

Domestic Violence, Sexual Assault & Employment: Paid Family Leave Benefits

YOUR LEGAL RIGHTS

Domestic violence and sexual assault survivors often need time off from work to care for a family member who has a serious health condition, whether mental or physical, that is caused or made worse by domestic violence or sexual assault. The California Paid Family Leave Act provides employees who pay into the State Disability Insurance Program (SDI) with up to six weeks of partial pay each year to care for a child, parent, spouse or registered domestic partner with a serious health condition (or to bond with a newborn baby or newly adopted or foster child).

1. What is the Paid Family Leave Act?

The Paid Family Leave Act (PFLA) provides pay for California employees who take time off work to care for family members. The PFLA, which went into effect July 1, 2004, entitles workers who participate in the State Disability Insurance (SDI) program to a maximum of six weeks of partial pay each year while taking time off from work. Eligible leave includes time off to: care for a child, parent, spouse or registered domestic partner with a serious health condition caused or made worse by domestic violence or sexual assault.

2. Am I eligible for benefits under the Paid Family Leave Act?

All California employees, including **new** or **probationary** employees, who pay into SDI qualify for benefits under PFLA. Some federal and state employees do not pay into SDI and are therefore not eligible for PFL benefits.

PFLA applies to employees regardless of their employers' size. Therefore, the PFLA applies to many more employees than the federal and state *unpaid* leave laws, such as the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), which do not apply to employees working for companies with fewer than 50 employees.

3. Will Paid Family Leave benefits equal my full pay?

Generally, an employee will receive 55% of his or her weekly wage, up to a maximum of \$840 per week. The benefit amount is based in part on the employee's previous earnings. For a specific description of the benefit calculation, see

www.edd.ca.gov/direp/dicfp.htm#YOUR%20BENEFIT%20AMOUNTS

4. What does it mean to “care for” a family member with a serious health condition?

PFLA covers physical and/or psychological care for the family member. Activities such as providing psychological comfort, attending to hygienic, nutritional and safety needs, arranging third party care, and directly providing or participating in the medical care all constitute “caring for” a family member.

5. What if another family member can provide care?

An employee will not be eligible for PFLA benefits if another family member is ready, willing, able, and available to provide care during the same hours in a day.

For example, if your seriously ill mother has a spouse who is willing and able to care for her, then you may not receive PFL benefits to care for your mother during the same time. You may, however, receive benefits to care for her during hours in the day when her spouse is not caring for her (e.g., while her spouse is sleeping, working, etc.). EDD will approve benefits for up to three individuals to care for the same care recipient in a 24-hour period. Individuals who are unsure whether this will prevent them from receiving PFLA benefits should nevertheless apply.

6. What is a “serious health condition” under the PFLA?

A “serious health condition” is an illness, disability, injury, impairment or physical or mental condition involving either:

- care requiring a stay in a hospital, hospice, or residential care facility; or
- continuing treatment by a health care physician or practitioner.

The “continuing treatment” provision above requires one of the following:

- a condition causing incapacity for more than **three** days that requires: (1) two or more visits to a health care provider, or (2) one visit with a regimen of continuing treatment and supervision;
- a condition that continues over an extended period of time and requires periodic doctor visits, and which may cause occasional or periodic, rather than continuous, incapacity;
- permanent or long-term absences due to a condition for which treatment may not be effective (such as terminal cancer) where the patient is under the supervision of, but not necessarily being actively treated by, a health care provider;
- absences to receive multiple treatments for (1) restorative surgery, or (2) a condition which would likely cause a period of incapacity of more than three days if not treated, or pregnancy and prenatal care.

“Treatment” includes examinations to determine if a serious health condition exists as well as an evaluation of that condition. Treatment does not include routine physical, eye or dental exams.

Cosmetic treatments or surgery, and treatments for routine conditions, such as the flu, are not generally considered sufficient to count as a serious health condition.

The term “health care provider” includes:

- licensed medical doctors;
- clinical psychologists;
- optometrists, dentists, podiatrists;
- licensed nurse practitioners and nurse-midwives;
- clinical social workers; and
- chiropractors (depending on the treatment provided).

7. Is my employer required to reinstate me after I take Paid Family Leave?

Unlike the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), which require that employers hold jobs for eligible employees when they return from leave, the PFLA does not expressly include the right to be reinstated.

PFLA leave can be taken at the same time as family and medical leave under the FMLA and/or CFRA. Therefore, employees who receive PFLA benefits concurrently with FMLA/CFRA leave are guaranteed their jobs back when they return to work.

Even if an employee is not qualified for FMLA/CFRA time, the employee may still be protected by Labor Code Section 230.1, which permits employees of companies with 25 or more employees to take up to 12 weeks of job protected time off from work to receive services related to domestic violence or sexual assault. These services include time off from work for medical or psychological care. Therefore, qualified employees who take protected time off under Labor Code Section 230.1 may take PFLA at the same time.

