UPDATE ON PREGNANCY AND PARENTAL LEAVE

Branden Butler, 1/28/2020
The Department of Fair Employment and Housing is California’s Civil Rights Agency
MISSION

• The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from the perpetration of acts of hate violence and human trafficking.
DFEH RESPONSIBILITIES

• Engage in public outreach and provide training and technical assistance to employers, business establishments, and housing providers regarding their responsibilities under the law
• Investigate discrimination complaints and cases of systemic discrimination
• Facilitate mediation and resolution of disputes involving civil rights
• Enforce the laws by prosecuting violations in civil court
EMPLOYMENT
EMPLOYMENT PROTECTED BASES

- Race
- Color
- Ancestry
- National Origin
- Religion
- Age (over 40)
- Disability (mental and/or physical)
- Sex
- Gender
- Sexual Orientation
- Gender Identity
- Gender Expression
- Medical Condition
- Genetic Information
- Marital Status
- Military and Veteran Status
2018 EMPLOYMENT FILINGS = 4,216 (1 OF 2)
Total Employment Bases = 13,842

- 1,000  2,000  3,000  4,000

28% Disability - 3,132
15% Reported or resisted any form of discrimination or harassment - 1,694
15% Age - 1,604
12% Sex/Gender - 1,350
12% Race - 1,289
6% Requested or used a disability-related accommodation - 668
5% Medical Condition - 498
4% National Origin - 472
3% Family Care - 362

DFEH also issued 14,767 right-to-sue letters in 2018
2018 EMPLOYMENT FILING S = 4,216 (2 OF 2)
Total Employment Bases = 13,842

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Review of civil rights protections under California law for pregnant employees and new parents
PREGNANCY DISABILITY LEAVE

• Pregnancy Disability Leave, or PDL, is leave from work to accommodate employees with a pregnancy disability.
• Health care provider will recommend leave from work, entitled to up to four months of PDL per pregnancy. (Cal. Code Regs., tit. 2, § 11042).
• This leave is in addition to any other leave for which an employee may be eligible under the Fair Employment and Housing Act (FEHA), California Family Rights Act (CFRA) or New Parent Leave Act (NPLA), or other state laws and local ordinances, or your employer’s leave policies.
PREGNANCY DISABILITY LEAVE (2 OF 3)

Eligibility

• Employer employs five or more employees
• There is no minimum requirement for number of hours or years worked to be eligible. (Cal. Code Regs., tit. 2, §§ 11035(h) & 11037).
PREGNANCY DISABILITY LEAVE

§ CCR § 11042 Pregnancy Disability Leave

• **Reinstatement rights:** The PDL provides reinstatement rights to returning employees.

• **Reinstatement to same position:** Following a pregnancy disability leave, an employee generally has the right to be reinstated to the same position held before the leave.

• **Exception—position no longer exists:** An employee has no greater rights than would have had if continuously employed, even if the employer has given a written guarantee of reinstatement to the employee.
PREGNANCY DISABILITY LEAVE (POSITION) (1 OF 2)

• **Reinstatement to comparable position**: If an employee returning from a pregnancy disability leave cannot be reinstated in the same, the employee generally has a right to be reinstated to an available comparable position. [2 CCR § 11043(c)(2)]
PREGNANCY DISABILITY LEAVE (POSITION) (2 OF 2)

• “Available” comparable position defined: A comparable position (for which the employee is qualified) is deemed “available” if it is open on the employee's scheduled return date or within 60 calendar days thereafter or it is one to which the employee is entitled by the employer's policy, contract or CBA. [2 CCR § 11043(c)(2)(B)]

• Notice of available positions: The employer must inform the employee of available comparable positions by means “reasonably calculated” to give her notice of the job openings. [2 CCR § 11043(c)(2)(B)]
“DISABLED BY PREGNANCY”

2 CCR § 11035

§ 11035. Définitions

• In the opinion of the health care provider, the employee is unable because of pregnancy to perform 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.
PREGNANCY DISABILITY LEAVE – MUST BE CONSISTENT

• An employer is not required to pay an employee during pregnancy disability leave unless the employer pays for other temporary disability leaves for similarly situated employees.

• (1) Sick Leave. An employer may not require an employee to use sick time when for birth/bonding with child, but an employee may elect to use.

