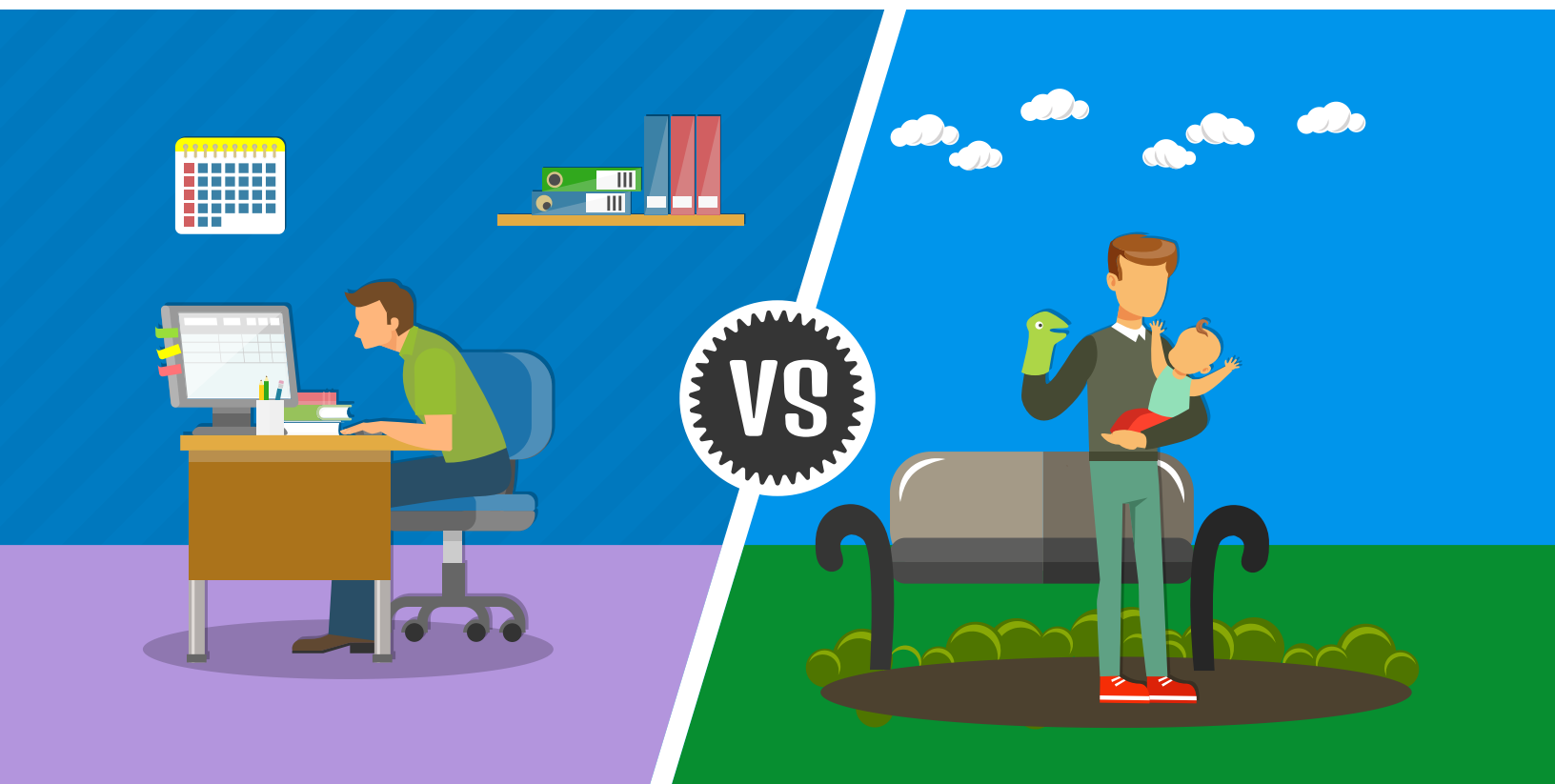




PATERNITY LEAVE LAW IN CALIFORNIA

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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.

