

FREQUENTLY ASKED QUESTIONS- PREGNANT EMPLOYEES: PREGNANCY DISABILITY LEAVE, ACCOMMODATIONS, AND REQUIRED NOTICES

LEAVE

1. *What defines pregnancy disability?*

A woman is “disabled by pregnancy” if in the opinion of her health care provider, she is unable to perform (because of her pregnancy) 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. An employee also may be considered to be “disabled by pregnancy” if, in the opinion of her health care provider, she is suffering from severe “morning sickness” or needs to take time off for: prenatal or postnatal care; bed rest; gestational diabetes; pregnancy- induced hypertension; preeclampsia; post-partum depression; childbirth; loss or end of pregnancy; or recovery from childbirth, loss or end of pregnancy. The preceding list of conditions is intended to be non-exclusive and illustrative only.

[California Code of Regulations, Title 2, Section 7291.2](#)

2. *Does PDL apply to my business and employees?*

Pregnancy disability leave (PDL) applies to employers with more than 5 and fewer than 50 employees. (California employers with 50 or more employees are subject to the Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA).)

3. *What must an employer do when an employee requests pregnancy disability leave?*

You must respond to a leave or transfer request as soon as possible, and no later than 10 calendar days after receiving the request. You may not deny the leave. You should attempt to respond to the leave request before the date the leave is due to begin.

In your response, inform the employee about PDL leave and include information on:

- The amount of leave available
- Any benefits available during the PDL
- Any requirements for payment by the employee for any benefits
- The required use of any paid time off
- Any requirements for medical certification of the need for leave and/or the employee’s ability to return to work

After given, approval is retroactive to the date of the first day of the leave.

You must also provide the employee with [“Notice A” \(Your Rights and Obligations as a Pregnant Employee\)](#) from the Department of Fair Employment and Housing (DFEH) along with your response.

Once the employee goes out on leave, you must then provide written notice to an employee indicating the beginning of the PDL leave. The notice is to clarify that the employee’s status has changed and she is on a leave of absence.

4. What protections does the Pregnancy Disability Leave Act provide?

If the employee is disabled, according to her health care provider, due to pregnancy, childbirth or related medical condition, there is job protection for up to four months or 88 working days for every twelve (12) months worked. Pregnancy disability leave protection applies from the first day of employment. If the employee's leave is covered by PDL, she is entitled to return to her original position with the same hours, pay, duties and benefits.

5. Are there circumstances under which as an employer I do not have to reinstate an employee after she comes back from PDL?

You may refuse reinstatement to the original position only if you can show that either:

- The employee would not otherwise have been employed in her same position for legitimate business reasons unrelated to the employee taking the leave (such as a layoff of her entire department); or
- That preserving the job for the employee (such as leaving it unfilled or filling it with a temporary employee) would substantially undermine your ability to operate the business safely and efficiently. Keep in mind that this means more than showing it was inconvenient to hold the position.

Even if you can meet one of these two standards to justify not returning the employee to her original position, you still must return the employee to work in a comparable position unless you can show that:

- There is no comparable position available for which the employee is qualified; or
- Filling the available position with the returning employee would substantially undermine your ability to operate the business safely and efficiently.

6. How much time off is an employee afforded with PDL?

An employee is afforded 4 months (88 days) of job-protected time off and possibly more if she documents that she needs more time for a reasonable accommodation for a disability. Documentation could be a letter from her physician stating that she needs more time.

7. Does an employee have to take all her pregnancy disability leave (PDL) at one time?

No. An employee has the right to take what is called "intermittent" leave for her pregnancy-related disability, as needed. "Intermittent" leave is leave that is taken in small increments. These increments can be in hours, days, weeks, or months.

For example, a pregnant employee, with the advice of her doctor, has the right take a few hours of leave each day or on certain days because of severe morning sickness or for a doctor's appointment, or for other prenatal care.

8. Does an employee have the right to continued health care benefits while on pregnancy disability leave?

Yes, to the same extent and under the same conditions as would apply to any other unpaid disability leave granted by the employer for any reasons other than a pregnancy disability. An employee who is taking pregnancy disability leave (PDL) is entitled to the continuation of her health benefits for the entire duration of her leave, up to four months.

9. Does an employee have the right to wage replacement while on pregnancy disability leave?

Yes, if the employee pays into State Disability Insurance (SDI), or if the employer has a policy or practice of providing employees paid leave. An employee's pay stub will reflect whether or not the employee pays into SDI. Employees who pay into SDI can collect partial wage replacement while on pregnancy disability leave. To find out more about the SDI program, please visit <http://www.edd.ca.gov/>.

