

# EMPLOYMENT LAW SUMMARY

## California Employee Leave Laws— Overview



Employers have some flexibility when it comes to establishing or negotiating employee leave policies, providing their employees with various types of paid or unpaid leave as part of their overall compensation packages. However, California law requires covered employers to provide employees with job-protected leave in certain situations.

Employers must also comply with federal laws requiring employee leave, such as the Family and Medical Leave Act, and any local employee leave laws that apply, but federal and local leave requirements are not addressed here.

California has state employment laws regarding:

- Paid sick leave;
- Family and medical leave;
- Bereavement leave;
- Reproductive loss leave;
- Family sick leave;
- Pregnancy disability leave;
- Organ and bone marrow donor leave;
- Jury duty, witness and crime victim leave;
- Victim leave;
- Voting leave;
- Military and military spouse leave;
- School activity leave;
- Alcohol or drug rehabilitation leave;
- Volunteer firefighter, reserve police and emergency rescue personnel leave; and
- Civil air patrol leave.

The following list provides a high-level overview of California's employee leave laws.

### Paid Sick Leave

**All employers** must provide eligible employees with **24 hours (or three workdays)** of paid sick leave per year. *(Effective Jan. 1, 2024, this amount increases to 40 hours/five workdays.)* Employees may use this leave for preventive care for, or the diagnosis, care or treatment of, an existing health condition of the employee, a family member or a designated person. Employers are also required to provide paid sick leave to employees who are victims of domestic violence, sexual assault or stalking.

To be eligible for paid sick leave, an employee must work in California for **30 or more days** for the same employer within a year from the start of his or her employment. Certain employees are not covered by the law. Eligible employees may use accrued sick days beginning on their **90th day of employment**. Posting requirements apply.

## Family and Medical Leave

Under the California Family Rights Act (CFRA), employers with **five or more employees** must provide eligible employees with **unpaid** family and medical leave.

To be eligible for family and medical leave, an employee must:

- Have at least a **total of 12 months** of service with the employer; and
- Have worked at least 1,250 hours in the 12-month period prior to the date of the requested leave.

Eligible employees may take **up to 12 weeks** of CFRA leave in a 12-month period for:

- Childbirth;
- Adoption;
- Care for the serious health condition of the employee or of the employee's child, grandchild, parent, parent-in-law, grandparent, sibling, spouse, registered domestic partner or partner's child; or
- A qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

Leave runs concurrently with FMLA leave. Notice and certification requirements apply.

Effective Jan. 1, 2023, the CFRA also requires employers to provide five days of bereavement leave to employees who have worked for them for 30 days. Bereavement leave must be completed within three months of the family member's death, and it must be taken pursuant to any existing bereavement leave policy of the employer (so long as the employee is entitled to no less than a total of five days of bereavement leave). The leave may be unpaid in the absence of an existing policy, but employees may use other available leave, including paid sick leave. The days of bereavement leave do not have to be consecutive. Employers may require documentary verification of the family member's death within 30 days of the first day leave is taken. Other job protections apply to employees taking family and medical leave.

## Bereavement Leave

The California Fair Employment and Housing Act requires employers to provide **five days of bereavement leave** to employees who have worked for them for **30 days**. Bereavement leave must be completed within three months of the bereaved family member's death, and it must be taken pursuant to any existing bereavement leave policy of the employer (so long as the employee is entitled to no less than a total of five days of bereavement leave).

The leave may be **unpaid** in the absence of an existing policy, but employees may use other available leave, including paid sick leave. The days of bereavement leave do not have to be consecutive. Employers may require documentary verification of the family member's death within 30 days of the first day leave is taken.

## Reproductive Loss Leave

Effective Jan. 1, 2024, the California Fair Employment and Housing Act also requires employers to allow employees to take up to five days of unpaid leave following a reproductive loss. The requirement applies to employers with at least five employees, including the state and its political subdivisions, such as cities and counties.

Employees are eligible for the leave if they have worked for their employer for at least 30 days.

"Reproductive loss" is defined as a failed adoption, failed surrogacy, miscarriage, stillbirth or unsuccessful assisted reproduction. Reproductive loss leave must be taken within three months of the reproductive loss event and pursuant to any applicable leave policy of the employer. Total leave for an employee's multiple reproductive loss events is limited to 20 days per 12-month period. Employees may take the leave on nonconsecutive days.