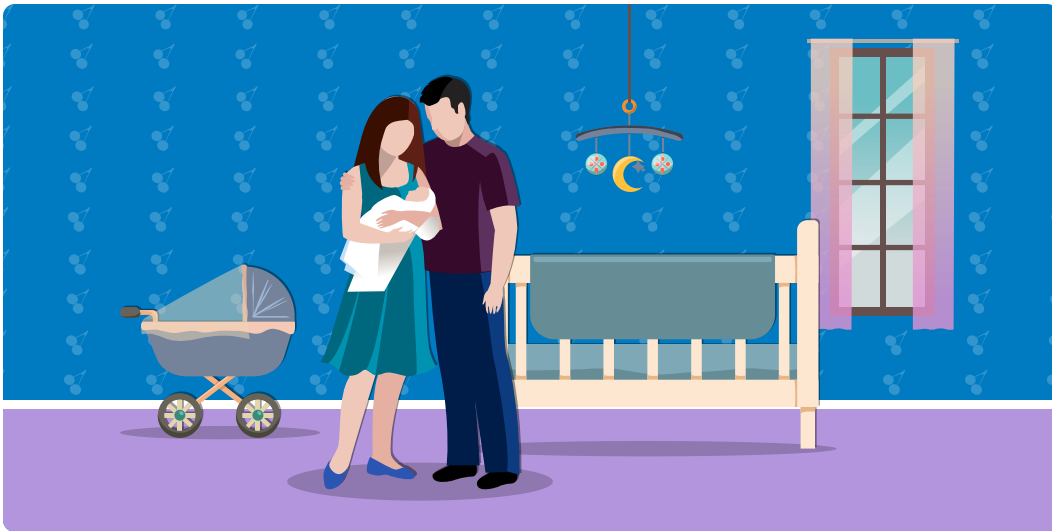


Paternity leave is the time a new father takes off from work for the birth, adoption, or foster care placement of his new child. In California, many new fathers have a legal right to take up to *12 weeks* of unpaid, job-protected leave to bond with a child, and some also have a right to partial pay while they are off.¹

The rights of new fathers are often overlooked, because a greater emphasis is usually placed on the rights of mothers to take maternity leave. But the protections for fathers are real, and this article explains how they work.²

Importantly, although this article describes paternity leave rights in terms of biological fathers, many of the same rules apply to same-sex spouses.

The Right to Paternity Leave Generally



In California, the legal right to take leave differs in significant ways for men and women. Most notably, many women have a right to take pregnancy disability leave.³ But, because men cannot physically be disabled by pregnancy, they have no right to pregnancy disability leave.⁴

Many men do, however, have a legal right to take *up to 12 weeks* of family leave, which can be used to bond with a new child or to care for a family member with a serious health condition.⁵

In California, there are two primary laws protecting the right of new fathers to take paternity leave:



The Family and Medical Leave Act (FMLA),⁶ which provides a federal right for eligible employees to take up to 12 weeks of unpaid leave to tend to certain family obligations, including caring for the serious health condition of a spouse and the birth or adoption of a child.⁷



The California Family Rights Act (CFRA),⁸ which is the state counterpart to the FMLA and provides most of the same rights, including a right for

eligible employees to take up to 12 weeks of unpaid paternity leave.⁹

Employees who are eligible to take leave under both of these laws must take them *concurrently*.¹⁰ Meaning, the aggregate amount of potential paternity leave is 12 workweeks.¹¹

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

Paternity leave is therefore unpaid unless the employee has a separate legal right to pay during leave.¹² The laws controlling the right to pay during paternity leave are addressed in Chapter 4, below.

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

Eligibility Requirements for Paternity Leave



Eligible employees in California have a right to take up to **12 weeks** of family leave per year.¹³ This type of leave can be used for any of the following reasons:

-  To bond with a child who was born to, adopted by, or placed for foster care with, the employee;
-  To care for the employee's child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, domestic partner, or a designated person who has a serious health condition; or¹⁴
-  Because the employee is suffering from a serious health condition rendering them unable to perform the functions of their job.¹⁵

The eligibility requirements depend on the purpose of the employee's leave.

