



FREQUENTLY ASKED QUESTIONS

Disclaimer: These questions and answers do not apply to federal employees. For information about family and medical leave for federal employees, please go to www.dol.gov/whd/fmla.

Four Sections:

- A. Pregnancy Disability Leave
- B. Pregnancy-Related Accommodations
- C. Bonding Leave
- D. When An Employee's Rights Are Violated

A. Pregnancy Disability Leave (PDL)

1. Does an employee have the right to take time off from work due to medical conditions related to her pregnancy?

Yes, an employee may take up to 4 months of [job-protected time off](#) so long as the following conditions are met:

- The employee works for an employer with 5 or more employees; and
- An employee may take longer than 4 months if her employer provides more than 4 months of leave as part of its own policies for temporary disabilities or in a union contract, or as a reasonable accommodation for a disability.

This time off is known as pregnancy disability leave.

2. Does an employee have to take all her pregnancy disability leave (PDL) at one time?

No. An employee has the right to take what is called “intermittent” leave for her pregnancy-related disability, as needed. “Intermittent” leave is leave that is taken in small increments. These increments can be in hours, days, weeks, or months.

For example, a pregnant employee, with the advice of her doctor, has the right take a few hours of leave each day or on certain days because of severe morning sickness or for a doctor's appointment, or for other prenatal care.

3. Does an employee have the right to continued health care benefits while on pregnancy disability leave?

Yes, to the same extent and under the same conditions as would apply to any other unpaid disability leave granted by the employer for any reasons other than a pregnancy disability. An employee who is taking pregnancy disability leave (PDL) is entitled to the continuation of her health benefits for the entire duration of her leave, up to four months.

4. Does an employee have the right to wage replacement while on pregnancy disability leave?

Yes, if the employee pays into State Disability Insurance (SDI), or if the employer has a policy or practice of providing employees paid leave. An employee's pay stub will reflect whether or not the employee pays into SDI. Employees who pay into SDI can collect partial wage replacement while on pregnancy disability leave. To find out more about the SDI program, please visit <http://www.edd.ca.gov/>.

It is important to remember that receiving wage replacement alone does not guarantee that an employee's [job will be protected](#).

5. Can an employee use her sick days or vacation days during pregnancy disability leave? Can her employer require her to do so?

Generally, either an employer or employee can choose to apply the employee's paid sick leave during pregnancy disability leave. However, only an employee can decide to use her vacation or personal time off during her pregnancy disability leave; an employer cannot require her to do so.

6. Does an employee have to give her employer notice before taking pregnancy disability leave?

Yes. An employee must give her employer either verbal or written notice that she is taking the leave. Generally, if the need is foreseeable, she must give her employer 30 days' notice. However, if she does not know that she will need to take a leave 30 days in advance, she only needs to give notice as soon as practicable.

In her notice, an employee should tell her employer (1) the reason for taking leave (e.g., pregnancy disability); and (2) when and for how long she plans to take the leave.

7. Does an employee have to give her employer a medical certification to take pregnancy disability leave?

Maybe. An employer may require medical certification only if the employee requires certification from other similarly situated employees. If so, the employee should obtain it from her medical provider. The certification should contain the following information:

- (1) A statement that the employee has a disability due to pregnancy, childbirth or a related medical condition and because of the disability she cannot perform an essential function of her position without undue risk to herself, the successful completion of her pregnancy, or to others;
- (2) The date on which the employee became/will become disabled; and
- (3) The probable duration of the disability, and whether or not the employee needs to take intermittent leave

A certification need not provide more information than what is described above. All medical information in a medical certification is confidential. For a sample certification form, please click here. (add link to new form on pg. 24 of the regulations at http://www.fehc.ca.gov/act/pdf/pregnancyregulations/FINAL_APPROVED_PREG_REGS_CLEAN_11_30_12.pdf)

8. Does an employee have the right to return to the same position that she had before she took pregnancy disability leave?

Yes. An employee generally has the right to return to the same position once her PDL leave is over unless, for legitimate business reasons unrelated to the employee's pregnancy or leave, the employee would have been laid off even if she had not taken the leave. If the employer, for legitimate business reasons, cannot reinstate the employee to the same position, she is entitled to return to a comparable position if one is available.