• (2) Vacation Time and Other Accrued Time Off. An employee may elect, at their option.
FAMILY MEDICAL LEAVE ACT (FMLA) (1 OF 2)

- FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees in a 75 mile radius.
- Employer has employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year.
- An employee has worked the minimum 1,250 hours of service.
FAMILY MEDICAL LEAVE ACT (FMLA) (2 OF 2)

Federal Law

• These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:
  – Birth
  – Placement with the employee of a child for adoption or foster care;
  – Care for an immediate family member (spouse, child, or parent) with a serious health condition;
  – Care for Military - 26 weeks.
PDL RELATION TO FMLA

• A Pregnancy Leave May Also Be a FMLA Leave.
• If the employer is a covered employer and the employee is eligible for leave under the federal Family Care and Medical Leave Act (FMLA), the employer may be able to count the employee's pregnancy disability leave up to a maximum of 12 weeks, against her FMLA leave entitlement.
CALIFORNIA FAMILY RIGHTS ACT (CFRA) OF 1993

- Birth, adoption, or foster care placement of child or for personal serious health condition or that of your child, parent or spouse.
- 12 months of service and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave.
- Employ 50 or more employees or within 75 miles of worksite. Employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year.
CFRA LEAVE (1 OF 3)

• This leave may be up to 12 workweeks in a 12-month period.

• The 12-workweek period means 60 working and/or paid eight hour days for full-time employees. For part-time employees, the number of working days is adjusted on a pro rata basis (e.g., for an employee who works half-time, “12 workweeks” means 30 full days or 60 half days). [2 CCR § 11090(c)(1)]
Unlike the FMLA, the CFRA’s minimum duration of such a leave generally is two weeks, except that the employee has a right to shorter leaves (e.g., one day) on any two occasions and the employer shall grant requests for additional occasions of leave lasting less than two weeks. [2 CCR § 11090(d)]
CFRA LEAVE (3 OF 3)

- Parents with same employer: The employer may limit their combined leave rights in connection with the birth, adoption or foster care placement of a child, to 12 weeks. Note there is no such limitation if the leave is taken to provide care for the serious health condition of the child. [2 CCR § 11088(c)]
Reinstatement to same position.
Exception—position no longer exists: An employee has no greater rights than would have had if continuously employed, even if the employer has given a written guarantee of reinstatement to the employee.
Notice of available positions: The employer must inform the employee of available comparable positions by means “reasonably calculated” to give her notice of the job openings. [2 CCR § 11043(c)(2)(B)]
However, in granting a CFRA leave, the employer must provide the employee with a guarantee of reinstatement to the same or a comparable position at the conclusion of the leave (unless it turns out that the employee would not otherwise be employed at the time, or the employee is a “key employee” and reinstatement would result in substantial and grievous economic injury. If requested by the employee, the employer must put the guarantee in writing [2 CCR § 11089(a)]
CFRA DESIGNATION (1 OF 3)

• Form of notice: Employee notice to the employer of a CFRA leave request may be verbal. [2 CCR § 11091(a)(1).

• Reason for leave: An employee need not specifically invoke rights under the CFRA (or the FMLA).

• An employee may simply state that the leave is needed for medical treatment for the employee or a family member, or for the birth or adoption of a child. [2 CCR § 11091(a)(1).
Specific medical information need not be disclosed: The regulations do not require that an employee divulge the specific medical condition, diagnosis, or treatment (whether the employee’s or a family member’s) causing the need for a CFRA leave. [See 2 CCR § 11091(a)(1)]

If the employer needs further information to determine whether the employee is requesting CFRA leave or the reason for the leave, it must request such information from the employee. [2 CCR § 11091(a)(1)]
NOTE: CFRA regulations generally prohibit employers from seeking that information, and the CFRA model medical certification form provides that an employee’s underlying diagnosis may not be disclosed without his consent.

CFRA regulations expressly prohibit an employer from contacting a healthcare provider for any reason other than to authenticate a medical certification. Also, the employee’s supervisor may not contact the healthcare provider for any purpose.
CFRA TIMING

• Timing/duration of leave: The anticipated timing and duration of the leave must be included in the employee’s leave request. [2 CCR § 11091(a)(1)]

• Timing of notice: If the need for leave is foreseeable, the employee must give “reasonable advance notice.” [Gov.C. § 12945.2; see 2 CCR § 11091(a)(2)—employer may require up to 30 days’ advance notice]

• If the need for leave is not foreseeable (e.g., medical emergency), the employee must give the employer notice “as soon as practicable.” [2 CCR § 11091(a)]
CFRA AND PDL – SEPARATE