2.1 Child Bonding Leave

Since January 1, 2021,¹⁶ 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*;¹⁷
-  The employee worked *more than 12 months* for the employer prior to the date that the period of leave is taken;¹⁸ and
-  In the past 12-month period, the employee worked *at least 1,250 hours* for the employer.¹⁹

Notably, there is no longer any requirement that a minimum number of employees work within 75 miles of the employee's worksite. The five-employee count applies no matter where the employer's employees are located.²⁰

If all three requirements are met, employers will usually be required to provide up to 12 weeks of family leave to eligible employees.²¹

2.2 Serious Health Conditions

As mentioned above, in addition to taking leave for the purpose of child bonding, eligible employees can use family leave to care for their own serious health condition or the serious health condition of a family member.²² This type of leave can be useful when a spouse suffers from pregnancy-related complications.

To be eligible for this type of leave, the following requirements must be met:

-  The employer must employ *five or more employees*;²³
-  The employee worked *more than 12 months* for the employer prior to the date that the period of leave is taken;²⁴ and
-  In the past 12-month period, the employee worked *at least 1,250 hours* for the employer.²⁵

A *serious health condition*, for these purposes, is a physical or mental condition that involves either of the following:

-  Inpatient care in a hospital, hospice, or residential health care facility; or
-  Continuing treatment or continuing supervision by a healthcare provider.²⁶

Inpatient care means a stay in a hospital, hospice, or residential health care facility, as well as any subsequent treatment in connection with that inpatient care.²⁷

2.3 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.²⁸

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.²⁹

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

2.4 Providing Notice to Employers

Employees wishing to take family leave must provide their employer with a reasonable notice of their need to take family leave.³⁰ That notice should include, at a minimum, 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.³¹

This notice can be made verbally,³² but it is often a good idea to put it in writing.

If the need for the family leave is foreseeable, employers can require their employees to give at least 30 days' advance notice before the leave is to begin.³³ The employer can also ask questions designed to determine whether an absence is potentially CFRA- or FMLA-qualifying, and the employee must respond to those questions.³⁴

If the need for family leave is sudden or unexpected, notice must be given by the employee as soon as is practicable.³⁵

2.5 Reinstatement After Family Leave

Most employees have a guaranteed right to be reinstated with their employer when they return from family leave.³⁶ This is true even if the employee's position was restructured or replaced to accommodate the employee's absence.³⁷

The right to reinstatement means that the employee is entitled to the *same* or a *comparable* position.³⁸ 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.³⁹

The new position must also involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.⁴⁰

Additionally, if an employee returns to the job and is no longer qualified for it due to missing training or other events that happened while he was off work, he must be afforded a reasonable opportunity to fulfill those key requirements.⁴¹

Taking Leave as a Reasonable Accommodation



Studies have shown that fatherhood can have potentially significant effects on a man's hormones.⁴² As a result, some men suffer from male postpartum depression [↗](#) (sometimes called *paternal postnatal depression*).

California law prohibits covered employers from discriminating against employees on the basis of their mental disabilities.⁴³ This protection extends to men who are mentally disabled as a result of clinical depression.⁴⁴

As part of the rule against discrimination, California law imposes a duty on covered employers to make reasonable accommodations for employees with mental disabilities.⁴⁵ 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.⁴⁶

Importantly for the purposes of paternity leave, a “reasonable accommodation” can sometimes include a period of leave, even after other types of leave have been exhausted.⁴⁷

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 applies to most businesses that have five or more employees.⁴⁸
-  The employee must have a qualifying physical or mental disability that impairs the employee's ability to perform the essential functions of his or her job.⁴⁹
-  If given a reasonable accommodation, the employee must be capable of performing his or her job's essential functions.⁵⁰
-  The reasonable accommodation would not cause the employer an undue hardship.⁵¹

Each of these requirements has special rules and definitions under the law, which we'll take a look at next.

