



The  
Legal Aid Society—  
Employment Law  
Center

# Family Medical Leave in California:

Options for job-protected leave and wage  
replacement while taking time off to care  
for yourself or your family member

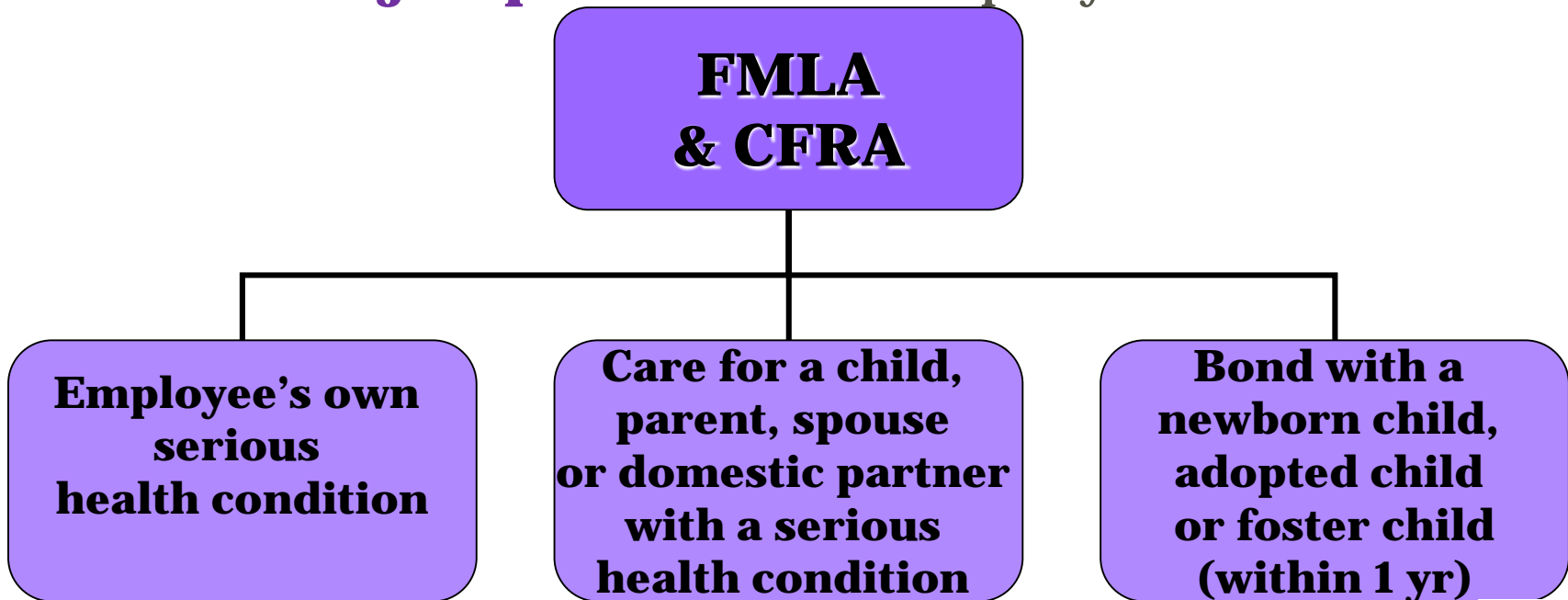


*Rachael Langston, Senior Staff Attorney, Legal Aid Society – Employment Law Center*

Medical Professionals Unit  
2016 Annual Meeting and Continuing Education  
Engineers and Scientists of California Local 20

# FMLA/CFRA: Job-Protected Leave

Family Medical Leave Act & Cal. Family Rights Act: **12 weeks of job-protected leave** per year.



# What Counts as “Caring For” a Seriously Ill Family Member?

- ∞ Driving to doctor’s appointments
- ∞ Providing psychological comfort and care
- ∞ Providing medical, hygienic, nutritional needs & safety
- ∞ Making arrangements for changes in care



# FMLA & CFRA Leave

- ∞ 12 weeks – all at once or in parts
- ∞ Health insurance continuation
- ∞ Employee notice
- ∞ Medical certification
  - Privacy: In CA, need not disclose diagnosis.
- ∞ Who is eligible?
  - **1 year** of service
  - **1250 hours** in prior year
  - Employer has **50 or more employees** w/in 75 miles



# Intermittent Leave under FMLA/CFRA

- ✧ An employee may take 12 weeks of leave intermittently when medically necessary
  - Leave in short increments
  - To work a reduced schedule
  - For bonding with a new child (Employer may require that bonding leave be taken in 2-week increments. Employee is entitled to two exceptions to this rule.)
- ✧ Intermittent leave is especially important for people with chronic, episodic illnesses such as asthma or migraines.



