

*California Employment Law Update:*  
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# Absent From Work – Which Bucket(s)?

- Holidays
- Vacation
- Paid Sick Leave
- Family and Medical Leave of Absence (FMLA) and California Family Rights Act (CFRA)
- Pregnancy Disability Leave of Absence (PDL)
- Disability Accommodation Leave of Absence
- Workers compensation leave
- Attendance (unexcused absence)

# Attendance Policy

- Employees are expected to report for work on a regular basis and in a timely manner, such that they are ready to work whenever their scheduled work hours begin. Accordingly, it is not acceptable to arrive late or leave early in connection with scheduled work hours, breaks, and meal periods.
- If an employee is unable to report to work, or will be late, the employee must contact his or her supervisor as soon as possible and always before the employee's scheduled starting time. If the supervisor is unavailable, the employee should leave a message with Human Resources, stating the reason for being late or absent, when the employee is anticipated to return to work, and a telephone number where the employee can be reached. If the absence or tardiness is due to an emergency, the employee must have someone contact the Company consistent with this policy as soon as possible.
- If the employee becomes ill while at work, he or she should report to his or her supervisor. Employees should not leave work without obtaining approval from their supervisor or Human Resources.
- Recurring absenteeism or tardiness, including the failure to comply with the call-in features of this policy, may result in discipline up to and including termination of employment. The Company reserves the right to determine whether recurring absenteeism or tardiness warrants termination, and that decision shall be made in the Company's sole discretion. In general, unexcused or unapproved absences of three (3) consecutive days or more may result in immediate termination.

# Benefits: Workers' Comp & FMLA/CFRA & PDL

- Except as required by applicable law and in accordance with this policy, the Company will not continue to pay the health insurance premium for an employee on an unpaid leave of absence in excess of 30 days, with the following exceptions:
  - For employees taking **FMLA and/or CFRA leave**, the Company will continue to pay its portion of health coverage premiums for the duration of the leave, to a maximum of 12 weeks. The employee must also pay his or her share of the premiums for such coverage. The cost of any dependents covered by the employee will also be the employee's sole responsibility.
  - For employees taking **PDL**, the Company will continue to pay its portion of health coverage premiums for the duration of the pregnancy disability, to a maximum of 4 months, in addition to paying its portion of the premium during FMLA and CFRA leave. The employee must also pay his/her share of the premiums for such coverage.
  - For employees taking **workers' compensation-related medical leaves**, in addition to any CFRA or FMLA leave taken, the Company will continue to pay its portion of health coverage premiums for the duration of the workers' compensation leave, to a maximum of 4 months, in addition to paying its portion of the premium during FMLA and CFRA leave. The employee must also pay his/her share of the premiums for such coverage.

# Workers' Comp & Disability

- Workers' compensation and disability laws impose different obligations on employers. An employer should not assume that just because it complied with workers' compensation laws, the employer also met its obligations under disability laws. Employers must remember to keep the workers' compensation and reasonable accommodation processes separate and meet their obligations under each
- An employee who is a qualified person with a disability under the ADA or FEHA has rights to reinstatement to an existing, modified or alternative job if he/she can perform the job's essential functions with or without reasonable accommodation.
- You can deny reinstating a qualified disabled employee only if it would cause undue hardship or constitute a direct threat to the health and safety of the employee or his/her co-workers.

# Workers' Comp & Disability (continued)

- Medical reports received as part of the workers' compensation process do not alleviate an employer's obligations under the ADA and FEHA.
- Workers' compensation "ratings" and evaluations may be relevant to an employee's ability to work, but do not replace the disability accommodation process.
- An employer's communications with an employee on a workers' compensation claim are not part of the interactive process.
  - ***Wallace v. County of Stanislaus***, 245 Cal.App.4th 109 (2016), a county relied on a workers' compensation doctor's medical report that listed a number of preclusions on a sheriff's ability to work. In attempting to return the sheriff to work, the county interpreted "precluded" to mean "prohibited" and concluded that the sheriff could not safely perform his job duties. The sheriff disagreed and said he could perform his job. The county nevertheless pulled Wallace from his position and placed him on unpaid leave. The sheriff sued for disability discrimination and was allowed to proceed with his claim.
- Where an employee disagrees with results of a medical examination in the workers' compensation setting, an employer cannot rely exclusively on a medical evaluation to make accommodation decisions. The employer must engage in a full, interactive process with the employee.