3.1 Which Employers Are Covered

Employers are covered by California's anti-discrimination laws 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 agent⁵² of a covered employer, or
-  The employer is a state or local governmental entity.⁵³

If the employer falls into one of these categories, they are a covered employer under California's anti-discrimination laws and may be required to provide their employees with a reasonable accommodation.⁵⁴

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 anti-discrimination laws.⁵⁵

3.2 Covered Mental Disabilities

To qualify for a reasonable accommodation in the context of paternity leave, the employee must have a mental disability that somehow impairs them.⁵⁶ A *mental disability*, for these purposes, is any mental or psychological condition that limits a major life activity.⁵⁷

In general, both employees and job applicants have a right to be free from discrimination due to their mental disability.⁵⁸ 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.⁵⁹

Common examples of qualified mental disabilities include:

-  Emotional illnesses,
-  Mental illnesses,
-  Intellectual or cognitive disability,
-  Certain learning disabilities,
-  Autism spectrum disorders,
-  Schizophrenia,
-  Clinical depression,
-  Bipolar disorder,
-  Post-traumatic stress disorder, and
-  Obsessive compulsive disorder.⁶⁰

California law specifically excludes certain behavioral problems, even though many of them are arguably mental disabilities. In the context of fatherhood, the most important exclusion involves substance abuse disorders resulting from the current *unlawful* use of drugs.⁶¹

3.3 “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.⁶²

The type of adjustment will vary depending on the employee's job and the nature of the disability.⁶³ Whether a proposed accommodation is *reasonable* is a question of fact, and can be the subject of much debate.⁶⁴

In general, courts are flexible in considering what accommodations are reasonable.⁶⁵ And employers are required to consider “any and all” reasonable accommodations they are aware of, unless those accommodations will create an undue hardship.⁶⁶

Additionally, the employer *must* consider the employee's preference in deciding which kind of accommodation to select.⁶⁷ Nevertheless, employers have discretion to choose between accommodations that are otherwise reasonable and effective.⁶⁸

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.⁶⁹

In the context of mental disabilities, reasonable accommodations 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.⁷⁰ 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.⁷¹ As explained by one court:

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*
(2000) 85 Cal.App.4th 245, 263



Importantly, however, leaves of absence should usually be treated as a last resort by employers.⁷²

3.4 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.⁷³

Essential job functions are the fundamental duties of the employment position.⁷⁴ 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 skill or expertise in performing a highly specialized function, then it may be essential.⁷⁵

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.⁷⁶

Importantly, essential functions differ from what courts call the “marginal functions” of a job.⁷⁷ *Marginal functions* are those that: could be performed by another employee or could be performed in a different way.⁷⁸ 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.⁷⁹

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.⁸⁰

3.5 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.⁸¹ 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.⁸²

Of course, each employer is different. So the factors courts will consider may vary from case to case.⁸³

3.6 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.⁸⁴ 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.⁸⁵

An employer who fails to engage in this process violates the law.⁸⁶ The employer's participation must be timely and in good faith.⁸⁷ If the process fails, responsibility rests with the party who failed to participate in good faith.⁸⁸

In some situations, the employer may request medical information to confirm the existence of the employee's disability.⁸⁹ If this happens, the employer has a duty to keep that information confidential.⁹⁰ There are exceptions to this duty for certain supervisors, managers, government officials, and safety personnel.⁹¹

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.⁹² Meaning, an

aggrieved employee can seek financial damages for the employer's failure to participate in an interactive process alone.