In the absence of an existing applicable employer policy, reproductive loss leave may be unpaid. However, employees may use any available vacation, personal leave, accrued and available sick leave or compensatory time off.

The law prohibits employers from retaliating against employees who take the leave. Confidentiality provisions also apply.

## Family Sick Leave

**All employers that provide sick leave for employees** must permit employees to use their accrued sick leave to care for an ill child, parent, spouse or domestic partner of the employee. Leave is limited each year by the amount of sick leave the employee **would accrue in six months**. Leave runs concurrently with leave under the California Family Rights Act and the FMLA.

The definition of "family member" includes a child, parent, spouse, domestic partner, stepparent, parent-in-law, grandparent, grandchild or sibling. An employee must be permitted to use family sick leave for the same purposes as required under the paid sick leave law, including for the preventive care of a family member.

## Pregnancy Disability Leave

Employers with **five or more employees** must provide a reasonable period of leave of **up to four months** per pregnancy to female employees who are disabled by pregnancy, childbirth or a related medical condition.

Leave runs concurrently with FMLA leave and is **unpaid**. Notice and certification requirements apply.

Other job protections also apply to employees taking pregnancy disability leave.

## Organ and Bone Marrow Donor Leave

**Employers with 15 or more employees** must provide employees who are organ or bone marrow donors with:

- **Up to 30 business days of paid leave** per year and an additional 30 business days of unpaid leave per year to donate an organ; and
- **Up to five business days of leave** per year to donate bone marrow.

Notice and certification requirements apply.

Leave may not run concurrently with FMLA or California disability leave, but an employer may require employees to take up to two weeks' accrued sick leave, paid time off or vacation leave for organ donation or five days for bone marrow donation. Public employees must first exhaust paid sick leave before taking the unpaid leave.

## Jury Duty, Witness and Crime Victim Leave

Employers are prohibited from discharging or discriminating against employees for taking time off to serve on an inquest jury or trial jury, if the employee gives reasonable notice to the employer.

Employers must similarly allow employees (including employees who are crime victims) to take time off to comply with a subpoena or other court order as a witness in any judicial proceeding.

Employers must also allow employees who are victims of a violent felony, serious felony or felony theft or embezzlement (or who are the immediate family members of such a victim, a registered domestic partner of the victim, or the child of a registered domestic partner of the victim) to be absent from work to attend judicial proceedings related to that crime. Employees may use their accrued paid vacation time, personal leave time, sick leave or other available paid time off, or use unpaid leave time. The employee must give the employer a copy of the notice of each scheduled proceeding provided to the victim, unless advance notice is not feasible, in which case documentation evidencing the proceeding should be provided within a reasonable time.

Furthermore, employers may not discharge or discriminate or retaliate against an employee who is a victim of an offense listed in [California Labor Code § 230.5](#) for taking time off to be heard at any proceeding (including any delinquency proceeding) involving a post-arrest release decision, plea, sentencing, postconviction release decision or any proceeding in which a right of the victim is at issue. Employees must provide reasonable advance notice where feasible. If advance notice is not feasible, the employee must provide documentary certification within a reasonable time after the absence. Employees may use available vacation, personal leave, or compensatory time off.

## Victim Leave

**All employers** must grant **unpaid** leave to employees:

- Who are victims of crime or abuse that caused physical injury or mental injury;
- Who are victims of crime or abuse that caused mental injury and the threat of physical injury;
- Who are victims of domestic violence, sexual assault, or stalking; or
- Whose immediate family member was killed in a crime.

The purpose of the leave is to obtain any relief (such as a restraining order) to help ensure the health, safety or welfare of either themselves or their children. Employee notice and certification requirements apply.

**Employers with at least 25 employees** must grant leave, up to the amount of FMLA leave available, to employees who are victims of domestic violence, sexual assault or stalking, or who are victims of crime or abuse that caused physical injury or mental injury and the threat of physical injury, or whose immediate family member was killed in a crime, so they can:

- Seek medical attention for related injuries;
- Obtain services from a domestic violence shelter, program or rape crisis center;
- Obtain psychological counseling; or
- Participate in safety planning and take other actions to increase their safety.

Employer notice requirements upon hire and upon request apply. Employee notice and certification requirements also apply.