• Separate and Distinct Entitlements. The right to take a pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take leave under the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2.
RELATIONSHIP BETWEEN PREGNANCY DISABILITY LEAVE AND LEAVE OF ABSENCE AS REASONABLE ACCOMMODATION

• The right to take pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take a leave of absence as a form of reasonable accommodation under Government Code section 12940.
CFRA LEAVE AFTER PREGNANCY DISABILITY LEAVE (1 OF 2)

- At the end of the employee's period(s) of pregnancy disability, or at the end of four months of pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of child if born by that time.
CFRA LEAVE AFTER PREGNANCY
DISABILITY LEAVE (2 OF 2)

• (1) There is no requirement that either the employee or child have a serious health condition to take CFRA leave for the birth of her child.
  – There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for the birth of her child.
CFRA VIOLATIONS

• (1) Transferring employees from one worksite to another for the purpose of reducing worksites, or to keep worksites below the 50-employee threshold for employee eligibility under CFRA;
• (2) Changing the essential functions of the job in order to preclude the taking of leave;
• (3) Reducing an employee's hours available to work in order to avoid employee eligibility; and
• (4) Terminating an employee when it anticipates an otherwise eligible employee will be asking for a CFRA-qualifying leave in the future.
NEW PARENT LEAVE ACT

§ 11035. Definitions.

• Less than 50 employees at worksite or within 75 miles of worksite, but at least 20 employees at worksite or within 75 miles of worksite, 1250 hours worked.

• Right to a family care leave for the birth, adoption, or foster care placement of child the NPLA leave may be up to 12 workweeks in a 12-month period.

• Not for medical leave or serious condition i.e. CFRA.
POSTING REQUIREMENTS

• Your Rights and Obligations as a Pregnant Employee, which applies to businesses with 5 or more employees.

• Family Care and Medical Leave and Pregnancy Disability Leave, which applies to businesses with 20 or more employees.
YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE

YOUR EMPLOYER HAS AN OBLIGATION TO:

- Reasonable accommodation. Your employer must, in the workplace, make reasonable accommodations for your medical conditions related to pregnancy. This includes providing or obtaining medical advice from a health care provider. Your employer must, in the workplace, reasonably accommodate your needs in a manner that does not impose an undue hardship on the employer's operations. You may contact the DFEH for further information.

- Provide access to medical records. Your employer must provide you with reasonable access to your medical records, including your personal and medical information.

- Provide reasonable time away from work. Your employer must provide you with reasonable time away from work for medical reasons related to pregnancy, including time off for medical appointments or childbirth.

- Provide reasonable adjustments to your work schedule. Your employer must provide reasonable adjustments to your work schedule to accommodate your medical needs related to pregnancy, including time off for medical appointments or childbirth.

- Provide reasonable support and assistance. Your employer must provide reasonable support and assistance to you in the workplace, including reasonable support and assistance in performing your job.

- Provide reasonable training and re-training. Your employer must provide you with reasonable training and re-training to accommodate your medical needs related to pregnancy, including time off for medical appointments or childbirth.

FOR PREGNANCY DISABILITY LEAVE:

- DFEH is your legal advocate to help protect your rights. You have the right to request a reasonable accommodation to protect your health and well-being. You have the right to file a complaint with the DFEH if you are denied your rights.

- If you believe you have been denied your rights, you may file a complaint with the DFEH. You may file a complaint in person, by phone, or online. You may also file a complaint in person or by phone with the DFEH.

ADDITIONAL RIGHTS UNDER CALIFORNIA FAMILY RIGHTS ACT (CFRA) AND NEW PARENT LEAVE ACT (NPLA):

- Under the California Family Rights Act of 1993, you may have a right to a family or medical leave for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, or spouse. California law also prohibits employers from discriminating against you if you request a reasonable accommodation for the birth, adoption, or foster care placement of your child.

- To file a public or private lawsuit, you may file a complaint with the DFEH. You may file a complaint in person, by phone, or online. You may also file a complaint in person or by phone with the DFEH.

FAMILY CARE & MEDICAL LEAVE & PREGNANCY DISABILITY LEAVE

- Under the California Family Rights Act of 1993, you may have a right to a family or medical leave for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, or spouse. California law also prohibits employers from discriminating against you if you request a reasonable accommodation for the birth, adoption, or foster care placement of your child.

- To file a public or private lawsuit, you may file a complaint with the DFEH. You may file a complaint in person, by phone, or online. You may also file a complaint in person or by phone with the DFEH.