10. Can an employee use her sick days or vacation days during pregnancy disability leave? Can her employer require her to do so?

An employee can choose to apply paid sick leave, personal time off (PTO) or vacation time to pregnancy disability leave. An employer can choose to apply the employee's paid sick leave, but not the employee's PTO or vacation time to PDL. The latter two are entirely at the employee's discretion.

11. Does an employee have to give her employer notice before taking pregnancy disability leave?

Yes. An employee must give her employer either verbal or written notice that she is taking the leave. Generally, if the need is foreseeable, she must give her employer 30 days' notice. However, if she does not know that she will need to take a leave 30 days in advance, she only needs to give notice as soon as practicable. In her notice, an employee should tell her employer (1) the reason for taking leave (e.g., pregnancy disability); and (2) when and for how long she plans to take the leave.

12. Does an employee have to give her employer a medical certification to take pregnancy disability leave?

Maybe. An employer may require medical certification only if the employee requires certification from other similarly situated employees. If so, the employee should obtain it from her medical provider. The certification should contain the following information:

- (1) A statement that the employee has a disability due to pregnancy, childbirth or a related medical condition and because of the disability she cannot perform an essential function of her position without undue risk to herself, the successful completion of her pregnancy, or to others;
- (2) The date on which the employee became/will become disabled; and
- (3) The probable duration of the disability, and whether or not the employee needs to take intermittent leave

A certification need not provide more information than what is described above. All medical information in a medical certification is confidential.

13. Does an employee have the right to return to the same position that she had before she took pregnancy disability leave?

Yes. An employee generally has the right to return to the same position once her PDL leave is over unless, for legitimate business reasons unrelated to the employee's pregnancy or leave, the employee would have been laid off even if she had not taken the leave. If the employer, for legitimate business reasons, cannot reinstate the employee to the same position, she is entitled to return to a comparable position if one is available.

14. Can an employer force an employee to take pregnancy disability leave?

No. As long as the employee can still perform her essential job functions with a reasonable accommodation, her employer may not force her to go on leave before she and her health care provider request it.

15. Can an employer penalize an employee for exercising her leave rights?

No. An employer cannot terminate, punish, refuse to hire, or otherwise discriminate against an employee for being pregnant, for requesting or taking pregnancy disability leave, or for opposing any policy, practice or action by her employer that she reasonably believes to be a violation of her pregnancy related rights.

ACCOMMODATIONS

16. Does an employee have the right to pregnancy-related accommodations, such as temporary transfers or duty restrictions?

Yes, so long as the following conditions are met:

- The employee works for an employer with 5 or more employees;
- The employee's health care provider recommends that the employee receive the transfer or other pregnancy-related accommodation; and
- The requested transfer or accommodation is "reasonable." Whether or not an accommodation is "reasonable" depends on the individual situation. "Reasonable" accommodations might include:
 - A temporary transfer to a less strenuous or hazardous position, if such a position is available
 - More frequent or longer rest breaks
 - Permission to sit on a stool or carry a water bottle
 - Permission to work from home
 - Modification or restriction of the employee's job duties,
 - Providing assistance with lifting heavy objects
 - Lactation accommodations when an employee returns from leave

17. Does an employee have to give her employer notice before receiving a temporary transfer or other pregnancy-related accommodation?

Yes. An employee must give her employer either verbal or written notice that she is requesting an accommodation. Generally, if the need for transfer is foreseeable, she must give her employer 30 days' notice. However, if she did not know 30 days in advance that she needed an accommodation, she only needs to give notice as soon as possible. In her notice, an employee should tell her employer (1) the reason for requesting accommodation; and (2) when and for how long she will likely need the accommodation.

18. Does an employee have to give her employer a medical certification for a temporary transfer or other pregnancy-related accommodation?

Maybe. An employer may require medical certification. If so, the employee should obtain it from her medical provider. The certification should contain the following information:

- (1) A statement that due to her pregnancy, childbirth, or related medical condition, it is medically advisable that the employee have the accommodation or transfer;
- (2) The date on which the transfer or accommodation became/will become medically advisable; and
- (3) The probable duration of the need for transfer or accommodation

A certification need not provide more information than what is described above. All medical information in a medical certification is confidential.

19. Does an employee have the right to return to the same position that she had before she received a temporary transfer or other pregnancy-related accommodation?