# Workers' Comp & Disability

- You cannot refuse to allow an individual with a disability to return to work even if he/she is not fully recovered from a work-related injury, unless you can show that:
  - The individual cannot perform the essential functions of the job with or without reasonable accommodation.
  - The individual would pose a direct threat to himself/herself or others that could not be reasonably accommodated.
- Blanket policies that say an employee must be 100-percent healed before he/she can return to work after an injury are unlawful. Instead, you must assess whether the employee can perform the essential functions of the job with or without reasonable accommodation.
- <http://www.dwt.com/Beyond-FMLA-Leave-The-Undefined-Limits-of-Leave-As-a-Reasonable-Accommodation-06-14-2016/>

## CALIFORNIA PRIVATE SECTOR EMPLOYEES' RIGHTS TO TIME OFF FOR MEDICAL OR FAMILY-CARE RELATED REASONS

	Employer Covered	Employees Covered	Condition Covered	Posting Requirements	Maximum Duration of Leave Entitlement/ Accrual	Intermittent Leave Rights	Return Rights	Use of Paid Time Off	Insurance Premiums Paid By Employer	Potential Right to Use PFL <sup>1</sup> /SDI <sup>2</sup>
<b>Workers' Compensation (Labor Code § 132a)</b>	All	All	Work-related injuries or illnesses	Notice requirements related to insurance.	As long as temporarily disabled (12-month presumption)	Yes, if medically necessary	Same position unless replacement with another employee was "business necessity"	Accrued sick leave must be available/ use may be required; Accrued vacation may be available use may be required.	No (Although can't discriminate)	No
<b>Pregnancy Disability (FEHA) (Gov't. Code § 12945)</b>	5 employees	All females	Pregnancy-related disability	FEHA Notice must be posted.  If employer has a handbook, notice must be provided therein.	4 months per pregnancy (in addition to CFRA)	Yes, if medically advisable and reasonable	Same or comparable position, depending on business reasons	Accrued sick leave must be available/use may be required; Accrued vacation must be available/use can't be required	Yes under CFRA	SDI
<b>Disability (FEHA) / (Gov't Code § 12940) (ADA) (42 USC § 12101)</b>	5 employees (FEHA) 15 employees (ADA)	All	Physical or mental condition that limits a life activity, or record or perception of such	FEHA Notice must be posted (DFEH-162).  ADA Notice must be posted.	Reasonable	Yes, if medically necessary and reasonable	Same or different position, whatever is reasonable	Accrued sick leave must be available/use may be required; Accrued vacation may be available/ use may be required	No (unless under FMLA/CFRA, can't discriminate)	SDI

<sup>1</sup> SDI: Partial wage replacement for up to 52 weeks for non-work related injury or illness suffered by the employee.

<sup>2</sup> PFL: Partial wage replacement, for periods between eight days and six weeks, to care for family member with serious health condition or to bond with a new child. "Family member" includes child, spouse, registered domestic partner, grandparents, grandchildren, siblings, or parents-in-law.