CONTACT US

For more information, please contact the DFEH at 1-800-986-2831 or visit our website at dfeh.ca.gov.
RULES FOR POSTING DFEH INFORMATION

• If 10 percent or more of a company’s workforce speaks a language other than English, the posters must also be displayed in that language (or languages). DFEH provides translated posters in several languages, available in the resources section of our website. We will work with an employer if other translations are needed.
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

REASONABLE ACCOMMODATION

• “Is any change in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential functions of a job. Reasonable accommodation may include, but is not limited to an employer:
§ 11035. DEFINITIONS.

• (1) modifying work practices or policies;
• (2) modifying work duties;
• (3) modifying work schedules to permit earlier or later hours, or to permit more frequent breaks (e.g., to use the restroom);
• (4) providing furniture (e.g., stools or chairs) or
• (5) providing a reasonable amount of break time and use of a room to express breast milk in private
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

REASONABLE ACCOMMODATION § 11040

• (a) It is unlawful for an employer to deny a request for reasonable accommodation made by an employee affected by pregnancy if:
  – (1) The employee's request is based on the advice of her health care provider that reasonable accommodation is medically advisable; and
  – (2) The requested accommodation is reasonable.

• (A) Whether an accommodation is reasonable is a factual determination to be made on a case-by-case basis.
REVIEW OF PROTECTIONS (1 OF 4)

I am eligible if:

**Pregnancy Disability Leave (PDL) -** I have a pregnancy disability, and my employer has at least 5 employees. (*Cal. Code Regs.*, tit. 2, §§ 11035(h) & 11037).

**Family & Medical Leave Act (FMLA) -** I have worked for my employer for 1+ year, I have 1250+ hours of service in the past year, and 50+ employees work within 75 mile radius. (*29 U.S.C.A. § 2611(2) & 29 C.F.R. § 825.110).*
I am eligible if:

**Bonding Leave (CFRA or NPLA)** - (For CFRA) I have worked for my employer for 1+ year, I have 1250 hours of service in the past year, and 50+ employees work within an 75 mile radius. (*Cal. Code Regs., tit. 2, § 11087(e)*). (For NPLA) I have worked for my employer for 1+ year, I have 1250 hours of service in the past year, and 20+ employees work within an 75 mile radius. (*SB 63*)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

REVIEW OF PROTECTIONS (3 OF 4)

How much leave do I get?

Pregnancy Disability Leave (PDL) - 4 months, based on hours worked per week (see chart above). *(Cal. Code Regs., tit. 2, § 11042).*

Family & Medical Leave Act (FMLA) - 12 weeks within one year of the child’s birth adoption, or start of foster care OR because of a serious pregnancy-related medical condition. This leave will run at the same time as PDL. *(29 U.S.C.A. § 2612; 29 C.F.R. § 825.701; Gov. Code, § 12945.2(p) & (s)).*
How much leave do I get?

**Bonding Leave (CFRA or NPLA)** - 12 weeks within one year of the child’s birth, adoption, or start of foster care. This leave will run after PDL and may run after FMLA. *(Cal. Code Regs., tit. 2, § 11087(h) & Gov. Code, § 12945.2(p) & (s)) and (SB 63).*
July 16, 2018
For Immediate Release

Contact: Holly Thomas (213) 337-4484
Holly.Thomas@dfeh.ca.gov

DFEH Settles Pregnancy Discrimination Case against Kitty Kat Bar in Huntington Park

Waitress terminated by employer after disclosing her pregnancy to receive $15,000

Sacramento – The California Department of Fair Employment and Housing (DFEH) has reached a settlement in a gender discrimination case with Respondents Kitty Kat Bar and its owner, Custodio Mendez, involving alleged pregnancy discrimination in employment.

The complainant, a waitress in the bar, filed a charge with DFEH in May 2017 alleging that when the owner learned of her pregnancy, he harassed her, changed her work schedule to reduce her tips, and ultimately terminated her employment.

Based on its investigation, DFEH found cause to believe a violation of the Fair Employment and Housing Act had occurred and referred the case to DFEH’s Dispute Resolution Division, which provides no-cost mandatory dispute resolution services in cases DFEH intends to prosecute in court, where the case settled. As part of a settlement agreement, the Respondents will pay the complainant $15,000.