Employers are **not** required to provide this leave over or in addition to FMLA leave but may require an employee to use vacation, personal leave or compensatory time off that is otherwise available to him or her, unless a collective bargaining agreement provides otherwise. These leave protections apply equally to men and women.

## Voting Leave

**All employers** must allow employees who do not have sufficient time outside of working hours to vote in a statewide election to, on an election day, take enough time off from work to vote. Employers must **pay** employees for **up to two hours** of leave for voting purposes. Notice requirements apply.

## Military and Military Spouse Leave

In addition to federal law, California law provides employment protections for California and U.S. military members. **All employers** must provide temporary **unpaid** leave to military members for periods of military duty, as follows:

- **Up to 17 days** per year for U.S. Reserve members (for training, drills, encampment, naval cruises, special exercises or like activity); and
- **Up to 15 days** per year for State Guard members (for inactive duty training).

**Employers with five or more employees** must provide employees eligible for leave under the California Family Rights Act with up to 12 weeks of unpaid leave under that statute for a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces.

**Employers with 25 or more employees** must provide **up to 10 days of unpaid** leave to eligible spouses of military service members when their spouses are on leave from deployment. Spouses must work an average of 20 or more hours per week for the employer to be eligible. Notice and documentation requirements apply.

**All employers** must reemploy National Guard members of any state following a period of active duty state military service.

## School Activity Leave

**Employers with 25 or more employees** must provide employees with **up to 40 hours of unpaid** leave per year to attend or otherwise be involved with their child's school or day care facility. Notice and certification requirements apply.

The school activity leave law specifically allows a parent to take this leave for the following child-related activities:

- To find, enroll or reenroll his or her child in a school or with a licensed childcare provider, or to participate in activities of the school or childcare provider, **limited to eight hours per month**; or
- To address a school emergency or childcare provider emergency (including a situation where a child cannot stay at school or with a childcare provider due to behavioral or discipline problems).

This law extends leave protections to nontraditional family relationships. The law defines "parent" as a parent, guardian, stepparent, foster parent, or a grandparent of, or a person who stands *in loco parentis* to, a child.

**All employers** must permit employees to take time off from work to appear at their child's school after the child has been suspended. Notice requirements apply.

## Alcohol or Drug Rehabilitation Leave

**Employers with 25 or more employees** must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, unless the accommodation would impose an undue hardship on the employer.

## Volunteer Firefighter, Reserve Police and Emergency Rescue Personnel Leave

**All employers** must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to be absent from or late for work to perform emergency duty.

**Employers with 50 or more employees** must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to take **up to 14 days** per year off from work to engage in fire, law enforcement or emergency rescue training.

## Civil Air Patrol Leave

**Employers with more than 15 employees** must provide employees who are Civil Air Patrol (CAP) members with leave to respond to an emergency operational mission of the California Wing of the CAP.

An employee is eligible for CAP leave if he or she:

- Has been employed for at least 90 days before beginning leave;
- Is a volunteer member of the California Wing of the CAP; and
- Is responding to an emergency operational mission of the California Wing of the CAP.

An employer may **not** require an employee to exhaust any other type of leave before providing CAP leave. Leave is **unpaid**. Notice and certification requirements apply.

## SPECIAL CONSIDERATIONS FOR EMPLOYERS

California has a **paid family leave insurance program** that provides up to eight weeks of wage replacement benefits to eligible employees who take time off from work to care for a newborn, a newly adopted child or foster child, or a seriously ill family member. Under this program, employees may receive a percentage of their wages during their absence, up to a certain maximum per week. Workers are eligible for the program if they contribute to the State Disability Insurance (SDI) fund. The program is separate from the federal FMLA and California's family and medical leave laws, which govern the terms of employee family and medical leaves.

In addition, **San Francisco** enacted a [Paid Parental Leave Ordinance](#), which requires employers in that city to provide "supplemental compensation" to employees who receive wage replacement under California's paid family leave insurance program. Employers subject to this ordinance must pay employees the difference between their normal gross weekly wage and the weekly amount they receive from the SDI, so that they receive 100 percent of their regular wages (rather than a lower percentage).

More information on SDI is available on the California Employment Development Department's [website](#).

Employers should also be aware that many California localities have their own paid leave laws that apply to covered employers in addition to state leave laws.

## More Information

Contact Heffernan Insurance Brokers for more information on employee leave laws in California.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2017-2018, 2020, 2022, 2023 Zywave, Inc. All rights reserved