

# Family and Medical Leave

Under federal and state laws, certain employees have the right to take up to 12 weeks of unpaid leave a year for the following reasons:

- for your own serious health condition which keeps you from doing your job;
- to care for a sick child, spouse, or parent with a serious health condition; or
- to care for a newborn child, newly adopted child, or foster child.

A "serious health condition" is an illness, injury, impairment or physical or mental condition that involves: (1) inpatient care in a hospital, hospice or residential medical care facility; or (2) continuing treatment by a health care provider.

The federal law providing for these leaves is the Family and Medical Leave Act (FMLA). The California law is the California Family Rights Act (CFRA). The two laws are almost identical. To be eligible for leave under FMLA or CFRA you must meet all of the following requirements:

- have worked for your employer for at least 12 months;
- have worked at least 1,250 hours during the 12 months before the leave (approximately 25 hours per week); and
- have worked for an employer with at least 50 employees within a 75-mile radius of your worksite.

## Rights and Requirement During Your Family or Medical Leave

- When you return to work after your leave, you have the right to the same or equivalent position. You do not have the right to your job if it was eliminated for legitimate business reasons unrelated to your leave. Also, if you are among the highest 10% paid employees, you may not have the right to your same job back if reinstatement would cause substantial economic harm to your employer.
- During your leave you are entitled to get the same medical benefits you would get if you were at work. If your family members are usually covered by your health insurance policy, your employer must continue their coverage during your leave. If you usually pay a portion of your benefits and your employer pays a portion, this continues during your leave.
- You cannot lose any employment benefits during your leave. For example, if you have a pension, disability insurance, sick leave, or other benefits you cannot lose those because you take a leave. However, you do not have the right to accrue additional benefits while you are on leave.

- You may take intermittent or reduced-schedule leave for your own serious medical condition or to care for your parent, child or spouse. You cannot take your leave intermittently or on a reduced-schedule basis for a new child unless your employer agrees.
- If you qualify for a family or medical leave, you have the right to take that leave free from harassment or discrimination. Your employer cannot interfere with your right to take leave or discriminate against you for requesting information about your rights or for taking a leave.
- If you take leave for a serious health condition or to care for a sick child, parent or spouse, your employer can require you to provide medical certification from your doctor. Your employer can also require second and third opinions, but must pay for them. The certification does not have to include a diagnosis, but must have enough facts to show that the leave is necessary.
- Employers are required to post a notice explaining family/medical leave laws in a prominent location in the workplace as well as include information in the employee handbook or personnel policies. If a significant number of employees at a workplace are not literate in English, the employer must provide notice in a language that the employees can understand.
- In some States, you may be entitled to temporary disability leave. In California you may be entitled to disability payments from the California Employment Development Department (EDD) while you are on unpaid leave for your own serious health condition or pregnancy. Contact your local EDD office for the specific requirements to apply for benefits.
- You may decide to or your employer may require you to substitute paid vacation days for all or part of family/medical leave.

## Additional Pregnancy Leave

In addition to any family/medical leave to which you may have a right, you may have the right to additional unpaid pregnancy disability leave:

- In California, if you are pregnant and work for an employer with 5 or more employees, you have the right to take unpaid pregnancy disability leave for up to 4 months if you are disabled due to pregnancy, childbirth or related

medical conditions regardless of the length of time in your position or the numbers of hours worked.

- If you are otherwise eligible for family/medical leave under FMLA or CFRA, you can tack on to your FMLA/CFRA leave your state pregnancy disability leave for up to 4 months off for your pregnancy-related disabilities and, once your child is born, an additional 12 weeks to care for your child under CFRA. Other states may have similar laws. Check with your local state employment agency.

## Pregnancy Discrimination

Discrimination based on pregnancy is illegal. Federal and many state laws prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions. Federal law applies to all employers with 15 or more employees. California law applies to all employers with 5 or more employees.

Pregnancy discrimination comes in many forms and can include all of the following actions by an employer: refusing to hire a pregnant applicant; firing or demoting a pregnant employee; denying the same or a similar job to a pregnant employee when she returns from a pregnancy-related leave; and treating a pregnant employee differently than other temporarily disabled employees.

Your employer must give pregnant employees the same treatment and benefits that it gives to employees with other temporary disabilities.

If you reside in California, you have the right to reasonable accommodations during your pregnancy.

- Your employer must provide you with any reasonable accommodation for pregnancy, childbirth, or related medical conditions that you request with the advice of your health care provider (e.g., changing your break schedule to allow for more bathroom visits).
  - You have the right to be transferred to a less strenuous or dangerous position during your pregnancy if you provide medical certification of your doctor and your employer can accommodate the request. You can also get a transfer if your employer has a policy of transferring temporarily disabled employees to less strenuous positions. When your doctor says that the transfer is no longer medically needed, you have the right to your old job back.
- In other states, check with a local community legal organization or attorney to see if your state has any similar laws.

## What You Can Do

**W**hat to do if you need to take a family or medical or pregnancy disability leave:

- **CHECK THE FAMILY/MEDICAL LEAVE REQUIREMENTS.** Have you worked for your employer for at least a year and worked 1,250 hours in the past year? Does your employer employ at least 50 employees in a 75-mile radius? Is your leave to care for a new child, for your own serious health condition or to care for a sick child, spouse or parent?

