



KNOW YOUR RIGHTS GUIDE

MAY 2013

## Family and Medical Leave/ Pregnancy Discrimination

In California, you have the right to take unpaid pregnancy disability leave at any time during your pregnancy, and after your child is born.

### Pregnancy and Bonding Leave

#### California Law\*

##### **Pregnancy Disability Leave under the Fair Employment and Housing Act (FEHA):**

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 cannot work 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.

##### **Bonding Leave under the California Family Rights Act (CFRA)\***

In California, you may be eligible to take up to 12 weeks of leave (in addition to the four months of pregnancy disability leave) to bond with your newborn child if:

- > 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);
- > your employer has at least 50 employees within a 75-mile radius of your worksite; and
- > you take the leave within a year after your child is born.

*\*CFRA also entitles eligible employees to take leave for their own serious health condition not related to pregnancy, and to care for a*

*family member with a serious health condition. For more information on these rights, see ERA's "Caregiving Leave and Rights" brochure.*

#### Federal Law

Under federal Family and Medical Leave Act (FMLA), you may have the right to take up to 12 weeks of unpaid leave per year for the following reasons:

- > your own serious health condition (including a pregnancy-related 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 bond with your newborn child, newly adopted child, or foster child (within a year from birth, adoption or foster care assignment).

To be eligible for leave under FMLA, 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 worksite.

If you are in California, FMLA leave runs at the same time as (not in addition to) pregnancy disability leave under FEHA and bonding leave under CFRA.

Outside of California, ask a legal organization or attorney about family or medical leave laws in your state.

## Rights and Requirements During Your Pregnancy and Bonding Leave under California and Federal Law

- > If you qualify for a pregnancy or bonding leave under California or federal law (see above), 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 group health 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. However, if you are among the top paid employees, you may not have the right to your same job back if reinstatement would cause substantial economic harm to your employer, unless you are in California and you are returning from pregnancy disability leave.
- > 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 medical condition related to pregnancy or childbirth, your employer can require you to provide medical certification from your doctor. The certification does not have to include a diagnosis, but must have enough facts to show that the leave is necessary. If you are not in California, your employer may also require second and third opinions, but must pay for them.
- > Employers are required to post a notice explaining family and medical leave laws, including pregnancy leave and bonding 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.

## Pay During Your Pregnancy or Bonding Leave

- **Paid Family Leave Benefits:** California employees may be entitled to six weeks of Paid Family Leave (PFL) payments while they are on unpaid leave to bond with a new child. You may qualify for PFL 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 medical leave for 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 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 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.*

## Pregnancy Accommodation

**You may have the right to reasonable accommodation under federal law.** You may be entitled to a reasonable accommodation for a pregnancy-related condition under the federal Americans with Disabilities Act (ADA), if:

- > your employer employs 15 or more employees; and
- > your pregnancy-related condition is a physical or mental impairment that substantially limits a "major life activity" such as walking, standing, lifting, and bending; and
- > you can perform the essential functions of your job with reasonable accommodation.

**If you reside in California, you may have the right to reasonable accommodation for your pregnancy- and childbirth-related condition(s).** 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.

If you are outside of California, ask a legal organization or attorney about whether your state has any laws requiring accommodation for pregnancy-related conditions.

## Pregnancy Discrimination

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

### 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;
- > harassing a pregnant employee because she is pregnant;
- > 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 (such as denying her a workplace accommodation but granting similar accommodations to other temporarily disabled employees).

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

## What You Can Do

What to do if you need to take a pregnancy or bonding leave:

- **Find out if you are eligible for state pregnancy disability leave.** You may be eligible for California pregnancy disability leave if: (1) you work in or your employer is based in California; (2) your employer employs at least 5 employees; (3) your doctor recommends that you take leave because of pregnancy, childbirth, or a related medical condition.
- **Find out if you are eligible for bonding leave under state law.** You may be eligible in California if: (1) you have worked for your employer for at least a year and worked 1,250 hours in the past year; (2) your employer employs at least 50 employees in a 75-mile radius or your worksite; (3) you take the leave within one year of the child's birth, adoption, or foster care assignment.
- **Find out if you are eligible for pregnancy or bonding leave under federal law.** You may be eligible if: (1) you have worked for your employer for at least a year and worked 1,250 hours in the past year; (2) your employer employs at least 50 employees in a 75-mile radius of your worksite; (3) you take the leave within one year of the child's birth, adoption, or foster care assignment.
- **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 federal and California pregnancy and bonding leave laws, if your pregnancy or bonding 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 possible.

What to do if you think you may need an accommodation for your pregnancy or a related medical condition:

- **Talk to your doctor.** Talk to your doctor about your job duties and find out what types of workplace accommodations your doctor recommends.
- **Find out if you are entitled to reasonable accommodation.** You may be entitled to reasonable accommodation if you are in California and your employer employs at least 5 employees. Other states may have similar laws. You also may be entitled to reasonable accommodation under the Americans with Disabilities Act if you work for an employer with 15 or more employees and you are a qualified disabled employee, within the meaning of that law. Additionally, you may be eligible if your employer provides reasonable accommodation to employees that are temporarily disabled.
- **Find out if you are eligible for additional protections.** Employees who are not in states with pregnancy accommodation laws may still be entitled to accommodation under other laws or employment policies. Some employees may be entitled to accommodation because of an employer's own policies, union contract, or Worker's Compensation laws. 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 an accommodation. Under California pregnancy accommodation law, if your need for the accommodation is foreseeable, you must give your employer 30 days notice of your need for the accommodation. If it is not foreseeable, you must give your employer as much notice as possible.

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

- **Write down what happened!** As soon as you believe your right to pregnancy disability leave, bonding leave, or pregnancy accommodation 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 with your employer.** 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 handbook 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.**

## Pregnancy and Bonding Leave Laws

If you think that your employer has violated your federal 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 your pregnancy or bonding leave rights under California law, you must first file a complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the violation. In other states, check with your state fair employment agency to find out how to file a complaint and when your state deadline is.

### Pregnancy Accommodation Law

Before you can file a lawsuit for a violation of your pregnancy accommodation rights under California law, you must first file a complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the violation. In other states, check with your state fair employment agency to find out how to file a complaint and when your state deadline is.

### Pregnancy Discrimination

To enforce federal pregnancy discrimination laws, you must file a formal charge of pregnancy discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). In California, you have 300 days to file a complaint with the EEOC. In other states, you may have only 180 days to file a formal complaint with the EEOC. Be sure to check with a community legal

organization or an attorney to find out about the specific filing requirements and deadlines in your state.

The deadlines under state discrimination laws vary from state to state, but most of these state laws require you to first file a complaint with the EEOC or the state fair employment agency before you will be allowed to file a lawsuit in court.

In California, before you can file a pregnancy discrimination lawsuit, you must first file a charge of discrimination with the California Department of Fair Employment and Housing (DFEH) within one year after the date of a violation.

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 their initial 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 Hotline where you can receive advice and information on your legal rights. To speak with a counselor, [request Advice & Counseling](#) or call ERA toll-free at (800) 839-4372 or call (415) 621-0505.

You can also contact us here:

Equal Rights Advocates  
180 Howard Street, Suite 300  
San Francisco, CA 94105  
Phone: (415) 621-0672  
Fax: (415) 621-6744  
Web: [www.equalrights.org](http://www.equalrights.org)

## Other Resources

### National

#### **U.S. Department of Labor, Wage and Hour Division**

The federal agency that enforces the Family and Medical Leave Act

Toll-free: (866) 4-USA DOL (487-2365) (provides referral to your local branch office)

Web: [www.dol.gov/whd/fmla/index.htm](http://www.dol.gov/whd/fmla/index.htm)

#### **U.S. Equal Employment Opportunity Commission (EEOC)**

The federal agency that enforces federal anti-discrimination laws

Toll-free: (800) 669-4000 (connects to your local branch office)

Web: [www.eeoc.gov](http://www.eeoc.gov)

### 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 law

Toll-Free (within California): (800) 884-1684

Telephone (outside California): (916) 227-0551

Web: [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

#### **California Employment Development Department (EDD)**

The state agency that provides State Disability Insurance benefits and Family Temporary Disability Insurance benefits

Toll-free: (800) 480-3287

Web: [www.edd.ca.gov](http://www.edd.ca.gov)

Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls until equality is secured for all.