

Paid Family Leave Benefits

YOUR LEGAL RIGHTS

1. What benefits does the Paid Family Leave Act provide?

The California Paid Family Leave Act (PFLA) provides up to six weeks of partial pay for employees who take time off work:

to care for a child, parent, spouse or registered domestic partner with a serious health condition; or

to bond with a newborn baby or newly adopted or foster child (or child of a spouse or domestic partner).

Bonding leave is limited to the first year after a child is born or placed with a family. Each parent is eligible for six weeks of paid family leave.

An employee may receive up to six weeks of partial pay during any 12-month period. Generally, an employee will receive 55% of his or her weekly wage. (The weekly wage is calculated by looking at the three-month period, during the previous 15 months, in which the employee earned the most money.) The six weeks of leave need not be taken all at once.

2. Are you covered under the California Paid Family Leave Act?

All employees, including new or probationary employees, in California who pay into State Disability Insurance (SDI) qualify for benefits under PFLA. Some employees, for example, federal employees, do not pay into SDI and are therefore not eligible for these benefits.

PFLA does not require that an employee work for a set period of time before qualifying for benefits. PFLA applies to employees working for employers of all sizes. This means that the PFLA applies to many more employees than the federal and state unpaid leave laws (such as the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA)), which do not apply to employers with fewer than 50 employees.

PFLA recognizes the family relationships created by domestic partnerships, thus allowing domestic partners to receive paid family leave benefits to care for their domestic partner with a serious health condition or to bond with their partner's newborn baby or an adopted or foster child placed with the family.

3. What is a “serious health condition”?

A “serious health condition” is an illness, injury, impairment or physical or mental condition involving either:

- care requiring a stay in a hospital, hospice, or residential care facility; or
- continuing treatment by a health care physician or practitioner.

The “continuing treatment” provision of the PFLA requires one of the following:

- a condition causing incapacity for more than three days that requires: (1) two or more visits to a health care provider, or (2) one visit with a regimen of continuing treatment and supervision;
- a chronic condition continuing over an extended period of time and requiring periodic doctor visits, and which may cause episodic rather than continuous incapacity;
- permanent or long-term absences due to a condition for which treatment may not be effective (such as terminal cancer) where the patient is under the supervision of, but not necessarily being actively treated by, a health care provider;
- absences to receive multiple treatments for (1) restorative surgery, or (2) a condition which would likely cause a period of incapacity of more than three days if not treated; or pregnancy and prenatal care (see Section 14, “Other Publications Regarding Family/Medical Leave” if you would like further information about the special rules that apply to pregnancy).
- Cosmetic treatments or surgery, and treatments for routine conditions, such as the flu, are not generally considered sufficient to count as a serious health condition.

“Treatment” under family/medical leave laws includes examinations to determine if a serious health condition exists and evaluation of that condition. Treatment does not include routine physical, eye or dental exams.

The term “health care provider” includes:

- licensed medical doctors;
- clinical psychologists;
- optometrists, dentists, podiatrists;
- licensed nurse practitioners and nurse-midwives;
- clinical social workers; and
- chiropractors (depending on the treatment provided).

If your employer’s health care plan accepts certification from your family member’s doctor of the existence of a serious health condition to substantiate a claim for benefits, your family member’s doctor probably counts as a health care provider under the family/medical leave laws.

4. Who pays for the leave?

The wage replacement benefits under PFLA are paid for by employee contributions to the State Disability Insurance (SDI) program. The employee contribution appears as a withheld tax on the employee's paycheck.

5. Is your employer required to reinstate you after you take Paid Family Leave?

Unlike the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), which include explicit job protection provisions, the PFLA does not expressly protect an employee's right to be reinstated.

PFLA leave can be taken concurrently with (at the same time as) family leave under the FMLA and/or CFRA. These two laws require employers to hold jobs for eligible employees when they return from leave. Therefore employees who receive PFLA benefits concurrently with FMLA/CFRA leave are guaranteed their jobs back when they return to work. However, not all workers qualify for FMLA/CFRA leave (see Family/Medical Leave Fact Sheets at <http://www.las-elc.org/factshtinvent.html> for more information). For employees who are taking FMLA or CFRA job-protected leave, the PFLA provides wage replacement benefits for up to six weeks of the leave.

Many employees are eligible for PFLA but not FMLA or CFRA because their employers have fewer than 50 employees, they've been employed for less than a year, or they have worked fewer than 1250 hours in the year preceding the leave. These employees nonetheless have the right to receive six weeks of PFLA benefits, though the leave is not expressly job-guaranteed. An employee who is in this category can negotiate with his or her employer to take PFLA leave on a schedule that fits the needs of both the employee and the employer.

An employee who takes the paid leave and is fired during or shortly after the leave may be able to win reinstatement to his or her job by proving that he or she was unlawfully fired in violation of public policy merely for taking the benefit of PFLA (See our Fact Sheet titled "**Wrongful Termination**" for more information).