“Expectant mothers are entitled to work without fear of demotion, termination, or ridicule because they are pregnant,” said DFEH Director Kevin Kish. “It is unlawful for employers to harass or take action against an employee because she is pregnant or may become pregnant.”

In addition to the monetary settlement, the Respondents have agreed to develop, implement, and distribute a written policy prohibiting discrimination on the basis of gender, including pregnancy, and other protected characteristics. They will post DFEH posters regarding sexual harassment and discrimination in conspicuous places in any businesses owned, operated, or managed by Respondents, and will obtain fair employment training for Respondents’ owners, managers, supervisors, and employees annually, for five years.

Martha L. Gomez, Staff Counsel, represented DFEH.
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

In the News...

April 11, 2018
For Immediate Release

Contact: Holly Thomas (213) 337-4484
Holly.Thomas@dfeh.ca.gov

DFEH Settles Pregnancy Discrimination Case against East County Glass & Window
Employee Alleged She Was Terminated Because of Her Pregnancy

Sacramento – The California Department of Fair Employment and Housing (DFEH) has settled a pregnancy discrimination case with East County Glass and Window, Inc. (East County) in Contra Costa County involving a former employee who alleged her bosses fabricated a reason to terminate her after learning she was pregnant.

The employee filed a complaint with DFEH in January 2017 alleging that her supervisor and the company president discussed replacing her with a non-pregnant employee after learning she was pregnant. Less than a week after the complainant asked for adjustments to her schedule to make appointments with her OB/GYN, she was fired. Though the employee was told she was being laid off due to budget concerns, she learned that another woman was hired to perform similar work shortly after she was terminated. DFEH found cause to believe a violation of the Fair Employment and Housing Act had occurred and filed suit in Contra Costa County Superior Court after an unsuccessful mandatory mediation.

“Too many employers continue to penalize employees who become pregnant,” said DFEH Director Kevin Kish. “Employees who become pregnant are entitled to the same rights as other employees with temporary disabilities, including the right to reasonable accommodations that can take the form of a restructured schedule, modified assignments, or temporary leave.”

In addition to paying $22,000 to the employee and $3,000 to partially offset DFEH’s fees and costs, East County will revise its employment policies to include specific provisions for handling requests for pregnancy disability leave and disability accommodation; put up DFEH posters that inform employees of their rights in the workplace; and require that all managerial employees attend annual training on fair employment requirements.
OBSERVATIONS

1. Not having job reinstated after taking PDL, or CFRA/NPLA.
2. Running out of PDL before CFRA starts.
3. Pretext - Losing job or job opportunity due to pregnancy.
4. Pretext - Never came back to the job vs. was told not to come back by employer.
ACCOMMODATIONS AND LANGUAGE ACCESS (1 OF 2)

The Department provides equal access to people with disabilities. Anyone needing an accommodation should email contact.center@dfeh.ca.gov or accommodations@dfeh.ca.gov, call 844-541-2877 (voice) or via California Relay Service 711 or 800-700-2320 (TTY).
ACCOMMODATIONS AND LANGUAGE ACCESS (2 OF 2)

The Department offers bilingual services and provides some translated documents for people with limited English proficiency. You may contact our Communications Center and request assistance in a language other than English: contact.center@dfeh.ca.gov, call 844-541-2877 (voice) or via California Relay Service 711 or 800-700-2320 (TTY).
THANK YOU!

For more information, please contact DFEH:

- [www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)
- [accommodations@dfeh.ca.gov](mailto:accommodations@dfeh.ca.gov)
- (800) 884-1684 or California Relay Service 711
- (800) 700-2320 TTY
What is State Disability Insurance?

Disability Insurance
Provides up to 52 weeks of partially paid leave for a non-work related illness, injury, or pregnancy.

Paid Family Leave
Provides up to six weeks* of partially paid leave to bond with a new child or to care for a seriously ill family member.

*Paid Family Leave will increase to eight weeks effective July 1, 2020.
Program Funding

1.0% withholding rate

$122,909 taxable wage limit

$1,229.09 maximum yearly employee contribution
Key Points

• Covers 18.7 million California workers.

• Replaces approximately 60-70 percent of the employee’s income.

• The employee must have earned at least $300 in wages during their 12-month base period.

• State Disability insurance does not provide entitlement to leave or job protection.

• Citizenship and immigration status do not affect eligibility.
Employment Status and State Disability Insurance

Seasonal employees, part-time workers, and unemployed individuals may still qualify.

A self-employed individual may be eligible if contributing to the Disability Insurance Elective Coverage program.