3.7 The Worker's Obligation to Notify

To establish a case of unlawful disability discrimination, employees must show that they were subjected to adverse employment action *because of* their disability.⁹³

In most cases that means that the employer must *know* about the employee's disability.⁹⁴ 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 (which is very unlikely in the context of clinical depression).⁹⁵

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.⁹⁶

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.⁹⁷

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.⁹⁸

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.⁹⁹

 QUICK TIP

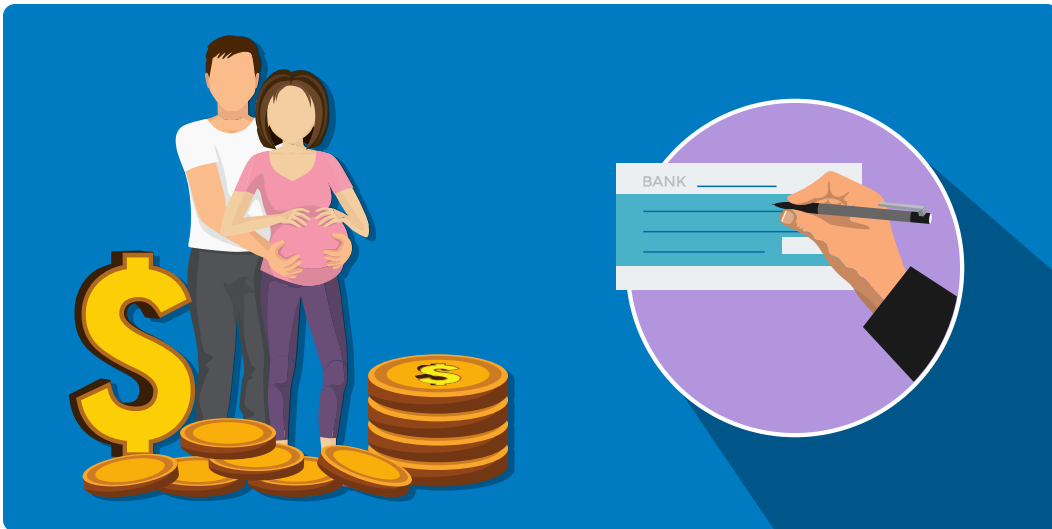
It can sometimes be a good idea for employees to provide a notice of their disability in writing. This can come in the form of an email, a dated letter, a text message, or other electronic message.

A written notice can help avoid any confusion and to document the fact that the employee gave the employer notice of the disability. It is important to prevent the employer from later denying their knowledge of the employee's disability or need for an accommodation.

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.¹⁰⁰

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.¹⁰¹

The Right to Pay and Benefits During Paternity Leave



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

4.1 California's Paid Family Leave Program

Some employees are eligible for up to **eight weeks** of paid family leave (PFL) to bond with their new child.¹⁰² Paid Family Leave 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.

Since January 1, 2025, Paid Family Leave has paid roughly 70 to 90 percent of an employee's wages, with lower earners receiving the higher percentage, up to a maximum weekly benefit that the state adjusts each year.¹⁰³

4.2 Using Accrued Paid Time Off

During paternity leave, employees can choose to use any accrued vacation or other accrued paid time off.¹⁰⁴ Accrued sick leave is treated differently: for child-bonding leave, an employee may use it only if the employee and employer mutually agree.¹⁰⁵

Likewise, employers can require new fathers to use accrued paid or unpaid time off during their period of family leave.¹⁰⁶

There is one important limit on this rule for Paid Family Leave. Before 2025, an employer could require an employee to use up to two weeks of accrued vacation before Paid Family Leave benefits began. Since January 1, 2025, employers can no longer impose that requirement.¹⁰⁷

4.3 Medical Benefits During Paternity Leave

Employers are legally obligated to maintain a worker's medical benefits at the same contribution rates during family leaves of absence.¹⁰⁸ 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.

Handling Violations of Paternity 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 paternity 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.

5.1 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.

5.2 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.¹⁰⁹ A prevailing employer, on the other hand, normally cannot recover its own fees from the employee unless the court finds the case was frivolous.¹¹⁰

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.

5.3 State Law Claims Start with a Government Agency

When an employee decides to sue their employer for violating California's paternity leave laws, they must first file a written complaint with California's Civil Rights Department (the "CRD"), formerly known as the Department of Fair Employment and Housing (the "DFEH").¹¹¹ Employees pursuing a claim related to paternity leave violations *cannot* go straight to court with a lawsuit.¹¹²

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

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.¹¹³ The employee may then pursue their case by bringing a lawsuit in court.

