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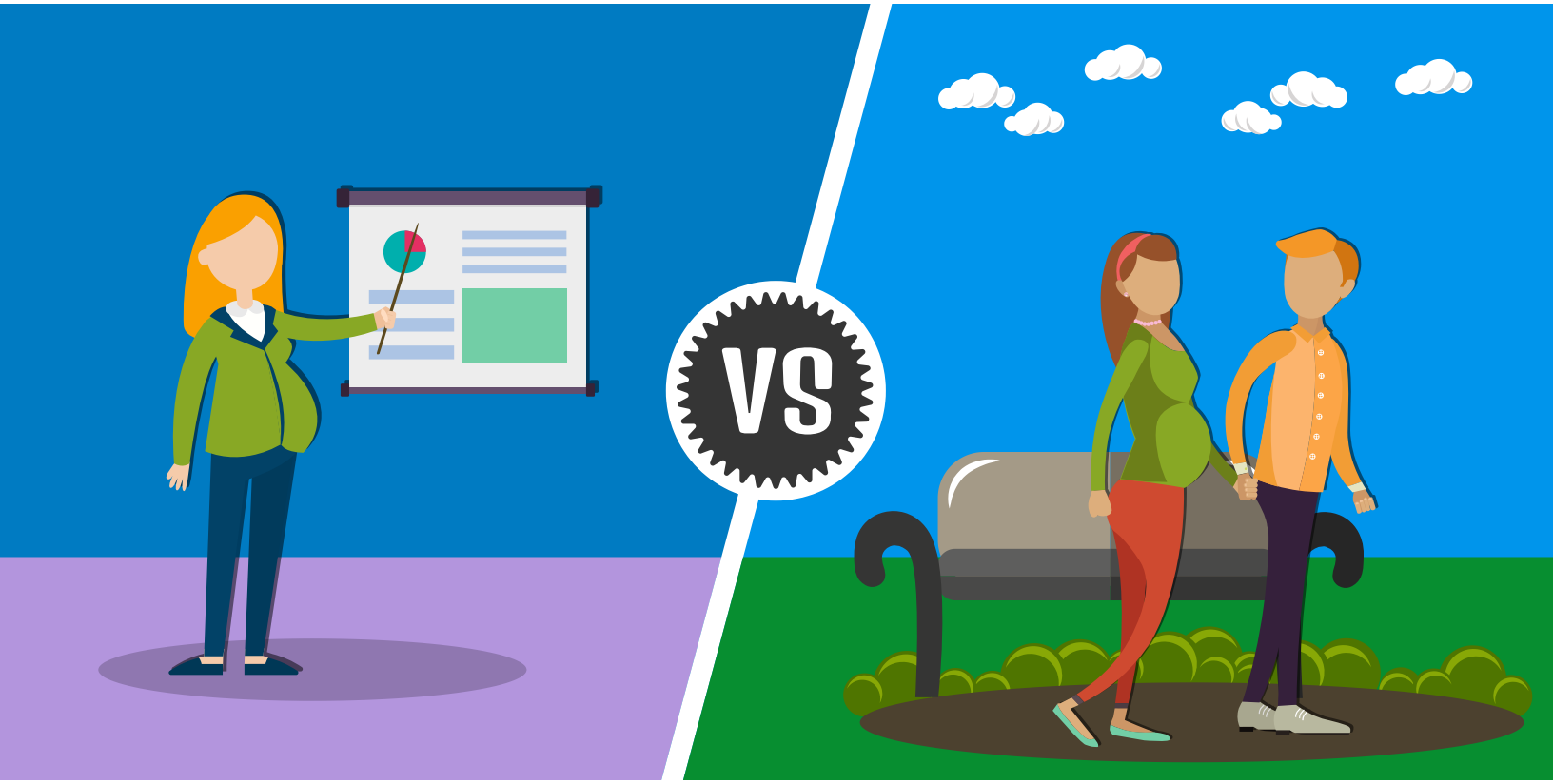

MATERNITY LEAVE LAW IN CALIFORNIA

Many California employees can take up to four months of pregnancy disability leave plus 12 weeks of bonding leave, with partial pay available from the state.

This document is a PDF version of the following article:
https://www.worklawyers.com/maternity-leave-law-california/

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BY KYLE D. SMITH

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He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.

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Maternity leave is the time a woman takes off from her job for the birth, adoption, or foster care placement of her new child. In California, many women have a legal right to be absent from work during and after their pregnancy, without having to risk losing their jobs.[1]

Eligible employees can take up to four months of pregnancy disability leave, followed by up to 12 weeks of family leave to bond with their new child: roughly seven months of maternity leave per pregnancy.[2] Some women also have a right to be paid during maternity leave.

This article takes a closer look at these rights and other laws protecting maternity leave for employees in California.[3]

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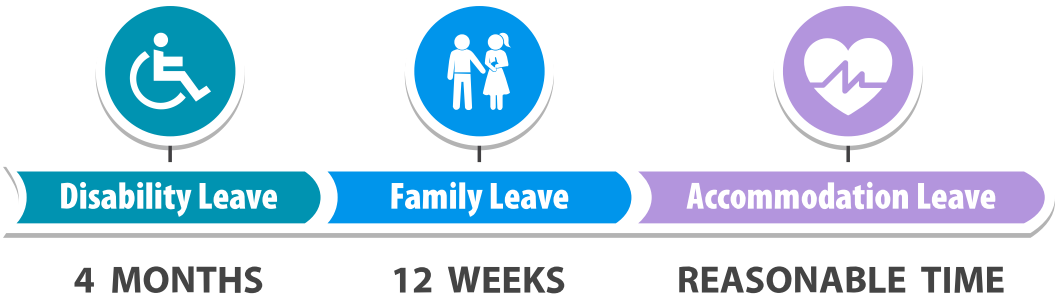
CH. 01

The Length of Maternity Leave in California



Many employees have the right to take time off during and after the birth of their child. There are generally three types of maternity leave in California:

- **Pregnancy Disability Leave**: An employee who has a disability related to her pregnancy or the birth of her child can receive up to *four months* of maternity leave while that disability continues, as long as certain requirements are met.[4]
- **Family Leave**: Employees who work for employers with five or more employees are entitled to take up to *12 weeks* of family leave to bond with their child, as long as certain requirements are met.[5]
- **Reasonable Accommodation Leave**: Even after an employee has exhausted other types of leave, employers may be required to accommodate their employees' pregnancy-related disabilities.[6] Sometimes this means giving more time off work.[7]

These types of leave can be taken consecutively, allowing many employees to enjoy *up to seven months* of maternity leave per pregnancy, and possibly more if additional

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leave time would be a reasonable accommodation for the employee's pregnancy-related disability.[8]

Employees will sometimes be entitled to pay or benefits during their maternity leave. The right to pay during leave, however, is distinct from the right to take leave in the first place.

Maternity leave is therefore unpaid unless the employee has a separate legal right to pay during leave.[9] The laws controlling the right to pay during maternity leave are addressed in Chapter 5.

But first, we'll explore the eligibility requirements for the different kinds of unpaid maternity leave in more detail.

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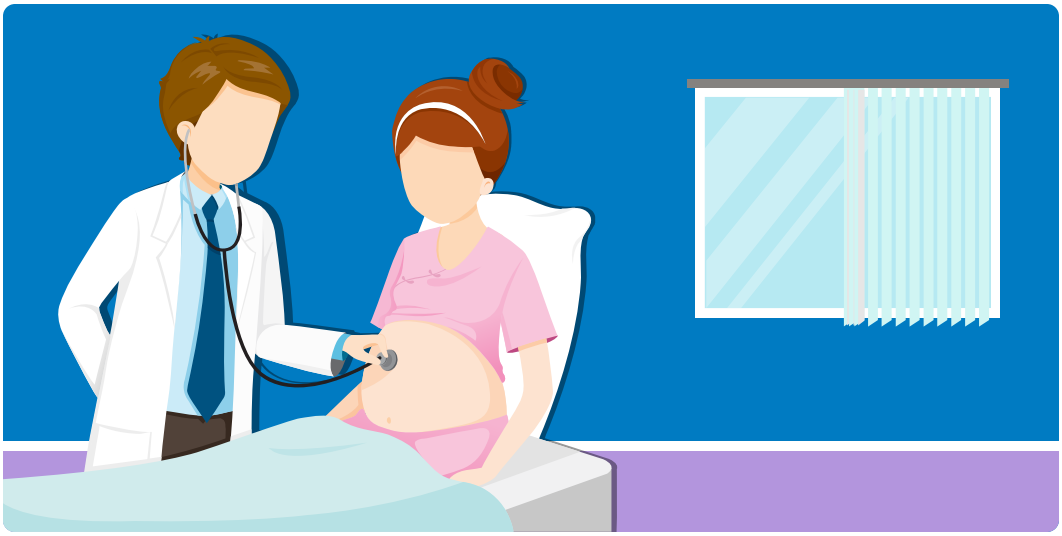
CH. 02