- **FIND OUT ABOUT ADDITIONAL PROTECTIONS.** Some employees who are not covered by the FMLA or CFRA may be entitled to leave and some employees may be entitled to a more generous leave, such as paid time off or longer leaves, because of an employer's own policies, union contract, state pregnancy disability laws, other state laws or benefit programs, Worker's Compensation laws, or the Americans with Disabilities Act. Check your employee handbook or personnel policies or consult with your union or an organization such as Equal Rights Advocates about what other protections may be available to you.

- **TELL YOUR EMPLOYER PROMPTLY.** Tell your employer as soon as you know you will need to take a leave. Under family/medical leave laws, if your family or medical leave is foreseeable, you must give your employer 30 days notice of your intent to take leave. If it is not foreseeable, for example because you have a medical emergency, you must give your employer as much notice as you can.

**W**hat to do if you think your rights have been violated:

- **DOCUMENT YOUR COMPLAINT.** As soon as you encounter what you believe may violate your right to family and medical leave or may be pregnancy discrimination, begin keeping records. Write down dates, places, times, and possible witnesses. Make sure to keep a written record of any conversations you have with supervisors or other superiors. Do not keep your notes at your workplace.

- **INVOLVE YOUR UNION.** If you are a union member, file a formal grievance through the union and try to get a shop steward or other union official to help you work through the grievance process. Even if you file a grievance with your union, the deadlines to file a complaint in court or with an administrative agency still apply. Be sure not to miss them!

- **CONSIDER FILING AN INTERNAL GRIEVANCE.** If internal channels exist, you may be able to resolve the problem informally through grievance procedures at your workplace. You may be able to resolve the dispute at your job without going anywhere else. Find out what the policies are. Look in your employee manual or at the personnel policies. A supervisor, manager, or human resources officer should be able to help you. Even if you file a grievance with your employer, the deadlines to file a complaint in court or with an administrative agency still apply. Be sure not to miss them!

- **FILE A COMPLAINT.** If you think that your employer has violated family or medical leave laws, you can file a complaint with the federal Department of Labor (DOL), Wage and Hour

Division within two years of the violation or file a lawsuit in federal court yourself. In California, you must file a complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the violation, in order to be able to file a lawsuit under the California Family Rights Act (in addition to the federal Family and Medical Leave Act). In other states, check with your state fair employment agency to find out how to file a complaint and when the state deadline is.

If you think you have experienced pregnancy discrimination, file a formal charge of pregnancy discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) and the California

Department of Fair Employment and Housing (DFEH) or, if outside California, your state or local equivalent agency. In California, you have 300 days to file a complaint with the EEOC and 1 year to file a complaint with the DFEH, but these deadlines vary from state to state: be sure to check with a community legal organization or an attorney to find out about specific filing requirements and deadlines. If you are a federal employee, follow federal guidelines on how to lodge a discrimination complaint. Remember, federal employees have a limited time frame in which to file a complaint. Check with the EEO office at your worksite.

- **DO NOT MISS FILING DEADLINES.** In order to preserve any legal claim you may have, you must file a formal complaint with any administrative agency required and/or file a lawsuit by the required deadline. This is very important! In most instances, the courts will not consider a case unless the proper procedures and time limits were followed. Deadlines vary based on what kind of claim you are making and also vary from state to state, so be sure to check with a community legal organization or an attorney to find out about specific filing requirements and deadlines.

## Equal Rights Advocates Can Help:

ERA provides a toll-free multi-lingual Advice and Counseling Line (1-800-839-4372), where you can receive advice and information on your legal rights.

### Resources:

#### NATIONAL

**U.S. Department of Labor Wage and Hour Division**  
800-959-3652 (general information line)

*(The federal agency that enforces the Family and Medical Leave Act)*

**U.S. Equal Employment Opportunity Commission (EEOC)**  
(415) 356-5100 San Francisco, CA  
(510) 637-3230 Oakland, CA

*(The federal agency that enforces anti-discrimination laws) All other states, check the U.S. government pages of the telephone book for your local offices*

#### CALIFORNIA

**California Department of Fair Employment and Housing (DFEH)**  
(800) 884-1684

*(The state agency that enforces the California Family Rights Act, the state Pregnancy Disability Leave Act, and the state anti-discrimination laws) Or call your local district office of the Fair Employment and Housing Department (Check the "state government" section of the telephone book)*

**California Employment Development Department, State Disability Insurance Program**  
(916) 227-0220

*(The state agency that provides State Disability Insurance benefits) Or call your local office of the Employment Development Department (Check the "state government" section of the telephone book)*

Equal Rights Advocates  
1663 Mission Street, Suite 250  
San Francisco, CA, 94103  
Phone: (415) 621-0672  
Fax: (415) 621-6744  
www.equalrights.org

Advice and Counseling:  
(415) 621-0505  
1-800-839-4ERA (toll-free)

Equal Rights Advocates' mission is to protect and secure equal rights and economic opportunities for women and girls through litigation and advocacy.

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# family & medical leave & pregnancy discrimination

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