5.4 The Deadline to File (Statute of Limitations)

Employees are up against strict deadlines when pursuing relief for paternity leave violations. If the employee is bringing claims under state law, they must file a complaint against the employer with California's Civil Rights Department no later than **three years** of the date of the alleged violation.¹¹⁴

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.¹¹⁵ 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. And employees wishing to pursue relief under federal law may be subject to a different timeline altogether. You should speak with a lawyer immediately if you are unsure whether your claim is time-barred.

5.5 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.¹¹⁶

Similarly, an employee who has suffered a violation of California's paternity leave laws has a right to file a complaint, testify, or assist in any proceeding in a claim against their employer. The employer may not retaliate against them for doing so.¹¹⁷

5.6 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.

References

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- | | |
|-------|---|
| 1 | Gov. Code, § 12945.2, subd. (a); 29 U.S.C. § 2612(a)(1). The right to partial pay during leave is addressed in Chapter 4. |
| <hr/> | |
| 2 | Unless otherwise mentioned, the laws in this article do not apply to employees of the federal government or certain federal contractors. |
| <hr/> | |
| 3 | See Gov. Code, § 12945. |
| <hr/> | |
| 4 | Gov. Code, § 12945, subd. (a)(1) [providing pregnancy disability leave for an employee disabled by pregnancy, childbirth, or a related medical condition]. |
| <hr/> | |
| 5 | 29 U.S.C. § 2612(a)(1); Gov. Code, § 12945.2. |
| <hr/> | |
| 6 | 29 U.S.C. §§ 2601–2654; 29 C.F.R. §§ 825.100–825.803. |
| <hr/> | |
| 7 | 29 U.S.C. § 2612(a)(1). |
| <hr/> | |
| 8 | Gov. Code, § 12945.2; Cal. Code Regs., tit. 2, §§ 11087–11098. |
| <hr/> | |
| 9 | Gov. Code, § 12945.2, subd. (a). |
| <hr/> | |
| 10 | Gov. Code, § 12945.2, subd. (p) [“Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions.”]. |
| <hr/> | |
| 11 | Gov. Code, § 12945.2, subd. (p) [“The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period.”]. |
| <hr/> | |
| 12 | See Gov. Code, § 12945.2. |
| <hr/> | |
| 13 | Gov. Code, § 12945.2. |
| <hr/> | |
| 14 | The “designated person” category was added effective January 1, 2023. It covers any individual related by blood or whose association with the employee is the equivalent of a family relationship, and the employee |

identifies the person when requesting leave. (Gov. Code, § 12945.2, subd. (b)(2); Assem. Bill No. 1041 (2021–2022 Reg. Sess.).)

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- 15 Gov. Code, § 12945.2, subd. (b)(5).
-
- 16 On September 17, 2020, Governor Gavin Newsom signed [Senate Bill No. 1383](#)², which significantly expanded family and medical leave rights for California employees and replaced the more limited New Parent Leave Act. This section reflects those changes, which took effect on January 1, 2021.
-
- 17 Gov. Code, § 12945.2, subds. (a), (b)(4)(A) [applying to employers with five or more employees].
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- 18 Gov. Code, § 12945.2, subd. (a).
-
- 19 Gov. Code, § 12945.2, subd. (a).
-
- 20 Gov. Code, § 12945.2, subd. (b)(4)(A) [containing no worksite or radius limitation]; Cal. Code Regs., tit. 2, § 11008, subd. (e)(1)(C).
-
- 21 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.”].
-
- 22 Gov. Code, § 12945.2, subd. (b)(5).
-
- 23 Gov. Code, § 12945.2, subds. (a), (b)(4)(A); Cal. Code Regs., tit. 2, § 11087, subd. (d) [“‘Covered employer’ means any person or individual, including successors in interest of a covered employer, engaged in any business or enterprise in California who directly employs five or more persons . . .”].
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- 24 Gov. Code, § 12945.2, subd. (a).
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- 25 Gov. Code, § 12945.2, subd. (a).
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- 26 Gov. Code, § 12945.2, subd. (b)(13); Cal. Code Regs., tit. 2, § 11087, subd. (v).
-
- 27 Cal. Code Regs., tit. 2, § 11087, subd. (v)(1) [“‘Inpatient care’ means a stay in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity.”].
-
- 28 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

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.”].