Pregnancy Disability Leave



In California, **pregnancy disability leave** (PDL) is time away from work that many employees can take if they are physically or mentally impaired as a result of their pregnancy, the childbirth, or a related medical condition. California law provides two requirements to meet this standard:

- The employee must be disabled by her pregnancy, the childbirth, or a related medical condition;[10] and
- The employer must be covered by California's pregnancy disability leave law,[11] which applies to most businesses that have five or more employees.[12]

If both requirements are met, the woman can take leave while she continues to be disabled by her pregnancy, the childbirth, or a related medical condition. The leave, however, cannot exceed **four months** (per pregnancy).[13]

California's pregnancy disability leave does not need to be taken all at once. Rather, it can be dispersed over the course of the pregnancy or after childbirth.[14] This can be important for women who experience conditions that are temporary or intermittent.

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2.1 “Disability” Defined

The most important question for women is whether they are, in fact, disabled by their pregnancy, the childbirth, or a related medical condition.[15] In general, pregnancy itself is *not* considered a disability. But, if pregnancy-related complications arise, the employee may become legally disabled.[16]

A woman is **disabled by her pregnancy** if, in the opinion of her doctor, she is unable to perform any one or more of the essential functions of her job because of her pregnancy.[17]

By about the 36th week of pregnancy, most women will experience some level of physical difficulty in performing one or more of the essential functions of their job. Even sitting at a desk for long hours can be strenuous at that point. So it’s common for doctors to find their patient unable to work around **week 36**.

If there are complications, the employee might be disabled even earlier. The following conditions are commonly considered disabling for these purposes, and will entitle the employee to begin her pregnancy disability leave early:

- Severe morning sickness;
- Prenatal or postnatal care;
- The need for bed rest;
- Gestational diabetes;
- Pregnancy-induced hypertension;
- Preeclampsia;
- Post-partum depression;
- Childbirth;
- Loss or end of pregnancy; and
- Recovery from childbirth, loss, or end of pregnancy.[18]

This list of examples is not exhaustive. Employees may have a different pregnancy or childbirth-related condition that would be considered disabling enough to qualify them for maternity leave.

It goes without saying that childbirth is a physically strenuous experience. As such, pregnancy-related disabilities will continue past birth. Every woman is different, but **six weeks** is a typical post-birth recovery time for a vaginal birth with no

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complications. If a caesarean section (c-section) or any other form of traditional surgery is necessary, **eight weeks** (or more) of recovery time is typical.

During this recovery time, women are still considered "disabled" by their pregnancy for the purposes of California's pregnancy disability leave law, as long as, in the opinion of her doctor, she is unable to perform one or more of the essential functions of her job because of childbirth.[19]

2.2 Which Employers Are Covered

Under California law, employers are required to provide pregnancy disability leave if they fall into one of the following categories:

- The employer is a person or business that regularly employs five or more people,
- The employer is a person or business who acts as an agent[20] of a covered employer, or
- The employer is a state or local governmental entity.[21]

If the employer falls into one of these categories, they are a **covered employer** under California's pregnancy disability leave law.[22] As such, they must permit eligible employees to take pregnancy disability leave.[23]

Of note, however, certain religious nonprofit associations and corporations are not considered "employers" for these purposes. Those religious employers are thus not subject to California's pregnancy disability leave law.[24]

2.3 No Additional Eligibility Restrictions

Pregnancy disability leave is unique in that it applies to *all* employees of covered employers who are capable of pregnancy, as long as they have a qualifying disability.[25] There are no additional eligibility requirements.

This means that part-time employees are entitled to take pregnancy disability leave to the same extent as full-time employees. Similarly, there is no minimum length of service requirement to qualify for pregnancy disability leave, so even recently hired employees can take it.[26] Additionally, transgender employees with pregnancy-related disabilities are specifically protected.[27]

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2.4 Reinstatement After Pregnancy Disability Leave

The right to take time off work is meaningless if there will be no job for the employee when they return. As such, California law has adopted strong reinstatement protections for employees returning from pregnancy disability leave.

Employees who exercise their right to take pregnancy disability leave are guaranteed a right to return to the same or comparable position, unless certain exceptions apply. The employee may ask the employer to provide this guarantee in writing.[28]

The most common exception to this right occurs when the employee would not have the same or comparable position, due to legitimate business reasons, even if she hadn't taken pregnancy disability leave.[29]

If there was a mass layoff, for example, then the employer may be able to show that the employee would have lost her job for legitimate business reasons unrelated to the employee taking pregnancy disability leave.

California law does not, however, allow employers to deny reinstatement on the grounds that preserving the job or duties for the employee would be inconvenient for the employer.[30]

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CH. 03

Family and Bonding Time Leave

Under California law, eligible employees have a right to take up to **12 weeks** of family leave per year.[31] This leave can be used by both men and women to bond with a new child after its birth, adoption, or foster care placement with the employee.[32]

To maximize the employee's total period of maternity leave, this leave can be taken *after* she uses any pregnancy disability leave to which she may be entitled.[33] This can allow employees to take up to seven months of maternity leave per pregnancy, depending on the duration of her pregnancy-related disabilities.[34]

Since January 1, 2021,[35] the following three requirements must be met before an employee is entitled to take child-bonding leave:

- The employer must employ five or more employees;
- The employee must have worked more than 12 months for the employer prior to the date that the period of leave is taken; and
- In the past 12-month period, the employee must have worked at least 1,250 hours for the employer.[36]

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If all three requirements are met, employers will usually be required to provide family leave for the purpose of child bonding to eligible employees.[37]

3.1 Taking Family Leave

Family leave does not need to be taken all at once, but it must be completed within one year of the child's birth, adoption, or foster care placement.[38]

An employer can require an employee to take the leave in a minimum duration of two weeks at a time. However, the law also gives the employee two opportunities to take intermittent leave of less than two weeks at a time.[39]

How does this work? On two occasions, an employee can ask the employer to grant her the right to take bonding leave of less than two-week increments. Once those two opportunities have been granted, the employer can require the new-child bonding time to be taken in two-week increments.

3.2 Reinstatement After Family Leave

Most employees have a guaranteed right to be reinstated with their employer when they return from family leave.[40] This is true even if the employee's position was restructured or replaced to accommodate the employee's absence.[41]

The right to reinstatement means that the employee is entitled to the *same* or a *comparable* position.[42] If the employer chooses to reinstate the employee in a different position, the new position must be equivalent to the employee's former position in terms of pay, benefits, shift, schedule, geographic location, and working conditions, including privileges, perquisites, and status.[43]

The new position must also involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.[44]

Additionally, if an employee returns to the job and is no longer qualified for the job due to missing training or other events which happened while she was off work, she must be afforded a reasonable opportunity to fulfill those key requirements.[45]

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3.3 Bereavement and Reproductive Loss Leave

Two newer California laws protect time off for some of the hardest experiences a growing family can face: the death of a family member and the loss of a pregnancy or an adoption.

Since January 1, 2023, eligible employees have been able to take up to **five days** of bereavement leave after the death of a family member. For these purposes, family members include a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.[46] The days do not need to be taken consecutively, but the leave must be completed within three months of the death.[47]

Since January 1, 2024, eligible employees have also been able to take up to **five days** of reproductive loss leave following a miscarriage, a stillbirth, a failed adoption, a failed surrogacy, or an unsuccessful round of assisted reproduction.[48] The right belongs to anyone who would have been a parent, so it covers the employee whether or not she was the person who was pregnant.[49] Here too, the days do not need to be consecutive, but the leave generally must be completed within three months of the loss. If the employee is on another protected leave when the loss occurs, the three-month window runs from the end of that leave.[50] An employer cannot demand documentation of the loss, and it must keep the employee's request confidential.[51] If the employee experiences more than one loss, the employer can cap this leave at 20 days in a 12-month period.[52]

Both types of leave apply to employers with five or more employees, and the employee must have worked for the employer for at least 30 days before the leave begins.[53] The leave may be unpaid, but the employee can use accrued paid time off, like vacation or sick leave, while taking it.[54] And employers may not retaliate against an employee for requesting or taking either kind of leave.[55]

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CH. 04

Taking Leave as a Reasonable Accommodation

California law prohibits covered employers from discriminating against employees on the basis of their physical or mental disabilities.[56] This protection extends to women who are disabled as a result of their pregnancy.[57]

As part of the rule against discrimination, California law imposes a duty on covered employers to make reasonable accommodations for employees with disabilities.[58] A **reasonable accommodation** is an adjustment to the employee's work environment that can enable the employee to perform the essential functions of the job.[59]

Importantly for the purposes of maternity leave, a "reasonable accommodation" can sometimes include a period of leave, even after other types of leave have been exhausted.[60]

There are four requirements for employees to be eligible for a reasonable accommodation:

- The employer must be covered by California's anti-discrimination laws, which apply to most businesses that have five or more employees.[61]

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- The employee must have a qualifying physical or mental disability that impairs the employee's ability to perform the essential functions of her job.[62]
- If given a reasonable accommodation, the employee must be capable of performing her job's essential functions.[63]
- The reasonable accommodation would not cause the employer an undue hardship.[64]

The definition of "covered employer" for these purposes is the same as under the pregnancy disability leave law, which was discussed in section 2.2 above. We'll take a closer look at the other requirements next.

Federal law adds a further layer of protection: since June 27, 2023, employers with 15 or more employees must reasonably accommodate an employee's known limitations related to pregnancy or childbirth, even when those limitations do not rise to the level of a disability.[65]

4.1 Covered Disabilities and Conditions

To qualify for a reasonable accommodation in the context of maternity leave, the employee must have a physical or mental disability that somehow impairs them.[66] Both of these categories have a special definition under the law:

Physical Disabilities

In most cases, a **physical disability** is any bodily condition, cosmetic disfigurement, or anatomical loss that affects one or more of the body's major systems and limits a major life activity.[67]

There are several ways an employee can show that they suffer from a physical disability. The most common way is to show three things:

- **Physical impairment**: The employee has an anatomical loss, cosmetic disfigurement, physiological disease, disorder, or condition.
- **Major bodily system**: The physical impairment affects at least one of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

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- **Limited Life Activity**: The condition limits a major life activity.[68]

A condition **limits a major life activity** if it makes the achievement of that activity difficult.[69] The phrase **major life activity** is treated broadly. It includes normal social activities, basic life functions (walking, eating, sleeping, etc.), and working.[70]

A worker can also establish that they have a physical disability by showing:

- That they have any health impairment that requires special education or related services;[71]
- That they have a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment;[72] or
- That their employer has a mistaken belief that the worker has or had a physical disability.[73]

In addition to the general test described above, California law has specifically included certain conditions as being within the definition of physical disability:

- Deafness,
- Blindness,
- Missing limbs (whether partial or complete),
- Mobility impairments requiring the use of a wheelchair,
- Cerebral palsy, and
- Chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, and heart and circulatory disease.[74]

An employee does *not* have a qualified disability if their condition is mild and temporary.[75] **Mild conditions** are impairments that have little or no long-term effects. Examples include:

- The common cold,
- Seasonal or common influenza,
- Minor cuts or abrasions,
- Sprain,
- Muscle aches,

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- Soreness,
- Bruises,
- Non-migraine headaches, and
- Minor and non-chronic gastrointestinal disorders.[76]

The conditions associated with pregnancy and childbirth are usually much more serious than those listed above.

Mental Disabilities

Pregnancy and childbirth can have severe effects on a person's hormones. This can be physiological and is normal. A **mental disability**, for these purposes, is any mental or psychological condition that limits a major life activity.[77]

In general, both employees and job applicants have a right to be free from discrimination due to their mental disability.[78] Likewise, an employer also may not discriminate based on a perception that an employee or applicant has a mental disability, whether or not the belief is correct.[79]

Common examples of qualified mental disabilities include:

- Emotional illnesses,
- Mental illnesses,
- Intellectual or cognitive disability,
- Organic brain syndrome,
- Specific learning disabilities,
- Autism spectrum disorders,
- Schizophrenia,
- Clinical depression,
- Bipolar disorder,
- Post-traumatic stress disorder, and
- Obsessive compulsive disorder.[80]

California law specifically excludes certain behavioral problems, even though many of them are arguably mental disabilities. In the context of pregnancy, the most

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important exclusion involves substance abuse disorders resulting from the current *unlawful* use of drugs.[81]

4.2 "Reasonable Accommodations" Generally

As mentioned above, a reasonable accommodation is an adjustment to the employee's work environment that can enable the employee to perform the essential functions of the job.[82]

The type of adjustment will vary depending on the employee's job and the nature of the disability.[83] Whether a proposed accommodation is *reasonable* is a question of fact, and can be the subject of much debate.

In general, courts are flexible in considering what accommodations are reasonable.[84] And employers are required to consider "any and all" reasonable accommodations they are aware of, unless those accommodations will create an undue hardship.[85]

Additionally, the employer *must* consider the employee's preference in deciding which kind of accommodation to select.[86] Nevertheless, employers have discretion to choose between accommodations that are otherwise reasonable and effective.[87]

Importantly, however, employers are *not* required to consider an accommodation if it would prevent the employee from performing the *essential functions* of the job. Nor is an employer required to accommodate disabilities that would endanger the employee's health or the health of their coworkers.[88]

Reasonable accommodations often involve making existing facilities readily accessible to individuals with disabilities.[89] They can also include: job restructuring, reassignment to a vacant position, alterations to *when* tasks are to be completed, or changes to *how* functions are performed.[90] Again, the best type of accommodation will vary from job to job.

In some cases, the employer may be required to permit the employee to take a period of leave for treatment and recovery.[91] As explained by one court:

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> Holding a job open for a disabled employee who needs time to recuperate or heal is in itself a form of reasonable accommodation and may be all that is required where it appears likely that the employee will be able to return to an existing position at some time in the foreseeable future.
>
> — *Jensen v. Wells Fargo Bank*
> (2000) 85 Cal.App.4th 245, 263

Importantly, however, leaves of absence should usually be treated as a last resort by employers.[92]

4.3 Which Job Functions are "Essential"

An employer is only required to provide a reasonable accommodation if the accommodation would enable the employee to perform the *essential functions* of a job. Meaning, California law generally permits an employer to terminate an employee if they are unable to perform the essential functions of the job, even with a reasonable accommodation.[93]

An employee's **essential job functions** are the fundamental duties of the employment position.[94] California statutes and regulations have given three examples of reasons why a job function might be considered essential:

- A job function is essential if the reason the employee's position exists is to perform that function.
- If there are a limited number of employees working for the employer and the job function cannot be distributed among them, it may be essential.
- If the employee was hired specifically for his or her skill or expertise in performing a highly-specialized function, then it may be essential.[95]

Of course, these are just a few examples of when a function might be treated as essential to the job. There may be other situations where courts might find a function essential.[96]

Importantly, essential functions differ from what courts call the "marginal functions" of a job. **Marginal functions** are those that could be performed by another employee or could be performed in a different way.[97] A function is also considered marginal if

the employer would need someone with the employee's position even if the function was not being performed by that position.[98]

A simple way to think about these rules is that job functions will generally be essential if the employer would have to hire another person if the employee couldn't perform the particular function. If that wouldn't be necessary, then it is likely that the function is considered marginal.

If the case goes to court, the burden is on the employee to prove that they could perform the essential functions of the job if a reasonable accommodation had been provided.[99]

4.4 When Hardships Become "Undue"

Every accommodation is likely to be somewhat inconvenient for an employer. Fortunately for employees, a mere inconvenience does not exempt an employer from having to accommodate an employee's known disability. The hardship suffered by the employer must be *undue*.