# Job Protection

## ∞ Right to return to the same or “equivalent” job

- **Equivalent** = equivalent pay, benefits, and other terms and conditions of employment
- An employee retains seniority while on leave but does not accrue additional seniority during the leave

## ∞ Exceptions:

- job was eliminated for legitimate business reason
- “key” employees





# Continued Health Insurance Benefits Under FMLA/CFRA

- ✎ During FMLA/CFRA leave, employer must continue employee's health benefits in same manner as if employee had continued to work.
- ✎ Voluntarily deciding not to return to work allows employer to seek reimbursement of premiums paid for continuation of benefits.
  - Exception: Employer may not seek reimbursement if decision not to return is beyond employee's control, e.g., if the serious health condition makes it impossible for her to return to work.



# Key Difference Between FMLA & CFRA: Domestic Partners

- ✎ CFRA covers registered domestic partners, but FMLA does not.
- ✎ Thus, leave taken to care for a seriously ill domestic partner counts against CFRA, not FMLA.
  - An employee taking CFRA leave to care for a domestic partner may be entitled to an additional 12 weeks of leave under FMLA for some other qualifying reason.





# Key Difference Between FMLA & CFRA: Pregnancy

- ✂ A separate California law (PDL) covers pregnancy.
- ✂ CFRA excludes pregnancy as a serious health condition so that leave taken for pregnancy-related conditions counts against FMLA entitlement, but not CFRA.
- ✂ This grants pregnant women in CA an additional 12 weeks of leave to bond with a newborn child.



# FMLA: Military Caregiver Leave

- ✎ 26 weeks of leave per year to care for injured or ill service members. 29 C.F.R. § 825.127(c).
- ✎ Family members: spouse, child, parent, or next of kin of covered service member.



# FMLA: Military Exigency Leave

- ✧ 12 weeks of leave per year to help service member or employee during qualifying exigency.
- ✧ Covered family members: spouse, child, parent.
- ✧ Qualifying exigency:
  - Short-notice deployment
  - Military events or related activities
  - Childcare and school activities
  - Financial and legal arrangements
  - Counseling
  - Rest and recuperation
  - Post-deployment activities
  - Additional activities



# FMLA/CFRA Notification Obligations for Employers



- ✧ Post notice
- ✧ Include leave information in employee handbook
- ✧ Provide detailed information to eligible employees who request leave
- ✧ Designate the leave and notify employee of designation

# Employees' Notice Requirements

## ☞ Time:

- Foreseeable Leave: 30 days notice.
  - 2009 FMLA regs: If <30 days notice given, employer can require explanation; should give notice within 1 day of learning of need for leave
- Unforeseeable Leave: as soon as practicable (1-2 business days)
  - 2009 FMLA regs: within time prescribed by employer's usual and customary procedures.

## ☞ Content:

- Need not expressly assert rights under FMLA/CFRA, but it is recommended.
- Enough information to put employer on notice that the leave may qualify under FMLA/CFRA.
- Employer must inquire further if necessary to determine whether FMLA/CFRA leave is being sought.





# FMLA/CFRA Medical Certification

## ☞ Employer may require medical certification.

- Date condition began, probable duration, statement that due to serious health condition, employee is temporarily unable to perform essential function(s) of job, or needed to care for serious health condition of family member.

## ☞ Employer must:

- Request certification in writing and explain consequences of not providing certification;
- Allow employee at least 15 days to comply;
- Notify employee if certification is inadequate and give reasonable opportunity to correct.





# Key Difference Between FMLA & CFRA: Privacy

## ∞ Medical Certification:

- Because of California's strict privacy laws, employer may not require employee to disclose diagnosis.
  - COMPARE FMLA which allows for appropriate medical facts supporting need for leave.
- Employer may not demand release of medical records as condition for obtaining leave.
- Employer may not request more information than is specified on the CFRA sample certification form.



# Medical Certification: Second and Third Opinions

## ∞ For employee's own health condition:

- An employer with reason to doubt medical certification may request a second opinion from a doctor of its choice at its expense.
  - The doctor may not be regularly employed by the employer.
- If the employee's doctor and the second doctor's opinions conflict, the employer may require a third opinion from a mutually agreed upon doctor, at the employer's expense.
  - 2d opinion is binding.







# Other FMLA/CFRA Protections

- ⌘ No retaliation for requesting leave or for complaining about a violation of leave laws
- ⌘ No harassment for taking leave
- ⌘ No denial of valid leave request
- ⌘ No interference with leave (refusal to designate, for example)
- ⌘ No refusal to hire or promote an employee who will take or has taken leave



# Kin Care: Sick Leave to Attend to Family

Employees are entitled to use half annual sick leave to attend to an illness of a:

- Child
- Parent
- Spouse
- Domestic partner

Retaliation prohibited.



# Options for Wage Replacement



The  
**Legal Aid Society**—  
Employment Law  
Center



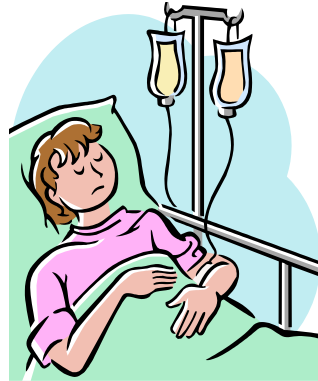
# California Paid Sick/Safe Days

- ✎ Governor Brown signed AB 1522 (2014), which requires employers to provide at least 3 paid sick days per year.
- ✎ Can be used for own illness, to care for family member, or to seek care or services related to domestic violence, sexual assault or stalking.
- ✎ Excludes IHSS workers.
- ✎ Effective July 2015.



# SF Paid Sick Days

- ☞ Paid time off for own illness, or to care for family or designated person who is ill, injured, receiving care, treatment or diagnosis.
- ☞ Family: child, parent, legal guardian, sibling, grandparent/child, spouse, registered DP.
- ☞ Accrue 1 hour for every 30 hours worked:
  - 0-9 ees: 6 days max
  - 10+ ees: 9 days max



# Wage Replacement Programs

## ☞ State Disability Insurance

- For patients

## ☞ Paid Family Leave

- For caregivers

## ☞ Unemployment Insurance

- For those who lose job through no fault of own



Apply online at [www.EDD.ca.gov](http://www.EDD.ca.gov)

# State Disability Insurance (SDI)

- ✎ **Partial wage replacement** while **unable to work** due to cancer or other non-workplace **disabilities**.
- Funded by workers through payroll deductions.
- ✎ **55%** of weekly wage, up to **\$1,104 per week**, up to **52 weeks**.
- ✎ 1-week waiting period.
- ✎ Medical certification required.
- ✎ Apply through EDD
  - within first day of disability, up to 49 days retroactively (or later with good cause).

# Job Protection and SDI

**\$\$:**

**State Disability Insurance SDI**

**1 week waiting period, then up to 52 weeks benefits**

**12 weeks job protection + health benefits**

**FMLA/CFRA**

**Job  
Protection:**

**Extended job-protected leave of absence may be a reasonable accommodation for a disability, regardless of whether employee was qualified for or has exhausted FMLA/CFRA leave entitlement.**

**ADA / FEHA**



# Paid Family Leave

- ✎ **Partial wage replacement** while:
  - **caring** for a seriously ill **close family member**, or
  - **bonding** with a new child.
- Funded by workers through payroll deductions.
- ✎ **55%** of weekly wage, up to **\$1,104 per week**, up to **6 weeks**.
- ✎ All at once or in parts; 1-week waiting period.
- ✎ Medical certification required.
- ✎ Apply through EDD.
  - first day of leave, up to 49 days retroactively (or later with good cause)



# Paid Family Leave Expansion

SB 770 expands the definition of family to include **grandparents, grandchildren, parents-in-law, and siblings.**

The new law went into effect **July 1, 2014.**

Previously, only children, spouses, domestic partners and parents were considered “family”.



The  
Legal Aid Society—  
Employment Law  
Center

# FMLA/CFRA Leave and PFL

**\$\$:**

**PFL**



**1 week waiting period,  
then 6 weeks benefits**

---



**12 weeks job protection + health benefits**

**Job Protection:**

**FMLA/CFRA**



The  
**Legal Aid Society—**  
Employment Law  
Center



The  
**Legal Aid Society**—  
Employment Law  
Center

# Questions?



**Legal Aid Society – Employment Law Center**

[www.las-elc.org](http://www.las-elc.org)

**Work & Family Helpline: (800) 880-8047**

**Rachael Langston, [rlangston@las-elc.org](mailto:rlangston@las-elc.org)**