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Employment Law Summary

California

California Employee Leave Laws— Frequently Asked Questions

California employers are obligated to comply with many state laws providing employee leave in a variety of situations. These answers to frequently asked questions address common issues raised by the state's major leave compliance mandates.

Please note that this document does not cover local employee leave ordinances imposed at the county or municipal level, nor does it take into account leave requirements under federal laws such as the Family and Medical Leave Act (FMLA). Employers must comply with all federal, state and local laws that apply to them and their workers.

Which California laws require paid versus unpaid leave?

The major California employee leave laws require paid or unpaid leave as follows:

Paid leave:

- [Paid sick leave](#) under the HWHFA;
- [Kin care leave](#);
- [Organ and bone marrow donor leave](#); and
- [Voting leave](#) (up to two hours).

Unpaid leave:

- Family and medical leave under [CFRA](#) (but employees may be eligible for compensation through state [paid family leave insurance](#));
- [Pregnancy disability leave](#) (employer does not have to provide paid leave unless it pays for other temporary disability leaves; employees may be eligible for state [disability insurance](#));
- [Bereavement leave](#) (may be unpaid in the absence of an existing policy, but employees are authorized to use other available leave balances);
- [Reproductive loss leave](#) (may be unpaid in the absence of an existing policy, but employees are authorized to use other available leave balances);
- [Jury duty](#), witness and crime victim leave (employees may use available accrued paid leave, including paid sick leave under the HWHFA);
- [Leave for victims of qualifying acts of violence](#) (Employees may use accrued paid sick leave under the HWHFA and vacation, personal leave or other compensatory time off);
- [School activity](#) and [school appearance](#) leave;
- Military and [military spouse leave](#) (employees may qualify for paid family leave insurance);

- [Civil Air Patrol leave](#);
- [Volunteer firefighter, reserve police and emergency rescue personnel leave](#); and
- [Alcohol and drug rehabilitation leave](#) (employees may use available paid sick leave).

Are small employers exempt from California employee leave requirements?

There is no blanket exemption for small employers from state California leave laws. Different California employee leave laws have different thresholds for employer coverage. For example, the Healthy Workplaces, Healthy Families Act (HWHFA) (paid sick leave) applies to all California employers, while the California Family Rights Act (CFRA) (unpaid family and medical leave) applies only to employers with at least five employees. Other examples include pregnancy disability leave and bereavement leave, which also apply to employers with five employees, and organ and blood donor leave requirements, which apply to employers with 15 or more employees.

One of my employees is planning to take time off when they give birth later this year. How much maternity leave am I required to provide?

In terms of California state law, employers with at least five employees must provide up to four months of job-protected leave for pregnancy- or childbirth-related disabilities. Leave can be taken before and after birth during any period an employee is physically unable to work because of pregnancy or a pregnancy-related condition. For example, pregnancy disability leave can be taken for prenatal or postnatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, loss or end of pregnancy, or any other related medical condition. Leave may be unpaid unless the employer pays for other temporary disability leaves for similarly situated employees. The employee may use any accrued vacation or other accrued paid time off (PTO) during the leave. The employer may require the employee to use, or the employee may elect to use accrued sick leave during any unpaid portion of the leave.

If the employer provides more than four months of leave for other types of temporary disabilities, the same leave must be made available to employees who are disabled due to pregnancy, childbirth or a related medical condition. (Employees on pregnancy disability leave may be able to collect state disability insurance.)

In addition, employers subject to the CFRA must allow eligible employees to take up to 12 weeks of unpaid leave during the 12 months after the birth of their child for child bonding. An employee who has taken pregnancy disability leave may take CFRA child bonding leave when their disability leave ends. (The employee may be eligible for California state paid family leave benefits during CFRA child bonding leave.)

Note that this discussion does not address an employer's potential obligations under federal law (such as the FMLA) related to pregnancy, childbirth and child bonding.

Do I have to provide paternity leave to my employees?

If you are covered by the CFRA, you must provide child bonding leave to any employees who are eligible for CFRA and have a new child via birth, adoption or foster placement. This is true for both parents (including fathers, adoptive and foster parents or same-sex parents), even if both parents work for you.

To be eligible under the CFRA, the employee must have worked for you for at least one year and worked at least 1,250 hours for you in the past year.

Note that this discussion is limited to the requirements of California state law, and it does not address bonding leave under the federal FMLA.

My company provides unlimited PTO. Does this meet California’s paid sick leave requirements?

As long as you provide at least 40 hours, or five days, per year of paid leave that can be used for health care and that meets the other requirements of the HWHFA, your unlimited PTO policy will meet state paid sick leave requirements.

In addition, while the law requires employers to separately track sick leave accrual and use, for employers with unlimited PTO plans, the notice, itemized pay stub or separate written statement provided with the payment of wages meets this requirement by indicating the paid sick leave is “unlimited.”

I suspect my employee is taking paid sick leave when they are not really sick. Can I require a doctor’s note?

Although an employer cannot deny a paid sick leave request solely for lack of a medical certification, it may be reasonable in certain circumstances to ask for documentation before paying the sick leave when the employer has information indicating that the employee is not requesting paid sick leave for a valid purpose. Guidance from the California Civil Rights Department says the reasonableness of the parties’ actions will inform the outcome of the claim.

Employers may, however, demand medical certification for family and medical leave absences under the CFRA.

Do I have to pay for my employee’s health insurance while they are on unpaid family and medical leave under the CFRA?

If you normally pay for those benefits, yes.

My business suffered a setback, and I had to let an entire department go, including an employee on CFRA leave. Did I violate the CFRA?

Probably not. The CFRA regulations state that employees on CFRA leave have no greater right to reinstatement than if they had been employed during the CFRA leave period. However, employers denying reinstatement after leave must show, by a preponderance of the evidence, that the employee would not otherwise have been employed on the requested reinstatement date. Employers may not simply replace employees on leave or restructure the employee’s position.

Am I required to pay employees for their unused paid sick leave when they leave the job?

No, the HWHFA does not require payout of accrued unused paid sick leave on separation of employment.