

Introduction to the California Pregnancy Disability Leave (PDL)

BUSINESS & PEOPLE STRATEGY CONSULTING GROUP FREE WEBINAR SERIES

Your Presenter

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- Over 25 years' HR, employment law, & compliance experience
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- Expertise in California and federal labor & employment laws and practices
- Author of *Dirty Little Secrets: Declassifying the Employment Game*



Pregnancy Disability Leave

Pregnancy Disability Leave (PDL)

- Department of Fair and Equal Housing (DFEH)
- Applies to employers with 5 or more employees
- Employees are eligible on their first day of employment
- Provides that it is “*unlawful for an employer to discriminate in terms of compensation, conditions, or privileges of employment because of pregnancy.*”

Overview of Rights

- Up to 17 1/3 weeks of protected and unpaid disability leave.
- Can be taken before or after birth during any time a woman is physically unable to work due to pregnancy or pregnancy related condition.
- All time taken counts towards the 17 1/3 weeks.
- Entitled to reasonable accommodations.
- Guaranteed reinstatement to previous position.
- May also have rights under FMLA and CFRA.
- For employers with 50+ employees, employees may be eligible for up to 29 1/3 weeks of protected leave.

Time Off

- Up to 17 1/3 weeks of protected disability leave.
- Doesn't have to be taken all at one time.
- May take intermittent leave.
 - Time off in hours per day
 - Pursuant to advice of doctor
 - Examples may include morning sickness, prenatal visits and care, etc.
- Recent CA law has indicated that an employer may be required to extend the 17 1/3 weeks period if continued disability.

Calculating Time Off

- Based upon the number of days the employee would work during the course of the $17 \frac{1}{3}$ weeks.
- For employees working more or less than 40 hours per week (or with variable schedules), the number of working days is calculated on a prorated basis.
- Example:
 - Full time employee works 40 hours per week
 - 693 hours of leave entitlement (40 hours X $17 \frac{1}{3}$)

Certification

- Employer may ask for medical certification to support requests for reasonable accommodation.
- If employer requires, notification to the employee is mandatory and must include:
 - Deadline to provide certification
 - What constitutes sufficient medical certification
 - Consequences with failing to provide certification

Reasonable Accommodation

- Employers must start the interactive process.
- Modifying
 - Work practices or policies
 - Work duties
 - Work schedules
- Providing furniture or modifying equipment or devices
- Providing reasonable amount of break time and use of a room to express breast milk.
- Transfer to a less strenuous or hazardous position.

Benefits During Leave

- Employers who provide health insurance coverage to employees who take leave for non-pregnancy-related, temporary disabilities must provide coverage for employees taking for pregnancy, childbirth or related medical conditions.
- Employers may require an employee to use accrued sick leave during any unpaid portion of PDL.
- Employee may opt to use vacation leave during any unpaid portion of PDL...thus, the employer may not require use of vacation or other accrued time off.

Return Rights

- After PDL employees are guaranteed a return to the same position and can request the guarantee in writing.
- If the position is no longer available the employer must offer a position that is comparable in terms of pay, location, job content, and promotional opportunities.
 - Examples include layoffs, plant closures, etc.
 - An exception is if the employer can prove that no comparable position exists.

Comparable Position

If no comparable position is available upon her return an employer has an affirmative duty to provide notice of available positions to the employee that she would be qualified for within 60 days.

Interaction with FMLA

Federal Family and Medical Leave Act (FMLA)

Applies only to employers with 50+ employees

FMLA offers up to 12 weeks for serious illness, injury for self or family member and baby-bonding

PDL and FMLA can run concurrent to each other

Must be designated by the employer

Interaction with CFRA

California Family Rights Act (CFRA)

Applies only to employers with 50+ employees

CFRA offers up to 12 weeks for serious illness, injury for self or family member and baby-bonding

PDL and CFRA cannot run concurrent to each other

Must be designated by the employer

Usually will start when the PDL ends

NOTE: CFRA and FMLA can run concurrent to each other

Wage Replacement

Employees may be eligible to receive partial wage replacement through the state SDI and PFL programs.

Both plans are managed through the Employment Development Department.

Programs have different eligibility requirements.

Paid Family Leave Benefits (PFL)

Often confused with Family Leaves (FMLA/CFRA)

PFL is not a leave and offers no protections to employees

State short-term disability insurance benefit

Paid through the Employment Development Department (EDD)

Pays up to 6 weeks of a portion of the employee's weekly wages

State Disability Insurance (SDI)

Provided for employees who suffer a loss of wages when they are unable to work due to a non-work related illness or injury, pregnancy, or childbirth.

Employees can't receive SDI and PFL benefits at the same time.

Summing It Up

Who has to offer PDL? CA employers with 5 or more employees

How many weeks of leave are provided under PDL? Up to 17 1/3 weeks

How many weeks can an employee potentially take? Up to 29 1/3 weeks if eligible for FMLA/CFRA

Can an employer force an employee to take PDL? No

Do I have to accommodate PDL employees who need it? Yes...but pursuant to a health care provider's direction.

Summing It Up

When you gain knowledge that an employee is pregnant...start the process

Assume that you will need to accommodate...even before you receive the certification

Document...Document...Document

Don't discriminate (or give the employee a reason to believe it is happening)

Don't try to be clever and try to out smart the system

QUESTIONS



For more information about today's webinar or if you need assistance with HR and compliance please feel free to contact us at:

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