Unemployed individuals must be looking for work and/or collecting Unemployment Insurance.
Disability Insurance

- Experience a wage loss due to being unable to perform regular and customary work because of the disability.
- Be under the care of a physician/practitioner.
- Serve a seven-day, non-payable waiting period.
- Submit a claim within 49 days.
Paid Family Leave

• Have a loss of wages due to the need to provide care for a seriously ill family member or to bond with a new child.

• No waiting period.

• Submit a claim within 41 days.

• Benefits can be used intermittently.
Paid Family Leave
Claim Types

Bonding
Care
To qualify, an individual must be a new parent welcoming a child into the family through birth, adoption, or foster care placement.

Must include documented evidence of the individual’s relationship to the child.

Benefits are payable within one year of the child’s birth or placement, if eligible.
New mothers can take Disability Insurance leave followed by Paid Family Leave, for example:

- **Disability Insurance**
  - 4 Weeks

- **Birth**

- **Disability Insurance**
  - 6 - 8 Weeks

- **Paid Family Leave**
  - 6 weeks*

*Your employee’s Paid Family Leave time can be split and doesn’t have to be taken all at once.*
Care Claim

• To qualify, an individual must care for a seriously-ill child, spouse, parent, parent-in-law, grandparent, grandchild, sibling, or registered domestic partner.

• The care recipient must be under the care of a physician/practitioner.

• Benefits must be used within a 12-month period.

• Can be used for out-of-state or out-of-country care.
Upcoming Changes
Paid Family Leave Expansion

• For Paid Family Leave claims beginning on or after July 1, 2020, benefits will be expanded from six weeks to eight weeks.

• Claims that begin prior to July 1, 2020, will not be eligible for the eight weeks of benefits.
Military Assist

• To qualify, an individual must assist a spouse, registered domestic partner, parent, or child in the United States military during a qualifying event.

• A qualifying event is an event arising from an order, call, or notification of the military member’s deployment to a foreign country.
As an Employer, What are Your Responsibilities?
Display the EDD Poster

Notice to Employees
(DE 1857A)
Provide Employee Brochures

- *Disability Insurance Provisions* (DE 2515)
- *Paid Family Leave* (DE 2511)
Wage Integration

• The Paid Parental Leave Ordinance (PPLO) requires covered employers to provide supplemental pay while employees are receiving their Paid Family Leave benefits.

• Employers may choose to supplement an employee’s salary while they are receiving Disability Insurance.

• Employers may request to be added to the Disability Insurance and Paid Family Leave integration lists.
Wage Integration Documents

• Obtain a copy of the *Notice of Computation* (DE 429D) or *Electronic Benefit Payment (EBP) Notification* (DE 2500E) for the weekly benefit amount.

• Employers must complete the *Notice to Employer* (DE 2503/DE2503F).
Return the *Notice to Employer* (DE 2503/2503F) to the EDD within two working days.
What is SDI Online?

Website: edd.ca.gov/disability
Benefit Programs Online

Benefit Programs Online is your single login to access the Employment Development Department’s online benefit services. Your account will provide access to:

- **SDI Online**: Apply for Disability Insurance (DI) and Paid Family Leave benefits and manage your DI claim.
- **UI Online**: Apply for Unemployment Insurance (UI) benefits, reopen an existing claim, and manage your UI claim.

To Access Benefit Programs Online

Select Log In or Register to go to the Benefit Programs Online login page. If you do not have a Benefit Programs Online account, select Log In or Register and then select Register to begin the registration process.

Website: edd.ca.gov/BPO
Employer SDI Online Registration

You must:
• Be registered with the EDD Tax Branch.
• Have filed quarterly payroll taxes.

And provide:
• EDD Employer Account Number.
• ZIP Code.
• Total subject wages from the Quarterly Contribution Return and Report of Wages (DE 9C).
The Claim Filing Process
SDI Online Claim Filing

The EDD recommends filing claims using SDI Online.

- Users must register with Benefit Programs Online (BPO).

- Select “New Claim” in the SDI Online account to begin an application.

Create or access your account by visiting edd.ca.gov/BPO
DI Claim Form
Claim for Disability Insurance (DI) Benefits (DE 2501)

Part A: Claimant’s Statement (Pages 1-4)

Part B: Physician Certification (Pages 5-7)
PFL Claim Form for Bonding
Claim for Paid Family Leave (PFL) Benefits (DE 2501F)

• