before becoming eligible for PFL benefits?

No. You are eligible as long as you pay into SDI, regardless of the number of hours or days you work. The amount of PFL benefits you will receive is determined by your wages in a set period.

2. Is there a waiting period for PFL benefits?

Yes. PFL requires a seven-day, non-payable waiting period.

3. Do I need to take all of my PFL at one time?

No. The six weeks of benefits do not have to be taken consecutively.

4. Can I take PFL intermittently?

Yes. You can take your PFL leave in hourly or daily increments as needed.

5. Am I required by law to use my vacation leave before receiving PFL benefits?

An employer may require you to take two weeks of earned, but unused vacation leave prior to getting PFL benefits. Vacation leave may include paid time off. One week of the vacation leave can be used to bridge the unpaid seven-day waiting period.

6. Can I receive paid sick leave and PFL benefits at the same time?

Yes. You **may** combine a portion of your paid sick leave with PFL up to a total of 100% of wages. By combining 45% of sick leave with the 55% PFL benefit, you can get 100% of wages while on leave. Your employer should be sure to notify EDD that only 45% of wages are being paid from your accumulated sick leave.



7. How is my weekly benefit amount for PFL determined?

Your weekly benefit amount is determined by your wages in a set period. Visit www.edd.ca.gov to estimate your benefit or call EDD at: 1-877-238-4373.

8. Is my employer required to continue my health benefits while I am on PFL?

The law does not require your employer to provide health benefits while you are receiving PFL. However, your health benefits may be continued if you are eligible for other laws, such as FMLA and CFRA, while you are on leave.

JOB PROTECTION

WE CAN TAKE PAID FAMILY LEAVE!



?



CAN WE GET FIRED
FOR TAKING PAID
FAMILY LEAVE?



FMLA and CFRA

What is the FMLA?

The Family Medical Leave Act (FMLA) provides qualified employees with 12 weeks of job-protected, unpaid leave to

- bond with a newborn, newly adopted or foster child (or the child of a spouse or domestic partner)
- care for yourself or a close family member with a serious health condition

What is CFRA?

The California Family Rights Act (CFRA) is the state version of the FMLA. CFRA offers the same protections as the as FMLA with the following exceptions:

- CFRA covers same sex domestic partners (FMLA does not)
- CFRA provides more privacy protections than FMLA
- CFRA does not provide leave for pregnancy-related conditions (But FMLA does)

NOTE:

Because FMLA and CFRA are the same in most circumstances, the following sections discuss these laws together. Remember, you have the right to a total of 12 weeks of leave under both FMLA and CFRA in most circumstances. See page 12 for more details.



Do I qualify to take FMLA/CFRA?

You must meet **all** of the following conditions to be covered:

- your employer employs at least 50 people within a 75-mile radius of your worksite
- you have worked for your employer for at least 12 months (even on a part-time or temporary basis)
- you have worked at least 1,250 hours (an average of 25 hours per week) during the 12 months before the leave

How do you request FMLA/CFRA from your employer?

- Give your employer 30 days notice before taking a family/medical leave when it is foreseeable. Foreseeable leaves include a major surgery scheduled in advance or planning to bond with a new child
- If you need leave suddenly to care for yourself or a family member, you must tell your employer as soon as practicable



Frequently Asked Questions about FMLA and CFRA

1. Can my employer retaliate against me for requesting or taking leave under the FMLA/CFRA?

No. If you qualify to take family/medical leave, it is illegal for your employer to:

- interfere with your right to take a leave
- harass you for taking leave
- deny a valid leave request
- refuse to hire or promote you because you have taken leave
- retaliate against you for complaining about a violation of family/medical leave laws

2. What information may my employer request about my leave?

If you take a family/medical leave, your employer is allowed to request the following from you:

- confirmation of your relationship to a family member, such as a birth or marriage certificate
- medical certification from a health care provider (such as a doctor's note) regarding you or your family member's serious health condition
- recertification if the original certification expires, you request an extension of leave, or circumstances change
- periodic reports during the leave about your status and intent to return to work

3. Can I take FMLA/CFRA intermittently?

Yes. You may take FMLA/CFRA leave intermittently as the condition requires.

4. How can I get paid while taking FMLA/CFRA?

Either you or your employer may choose to apply any accrued sick or vacation time or, if you qualify for Paid Family Leave benefits, you can receive up to six weeks of partial pay. (See Paid Family Leave Section)



Pregnancy Disability Leave (PDL)

What is PDL?

