



ALAN BENOY
INSURANCE SERVICES
(559) 734-4288 - CA LIC. 0B20964

FMLA

CALIFORNIA

Federal vs. California Family and Medical Leave Laws

SPECIAL NOTE: The California paid family leave program allows workers to take up to six weeks off to care for a newborn, a newly adopted child, or ill family member. Under this law, employees are eligible to receive approximately 55 percent of their wages during their absence, up to a certain maximum per week (e.g., effective 1/1/10, \$987). The paid family leave program is funded by a State Disability Program. Any working Californian who contributes to the State Disability Insurance program qualifies for this new Family Temporary Disability Insurance (FTDI).

	FEDERAL ELEMENTS	STATE ELEMENTS
Employer Covered	<p>Private Employers of 50 or more Employees in at least 20 weeks of the current or preceding year</p> <p>Public agencies, including state, local, and Federal Employers</p> <p>Local education agencies covered under special provisions</p>	<p>Anyone who directly employs 50 or more Employees</p> <p>The state and any political or civil subdivision of the state and cities</p> <p>No special provision for education agencies</p> <p>For military spouse leave, public and private employers who employ 25 or more employees</p> <p>Organ and Bone Marrow Donation: Effective January 1, 2011, private employers who employ 15 or more employees must permit employees to take a leave of absence, with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for the purpose of bone marrow donation.</p>
Employees Eligible	<p>Worked for Employer for at least 12 months - which need not be consecutive; worked at least 1,250 hours for Employer during 12 months preceding leave; and employed at Employer worksite with 50 or more Employees or within 75 miles of Employer worksites with a total of 50 or more Employees</p>	<p>Similar to Federal provision, including worksite proviso</p> <p>For military spouse leave, spouse of military member must work an average of 20 or more hours per week</p>
Leave Amount	<p>Generally, up to a total of 12 weeks during a 12-month period</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is service member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on</p>	<p>Similar to Federal provision</p> <p>Under separate statute, State Employees may receive up to 12-months leave for pregnancy, childbirth, or adoption, or care for newborn</p> <p>No requirement that spouses share leave. Under separate statute, employers are required to provide a female employee affected by pregnancy, childbirth, or</p>

	<p>temporary disabled retired list for serious injury or illness</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition, or care for a covered servicemember with a serious injury or illness must be shared by spouses working for same Employer</p>	<p>related medical condition the same benefits as provided employees on temporary disability (for a period of 6 weeks or less). An employee also is entitled to take pregnancy leave for a reasonable period of time not to exceed 4 months.</p> <p>For military spouse leave, up to 10 days unpaid leave during military member's leave from deployment</p> <p>Organ Donor: Not to exceed 30 days in any one-year period, for the purpose of donating his or her organ to another person.</p> <p>Bone Marrow Donor: Not to exceed 5 days in any one-year period, for the purpose of donating his or her bone marrow to another person.</p>
Type of Leave	<p>Unpaid leave for birth, placement of child for adoption or foster care, to provide care for Employee's own parent (including individuals who exercise parental responsibility under state law), child under 18 or a dependant adult child, or spouse with serious health condition, or Employee's own serious health condition, or any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces in support of contingency operation, or to care for spouse, child, parent or next of kin who is service member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on temporary disabled retired list for serious injury or illness</p>	<p>Similar to Federal provision, except that military spouse leave applies only to the period during which the military member is on leave from deployment during a period of military conflict</p> <p>Organ and Bone Marrow Donor: Protected, paid leave</p>
Serious Health Condition	<p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or, continuing treatment by a health care provider involving a period of incapacity: (1) requiring absence of more than 3 consecutive full calendar days from work, school, or other activities and involves a certain level of treatment; (2) due to a chronic or long-term condition for which treatment may be ineffective; (3) absences to receive multiple</p>	<p>Similar to Federal provision, except for military leave</p>