6. Can you take paid family leave after taking unpaid family leave under FMLA or CFRA?

No. PFLA leave and FMLA/CFRA leave run concurrently. An employee who is eligible for both PFLA and FMLA/CFRA leave cannot choose to take the two types of leave at different times. These employees can receive up to six weeks of PFLA benefits during their job-protected FMLA/CFRA leaves. However, if you have received PFL benefits to care for a domestic partner, you may be able to take an additional 12 weeks of unpaid FMLA leave because the FMLA does not cover domestic partners and therefore does not run concurrently with PFL benefits.

7. What if care can be provided by another family member?

PFLA benefits are not available to an employee for any day that another family member is ready, willing, able, and available to provide the required care. For example, an employee who is unemployed and looking for a job, but unwilling to provide care, is not considered to be ready, willing, able, and available. No more than one family member may receive benefits during any eight hour period, and no more than three family members may receive benefits during a twenty-four hour period. Individuals who are unsure whether this will prevent them from receiving PFLA benefits should apply.

8. What if you are receiving Unemployment Insurance or State Disability Insurance?

Employees receiving unemployment or state disability insurance benefits are ineligible to receive PFLA benefits at the same time.

9. Can your employer require you to take vacation?

Yes. An employer may require an employee to take up to two weeks of earned but unused vacation leave before beginning to receive benefits. An employer, however, cannot require an employee to use sick leave before receiving benefits.

10. Are Paid Family Leave benefits paid immediately once the leave begins?

No. An individual may not receive PFLA benefits for the first seven days of leave. Any vacation time an employer requires an employee to use before receiving PFLA benefits may be counted toward this seven day waiting period. These first seven days do not have to be consecutive.

11. Does the leave have to be taken all at once or can it be taken intermittently?

A worker can receive benefits for any length of time - up to six weeks - necessary to care for a seriously ill parent, partner, spouse or child, or for bonding with a new child. Therefore, providing all other conditions are met, a worker can get paid family leave benefits when taking intermittent leave.

However, workers taking intermittent leave still must observe the 7-day waiting period. Each day that the worker is eligible for paid family leave benefits will count towards this waiting period. For example, if a worker establishes a claim and plans to take two days off each month to care for a parent, the worker will not receive benefits until the middle of the fourth month - after he or she has taken 7 days of leave from work.

12. What is the procedure for applying for benefits?

To Care for a Seriously Ill Family Member

To receive paid family leave benefits while caring for a seriously ill family member an employee must fill out a claim form, available from the Employment Development Department (EDD), and obtain a certificate from the treating health care provider stating:

- a diagnosis or detailed statement of symptoms;
- the date the condition began;
- the probable duration of the condition;
- an estimate of how much time the employee needs to care for the family member; and
- that the serious health condition requires the participation of the employee to provide care for his or her relative.

The employee must submit the claim form and certificate to the EDD, not the employer.

Activities such as providing psychological comfort, arranging third party care for the affected relative, and directly providing or participating in the medical care all show that an employee needs to care for his or her family member.

To Bond with a New Child

Pregnant women who have received SDI while on pregnancy disability leave will automatically receive a claim form from the EDD for bonding. Other employees must obtain a claim form from the EDD. Bonding claim forms must be accompanied by documentation of the birth or placement of the adopted or foster child.

13. Where can you get help regarding your family/medical leave rights?

If you have questions about your employment rights or benefits, call the Work and Family Project of The Legal Aid Society - Employment Law Center at 1-800-880-8047, or the Employment Development Department (EDD) at 1-877-BE-THERE.

If you think your employer has violated family/medical leave laws, you can file a complaint with your local office of the United States Department of Labor, Wage and Hour Division no later than two years after the earliest discriminatory act (check the U.S. Government listing at the front of your local telephone directory) or with the California Department of Fair Employment and Housing no later than one year after the first discriminatory act (for information, call 1.800.884.1684).

If you sue your employer for violating family/medical leave laws, the court may reinstate you to your job and award you wages you should have been paid or a promotion you should have received, as well as reimbursement for legal costs. Time limits apply. You should take action immediately if you think your rights have been violated.

14. Other LAS-ELC Fact Sheets on Family/Medical Leave

“Family/Medical Leave: Your Own Health Condition”

“Family/Medical Leave: Caring For a Family Member”

“Taking a Leave for Pregnancy, Prenatal Care, and/or Bonding with a New Child”

“Pregnancy Discrimination”

Consult the appropriate agency or an attorney about your rights.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, call:

The Work and Family Project
(800) 880-8047 or (415) 593-0033

The Work and Family Project is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems. For information, call the LAS-ELC's 24-hour Direct Services Information Line at (415) 864-8208.