An **undue hardship** is any action that would require significant difficulty and expense on the employer's part.[100] Courts consider a variety of factors to determine whether an accommodation will cause an undue hardship, including:

- The nature and cost of the accommodation needed,
- The employer's financial resources,
- The impact that the accommodation will likely have on the employer's business operations, and
- The overall size of the business.[101]

Of course, each employer is different. So the factors courts will consider may vary from case to case.[102]

4.5 The Duty to Engage in an Interactive Process

An employer is required to engage in an **interactive process** with employees to determine whether reasonable accommodation is available.[103] This is generally an informal process with the employee or the employee's employment lawyer, where the parties attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively.[104]

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An employer who fails to engage in this process violates the law.[105] The employer's participation must be timely and in good faith.[106] If the process fails, responsibility rests with the party who failed to participate in good faith.[107]

In some situations, the employer may request medical information to confirm the existence of the employee's disability.[108] If this happens, the employer has a duty to keep that information confidential.[109] There are exceptions to this duty for certain supervisors, managers, government officials, and safety personnel.[110]

A claim against an employer for failing to engage in an interactive process is an independent legal cause of action from a failure to accommodate.[111] Meaning, an aggrieved employee can seek financial damages for the employer's failure to participate in an interactive process alone.

In some situations, the employee may be required to provide medical documentation that confirms the existence of the disability and the need for reasonable accommodation.[112]

If the disability lasts for more than a year, the employee may be required to submit medical documents substantiating the need for continued reasonable accommodations on a yearly basis.[113]

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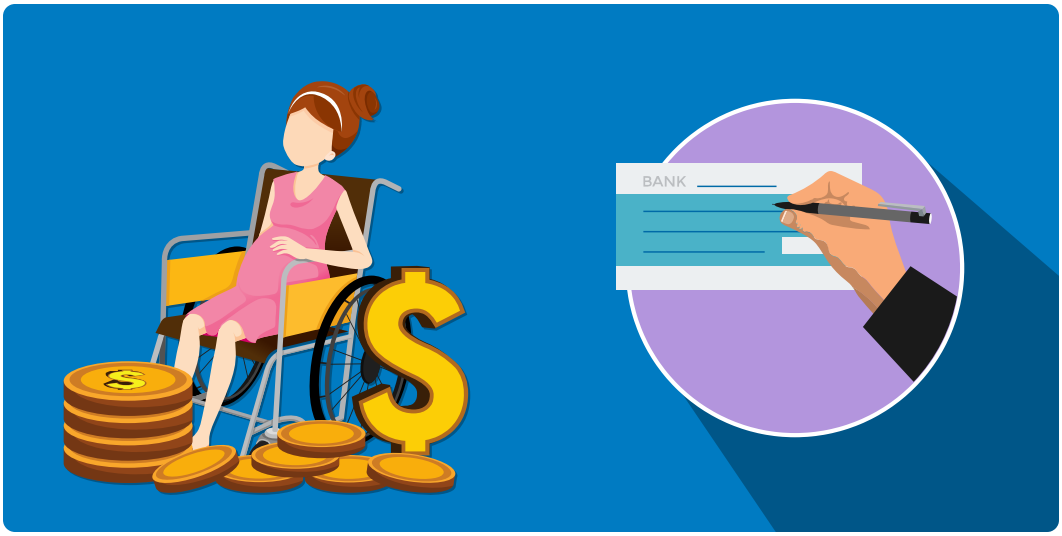
CH. 05

The Right to Pay and Benefits During Maternity Leave



Generally, employers are not required to pay employees their wages during maternity leave. However, in some circumstances, California employees may still have a right to paid maternity leave.

5.1 Medical Benefits During Maternity Leave

Employers are generally required to maintain a worker's medical benefits at the same contribution rates during both pregnancy disability leave and family leaves of absence.[114] This means that an employer that offers group health plan coverage must continue to pay the same premiums that were paid while the employee was working.

To prevent employers from trying to cut off a woman's benefits in retaliation for taking maternity leave, the law makes it illegal to impose new requirements for a woman to receive benefits. An employer cannot impose new requirements on a woman returning from pregnancy disability leave in order to get benefits.[115]

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5.2 California's State Disability Insurance

An employee may be entitled to receive state disability insurance for a period of disability due to pregnancy. California's short-term state disability insurance program (**SDI**) pays a portion of the employee's usual wages while the employee is temporarily disabled, including by pregnancy and childbirth. The benefit is generally 70 percent of the employee's regular wages, or 90 percent for lower earners, up to a weekly maximum that adjusts each year.[116] In 2026, weekly benefits range from $50 to $1,765, for up to 52 weeks.[117]

If a worker's pay stub shows that her employer withheld at least $300 for the SDI fund during her "base eligibility period," then she may be eligible for paid leave from state funds.[118] The employee's **base eligibility period** is a 12-month period that ends three to six months before the SDI claim starts.

So, to be eligible for SDI, the employee must have paid at least $300 into the SDI fund roughly five to 18 months prior to the employee's claim start date. The SDI program only applies if the employee has a short-term disability due to pregnancy or childbirth.

California's disability insurance benefits are described in greater detail by the California Employment Development Department in the following two articles:

- Am I Eligible for Disability Insurance Benefits?
- Disability Insurance Benefits

5.3 California's Paid Family Leave Fund

Some employees are eligible for up to eight weeks of paid family leave (PFL) to bond with their new child, even if they aren't disabled by pregnancy or childbirth.[119]

California's Paid Family Leave program entitles eligible employees to receive partial pay while taking time off work to bond with a newborn baby, newly adopted child, or foster child within the first 12 months of the child's arrival. Benefits are calculated the same way as state disability insurance benefits: generally 70 percent of the employee's regular wages, or 90 percent for lower earners, up to the same weekly maximum.[120]

California's paid family leave benefits are described in greater detail on the California Employment Development Department's website: Paid Family Leave Benefit Payment Amounts.

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5.4 Using Accrued Paid Time Off

During maternity leave, employees have a right to use any vacation pay, sick pay, or other paid time off they have accrued with their employer.[121] In some cases, an employer can even force them to do so.

If an employee takes family leave to bond with her child, the employer can require her to use her accrued paid or unpaid time off.[122] Accrued sick leave is different: during bonding leave, it can be used only if the employee and the employer mutually agree.[123]

But, if an employee only takes pregnancy disability leave, her employer can only force her to use her accrued sick leave.[124] Her other accrued time off, like vacation time or personal time off, can be used at her discretion during pregnancy disability leave.[125]

There are also limits when state benefits are involved. An employee who is receiving Paid Family Leave benefits is not on unpaid leave, so her employer cannot require her to use vacation, sick leave, or other paid time off during that period.[126] And since January 1, 2025, employers may no longer require employees to use up to two weeks of accrued vacation before receiving Paid Family Leave benefits.[127]

Of course, workplace policies will vary from employer to employer. So employees concerned about being forced to use their accrued time off should check with their employer.

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CH. 06

How to Request Maternity Leave

Employees wishing to take maternity leave must provide their employer with a reasonable notice of their need for the leave.[128] At a minimum, the notice should include the following information:

- The time the leave is anticipated to be taken,
- The expected duration of the leave, and
- Facts sufficient to make the employer aware that the employee needs family leave or pregnancy disability leave under the applicable laws.[129]

As a courtesy, this notice usually comes in the form of a request. But employers *cannot* deny maternity leave if the employee is legally entitled to take it and the employee has timely provided the required notice.[130]

Maternity leave requests can be made verbally,[131] but it is often wise to put it in writing using clear language that specifies the reason for the leave. The employee should also keep a copy of the request for their own records, in the event there is a dispute about the notice down the road.

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It might also be a good idea to provide any other relevant information about the employee's situation that could assist the employer in providing the employee's leave. This might include the expected due date, tasks that will need to be taken care of during the maternity leave, or contact information in the event the employer has questions while the employee is on leave.

6.1 When the Request Should Be Made

If the need for the maternity leave is foreseeable, employers can require their employees to give at least 30 days' advance notice before the leave is to begin.[132]

If the need for maternity leave is sudden or unexpected, as in the case of a sudden medical complication, notice must be given by the employee as soon as is practicable.[133] Covered employers *cannot* deny an employee's leave because of a sudden and unforeseen absence caused by a pregnancy or childbirth-related medical emergency.[134]

6.2 Providing Medical Documentation

If the employee requests pregnancy disability leave, the employer can require the employee to supply a written medical certification from the employee's health care provider. The medical certification must verify that the employee is disabled by her pregnancy, the childbirth, or a related medical condition and requires pregnancy disability leave.[135]

Employers can also ask questions designed to determine whether an absence is potentially qualifying for leave under applicable laws, and the employee must respond to those questions.[136]

6.3 Sample Letter Requesting Maternity Leave

Below is a sample notice letter that an employee could use, depending on their situation, to request maternity leave. The words in brackets contain sample text and should be modified to reflect the specific facts of the employee's situation. In fact, the entire letter should be modified to suit the particular employee's situation, as well as the employee's eligibility for California's maternity leave laws.

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Re: Maternity Leave Notice

Dear [*Employer*]:

I am writing to let you know that I am pregnant and to request maternity leave. My baby is due on [*March 1, 2026*]. I expect to begin my leave on or around [*February 1, 2026*] and to return to work on or around [*July 5, 2026*].

My leave will cover the period I am disabled by my pregnancy and childbirth, along with time afterward to bond with my child. Because pregnancy and recovery can be unpredictable, these dates are my best estimate for now. I will give you as much notice as I can if anything changes, and I am happy to provide medical certification if you need it.

I want to make my time away as smooth as possible for the team. I am glad to talk through how my responsibilities can be covered while I am out. If something urgent comes up during my leave, you can reach me at [*jane.doe@example.com*] or [*(123) 456-7890*].

Please confirm in writing that you have received this request, and let me know if you need anything further from me or my health care provider.

Sincerely,

[***Jane Doe***]

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6.4 Requesting Leave as a Reasonable Accommodation

To be entitled to disability leave as a form of a reasonable accommodation, the employer must *know* about the employee's disability.[137] An employer knows an employee has a disability when:

- The employee tells the employer about his or her condition, or
- When the employer otherwise becomes aware of the condition, such as through a third party or by observation.[138]

The employer does not need to know the legal significance of the condition, but it must at least know of the facts underlying the condition's existence and its impact on the employee's work.[139]

The employee should make sure the employer is "on notice" of the disability and the potential need for an accommodation, unless the disability and resulting limitations are obvious.[140]

The same is true if the employee wishes to engage in an interactive process to determine an appropriate accommodation: The employee must initiate the process unless his or her disability and the resulting limitations are obvious.[141]

The easiest path is usually for the employee to clearly and directly inform the employer. In doing so, the employee's statements cannot be vague: they must be explicit enough for the employer to understand the facts relevant to the employee's work-related needs.[142]

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CH. 07

The Right to Be Free from Pregnancy Discrimination

Pregnancy discrimination occurs when a pregnant employee or job applicant receives less favorable treatment because of their pregnancy. California law prohibits discrimination on the basis of a woman's pregnancy by employers with five or more employees.[143]

Pregnancy discrimination can take many forms. Common examples of *unlawful* pregnancy discrimination in the employment context include:

- Refusing to hire a woman because she is pregnant or may someday become pregnant;[144]
- Firing or demoting a woman because she experienced medical conditions related to pregnancy;[145]
- Refusing to provide reasonable accommodations for a woman's pregnancy-related disabilities;[146]
- Denying a woman time off for childbirth or medical conditions related to childbirth, if the woman is legally entitled to take that time off;[147] and

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- Discriminating against a woman because she needs to breastfeed, pump, or treat medical conditions related to breastfeeding.[148]

To prove that an employer engaged in *unlawful* discrimination, the employee or job applicant will have the burden of proving certain facts.[149] These facts are called *elements* of the claim. In cases involving pregnancy discrimination, the elements are as follows:

- The employer was an entity covered by applicable pregnancy discrimination laws;
- The employer took a negative employment action against the worker, like refusing to hire them, refusing to promote them, or firing them;
- The employee or job applicant's pregnancy, her pregnancy-related disability, or her ability to become pregnant was a motivating reason for the employer's negative employment action; and
- The employee suffered some kind of harm because of the employer's negative employment action.[150]

The next few sections will take a closer look at each of these elements.

7.1 Which Employers Can Be Held Responsible

To determine whether an employer has committed unlawful pregnancy discrimination, the first question is whether California's anti-discrimination laws apply to them.

Under California law, an employer can usually be held responsible if they fall into one of the following categories:

- The employer is a person or business that regularly employs five or more people,
- The employer is a person or business who acts as an agent[151] of a covered employer, or
- The employer is a state or local governmental entity.[152]

There are important exceptions to each of these categories. For example, certain religious nonprofit associations and corporations are not considered "employers" for these purposes. Those religious employers are thus not subject to many of California's anti-discrimination laws.[153]

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It is also worth noting that supervisors, managers, and coworkers are generally *not* personally liable for actions involving discrimination or retaliation, unless they are the actual employer.[154] But employers can often be held legally responsible for discriminatory actions of supervisors and managers.[155]

Finally, it is worth noting that pregnancy-based *harassment* protections are broader than California's protections against *discrimination*. California's ban on pregnancy-based harassment applies to employers of any size, even those that employ fewer than five people.[156] Similarly, supervisors, managers, and coworkers can be held personally liable for actions involving pregnancy harassment.[157]

7.2 Which Workers Receive Protections

California law states that it is unlawful to discriminate against "any person" because of their pregnancy.[158] In reality though, the actions prohibited by this law are limited to the employment context.[159] The result is that only certain groups of workers can benefit from California's legal protections.

Those workers generally fall into four categories:

- **Traditional Employees**: A traditional *employee* is someone who works under the direction and control of the employer, and that the employer has agreed to hire.[160]
- **Job Applicants**: An *applicant* is someone who files a written application with an employer. If the employer does not provide a written application form, then a person is an applicant if they express a specific desire to the employer to be considered for employment.[161]
- **Temporary Employees** (Temps): Temps are workers that are hired by an agency and the agency assigns them to work for a business. In some cases, the temp can hold both the temp agency and the business they work at responsible for unlawful pregnancy discrimination.[162]
- Unpaid Interns and Volunteers: Unpaid interns and volunteers are entitled to some, but not all, of the law's protections regarding pregnancy.[163]

There are, of course, some caveats to these categories. First, California's anti-discrimination protections do *not* extend to under-qualified applicants. An employer has the right to reject an applicant if they are less-qualified for a position than the person ultimately selected.[164]

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Additionally, individuals employed by their parent, spouse, or child are not protected by California's anti-discrimination laws.[165]

Finally, independent contractors and volunteers are generally *not* protected by California's anti-discrimination laws.[166] They are, however, protected by California's provisions that prohibit pregnancy-based harassment.[167]

7.3 Which Forms of Discrimination Are Prohibited

California law provides significant protections against discrimination on the basis of an employee's pregnancy status. Pregnancy discrimination includes treating individuals differently, due to their pregnancy or recent childbirth, with respect to:

- Their compensation,
- The terms or privileges of their employment,
- Their work conditions, and
- Their job assignments.[168]

Importantly, pregnancy discrimination is illegal at almost any stage of employment, including:

- During hiring (or before taking applications if recruiting materials are discriminatory),[169]
- While considering promotions,
- When making raise determinations,
- When making determinations about laying off or firing employees,
- While considering training opportunities,
- When deciding whether to permit leave time, and
- When determining employee benefits.[170]

Additionally, if the employee becomes disabled by her pregnancy or a condition related to childbirth, the employer will often have an obligation to provide them with a reasonable accommodation.[171] This can mean that the employer is required to make the employee's working conditions significantly more comfortable.

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CH. 08

Handling Violations of Maternity Leave Rights

Despite the clear requirements of California law, some employers still violate their employees' legal rights. Employees who have experienced a violation of their maternity leave rights have three basic options:

- They can attempt to resolve the dispute informally with their employer,
- They can bring an administrative claim to seek damages, or
- They can file a lawsuit in court.

In selecting one of these paths, employees should remember that they may be entitled to compensatory damages, punitive damages, or, in some cases, reinstatement to their former job.

Of course, each option has benefits and disadvantages, and some situations require employees to try all three approaches. It is often a good idea for employees to discuss their case with an employment lawyer.

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8.1 Do Employees Need a Lawyer?

Employees are *not* required to have a lawyer to file a claim against their employer. But it is often a good idea to have one.

The law can be complex and very few cases are straightforward. Even if the facts are strong, an experienced employment law attorney can sometimes help by:

- Collecting all legally relevant information,
- Applying the law to the evidence and related facts in a compelling way,
- Avoiding the strategic pitfalls many nonlawyers are unfamiliar with, and
- Maximizing the financial damages the employee receives.

Of course, there is no guarantee that a lawyer will be able to accomplish these things. But, when employees handle their legal disputes without representation, there is sometimes an increased risk that they will lose or severely harm their case due to legal missteps that a lawyer would have avoided.

If the employer contests the employee's claim, which happens often, legal arguments will have to be made and evidence might need to be presented. This might occur in court or with an administrative agency, sometimes according to complicated legal procedures. It can be a good idea to have a lawyer who is familiar with doing those things.