An employee who takes the paid leave and is fired during or shortly after the leave, and whose employer is too small to protect the employee under FMLA/CFRA or Labor Code Section 230.1, may be able to get their job back if they prove that they were fired merely for taking the benefit of PFLA

8. What other differences are there between Paid Family Leave, the Family and Medical Leave Act and the California Family Rights Act?

Not all workers qualify for FMLA/CFRA leave, because their employers have fewer than 50 employees, they've been employed for less than a year, or have they have worked fewer than 1,250 hours in the year preceding the leave. These employees nonetheless have the right to receive PFLA benefits when they take off work to care for a family member, though the leave is not expressly job-guaranteed.

9. Can an employer fire or discipline an employee for taking PFLA?

Probably not. Although the PFLA doesn't expressly say so, an employee who takes Paid Family Leave and is fired or disciplined (e.g. suspended during or shortly after the leave) would have a good argument that he/she was unlawfully fired or suspended in violation of public policy if he/she could prove that he/she was disciplined merely for taking PFLA.

10. May I collect other benefits – like SDI payments due to pregnancy disability – while collecting Paid Family Leave benefits?

New mothers who are eligible for pregnancy-related SDI will be eligible for an additional six weeks of PFL benefits to bond with a new baby, after their pregnancy disability benefits end.

You may not receive PFL benefits while receiving Unemployment Insurance, State Disability Insurance, or Workers' Compensation benefits.

11. Is there a waiting period before receiving Paid Family Leave benefits?

Yes. There is a seven-day waiting period before benefits are paid. These first seven days do not have to be consecutive. For example, if one day of care were provided each week, the seven-day waiting period would be satisfied over a seven-week period.

12. Can an employer require me to take paid vacation or sick leave before receiving PFL benefits?

Yes. An employer may require an employee to take up to two weeks of earned but unused vacation or paid time off ("PTO") leave before beginning to receive benefits. One week of the vacation or PTO leave will be used to satisfy the seven-day waiting period. This requirement will not apply to employees whose union contract prohibits substitution of vacation leave for Paid Family Leave.

An employer cannot require an employee to use sick leave before receiving PFL benefits.

13. Does Paid Family Leave have to be taken all at once or can it be taken intermittently?

An employee may receive PFL benefits during leave that is taken all at one time or on an intermittent basis in hourly, daily or weekly increments.

One exception is employees receiving PFL benefits while taking job-protected leave to bond with a new child under CFRA. These employees may be required to take the bonding leave in two-week increments.

Employees taking intermittent leave still must observe the seven-day waiting period. Each day that the employee is eligible for PFL benefits will count towards this waiting period.

14. What is the procedure for applying for benefits?

Employees must fill out a claim form with the Employment Development Department (EDD). Claim forms are available from EDD online at www.edd.ca.gov or by calling:

1-877- BE-THERE

1-877-379-3819 (Español)

1-800-563-2441 (TTY)

Pregnant women who have received SDI while on pregnancy disability leave will automatically receive a claim form from the EDD for bonding. The employee must submit the claim form and documentation to the EDD, not the employer.

15. What documentation must an employee provide when submitting a PFL claim to EDD?

Applications to care for a family member with a serious health condition require documentation of the serious health condition and an assertion that the serious health condition requires the employee to provide care for his or her relative. The health care practitioner must fill out and sign this portion of the form.

Bonding claim forms must be accompanied by documentation of the birth or placement of the adopted or foster child. Generally, parents supply a hospital discharge record, copy of the birth certificate, an adoption placement notice or other notice from a government agency stating that the child has been placed with the family.

16. Where can I get help regarding your family and medical leave rights?

If you have questions about your employment rights or benefits with your domestic violence or sexual assault situation, call the **Domestic Violence and Employment Project** of The Legal Aid Society - Employment Law Center at **1-888-864-8335**, or the Employment Development Department (EDD) at **1-877-BE-THERE**.

If you think your employer has violated your family and medical leave rights you can file a complaint with your local office of the United States Department of Labor, Wage and Hour Division no later than two years after the earliest discriminatory act (check the U.S. Government listing at the front of your local telephone directory) or with the California Department of Fair Employment and Housing no later than one year after the first discriminatory act (for information, call 1-800-884-1684).

If you sue your employer for violating family and medical leave laws, the court may reinstate you to your job and award you wages you should have been paid or a promotion you should have received, as well as reimbursement for legal costs. Time limits apply, so you should take action immediately if you think your rights have been violated.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

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For further information about your employment rights, call:

The SURVIVE Project

(888) 864-8335 Toll-free in California (415) 593-0033 Outside California

The SURVIVE Project is a Project of the Legal Aid Society – Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

