

*There is a great deal of confusion regarding pregnancy leaves in the State of California. This article will shed some light on how the pregnancy leave rules interface with other medical leave laws and policies.*

### **What is the Pregnancy Disability Leave Law in California?**

The Pregnancy Disability Leave law (PDL) applies to California employers with five or more employees. Thus, unlike the federal and state family medical leave acts, which apply to employers of 50 or more employees, almost all employers are affected by PDL.

### **Which Employees are Eligible under PDL?**

There is no minimum length of service requirement. However, the law applies only to pregnant women who are certified disabled by their physicians. For healthy pregnancies with no surgery or complications, typically a physician will certify disability of six weeks after the delivery.

### **Am I Required to Pay Wages to Employees on PDL?**

No, assuming that the company does not, as a policy, provide for paid maternity leave, or for paid non-pregnancy disability leaves of absence. Employers are required to allow up to 88 working days off to full time employees under PDL, assuming that the employee is disabled for all of that time. Eligible employees may apply for and receive State Disability Insurance (SDI) benefits during the term of their disability. There is a seven-day waiting period for benefits to begin.

### **What if Either the FMLA or the CFRA Applies?**

If your company employs 50 or more employees, and the pregnant employee otherwise qualifies for leave under the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), then the leave rules are complicated. FMLA and PDL can run concurrently. Thus, an employee can be out on 12 weeks of FMLA leave, during which time she also exhausts 12 weeks of PDL (assuming she is certified disabled during that time). If she is still disabled after 12 weeks, she is permitted to take up to about five more weeks of PDL. After that, she may take up to 12 weeks of CFRA to bond with the baby. CFRA does not run concurrently with PDL.

### **What are the Return to Work Rules for PDL?**

The employee must be returned to the previous position held. You may (and should) ask for a doctor's note releasing the employee to work. You cannot ask the employee if she plans on returning to work, or when she plans to return. However, if you require a medical certification of the pregnancy disability, which you may do, the health care provider should give you an estimate of the approximate day the employee will be returning to work.

### **Do Companies Need to Provide Continued Health Benefits for Employees on PDL Only?**

No, the company is not required to provide continued health insurance benefits for the employee, unless the company has a policy to do so for other non-pregnancy related disability leaves, or is required to provide continuation of health insurance benefits for other types of leaves of absence (as it is under FMLA and CFRA, for example).

### **What About Paid Family Leave?**

In California, the law provides for a benefit payment called Paid Family Leave (PFL). This program is administered by the EDD (Employment Development Department), and employees must apply to the EDD to obtain this benefit. The benefit is similar to disability payments. Eligible employees may collect PFL benefits for a maximum of six weeks in a 12-month period, for taking care of a baby (among other things). There is no job protection for employees who take PFL. Thus, suppose your new mother/employee applies for PFL benefits after her pregnancy disability payments end, and neither FMLA nor CFRA applies, the employee has no guarantee that she will be returned to work, or the same job. Keep in mind, however, that disability discrimination laws would prohibit an employer from using a disability, including a pregnancy-related disability, to discriminate against an employee.

### **How Do We Apply Sick Leave or Vacation Benefits to An Employee on PDL?**

You may require the use of paid sick leave to employees on pregnancy disability leaves of absence. You may also permit the use of paid vacation or paid time off. Receipt of sick leave payments will affect the amount of SDI payments the employee receives while disabled.

### **Conclusion**

In sum, the rules surrounding disability and sick leaves are complicated. Hopefully, the primer above will assist those companies dealing with employees on pregnancy-related disability leave.

## ABOUT OLIVIA GOODKIN



Olivia Goodkin has over two decades of experience representing corporations, individuals and closely-held businesses in employment law and business litigation. She advises on the termination of employees, wage and hour laws, employment contracts and other employment issues, and she defends companies in wrongful termination lawsuits. Olivia also creates trade secret programs for companies seeking to protect their valuable intellectual property. *Olivia can be reached at [ogoodkin@rutterhobbs.com](mailto:ogoodkin@rutterhobbs.com), or by telephone at 310.286.1700.*

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