8.2 Paying for a Lawyer

In many cases, attorneys are willing to work with no upfront costs on the part of the employee. Instead, they will take a percentage of what the employee wins at the end of the case.

It is also possible that the employer will be required to pay the employee's legal fees at the end of the case. Some laws place the burden of those expenses on the employer because it is easier for them to afford it.[172] A prevailing employer, on the other hand, normally cannot recover its own fees from the employee unless the court finds the case was frivolous.[173]

So, although there is no legal requirement that an employee must have an attorney, navigating the claims process can be much easier if the employee has one.

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8.3 State Law Claims Start with a Government Agency

When an employee decides to sue their employer for violating California's maternity leave laws, they must first file a written complaint with California's Civil Rights Department (CRD), formerly known as the Department of Fair Employment and Housing (DFEH).[174] Employees pursuing a claim related to maternity leave violations *cannot* go straight to court with a lawsuit.[175]

The CRD complaint process is explained in our article: *How to File a Work Discrimination Complaint with California's Civil Rights Department (CRD)*.

If, after a complaint is filed with the CRD, the claim is not resolved, the employee will be issued a document called a right-to-sue letter.[176] The employee may then pursue their case by bringing a lawsuit in court. An employee who prefers to proceed directly to a lawsuit can instead request an immediate right-to-sue notice when filing the complaint, rather than waiting for an investigation.[177]

8.4 The Deadline to File (Statute of Limitations)

If the employee is bringing claims under state law, they must first file a complaint against the employer with the Civil Rights Department (CRD) no later than **three years** from the date of the alleged violation.[178]

If the employee has gone through the administrative process and has been issued a right-to-sue letter from the CRD, the employee will then have **one year** to file a lawsuit in civil court against the employer.[179] This one-year clock starts ticking on the date the right-to-sue letter is issued.

There are, of course, exceptions to these time limits. You should speak with a lawyer immediately if you are unsure whether your claim is time-barred.

8.5 Retaliation Is Prohibited

Even though most employers follow the law, employees are often worried about the consequences of pursuing a claim against their employer. But it is important to understand that employers may *not* wrongfully terminate or take adverse employment actions against their employees simply because they opposed the employer's violations of the law.[180]

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Similarly, an employee who has suffered a violation of California's maternity leave laws has a right to file a complaint, testify, or assist in any proceeding in a pregnancy discrimination claim against their employer. The employer may not retaliate against them for doing so.[181]

8.6 The Next Step: Talk to a Lawyer

Employees who experience legal violations in the workplace should never have to suffer alone. Having an attorney on your side can provide important benefits to both you and your family. In many cases, there are no upfront costs to hire a lawyer; they will instead take a percentage of whatever they can win for you.

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References

1	Gov. Code, §§ 12945, subd. (a)(1), 12945.2, subd. (a).
2	Cal. Code Regs., tit. 2, § 11046, subd. (a).
3	Unless otherwise mentioned, the laws in this article do not apply to employees of the federal government or certain federal contractors.
4	Gov. Code, § 12945.
5	Gov. Code, § 12945.2.
6	Gov. Code, § 12940, subd. (m).
7	See, e.g., *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331; Cal. Code Regs., tit. 2, §§ 11065, subd. (p)(2)(M), 11068, subd. (c).
8	Cal. Code Regs., tit. 2, § 11046, subd. (a) ["The right to take a pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take leave under the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2."].
9	See Gov. Code, §§ 12945, 12945.2; Cal. Code Regs., tit. 2, § 11044, subd. (a) ["An employer is not required to pay an employee during pregnancy disability leave unless the employer pays for other temporary disability leaves for similarly situated employees."]; *California Federal Sav. & Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 275–276 (107 S.Ct. 683, 686–687) ["California's Fair Employment and Housing Act (FEHA) . . . requires these employers to provide female employees an **unpaid** pregnancy disability leave of up to four months."], emphasis added.
10	Gov. Code, § 12945, subd. (a)(1).
11	California's Pregnancy Disability Leave (PDL) law is codified at Government Code section 12945.

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12 Gov. Code, §§ 12926, subd. (d), 12945, subd. (a); Cal. Code Regs., tit. 2, § 11035, subd. (h).

13 Gov. Code, § 12945, subd. (a)(1); Cal. Code Regs., tit. 2, § 11042, subd. (a)(1) ["Employees are eligible for up to four months of leave per pregnancy, not per year."].

14 Cal. Code Regs., tit. 2, § 11042, subd. (a) ["Pregnancy disability leave does not need to be taken in one continuous period of time."].

15 Gov. Code, § 12945, subd. (a)(1).

16 *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1339 ["Under section 12940, a woman disabled by pregnancy is entitled to the protections afforded any other disabled employee—a reasonable accommodation that does not impose an undue hardship on her employer."]; Cal. Code Regs., tit. 2, § 11068, subd. (a).

17 Cal. Code Regs., tit. 2, § 11035, subd. (f) ["A woman is '**disabled by pregnancy**' if, in the opinion of her health care provider, she is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons."].

18 Cal. Code Regs., tit. 2, § 11035, subd. (f).

19 Cal. Code Regs., tit. 2, § 11035, subd. (f).

20 An **agent** is a person who acts on behalf of an employer. (Civ. Code, § 2295.) The employer must agree to have the agent act on its behalf for this type of relationship to exist. (*Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 91 ["An agency relationship is a bilateral matter created through mutual consent."].)

21 Gov. Code, §§ 12926, subd. (d), 12945, subd. (a); Cal. Code Regs., tit. 2, § 11035, subd. (h).

22 Gov. Code, § 12926, subd. (d).

23 Gov. Code, § 12945, subd. (a)(1).

24 Gov. Code, § 12926, subd. (d).

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25 Gov. Code, § 12945, subd. (a)(1).

26 Cal. Code Regs., tit. 2, § 11037 [“There is no eligibility requirement, such as minimum hours worked or length of service, before an employee affected or disabled by pregnancy is eligible for reasonable accommodation, transfer, or disability leave.”].

27 Cal. Code Regs., tit. 2, § 11035, subd. (g) [“‘Eligible female employee’ includes a transgender employee who is disabled by pregnancy.”].

28 Cal. Code Regs., tit. 2, § 11043, subd. (a).

29 Cal. Code Regs., tit. 2, § 11043, subd. (c).

30 Cal. Code Regs., tit. 2, § 11043, subds. (a), (c).

31 Gov. Code, § 12945.2.

32 Gov. Code, § 12945.2, subd. (b)(5)(A) [“‘Family care and medical leave’ means any of the following: . . . Leave for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.”].

33 Gov. Code, § 12945.2, subd. (p) [“An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.”].

34 Cal. Code Regs., tit. 2, § 11046, subd. (a).

35 On September 17, 2020, Governor Gavin Newsom signed Senate Bill No. 1383, which significantly expanded family and medical leave rights for California employees. This section reflects those changes, which took effect on January 1, 2021.

36 Gov. Code, § 12945.2, subds. (a), (b)(4)(A) [applying to employers with five or more employees].

37 Cal. Code Regs., tit. 2, § 11088, subd. (a) [“It is an unlawful employment practice for a covered employer to refuse to grant, upon reasonable request, a CFRA leave to an eligible employee.”].

38 Cal. Code Regs., tit. 2, § 11090, subd. (d) [“CFRA leave taken for reason of the birth, adoption, or foster care placement of a child of the employee

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does not have to be taken in one continuous period of time. Any leave(s) taken shall be concluded within one year of the birth or placement of the child with the employee in connection with the adoption or foster care of the child by the employee."].

39 Cal. Code Regs., tit. 2, § 11090, subd. (d) ["The basic minimum duration of the leave shall be two weeks. However, an employer shall grant a request for a CFRA leave of less than two weeks' duration on any two occasions and may grant requests for additional occasions of leave lasting less than two weeks."].

40 Cal. Code Regs., tit. 2, § 11089, subd. (a)(1) ["Upon granting the CFRA leave, the employer shall inform the employee of its guarantee to reinstate the employee to the same or a comparable position, subject to the defenses permitted by section 11089(d), and shall provide the guarantee in writing upon request of the employee."].

41 Cal. Code Regs., tit. 2, § 11089, subd. (a)(2)(A) ["An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence."].

42 Cal. Code Regs., tit. 2, § 11089, subd. (b).

43 Cal. Code Regs., tit. 2, § 11089, subd. (b).

44 Cal. Code Regs., tit. 2, § 11089, subd. (b).

45 Cal. Code Regs., tit. 2, § 11089, subd. (a)(2)(B) ["If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, or other non-qualifying reason, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon returning to work."].

