

What You Can Do

What to do if you need to take a family or medical or pregnancy disability leave:

■ **FIND OUT IF YOU ARE ELIGIBLE FOR FAMILY/MEDICAL LEAVE.** 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 IF YOU ARE ELIGIBLE FOR ADDITIONAL PROTECTIONS.** Employees who are not covered by FMLA or CFRA may still be entitled to leave under other laws or employment policies. 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 that 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.

What to do if you think your rights have been violated:

- **WRITE DOWN WHAT HAPPENED!** As soon as you believe your right to family and medical leave has been violated, or that you are being discriminated against based on your pregnancy, 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. Do not miss them!
- **CONSIDER FILING AN INTERNAL GRIEVANCE.** If internal grievance procedures exist, you may be able to resolve the problem informally by filing an internal complaint. This means that you may be able to resolve the dispute at your job without taking legal action. First, find out what the policies are by looking in your employee manual or at the personnel policies. You may wish to ask a supervisor, manager, or human resources officer 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. Do not miss them!

■ **FILE A COMPLAINT.**

➤ **Family and Medical Leave Laws**

If you think that your employer has violated your family or medical leave rights, you can file a complaint with the U.S. Department of Labor (DOL), Wage and Hour Division within **2 years** of the violation or file a lawsuit in federal court yourself. To preserve your right to file a lawsuit for a violation of

California Family Rights Act (CFRA), you must first file a complaint with the California Department of Fair Employment and Housing (DFEH) within **1 year** of the violation. In other states, check with your state fair employment agency or the U.S. Department of Labor to find out how to file a complaint and when your state deadline is.

➤ **Pregnancy Discrimination**

To enforce federal or state pregnancy discrimination laws, you must 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). In California, you have **300 days** to file a complaint with the EEOC and **1 year** to file a complaint with the DFEH. The deadlines vary from state to state but you must first file a complaint with the

EEOC and your state fair employment agency (if your state has one) before you will be allowed to file a lawsuit in court. Under federal law in other states, you may have only 180 days to file a formal complaint. 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 file a discrimination complaint. Remember, federal employees have a limited time frame in which to file a complaint. Check with the equal employment opportunity office at your worksite.

■ **DO NOT MISS FILING DEADLINES.** As explained above, in order to preserve any legal claim you may have, you must file a formal complaint with the correct administrative agency and/or file a lawsuit by the required deadline. These deadlines apply even if you have filed an internal complaint with your employer or union. 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 (ERA) 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
(The federal agency that enforces the Family and Medical Leave Act)

1-866-4-USWAGE www.dol.gov/esa/whd

Provides referral to your local branch office

U.S. Equal Employment Opportunity Commission (EEOC)
(The federal agency that enforces federal anti-discrimination laws)

1-800-669-4000 www.eeoc.gov

Connects to your local branch office

CALIFORNIA

California Department of Fair Employment and Housing (DFEH)

(The state agency that enforces the California Family Rights Act, the state Pregnancy Disability Leave Act, and the state anti-discrimination laws)

1-800-884-1684 within California
1-916-227-0551 outside California www.dfeh.ca.gov

For all other states, check the state government pages of the telephone book for your local agencies.

California Employment Development Department (EDD)
(The state agency that provides State Disability Insurance benefits and Family Temporary Disability Insurance benefits)

1-800-480-3287 www.edd.ca.gov

Equal Rights Advocates

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Advice and Counseling:

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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.

family &
medical leave

&
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Family and Medical Leave

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

- your own serious health condition that keeps you from doing your job;
- to care for your sick child, spouse, or parent with a serious health condition; or
- to care for your 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 Family and Medical Leave Act (FMLA) is the federal law providing for these leaves. The California law is the California Family Rights Act (CFRA). These two laws are almost identical. To be eligible for leave under FMLA or CFRA you must meet all of the following requirements:

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

Rights and Requirements During Your Family or Medical Leave

- 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.

- 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.
- 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 top paid employees, you may not have the

Additional Maternity Leave Under California Law

You may have the right to additional unpaid maternity leave under state law:

Pregnancy Disability Leave:

- In California, you have the right to take unpaid pregnancy disability leave at any time during your pregnancy, and even after your child is born, if you are disabled due to pregnancy, childbirth or related medical conditions. You may take up to a total of 4 months of this leave regardless of the length of time you have

been in your position, or the numbers of hours you have worked, if you work for an employer with 5 or more employees.

- You do not have to take all of your leave at once; you may take it on an intermittent or reduced-work schedule basis. How you may do this depends on the reason for your leave and your employer’s payroll system. Consult a legal organization or attorney for more information on taking intermittent 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 and include this 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 also provide this notice in a language that the employees can understand.

California Family Rights Act (CFRA):

- In California, you may be eligible to take an additional 12 weeks of CFRA leave once your baby is born even after using up to 4 months of state pregnancy disability leave. Outside of California, ask a legal organization or attorney about any similar law in your state.

Pay During Your Family or Medical Leave

PAID FAMILY LEAVE BENEFITS. Starting in July 2004, California employees may be entitled to six weeks of Family Temporary Disability Insurance (FTDI) payments while they are on unpaid leave to bond with a new child or to care for a seriously ill child, parent, spouse or domestic partner. *You may qualify for FTDI no matter how long you have worked for your employer or how many employees are at your worksite.* This benefit would entitle you to 55% of your weekly wages up to a maximum amount. Contact the California Employment Development Department (EDD) to apply for benefits. Outside of California, ask a legal organization or attorney about paid family leave benefits in your state.

TEMPORARY DISABILITY BENEFITS. California employees may be entitled to State Disability Insurance (SDI) payments while they are on unpaid leave for their own serious health condition or pregnancy. *You may qualify for SDI no matter how long you have worked for your employer or how many employees are at your worksite.* This ben-

efit would entitle you to 55% of your weekly wages up to a maximum amount. Contact the California Employment Development Department (EDD) to apply for benefits. Outside of California, ask a legal organization or attorney about temporary disability insurance benefits in your state.

Note that qualifying for these benefits does not mean your job will automatically be held open for you.

USING VACATION LEAVE. Your employer may require OR you can choose to use your vacation or other accrued leave while you are on an unpaid family or medical leave.

USING SICK LEAVE. Your employer may require OR you can choose to use your sick leave while you are on an unpaid family or medical leave for your own serious health condition or pregnancy. In California, you also have the right to use up to the amount of sick leave you accrue in a 6-month period to care for a sick child, parent, spouse or domestic partner. Outside of California, ask a legal organization or attorney about using sick leave in your state.

Pregnancy Discrimination

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

Pregnancy Discrimination

PREGNANCY DISCRIMINATION COMES IN MANY FORMS. Pregnancy discrimination 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.

Pregnancy Accommodation

IF YOU RESIDE IN CALIFORNIA, YOU HAVE THE RIGHT TO REASONABLE ACCOMMODATIONS. If you are pregnant and work for an employer with 5 or more employees, you have additional protections under state law.

- 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 from 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. If your doctor says that the transfer is no longer medically needed, you have the right to your old job back.

Outside of California, ask a legal organization or attorney about any similar law in your state.