Yes, an employee generally has the right to return to the same position once she no longer needs the accommodation or transfer unless, for legitimate business reasons unrelated to pregnancy, the employee would not have been returned to the same position even if she had not received the accommodation. If the employer, for legitimate business reasons unrelated to pregnancy, cannot reinstate the employee to the same position, she is entitled to return to a comparable position if one is available.

20. Can an employer punish an employee for exercising her accommodation rights?

No. An employer cannot terminate, punish, refuse to hire, or otherwise discriminate against an employee for being pregnant, for requesting or taking a pregnancy-related accommodation or transfer, or for opposing any policy, practice or action by her employer that she reasonably believes to be a violation of her pregnancy related rights.

21. How long must an employee work for me before she is eligible to take PDL?

Pregnancy disability leave protection applies from the first day of employment.

22. What benefits do we need to continue for an employee on disability leave?

An employer who currently pays for health insurance under a group health plan (medical, dental, vision) must continue to maintain a pregnant employee's coverage under the plan as if she was actively working.

Health benefits must be continued for the duration of the PDL (up to a maximum of four months in a 12-month period, beginning the date the leave begins). You may choose to maintain and pay for coverage for longer than four months. However, you should consult with your health care provider to ensure continued coverage is available under your plan(s).

The employer must provide the coverage at the same level and under the same conditions that coverage would have been provided had the employee continued active employment. If the employee contributed to the group plan premium before taking PDL, she must continue to pay her portion while on leave. However, if you provide greater benefits for other temporary disability leaves, you must provide them for pregnancy leave to the same extent and for the same length of time. When the employee returns to work, 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, etc.

At the time the leave begins, provide the employee with written notice as to which benefits you provide, and, if applicable, the amount the employee must pay for those benefits and how and when she must make those payments for her benefits to continue. If the employee normally pays a portion of the insurance premium, he/she should pay his/her share of the premium to you monthly by cash or check, because payroll deductions are not possible for an unpaid leave. Ask the employee to sign a notice acknowledging she will not continue receiving benefits if she does not make the payments for continued benefits.

23. Can I ask for a note from a woman's doctor certifying that she is disabled by her pregnancy, or that she can come back to work?

As a condition of granting a pregnancy disability leave or transfer, an employer may require medical certification only if the employer requires certification of other similarly situated employees who take non-pregnancy related disability leaves (for example, for surgery, recovery from an accident or a severe illness).

Generally an employer prior to a pregnancy leave will ask for a note faxed from the doctor's office indicating the date that the employee became disabled due to pregnancy, child birth or related medical condition and the probable duration of the period or periods of disability.

If the employee is restricted in work duties or in need of a change in a work schedule or accommodation, (i.e. less strenuous work, reduction of hours, transfer to another position, that will also be indicated. Because pregnancy is a medical condition protected by privacy laws employers may not ask for more information regarding the pregnancy.

24. Can an employee request to return to work part-time following Pregnancy Disability Leave?

When you grant an employee's request for PDL, you must guarantee to reinstate the employee to the same position or to a comparable position in some circumstances. This guarantee must be put in writing if the employee requests a written guarantee. You can refuse to honor the guarantee of reinstatement only under very limited circumstances.

Therefore, although an employee returning from PDL can request to return to a different job or a different schedule, she is not entitled to any special consideration for the request. Treat her request the same as you would any other employee request for a change in hours or position.

However, if an employee returning from PDL is disabled by an injury or illness unrelated to the pregnancy or childbirth, she may be entitled to reasonable accommodation. You may ask for a reinstatement accommodation from her medical care provider which outlines the restricted work duties that the employee is unable to perform.

REQUIRED NOTICES

25. Am I required to post any notices regarding pregnancy disability?

Yes. Employers of five to 49 employees must post ["Notice A: Your Rights and Obligations as a Pregnant Employee"](#) from the California Department of Fair Employment and Housing (DFEH).

Employers with 50 or more employees (and thus covered by Family Medical Leave Act (FMLA)/ California Family Rights Act (CFRA) must post the [Family Care and Medical Leave and Pregnancy Disability Leave - Notice B - 50 or More Employees](#). (Please note- PDL laws do not apply to employers with 50 or more employees. Employers with 50 or more employees must reference the [Family Medical Leave Act](#).)

26. Am I required to provide any other notices to employees?

Yes. At the time that you respond to an employee's request for pregnancy disability accommodation or pregnancy disability leave, you must provide her with [Pamphlet DFEH-186: Pregnancy Leave](#) from the California Department of Fair Employment and Housing.