46 Gov. Code, § 12945.7, added by Assem. Bill No. 1949 (2021–2022 Reg. Sess.), effective January 1, 2023.

47 Gov. Code, § 12945.7.

48 Gov. Code, § 12945.6, added by Sen. Bill No. 848 (2023–2024 Reg. Sess.), effective January 1, 2024.

49 Gov. Code, § 12945.6.

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50 Gov. Code, § 12945.6.

51 Gov. Code, § 12945.6.

52 Gov. Code, § 12945.6.

53 Gov. Code, §§ 12945.6, 12945.7; see also Cal. Code Regs., tit. 2, § 11008, subd. (e)(2).

54 Gov. Code, §§ 12945.6, 12945.7.

55 Gov. Code, §§ 12945.6, 12945.7.

56 Gov. Code, § 12940, subd. (a).

57 Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a), 12945.

58 Gov. Code, § 12940, subds. (a), (m); *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54 ["In addition to a general prohibition against unlawful employment discrimination based on disability, FEHA provides an independent cause of action for an employer's failure to provide a reasonable accommodation for an applicant's or employee's known disability."].

59 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.

60 *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1338–1341.

61 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code Regs., tit. 2, § 11008, subd. (f).

62 Gov. Code, §§ 12926, subds. (f), (j), (m), 12926.1, 12940, subd. (a).

63 Gov. Code, § 12940, subds. (a), (m); Cal. Code Regs., tit. 2, § 11068, subd. (a).

64 Gov. Code, § 12940, subd. (m).

65 Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg et seq.

66 Gov. Code, § 12940, subd. (m) [making it unlawful "[f]or an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee."].

67 Gov. Code, § 12926, subd. (m)(1); *Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 584; *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1026.

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68 Gov. Code, § 12926, subd. (m)(1).

69 Gov. Code, § 12926, subd. (m)(1)(B)(ii) [“A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.”].

70 Gov. Code, § 12926, subd. (m)(1)(B)(iii) [“‘Major life activities’ shall be broadly construed and includes physical, mental, and social activities and working.”]; Cal. Code Regs., tit. 2, § 11065, subd. (l)(1) [“Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.”].

71 Gov. Code, § 12926, subd. (m)(2).

72 Gov. Code, § 12926, subd. (m)(3).

73 Gov. Code, § 12926, subds. (m)(4), (m)(5).

74 Cal. Code Regs., tit. 2, § 11065, subd. (d)(2)(C).

75 Cal. Code Regs., tit. 2, § 11065, subd. (d)(9)(B).

76 Cal. Code Regs., tit. 2, § 11065, subd. (d)(9)(B) [“**Disability** does not include: . . . conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis. These excluded conditions have little or no residual effects, such as the common cold; seasonal or common influenza; minor cuts, sprains, muscle aches, soreness, bruises, or abrasions; non-migraine headaches, and minor and non-chronic gastrointestinal disorders.“].

77 Gov. Code, § 12926, subd. (j)(1); Cal. Code Regs., tit. 2, § 11065, subd. (d)(1).

78 Gov. Code, § 12940, subd. (a).

79 Gov. Code, § 12926, subds. (j)(4), (j)(5).

80 Cal. Code Regs., tit. 2, § 11065, subd. (d)(1).

81 Gov. Code, § 12926, subd. (j); Cal. Code Regs., tit. 2, § 11065, subds. (d)(9)(A) [“Disability does not include: . . . compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the

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current unlawful use of controlled substances or other drugs, and "sexual behavior disorders . . . ."], (q).

82 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.

83 *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228, fn. 11 ["the reasonableness of an accommodation is generally a factual question"].

84 *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 948.

85 Cal. Code Regs., tit. 2, § 11068, subd. (e).

86 Cal. Code Regs., tit. 2, § 11068, subd. (e).

87 *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228 ["[T]he employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide." (Quotation marks omitted.)], quoting *Hankins v. The Gap, Inc.* (6th Cir. 1996) 84 F.3d 797, 800–801.

88 *Sterling Transit Co. v. Fair Employment Practice Com.* (1981) 121 Cal.App.3d 791, 798 ["An employer may refuse to hire persons whose physical handicap prevents them from performing their duties in a manner which does not endanger their health."].

89 Gov. Code, § 12926, subd. (p)(1).

90 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 374; Gov. Code, § 12926, subd. (p)(2); Cal. Code Regs., tit. 2, § 11065, subd. (p)(2).

91 Cal. Code Regs., tit. 2, §§ 11065, subd. (p)(2)(M), 11068, subd. (c).

92 Cal. Code Regs., tit. 2, § 11068, subd. (c) ["When an employee can work with a reasonable accommodation other than a leave of absence, an employer may not require that the employee take a leave of absence."].

93 Gov. Code, § 12940, subd. (a)(1) ["This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability . . . if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations . . . ."].

94 Gov. Code, § 12926, subd. (f).

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95 Gov. Code, § 12926, subd. (f)(1); Cal. Code Regs., tit. 2, § 11065, subd. (e)(1)(A); *Lui v. City and County of San Francisco* (2012) 211 Cal.App.4th 962, 972.

96 See, e.g., Gov. Code, § 12926, subd. (f)(1) ["A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following . . . ."].

97 Gov. Code, § 12926, subd. (f); Cal. Code Regs., tit. 2, § 11065, subd. (e)(3) ["'Marginal functions' of an employment position are those that, if not performed, would not eliminate the need for the job or that could be readily performed by another employee or that could be performed in an alternative way."].

98 Cal. Code Regs., tit. 2, § 11065, subd. (e)(3).

99 *Green v. State of California* (2007) 42 Cal.4th 254, 258 ["[T]he FEHA requires employees to prove that they are qualified individuals under the statute just as the federal ADA requires."]; Cal. Code Regs., tit. 2, §§ 11065, subd. (o) ["'**Qualified individual**,' for purposes of disability discrimination under California Code of Regulations, title 2, section 11066, is an applicant or employee who has the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."], 11066, subd. (a) ["An applicant or employee has the burden of proof to establish that the applicant or employee is a qualified individual capable of performing the essential functions of the job with or without reasonable accommodation."].

100 *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 947; Cal. Code Regs., tit. 2, § 11065, subd. (r) ["'Undue hardship' means, with respect to the provision of an accommodation, an action requiring significant difficulty or expense incurred by an employer or other covered entity, when considered under the totality of the circumstances in light of the following factors: . . . ."].

101 *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 947; Cal. Code Regs., tit. 2, § 11065, subd. (r).

102 For other factors, see Cal. Code Regs., tit. 2, § 11065, subd. (r).

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103 Gov. Code, § 12940, subd. (n); Cal. Code Regs., tit. 2, § 11069.

104 *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1195.

105 Gov. Code, § 12940, subd. (n).

106 Cal. Code Regs., tit. 2, § 11069, subd. (a).

107 *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.

108 Cal. Code Regs., tit. 2, § 11069, subds. (d)(1), (f).

109 Cal. Code Regs., tit. 2, § 11069, subd. (g).

110 Cal. Code Regs., tit. 2, § 11069, subd. (g).

111 *Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 971 [“an employer’s failure to properly engage in the process is separate from the failure to reasonably accommodate an employee’s disability and gives rise to an independent cause of action”].

112 Cal. Code Regs., tit. 2, § 11069, subd. (d)(1).

113 Cal. Code Regs., tit. 2, § 11069, subd. (f).

114 Gov. Code, §§ 12945, subd. (a)(2), 12945.2, subd. (e).

115 Cal. Code Regs., tit. 2, § 11044, subd. (e) [“The employee shall retain employee status during the period of the pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee’s reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions.”].

116 Unemp. Ins. Code, § 2655, as amended by Stats. 2022, ch. 878 (Sen. Bill No. 951), for periods of disability commencing on or after January 1, 2025.

117 Employment Development Dept., Disability Insurance Benefits.

118 Employment Development Dept., Am I Eligible for Disability Insurance Benefits?

119 Unemp. Ins. Code, § 3301, subd. (d) [“No more than eight weeks of family temporary disability insurance benefits shall be paid within any 12-month

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period.”].

