

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

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	FMLA (Family and Medical Leave Act - 29 U.S.C. §2601, et seq.)	CFRA (California Family Rights Act - Gov. Code §12945.2)	ADA (Americans with Disabilities Act – 42 U.S.C. §§12101, et seq.)	FEHA (Fair Employment and Housing Act – Gov. Code §12945)
Employer Coverage	50 or more employees within a 75 mile radius	Same as FMLA	15 or more employees	5 or more employees
Employee Eligibility	<ul style="list-style-type: none"> the employee worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles. 	Same as FMLA	All employees with qualifying disabilities	All employees with qualifying disabilities
Qualifying Events	<ul style="list-style-type: none"> birth/adoption of a child; care for a newborn, newly adopted child or new foster care placement; employee’s own serious health condition; or to care for certain family members who have a serious health condition. 	Same as FMLA except: <ul style="list-style-type: none"> not provide leave for disability on account of pregnancy, childbirth or related conditions employee’s registered domestic partner is a family member FMLA military leaves not included in CFRA 	Physical or mental disability that limits a major life activity for which time off is a form of reasonable accommodation	Physical or mental disability that makes a major life activity more difficult for which time off is a form of reasonable accommodation
Length of leave available	12 weeks in a 12 month period (can be taken on reduced leave or intermittent leave basis in some cases)	Same as FMLA	Case by case for “reasonableness”	Case by case for “reasonableness”
Reinstatement Rights	Guaranteed in absence of defense to same or comparable position.	Same as FMLA	Generally guaranteed subject to undue hardship exception but not necessarily same or comparable position	Same as ADA

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	PDL (Pregnancy Disability Leave – Gov. Code §12945)	Parental Leave (California Family Rights Act – Gov. Code §12945.2)	Paid Sick Leave (Labor Code §§245-249)
Employer Coverage	5 or more employees	20-49 employees	All employers
Employee Eligibility	All employees with pregnancy-related disabilities (very expansive definition!)	employee worked for a covered employer for at least one year, <ul style="list-style-type: none"> • for 1,250 hours over the previous 12 months, and • if at least 50 employees are employed by the employer within 75 miles. 	Anyone who works 30+ days in California within a year of starting work; can use the PSL after 90 consecutive days.
Qualifying Events	Pregnancy-related disability preventing work (includes morning sickness, prenatal care, post-partum issues and end of pregnancy matters)	“Baby bonding” – care for newborn, newly adopted or placed for foster care within one year of leave	Time off for: <ul style="list-style-type: none"> -- diagnosis, care or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member; -- employee who is a victim of domestic violence, sexual assault or stalking to obtain relief, including medical attention and psychological counseling. “Family member” includes the employee’s child (biological, adopted, foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis, and regardless of age or dependency status); parent (biological, adoptive, foster parent, stepparent, legal guardian or a person who was in loco parentis when the employee was a minor); parents in-law through an employee’s spouse or registered domestic partner; spouse; registered domestic partner; grandparent; grandchild; and sibling.
Length of leave available	Length of pregnancy-related disability, up to “four months”	12 weeks	Minimum is 3 days/24 hours (per grant method or 1 hour for every 30 hours worked (accrual method). If accrual, can have cap of no less than 48 hours and can limit annual use to 24 hours.
Reinstatement Rights	Guaranteed to same position	Same or comparable position	Yes

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	FMLA Military Leave (Family and Medical Leave Act - 29 U.S.C. §2601, et seq.)	Military Leave Law (USERRA – 38 U.S.C. 4301, et seq.)	California Military Leave Law (Mil. & Vet. Code §394-395)	Spousal Military Leave Law (Mil. & Vet. Code §395.10)
Employer Coverage	50 or more employees within a 75 mile radius	All employers	All employers	25 or more employees
Employee Eligibility	<ul style="list-style-type: none"> the employee worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles. 	All employees who enlist in military service or perform military or reserve duties (also, some public health duties)	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
Qualifying Events	<p>Exigency leave: employee with a spouse, son, daughter, or parent on active duty or call to active duty status may use the 12-weeks to address certain “qualifying exigencies”: military events, arranging for alternative childcare, addressing certain financial and legal arrangements, counseling sessions, post-deployment reintegration briefings.</p> <p>Caregiver leave: employee may take up to 26 weeks of leave to care for a covered service-member who has a serious injury or illness on active duty that may render the service-member medically unfit to perform his or her duties.</p>	Enlistment or call to perform military duties	Need to perform military duty	A qualified leave period of a qualified member of the military
Length of leave available	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	Time needed, up to 5 years cumulative	17 days for private employees; 180 days for public employees	10 days
Reinstatement Rights	Guaranteed in absence of defense to same or comparable position.	Guaranteed	Guaranteed	Yes

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	Work-related disability (Labor Code §132a)	Drug/Alcohol Rehabilitation Leave (Labor Code §§1025-1028)	Jury Duty (Labor Code §260(a))	Witness Duty (Labor Code §230(b))
Employer coverage	All employers	25 or more employees	All employers	All employers
Employee Eligibility	All	All	All	All
Qualifying Events	Work-related disability preventing work (“workers comp”)	Voluntary enrollment in a residential drug or alcohol rehabilitation program (not AA) in program	Subpoena	Subpoena or Court Order
Length of leave available	Not specified in law.	Time necessary unless it would cause an undue hardship	Length of jury duty	Length of witness duty
Reinstatement Rights	Guaranteed subject to business realities exception	Yes	Yes	Yes

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	Crime Victims (Labor Code §§230(b) and 230.2)	Victims of Domestic Violence (Labor Code §§230(c)-(d) and 230.2)	Victims of Sexual Assault and other Serious Crimes (Labor Code §§230(c)-(d); 230.1; 230.5)	Sick Leave to attend family ("Kin Care") (Labor Code §§233-234)
Employer coverage	All employers	All employers; 25 or more employees have greater obligations	All employers; 25 or more employees have greater obligations	All employers who offer more than PSL minimum
Employee Eligibility	All employees who experience qualifying event	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
Qualifying Events	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
Length of leave available	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 (above PSL minimum)
Reinstatement Rights	Yes	Yes	Yes	Yes

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	Reserve Emergency Personnel: Volunteer Firefighters, Peace Officers, Emergency Rescue Personnel (Labor Code §230.3-230.4)	Time Off to Visit School Authorities (Labor Code §230.7)	Family School Partnership Act (Labor Code §230.8)	Employee Literacy Education Assistance Act (Labor Code §§1040-1044)
Employer coverage	All employers; 50 or more triggers greater obligations	All employers	25 or more employees	25 or more employees
Employee Eligibility	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
Qualifying Events	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
Length of leave available	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)
Reinstatement Rights	Yes	Yes	Yes	Yes

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	Time Off to Vote (Elections Code §§14000-14002)	Organ and Bone Marrow Donation (Labor Code §§1508-1513)	Religious Accommodation (Gov. Code §12945, et seq.)	Civil Air Patrol Leave (Labor Code §§1500-1507)
Employer coverage	All employers	15 or more employees	5 or more employees	15 or more employees
Employee Eligibility	All employees	All employees	All employees	90 days employment
Qualifying Events	Employee unable to vote in statewide election due to work schedule	Employee who donates 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
Length of leave available	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
Reinstatement Rights	Yes	Yes	Yes	Yes

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

***FMLA, CFRA, PDL, CFRA Parental Leave, and FMLA – Military Leave: employers must maintain coverage under group health plan.**