	<p>treatments (including recovery periods) for a condition that if left untreated likely would result in incapacity of more than 3 days; or (4) due to any incapacity related to pregnancy or for prenatal care</p> <p>Serious Injury or Illness: In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating</p>	
Health Care Provider	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the Employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States</p>	<p>Medical physician, surgeon, or osteopathic physician certified by California or licensed in another jurisdiction</p>
Intermittent Leave	<p>Permitted for serious health condition and for care of servicemember when medically necessary, and for active duty leave. Not permitted for care of newborn or new placement by adoption or foster care unless Employer agrees</p>	<p>Leave may be taken in one or more periods not to exceed 12 weeks</p> <p>Organ/Bone Marrow Donor: Leave may be taken in one or more periods</p>
Substitution of Paid Leave	<p>Employees may elect or Employers may require accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of Employer's normal paid</p>	<p>For family care and medical leave, Employee may elect, or Employer may require, substitution of accrued vacation leave or other accrued time off or other paid or unpaid time off negotiated with the Employer.</p>

	leave policies.	<p>For Employee's own serious health condition (but not other purposes unless the Employer and Employee agree), Employee may use accrued sick leave</p> <p>Organ/Bone Marrow Donor: Employer may require that employee take up to five days of earned but unused sick or vacation leave for bone marrow donation and up to two weeks of earned but unused sick or vacation leave or organ donation.</p>
Reinstatement Rights	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment	<p>Similar to Federal provision</p> <p>Organ/Bone Marrow Donor: Similar to Federal provision</p>
Key Employee Exception	Limited exception for salaried Employees if among highest paid 10%, within 75 miles of worksites, restoration would lead to grievous economic harm to Employer, and other conditions met	Similar to Federal provision
Maintenance of Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave	<p>Similar to Federal provision</p> <p>Organ/Bone Marrow Donor: Similar to Federal provision</p>
Leave Requests	<p>To be made by Employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable</p> <p>If due to a planned medical treatment or for intermittent leave, the Employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt Employer's operation</p> <p>If due to active duty of family member, notice as is reasonable and practicable</p>	<p>If need for leave is foreseeable, Employee shall provide reasonable advance notice</p> <p>Similar to Federal provision</p> <p>For military spouse leave, spouse employee must provide employer with notice of intent to take leave within 2 business days of receiving official notice of leave from deployment</p>
Medical Certification May Be Required by Employer for:	<p>Request for leave because of serious health condition or servicemember family leave</p> <p>To demonstrate Employee's fitness to return to work from medical leave where Employer has a uniformly applied practice or policy to require</p>	<p>Request for leave because of serious health condition</p> <p>Employee's fitness to return to work from medical leave as long as practice of requesting a certificate is uniformly applied</p> <p>Organ/Bone Marrow Donor: Employee shall provide written verification to his or her employer that he or she is an organ or bone marrow donor and that there is</p>

	<p>such certification</p> <p>Certification may be required by employer for active duty or call to active duty in the Armed Forces of family member</p>	<p>a medical necessity for the donation of the organ or bone marrow.</p>
<p>Executive, Administrative, and Professional Employees</p>	<p>Such individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an Employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p>No specific provision</p>

Director

Department of Industrial Relations
455 Golden Gate Ave.,
10th Floor
San Francisco, CA 94102
PH: 415-703-5050
Fax: 415-703-5059

State Labor Commissioner

Division of Labor Standards Enforcement
Department of Industrial Relations
455 Golden Gate Ave.,
9th Floor
San Francisco, CA 94102
PH: 415-703-4810
Fax: 415-703-4807
Internet: www.dir.ca.gov

Sources: *Wage and Hour Division of the U.S. Government, Department of Labor, Employment Standards Administration; the federal Family and Medical Leave Act, as amended (enacted January 28, 2008); CA AB 392 (effective October 9, 2007).*

This Chart is provided to you for general informational purposes only. It broadly summarizes state and federal statutes, but does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions of state offices of commissioners of insurance) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.

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