120 Unemp. Ins. Code, § 3301, subds. (b)–(d); Employment Development Dept., Paid Family Leave Benefit Payment Amounts.

121 Gov. Code, §§ 12945, 12945.2, subd. (d).

122 Gov. Code, § 12945.2, subd. (d) [“An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer.”].

123 Gov. Code, § 12945.2, subd. (d); Cal. Code Regs., tit. 2, § 11092, subd. (b)(1).

124 Cal. Code Regs., tit. 2, § 11044, subd. (b).

125 Cal. Code Regs., tit. 2, § 11044, subd. (b)(2).

126 Cal. Code Regs., tit. 2, § 11092, subd. (b)(3).

127 Unemp. Ins. Code, § 3303.1, as amended by Assem. Bill No. 2123 (2023–2024 Reg. Sess.), effective January 1, 2025.

128 Gov. Code, § 12945, subd. (a)(1) [“An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.”]; Cal. Code Regs., tit. 2, § 11091, subd. (a)(1).

129 Cal. Code Regs., tit. 2, §§ 11050, subd. (a)(1), 11091, subd. (a)(1).

130 Cal. Code Regs., tit. 2, § 11042, subd. (c) [“It is an unlawful employment practice for an employer to refuse to grant pregnancy disability leave to an employee disabled by pregnancy.”].

131 Cal. Code Regs., tit. 2, § 11091, subd. (a)(1).

132 Cal. Code Regs., tit. 2, § 11091, subd. (a)(2); Cal. Code Regs., tit. 2, § 11050, subd. (a)(3) [“If 30 days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances,

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a medical emergency, or other good cause, notice must be given as soon as practicable."].

133 Cal. Code Regs., tit. 2, § 11050, subd. (a)(3); Cal. Code Regs., tit. 2, § 11091, subd. (a)(3).

134 Cal. Code Regs., tit. 2, § 11050, subd. (a)(4) ["An employer shall not deny reasonable accommodation, transfer, or pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide adequate advance notice of the need for the reasonable accommodation, transfer, or leave."].

135 Cal. Code Regs., tit. 2, § 11050, subd. (b) ["As a condition of granting reasonable accommodation, transfer, or pregnancy disability leave, the employer may require written medical certification."].

136 Cal. Code Regs., tit. 2, § 11091, subd. (a)(1).

137 See *Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 237 ["An adverse employment decision cannot be made 'because of' a disability, when the disability is not known to the employer. Thus, in order to prove an ADA claim, a plaintiff must prove the employer had knowledge of the employee's disability when the adverse employment decision was made."].

138 *Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 887.

139 *Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 887.

140 *Scotch v. Art Institute of California-Orange County, Inc.* (2009) 173 Cal.App.4th 986, 1013; Cal. Code Regs., tit. 2, § 11069, subd. (b).

141 *Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 971.

142 *Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236–237.

143 Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a), 12945.

144 *Johnson Controls, Inc. v. Fair Employment & Housing Com.* (1990) 218 Cal.App.3d 517, 533.

145 Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a).

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146 *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1339 [“Under section 12940, a woman disabled by pregnancy is entitled to the protections afforded any other disabled employee—a reasonable accommodation that does not impose an undue hardship on her employer.”]; Cal. Code Regs., tit. 2, § 11068, subd. (a).

147 See, e.g., Gov. Code, § 12945.

148 Labor Code, § 1030 [“Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee’s infant child”]; 29 U.S.C. § 218d(a)(1) [“An employer shall provide . . . a reasonable break time for an employee to express breast milk for such employee’s nursing child for 1 year after the child’s birth each time such employee has need to express the milk . . . .”].

149 *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307; *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129.

150 Gov. Code, § 12940; CACI No. 2500 [Disparate Treatment—Essential Factual Elements].

151 An agent is a person who acts on behalf of an employer. (Civ. Code, § 2295.) The employer must agree to have the agent act on its behalf for this type of relationship to exist. (*Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 91 [“An agency relationship is a bilateral matter created through mutual consent.”].)

152 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code Regs., tit. 2, § 11008, subd. (f).

153 Gov. Code, § 12926, subd. (d).

154 *Reno v. Baird* (1998) 18 Cal.4th 640, 663 [“[W]e conclude that individuals who do not themselves qualify as employers may not be sued under the FEHA for alleged discriminatory acts.”]; *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173 [“[W]e conclude that the employer is liable for retaliation under section 12940, subdivision (h), but nonemployer individuals are not personally liable for their role in that retaliation.”].

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155 *Le Bourgeois v. Fireplace Mfg.* (1998) 68 Cal.App.4th 1049, 1054–1055 ["[D]iscrimination claims under the FEHA . . . may be maintained against employers, but not against supervisors individually."].

156 Gov. Code, § 12940, subd. (j)(4)(A) [defining "employer" to include "any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract," for the purposes of harassment]; *Page v. Superior Court* (1995) 31 Cal.App.4th 1206, 1217 ["FEHA's prohibition against harassment is not limited to employers of five or more persons. Rather, FEHA expressly makes the harassment prohibition applicable to employers of 'one or more persons.'"].

157 Gov. Code, § 12940, subd. (j)(3) ["An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action."]; see also *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707 ["When the harasser is a supervisor, the employer is strictly liable for the supervisor's actions. [Citation.] When the harasser is a nonsupervisory employee, employer liability turns on a showing of negligence (that is, the employer knew or should have known of the harassment and failed to take appropriate corrective action)."].

158 Gov. Code, § 12940, subd. (a).

159 See generally Gov. Code, § 12940.

160 Gov. Code, § 12926, subd. (c); Cal. Code Regs., tit. 2, § 11008, subd. (e) ["'Employee.' Any individual under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written."]; but see *Shephard v. Loyola Marymount Univ.* (2002) 102 Cal.App.4th 837, 842 ["[T]he FEHA does not define an employer, employee, or what constitutes employment."].

161 Cal. Code Regs., tit. 2, § 11008, subd. (c) ["'Applicant.' Any individual who files a written application or, where an employer or other covered entity does not provide an application form, any individual who otherwise indicates a specific desire to an employer or other covered entity to be considered for employment."].

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162 Cal. Code Regs., tit. 2, § 11008, subd. (e)(5) [“An individual compensated by a temporary service agency for work to be performed for an employer contracting with the temporary service agency is an employee of that employer for such terms, conditions and privileges of employment under the control of that employer. Such an individual also is an employee of the temporary service agency with regard to such terms, conditions and privileges of employment under the control of the temporary service agency.”].

163 See, e.g., Gov. Code, § 12940, subds. (c), (j), & (l); Cal. Code Regs., tit. 2, § 11008.

164 *Sada v. Robert F. Kennedy Med. Ctr.* (1997) 56 Cal.App.4th 138, 153 [“The Act does not prohibit an employer from rejecting a job applicant because she is less qualified than the person selected.”].

165 Gov. Code, § 12926, subd. (c) [“Except as provided by Section 12926.05, ’employee’ does not include any individual employed by that person’s parent, spouse, or child . . . .”]; *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 632 [noting that FEHA excludes persons employed by close relatives].

166 Cal. Code Regs., tit. 2, § 11008, subd. (e)(1) [“‘**Employee**‘ does not include an independent contractor as defined in Labor Code section 3353.”]; *Estrada v. City of Los Angeles* (2013) 218 Cal.App.4th 143, 155 [unpaid volunteer found to not be an employee within the meaning of FEHA].

167 Gov. Code, § 12940, subds. (j)(1), (j)(5).

168 Gov. Code, § 12940, subd. (a).

169 Gov. Code, § 12940, subd. (a).

170 Gov. Code, § 12940.

171 Gov. Code, §§ 12926, 12940.

172 Gov. Code, § 12965, subd. (c)(6) [“In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney’s fees and costs, including expert witness fees, except that . . . a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous,

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unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so."].

173 Gov. Code, § 12965, subd. (c)(6).

174 Gov. Code, § 12960, subd. (c).

175 *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724; *Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 90 ["Before a person may file a civil complaint alleging a violation of this statute, he or she must first file an administrative claim with the DFEH."].

176 Gov. Code, § 12965, subd. (c)(1)(A) ["[I]f a civil action is not brought by the department pursuant to subdivision (a) within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought pursuant to subdivision (a), the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice."].

177 Cal. Code Regs., tit. 2, § 10005, subd. (a) ["Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may forgo having the department investigate a complaint and instead obtain an immediate right-to-sue notice."].

178 Gov. Code, § 12960, subd. (e)(5).

179 Gov. Code, § 12965, subd. (c)(1)(D).

180 Gov. Code, § 12940, subd. (h).

181 Gov. Code, § 12940, subd. (h).

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