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California Family Rights Act (CFRA) (Gov't. Code § 12945.1) Family and Medical Leave Act (FMLA) (29 U.S.C. § 2601)	50 employees	<p>Worked at least 1,250 hours in preceding 12 mos., employed at least 12 mos., and in work location where at least 50 employees within 75 miles of employee's assigned worksite</p> <p>Employee who has met the 1,250-hour requirement but has not yet worked 12 months can become eligible for CFRA while on an otherwise-authorized leave; once employee reaches 12 months of employment (including time on leave), the leave thereafter can be designated as CFRA leave</p>	<p>Serious health condition of employee, spouse/ dom. partner, parent, dependent child; OR</p> <p>Bonding with newborn/ newly adopted/ placed/foster child within 12 months of birth/ adoption/ placement OR</p> <p>Providing care to employee's spouse, parent, child, or "next of kin" who is a service member in the armed forces, reserves, or National Guard with serious injury or illness incurred in line of duty</p>	<p>CFRA notice must be posted</p> <p>FMLA Notice must be posted.</p> <p>If employer has a handbook, notice must be provided therein</p> <p>If 10% or more of the workforce at any facility or establishment speaks a language other than English as their primary spoken language, CFRA notice must be translated into that language</p>	<p>12 workweeks during a 12-month period (for all FMLA leaves combined) OR</p> <p>26 workweeks during 12-month period for care of service member</p> <p>Leave pursuant to California's Pregnancy Disability Leave law (PDL) does <u>not</u> run concurrently with leave taken under CFRA. As such, employees may take up to 29 1/3 weeks under these laws</p>	<p>Yes, if for medical condition or injury/illness of service member</p> <p>Basic minimum duration of "bonding" leave is two weeks; however, under CFRA employers must grant requests for leave of less than two weeks on any two occasions</p>	<p>Same or comparable position, unless eliminated for business reasons or "key employee"</p>	<p><b>Leave for employee's health condition</b> (unpaid): Accrued vacation and sick leave must be available and use can be required</p> <p><b>Leave for family member's health condition</b> (unpaid): Accrued vacation must be available and use can be required; accrued sick leave need not be available for use and cannot be required</p> <p><b>Leave for baby bonding</b> (unpaid): Accrued vacation must be available and use can be required; accrued sick leave need not be available for use and cannot be required</p> <p><b>Note:</b> If an employee is receiving a partial wage replacement benefit during leave (workers' comp, SDI, PFL, etc.), use of vacation and sick leave cannot be required but can be permitted</p>	Yes	<p><b>Leave for employee's health condition:</b> SDI</p> <p><b>Leave to care for others:</b> PFL</p>

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California's "Healthy Workplaces, Healthy Families Act of 2014" <sup>3</sup>	All	Any employee (exempt and non-exempt, full-time and part-time) who has worked more than 30 days within a year in California, except: (a) employees covered by a CBA that provides paid leave and meets other minimum requirements; (b) on-site construction employees covered by a CBA that meets certain requirements; (c) most in-home supportive service employees; and (d) airline flight deck and cabin crew employees covered by the RLA provided that they receive compensated time off meeting certain requirements.	Employees may use accrued paid sick time for their own illness or preventive care, or for the illness or preventive care of a "family member," broadly defined (includes grandparents, siblings, etc.). Employees who are victims of domestic violence, sexual assault, or stalking can use paid sick time to seek aid, treatment or assistance related thereto.	Posting and, for non-exempt employees, wage-theft prevention notice requirements. In addition, paystub reporting requirements.	Accrual rate is 1 hour of paid sick leave for every 30 hours worked, or on a regular schedule that provides at least 24 hours or 3 days of paid leave after 120 calendar days following hire.  Accrual can be capped at 48 hours.  Use can be limited to 24 hours per year.  Up-front award of 24 hours or 3 days of sick leave per year is permitted.  Employers can provide more generous sick leave/PTO policies.	Employers can establish minimum usage of 2 hours; beyond that, no.	Absolute.	N/A	N/A	N/A

<sup>3</sup> Effective 1/1/15, with accrual to begin 7/1/15. Local ordinances in SF, Oakland, and Emeryville impose additional requirements not covered in this chart.

# Questions?

Thank you for attending today's presentation. Any questions?



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