

## Leaves of Absence in California – Jeanine DeBacker, McPharlin Sprinkles & Thomas LLP

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	<b><u>FMLA</u></b> (Family and Medical Leave Act - 29 U.S.C. §2601, et seq.)	<b><u>CFRA</u></b> (California Family Rights Act - Gov. Code §12945.2)	<b><u>ADA</u></b> (Americans with Disabilities Act – 42 U.S.C. §§12101, et seq.)	<b><u>FEHA</u></b> (Fair Employment and Housing Act – Gov. Code §12945)
<b>Employer coverage</b>	50 or more employees within a 75 mile radius	Same as FMLA	15 or more employees	5 or more employees
<b>Employee Eligibility</b>	<ul style="list-style-type: none"> <li>• the employee worked for a covered employer for at least one year,</li> <li>• for 1,250 hours over the previous 12 months, and</li> <li>• if at least 50 employees are employed by the employer within 75 miles.</li> </ul>	Same as FMLA	All employees with qualifying disabilities	All employees with qualifying disabilities
<b>Qualifying Events</b>	<ul style="list-style-type: none"> <li>• birth/adoption of a child;</li> <li>• care for a newborn, newly adopted child or new foster care placement;</li> <li>• employee’s own serious health condition; or</li> <li>• to care for certain family members who have a serious health condition.</li> <li>• military family leave <b>(N. 1)</b></li> </ul>	Same as FMLA except: <ul style="list-style-type: none"> <li>• not provide leave for disability on account of pregnancy, childbirth or related conditions <b>(N.2)</b></li> <li>• employee’s registered domestic partner is a family member</li> <li>• FMLA military leaves not included in CFRA</li> </ul>	Disabled employees requiring time off as a form of reasonable accommodations	Same as ADA
<b>Length of leave available</b>	12 weeks in a 12 month period (can be taken on reduced leave or intermittent leave basis in some cases) OR 26 weeks to care for injured military service-member	Same as FMLA except for service-members leave of 26 weeks N/A under CFRA) (NB – baby bonding leave)(N.2)	Not specified in law (but cannot be too open-ended)	Not specified in law (but cannot be too open-ended)
<b>Reinstatement Rights</b>	Guaranteed in absence of defense to <u>same or comparable</u> position.	Same as FMLA	Generally guaranteed subject to undue hardship exception but not necessarily same or comparable position	Same as ADA
<b>Advance Notice Required</b>	Yes if company policy	Same as FMLA	Generally, yes	Generally, yes

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	<b>PDL</b> (Pregnancy Disability Leave – Govt. Code §12945)	<b>Work-related disability</b> (Labor Code §132a)	<b>Drug/Alcohol Rehabilitation Leave</b> (Labor Code §§1025-1028)	<b>Military Leave Law</b> (USERRA – 38 U.S.C. 4301, et seq.)
<b>Employer coverage</b>	5 or more employees	All employers	25 or more employees	All employers
<b>Employee Eligibility</b>	All employees with pregnancy-related disabilities (very expansive definition!)	All employees with a work-related disability (“Workers Comp”)	Employees who voluntarily enroll in a residential drug or alcohol rehabilitation program (not AA)	All employees who enlist in military service or perform military or reserve duties (also, some public health duties)
<b>Qualifying Events</b>	Pregnancy-related disability preventing work	Work-related disability preventing work	Voluntary enrollment in program	Enlistment or call to perform military duties
<b>Length of leave available</b>	Length of pregnancy-related disability, up to “four months”	Not specified in law.	Time necessary unless it would cause an undue hardship	Time needed, up to statutory maximum of 5 years cumulative total
<b>Reinstatement Rights</b>	Guaranteed to <b>same</b> position	Guaranteed subject to business realities exception	Yes	Guaranteed
<b>Advance Notice Required</b>	Yes	Yes – protections are triggered by notice of claim	Yes	Yes, when advance notice is possible

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	<b>California Military Leave Law</b> (Mil. & Vet. Code §394-395)	<b>Spousal Military Leave Law</b> (Mil. & Vet. Code §395.10)	<b>Jury Duty</b> (Labor Code §260(a))	<b>Witness Duty</b> (Labor Code §230(b))
<b>Employer coverage</b>	All employers	25 or more employees	All employers	All employers
<b>Employee Eligibility</b>	Members of a reserve corps or who have other specified military obligations	Spouses of qualified members of Armed Forces, National Guard or Reserves who work at least 20 hours/week	Subpoenaed to appear as jurors	Subpoenaed to appear as witness
<b>Qualifying Events</b>	Need to perform military duty	A qualified leave period of a qualified member of the military	Subpoena	Subpoena
<b>Length of leave available</b>	17 days for private employees; 180 days for public employees	10 days	Length of jury duty	Length of witness duty
<b>Reinstatement Rights</b>	Guaranteed	Yes	Yes	Yes
<b>Advance Notice Required</b>	Implied by the law	Yes – within 2 business days of receiving notice of spouse’s leave	Yes	Yes

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	<b>Crime Victims</b> (Labor Code §§230(b) and 230.2)	<b>Victims of Domestic Violence</b> (Labor Code §§230(c)-(d) and 230.2)	<b>Victims of Sexual Assault and other Serious Crimes</b> (Labor Code §§230(c)-(d); 230.1; 230.5)	<b>Sick Leave to attend family ("Kin Care)</b> (Labor Code §§233-234)
<b>Employer coverage</b>	All employers	All employers; 25 or more employees have greater obligations	All employers; 25 or more employees have greater obligations	All employers who provide sick leave
<b>Employee Eligibility</b>	Subpoenaed or ordered to appear in court or who attend judicial proceedings related to a crime	All employees who experience qualifying event	All employees who experience qualifying event	All employees who are eligible for sick leave and use sick leave to attend to a sick child, parent, spouse or domestic partner
<b>Qualifying Events</b>	Subpoena, or court order to attend judicial proceedings	Victimization by domestic violence and other related events	Victimization by sexual assault and enumerated "serious crimes, including DUI, child abuse, DV, elder abuse, assault, stalking,	Use of eligible portion of sick leave to attend to sick qualified family member
<b>Length of leave available</b>	Length of court appearance	Time necessary to resolve issues	Time necessary to resolve issues/appear at court proceedings	Up to half of sick leave time
<b>Reinstatement Rights</b>	Yes	Yes	Yes	Yes
<b>Advance Notice Required</b>	Yes, where feasible	Yes, where feasible	Yes	No

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	<b>Reserve Emergency Personnel: Volunteer Firefighters, Peace Officers, Emergency Rescue Personnel</b> (Labor Code §230.3-230.4)	<b>Time Off to Visit School Authorities</b> (Labor Code §230.7)	<b>Family School Partnership Act</b> (Labor Code §230.8)	<b>Employee Literacy Education Assistance Act</b> (Labor Code §§1040-1044)
<b>Employer coverage</b>	All employers; 50 or more triggers greater obligations	All employers	25 or more employees	25 or more employees
<b>Employee Eligibility</b>	All employees	All employees	Employees with children or custody of children in day care or K-12	Employees who enroll in adult literacy education assistance program
<b>Qualifying Events</b>	Emergency duty; plus training time if 50+ employees	Employees must be a parent or guardian who has been asked to visit school because of child discipline	Participation in school or child day care activities	Enrollment and participation in program
<b>Length of leave available</b>	Time necessary for emergency duty; if 50+ employees, also entitled to up to 14 days off to train annually	Usually a day or less	Up to 8 hours per month and 40 hours per year	Time necessary to enroll and participate (reasonable accommodation from employer: time off to leave work early, arrive late, or take an extended lunch period to attend the program)
<b>Reinstatement Rights</b>	Yes	Yes	Yes	Yes
<b>Advance Notice Required</b>	Not specified by law (make a policy!)	Yes	Yes	Yes

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	<b>Time Off to Vote</b> (Elections Code §§14000-14002)	<b>Organ and Bone Marrow Donation</b> (Labor Code §§1508-1513)	<b>Religious Accommodation</b> (Gov. Code §12945, et seq.)	<b>Civil Air Patrol Leave</b> (Labor Code §§1500-1507)
<b>Employer coverage</b>	All employers	15 or more employees	5 or more employees	15 or more employees
<b>Employee Eligibility</b>	Employees who are unable to vote due to work schedules	Employees who donate an organ or bone marrow	All employees	90 days employment
<b>Qualifying Events</b>	Statewide election	Donation of organ or bone marrow due to medical necessity	Religious event	Employee authorized to respond to emergency operational mission of California Wing of Civil Air Patrol
<b>Length of leave available</b>	Time necessary to vote (~2 hours)	Up to 30 business days per year for organ donor; 5 business days per year for bone marrow. Time off is paid.	An employer must reasonably accommodate an employee's religious beliefs or observances, unless undue hardship would result The duration and timing of the religious leave is controlled by the religious observance or practice itself	Up to 10 days per year
<b>Reinstatement Rights</b>	Yes	Yes	Yes	Yes
<b>Advance Notice Required</b>	Two days	Yes	Yes	Yes

**Notes:**

**\* All of these leaves above are UNPAID TIME OFF (except for Organ and Bone Marrow Leaves)**

**\*For FMLA/CFRA and PDL – employers are required to maintain coverage under group health plan.**

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### Note 1:

**FMLA military exigency leave** provides that eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain “qualifying exigencies.” Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

**FMLA military caregiver leave** provides that eligible employees to take up to 26 weeks of leave to care for a covered service-member during a single 12-month period. A covered service-member is a current member of the Armed Forces, National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service-member medically unfit to perform his or her duties

### Note 2:

**Baby Bonding Leave.** CFRA does not provide leave for disability on account of pregnancy, childbirth or related medical conditions because California’s Pregnancy Disability Leave protects this time off. This means that after the employee has recovered from child birth, which is protected leave under FMLA and PDL, she likely has her entire CFRA protected time off available – 12 weeks of leave to care for her newborn (“baby bonding leave”). Male employees who take time off to bond with their children are taking FMLA and CFRA at the same time.