9. What must an employer do when an employee requests pregnancy disability leave?

An employer must respond to a request for pregnancy disability leave (PDL) as soon as possible, but no later than ten days after the request. If an employee asks about her rights regarding PDL or communicates her intent to exercise those rights, an employer must give the employee written notice about her rights as soon as practicable. An employer must grant the leave if the employee is eligible. (Please see No. 1 above.)

10. Can an employer force an employee to take pregnancy disability leave?

No. As long as the employee can still perform her essential job functions with a reasonable accommodation, her employer may not force her to go on leave before she and her health care provider request it. (Please see Pregnancy Accommodations and Transfers below.)

11. Can an employer penalize an employee for exercising her leave rights?

No. An employer cannot terminate, punish, refuse to hire, or otherwise discriminate against an employee for being pregnant, for requesting or taking pregnancy disability leave, or for opposing any policy, practice or action by her employer that she reasonably believes to be a violation of her pregnancy related rights.

B. Pregnancy Accommodations and Transfers

1. Does an employee have the right to pregnancy-related accommodations, such as temporary transfers or duty restrictions?

Yes, so long as the following conditions are met:

- The employee works for an employer with 5 or more employees;
- The employee's health care provider recommends that the employee receive the transfer or other pregnancy-related accommodation; and
- The requested transfer or accommodation is "reasonable."

Whether or not an accommodation is "reasonable" depends on the individual situation. "Reasonable" accommodations might include:

- A temporary transfer to a less strenuous or hazardous position, if such a position is available
- More frequent or longer rest breaks
- Permission to sit on a stool or carry a water bottle
- Permission to work from home
- Modification or restriction of the employee's job duties,
- Providing assistance with lifting heavy objects
- Lactation accommodations when an employee returns from leave

[Please click here for an example.](#)

2. Does an employee have to give her employer notice before receiving a temporary transfer or other pregnancy-related accommodation?

Yes. An employee must give her employer either verbal or written notice that she is requesting an accommodation. Generally, if the need for transfer is foreseeable, she must give her employer 30 days' notice. However, if she did not know 30 days in advance that she needed an accommodation, she only needs to give notice as soon as possible.

In her notice, an employee should tell her employer (1) the reason for requesting accommodation; and (2) when and for how long she will likely need the accommodation.

3. Does an employee have to give her employer a medical certification for a temporary transfer or other pregnancy-related accommodation?

Maybe. An employer may require medical certification. If so, the employee should obtain it from her medical provider. The certification should contain the following information:

- (1) A statement that due to her pregnancy, childbirth, or related medical condition, it is medically advisable that the employee have the accommodation or transfer;
- (2) The date on which the transfer or accommodation became/will become medically advisable; and
- (3) The probable duration of the need for transfer or accommodation.

A certification need not provide more information than what is described above. All medical information in a medical certification is confidential. For a sample certification form, please click [here](#).

4. Does an employee have the right to return to the same position that she had before she received a temporary transfer or other pregnancy-related accommodation?

Yes, an employee generally has the right to return to the same position once she no longer needs the accommodation or transfer unless, for legitimate business reasons unrelated to pregnancy, the employee would not have been returned to the same position even if she had not received the accommodation. If the employer, for legitimate business reasons unrelated to pregnancy, cannot reinstate the employee to the same position, she is entitled to return to a comparable position if one is available.

5. Can an employer punish an employee for exercising her accommodation rights?

No. An employer cannot terminate, punish, refuse to hire, or otherwise discriminate against an employee for being pregnant, for requesting or taking a pregnancy-related accommodation or transfer, or for opposing any policy, practice or action by her employer that she reasonably believes to be a violation of her pregnancy related rights.

C. Bonding Leave

1. Does an employee have the right to take job-protected time off from work to bond with a new child?

Yes, an employee is eligible to take time off under the California Family Rights Act (CFRA) if his or her employer has at least 50 employees within a 75 mile radius of his or her worksite, he or she has worked at least 1,250 hours in the 12 months before taking the leave, and he or she has worked for his or her employer for at least a year.

If covered by CFRA, an employee can take up to 12 weeks per year of unpaid [job-protected leave](#) to bond with a newborn or newly adopted or fostered child, to care for a spouse, domestic partner, parent or child with a serious health condition, and/or because of his or her own serious health condition not related to pregnancy. For bonding, the leave must be used and completed within 12 months of the birth, adoption, or fostering of the child.

Bonding leave can be taken in addition to pregnancy disability leave (PDL) if the employee is eligible for both PDL and CFRA.

For examples about an employee's eligibility to take CFRA bonding leave, click [here](#).

2. Does an employee have to take all of his or her bonding leave at one time?

No. Employees have the right to take their CFRA bonding leave in two-week blocks of time. On any two occasions, employees may take their CFRA leave in a smaller block of time of less than two weeks duration.

NOTE: If an employee is using [job-protected time off](#) under CFRA relating to serious health conditions, the employee can take “intermittent” leave, meaning leave in small increments of time, as needed.

3. Does an employee have the right to continued health care benefits while he or she is out on job-protected bonding leave?

Yes, the employer must maintain and pay for the employee’s health coverage at the same level and under the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

4. Can an employee collect wage replacement while on bonding leave?

Yes, if the employee pays into State Disability Insurance (SDI), or if the employer has a separate policy or practice of providing employees paid leave. An employee’s pay stub will reflect whether or not the employee pays into SDI. Employees who pay into SDI have a right to collect Paid Family Leave (PFL). PFL is a state program that allows an individual to collect partial wage replacement for up to 6 weeks to bond with a newborn, newly adopted, or newly placed foster care child, or to care for a family member with a serious health condition. To find out more about the PFL program, please visit <http://www.edd.ca.gov/>.

It is important to remember that receiving wage replacement alone does not guarantee that an employee’s [job will be protected](#).

5. Can an employee use his or her sick days or vacation days during bonding leave? Can the employer require him or her to do so?

Either an employee or his or her employer can choose to apply the employee’s paid vacation time during his or her bonding leave. However, an employee or employer can only apply the employee’s paid sick leave during bonding leave if they both agree to do so.

6. Does an employee have to give his or her employer notice before taking bonding leave?

Yes. An employee must give the employer either verbal or written notice that he or she is taking the leave. Generally, if the need for leave is foreseeable, the employee must

give the employer 30 days' notice. However, if the employee does not know 30 days in advance that he or she needs to take a leave, he or she only needs to give notice as soon as possible.

In the notice, the employee should tell his or her employer (1) the reason for taking leave (e.g., bonding with child); and (2) when and for how long he or she plans to take the leave.

7. Does an employee have to give his or her employer a medical certification to take bonding leave?

No. An employee does not need medical certification to take bonding leave. However, an employee does need to provide a certification (e.g., a birth certificate) to the Employment Development Department (EDD) in order to receive PFL. (Please see No. 4 above)

8. Does an employee have the right to return to the same position that he or she had before taking job-protected bonding leave?

An employee generally has the right to return to the same or comparable position once his or her CFRA leave is over unless, for legitimate business reasons, the employee would have been laid off even if he or she had not taken the leave. However, certain exceptions apply to the top ten percent of the employer's salaried employees.

9. What must an employer do when an employee requests bonding leave?

An employer must respond to a request for CFRA qualifying leave as soon as practicable, but no later than 10 days after the request. An employer must grant bonding leave if the employee provides adequate notice.

If an employee requests leave for a reason that may qualify for [job-protection](#) under CFRA, but the employer is uncertain whether the request is for a qualifying reason, an employer should inquire further to determine whether the employee is qualified for such leave. An employer is responsible for designating the leave as CFRA leave and must give notice to the employee of the designation in his or her own language.

Employers are also required by law to provide notice to employees of their right to CFRA leave, including bonding leave.

10. Can both parents take CFRA leave to bond with a new child?

Yes, if both parents are eligible for CFRA leave from their employers. If both parents work for the same employer, they may be limited to 12 weeks of bonding leave total.

11. Can an employer penalize an employee for exercising his or her bonding leave rights?

No. An employer cannot terminate, punish, refuse to hire, or otherwise discriminate or retaliate against an employee for requesting or taking bonding leave (CFRA), or opposing any policy, practice, or action by the employer that he or she reasonably believes to be a violation of his or her (CFRA) rights.

D. When an Employee's Rights Are Violated:

1. What should an employee do if he or she thinks that his or her rights have been violated?

If an employee feels that his or her rights have been violated, he or she may file a complaint with the DFEH within one year of the date of the violation. An employee can visit the DFEH's [website](#) to file a complaint or call 1-800-884-1684 to speak with a representative. In some cases, the employee may also be able to file a complaint with the [United States Department of Labor](#) (for violations of the federal FMLA) or the [Equal Employment Opportunity Commission](#) (for violations of the Pregnancy Discrimination Act).

2. What can an employee do if he or she still has questions about his or her rights?

For more information about employment rights, contact:

- Equal Rights Advocates Advice and Counseling Line at (800) 839-4372
- Legal Aid Society – Employment Law Center's Work & Family Helpline at (800) 880-8047

Examples:

The following are general examples of the ways in which the above laws can work together. This is general information only. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

Ana just found out that she is pregnant and she wants to know what laws protect her. Her employer has 65 employees working within a 75 mile radius of Ana's work site. Ana has been working for her employer for 2 years, and has worked 40 hours per week for the past year. Is Ana protected by the Pregnancy Disability Leave provisions under the Fair Employment and Housing Act (respectively, PDL and FEHA) and the California Family Rights Act (CFRA)?

Yes.

Because Ana's employer has more than 5 employees, she is eligible for PDL under the FEHA. She need not have worked for a minimum period of time or minimum hours to be protected by the FEHA.

Ana is also protected by the California Family Rights Act (CFRA) because her employer has over 50 employees within a 75 mile radius of her worksite, she has worked for her employer for at least one year, and she has worked for over 1,250 hours that year.

Ana’s doctor recommends that she take leave 4 weeks before her delivery date. She remains disabled for 6 weeks after she delivers her baby. She has worked the necessary number of hours and period of time and her employer is sufficiently large so she is covered under both the PDL and CFRA (see above). Her pay stubs reflect that she has paid into SDI (State Disability Insurance). What are her leave rights?

Job-protected leave: During the 4 weeks before and 6 weeks after she gives birth Ana can take [job-protected leave](#) under PDL because during that time she is disabled due to her pregnancy and childbirth. Because she also qualifies for leave under CFRA, she can take up to 12 additional weeks of [job-protected leave](#) to bond with her baby after she recovers from her own pregnancy and childbirth-related disability. She does not need to take all of her leave at one time, but must use the bonding leave within a year of her child’s birth. The child’s other parent may also be entitled to take CFRA bonding leave, if he or she is eligible.

Wage replacement: Because she has paid into SDI, Ana can collect partial wage replacement (SDI) while she is disabled, during the 4 weeks before giving birth and the 6 weeks afterwards. She can also receive partial wage replacement (PFL) during 6 weeks of her bonding leave.

Continuation of health care benefits: Ana’s employer may be required to continue her health benefits for the entire duration of her leave.

Bonnie is 6 months pregnant. Her doctor recommends that she not lift anything heavier than 20 pounds. Bonnie works in a large commercial bakery and has a variety of duties, occasionally lifting more than 20 pounds. Bonnie wants to continue working, but does not want to endanger her pregnancy by lifting heavy objects. What are her rights?

Bonnie is entitled to a reasonable accommodation due to her pregnancy. Her employer may not force her to go on pregnancy disability leave because she is temporarily unable to perform a task. Bonnie can still do her job; she just needs occasional assistance with lifting. Her employer should grant her that accommodation. If her employer asks, she should provide a certification from her doctor.

* “Job-protected leave” is time that an employee can take off from work without risking the loss of his or her job. There are some exceptions to this rule. For those, please see No. A-8 and C-8.