29 Cal. Code Regs., tit. 2, § 11090, subd. (d) [“[T]he 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.”].

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

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

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

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

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

35 Cal. Code Regs., tit. 2, § 11091, subd. (a)(3).

36 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.”].

37 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.”].

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

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

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

41 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.”].

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- 42 Scientific American, *Fathers-to-Be May Have Hormonal Changes Too* [↗](#) (last accessed November 22, 2017); WebMD, *Expectant Dads May Also Have Hormonal Changes* [↗](#) (last accessed November 22, 2017).
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- 43 Gov. Code, § 12940, subd. (a).
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- 44 Gov. Code, §§ 12926, subd. (j), 12926.1, subd. (c) [“Physical and mental disabilities include, but are not limited to . . . clinical depression . . . ”], 12940, subd. (a).
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- 45 Gov. Code, § 12940, subd. (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.”].
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- 46 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.
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- 47 *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1338–1341.
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- 48 Gov. Code, § 12926, subd. (d), 12940, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (e).
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- 49 Gov. Code, §§ 12926, subds. (d), (i)(2), 12926.1, 12940, subd. (a).
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- 50 Gov. Code, § 12940, subd. (a), (m); Cal. Code of Regs., tit. 2, § 11068, subd. (a).
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- 51 Gov. Code, § 12940, subd. (m).
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- 52 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.”].)
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- 53 Gov. Code, § 12926, subd. (d); Cal. Code of Regs., tit. 2, § 11008, subd. (e).
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- 54 Gov. Code, § 12926, subd. (d).
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- 55 Gov. Code, § 12926, subd. (d).
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56	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.”].
57	Gov. Code, § 12926, subd. (j)(1); Cal. Code Regs., tit. 2, § 11065, subd. (d)(1).
58	Gov. Code, § 12940, subd. (a).
59	Gov. Code, § 12926, subd. (j)(4), (j)(5).
60	Cal. Code Regs., tit. 2, § 11065, subd. (d)(1).
61	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 current unlawful use of controlled substances or other drugs, and ‘sexual behavior disorders’ . . . ”], (q).
62	<i>Nealy v. City of Santa Monica</i> (2015) 234 Cal.App.4th 359, 373.
63	<i>Hanson v. Lucky Stores, Inc.</i> (1999) 74 Cal.App.4th 215, 228, fn. 11 [“the reasonableness of an accommodation is generally a factual question”].
64	<i>Hanson v. Lucky Stores, Inc.</i> (1999) 74 Cal.App.4th 215, 228, fn. 11 [“the reasonableness of an accommodation is generally a factual question”].
65	<i>Prilliman v. United Air Lines, Inc.</i> (1997) 53 Cal.App.4th 935, 948.
66	Cal. Code of Regs., tit. 2, § 11068, subd. (e).
67	Cal. Code of Regs., tit. 2, § 11068, subd. (e).
68	<i>Hanson v. Lucky Stores, Inc.</i> (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 <i>Hankins v. The Gap, Inc.</i> (6th Cir. 1996) 84 F.3d 797, 800–801.
69	<i>Sterling Transit Co. v. Fair Employment Practice Com.</i> (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.”].

- 70 *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).
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- 71 Cal. Code Regs., tit. 2, §§ 11065, subd. (p)(2)(M), 11068, subd. (c).
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- 72 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.”].
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- 73 Gov. Code, § 12940, subd. (a)(1) [providing that FEHA does not prohibit discharging an employee who “is unable to perform the employee’s essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations”].
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- 74 Gov. Code, § 12926, subd. (f).
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- 75 Gov. Code, § 12926, subd. (f)(1); Cal. Code Regs., tit. 2, § 11065, subd. (e)(1)(A); *Lui v. San Francisco* (2012) 211 Cal.App.4th 962, 972.
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- 76 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 . . .”].
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- 77 Gov. Code, § 12926, subd. (f); Cal. Code Regs., tit. 2, § 11065, subd. (e)(3).
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- 78 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.”].
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- 79 Cal. Code Regs., tit. 2, § 11065, subd. (e)(3).
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- 80 *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.”].

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- 81 *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: . . . ”].
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- 82 *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 947; Cal. Code Regs., tit. 2, § 11065, subd. (r).
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- 83 For other factors, see Cal. Code Regs., tit. 2, § 11065, subd. (r).
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- 84 Gov. Code, § 12940, subd. (n); Cal. Code Regs., tit. 2, § 11069.
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- 85 *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1195.
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- 86 Gov. Code, § 12940, subd. (n).
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- 87 Cal. Code Regs., tit. 2, § 11069, subd. (a).
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- 88 *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.
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- 89 Cal. Code Regs., tit. 2, § 11069, subds. (d)(1), (f).
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- 90 Cal. Code Regs., tit. 2, § 11069, subd. (g).
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- 91 Cal. Code Regs., tit. 2, § 11069, subd. (g).
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- 92 *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”].
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- 93 *Deschene v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 44.
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- 94 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.”].
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95	<i>Faust v. California Portland Cement Co.</i> (2007) 150 Cal.App.4th 864, 887.
96	<i>Faust v. California Portland Cement Co.</i> (2007) 150 Cal.App.4th 864, 887.
97	<i>Scotch v. Art Institute of California-Orange County, Inc.</i> (2009) 173 Cal.App.4th 986, 1013; Cal. Code Regs., tit. 2, § 11069, subd. (b).
98	<i>Swanson v. Morongo Unified School Dist.</i> (2014) 232 Cal.App.4th 954, 971.
99	<i>Brundage v. Hahn</i> (1997) 57 Cal.App.4th 228, 236–237.
100	Cal. Code Regs., tit. 2, § 11069, subd. (d)(1).
101	Cal. Code Regs., tit. 2, § 11069, subd. (f).
102	Unemp. Ins. Code, § 3301; State of California Employment Development Department, <i>Paid Family Leave</i> [☞] [up to eight weeks in a 12-month period].
103	Unemp. Ins. Code, §§ 2655, 3301, as amended by Senate Bill No. 951 (2021–2022 Reg. Sess.); State of California Employment Development Department, <i>Paid Family Leave Benefit Payment Amounts</i> [☞] . The current maximum is posted on the EDD's benefit-amounts page.
104	Gov. Code, § 12945.2, subd. (d).
105	Gov. Code, § 12945.2, subd. (d) [“[A]n employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child . . . unless mutually agreed to by the employer and the employee.”].
106	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.”].
107	Assem. Bill No. 2123 (2023–2024 Reg. Sess.), effective January 1, 2025 [eliminating the employer’s ability to require use of up to two weeks of accrued vacation before Paid Family Leave benefits].

108	Gov. Code, § 12945.2, subd. (e)(1).
109	Gov. Code, § 12965, subd. (c)(6).
110	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, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.”].
111	Gov. Code, § 12960.
112	<i>Martin v. Lockheed Missiles & Space Co.</i> (1994) 29 Cal.App.4th 1718, 1724; <i>Williams v. City of Belvedere</i> (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.”].
113	Gov. Code, § 12965, subd. (c)(1)(A) [“[I]f a civil action is not brought by the department . . . within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought . . . , 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.”].
114	Gov. Code, § 12960, subd. (e)(5).
115	Gov. Code, § 12965, subd. (c)(1)(C).
116	Gov. Code, § 12940, subd. (h).
117	Gov. Code, § 12940, subd. (h).