Pregnancy Disability Leave is a state law that provides employees the right to take job-protected leave for a pregnancy-related condition (before and/or after birth).

If you pay into SDI, you should also be entitled to receive disability payments for the **entire duration** of your pregnancy disability leave.

Who is covered under PDL?

Employees who meet both of the following conditions are covered by PDL:

- are disabled due to pregnancy, childbirth or related medical conditions and
- work for an employer who employs at least five employees

Because PDL has fewer eligibility requirements, employees who don't qualify for protection under FMLA/CFRA may still be entitled to take unpaid leave for a pregnancy-related condition under PDL.

What rights/benefits does PDL provide?

- Up to 4 months for complications, severe morning sickness, or other disabilities related to pregnancy, childbirth, or a related medical condition
- Generally, health care providers will certify a pregnancy disability leave of up to 10 weeks for a normal pregnancy — 4 weeks before childbirth and 6 weeks after a vaginal delivery. For a delivery by C-section, you will be certified for 8 weeks of leave after delivery. However, if medically necessary, you may take up to 4 months off
- The specific duration of disability leave that you will be eligible for must be certified by your health care provider



Frequently Asked Questions about PDL

1. How can I get paid while on PDL?

If you pay into the State Disability Insurance (SDI) program, you may also qualify for SDI payments. You should be entitled to receive disability payments for the entire duration of your disability leave, before and/or after delivery.

2. How long do I have to work to be eligible for pregnancy disability leave?

Eligibility for PDL does not depend on how long you have worked for your employer nor on the number of hours worked during your leave. As long as you are currently employed in a worksite with at least 5 employees and have a qualifying pregnancy related condition, you qualify for PDL.

3. Will my health benefits be continued while on PDL?

No. PDL, by itself, does not protect your health benefits. However, if you qualify for FMLA and take that concurrently, your benefits will continue.

PUTTING IT ALL TOGETHER: PDL, FMLA & CFRA

Tracy has the right to time off for pregnancy-related conditions before and after birth AND for bonding with her new baby.



Before
Birth



After
Birth

PREGNANCY-RELATED DISABILITY

- ▶ PDL and FMLA protect Tracy's job
- ▶ SDI provides partial pay

BONDING

- ▶ CFRA protects Tracy's job
- ▶ PFL provides partial pay



Combining Job Protection and Income Replacement

Things to remember when combining leave:

- ✓ Combine job protection (FMLA, CFRA, PDL) with income replacement programs (PFL, SDI).
- ✓ Consider all options for replacing income including taking vacation pay and paid sick time.
- ✓ Generally, CFRA and FMLA run concurrently for a total of 12 weeks of leave. For pregnancy-related disability, PDL and FMLA run concurrently, while CFRA can be taken after your PDL leave for bonding.
- ✓ You may be able to receive 100% of your wages while on leave by bargaining for partial wages during leave or the option to integrate benefits. The details have to be worked out through your union and employer in each case.
- ✓ Remember, if you pay into SDI, you can take PFL. You can also get SDI while out on PDL. See below for a definition of SDI.

SDI:

SDI provides short-term wage-replacement benefits to eligible workers in California when they are unable to work due to non-work related illness or injury, or a medically disabling condition from pregnancy or childbirth.

GETTING HELP





Contacts and Resources

FOR UNIONS:

■ **Labor Project for Working Families**

1-510-643-7088

www.working-families.org

■ **LEARN Work Family**

Labor Education & Resource Network

An online labor education resource network featuring a database of work family contract language

www.learnworkfamily.org

FOR MORE INFORMATION ON THE LAW:

■ **EDD**

(for information or to apply)

1-877-BE-THERE

www.edd.ca.gov

■ **Paid Family Leave Collaborative**

www.paidfamilyleave.org

FOR QUESTIONS ABOUT YOUR RIGHTS AND TAKING LEAVE:

■ **Legal Aid Society — Employment Law Center**

1-800-880-8047 (Spanish/English)

www.las-elc.org

■ **California Women's Law Center**

1-323-951-1041

www.cwlc.org

■ **Equal Rights Advocates**

1-800-839-4372

www.equalrights.org



DISCLAIMER

This guide is intended to provide accurate, general information about family leave laws. Because laws and legal procedures are subject to frequent change and differing interpretations, the Labor Project for Working Families cannot ensure that the information in this guide is current, nor be responsible for any use to which it is put. People who have legal questions should consult an attorney or the appropriate administrative agency. Do not rely on this information without consulting an attorney or the appropriate agency about your rights.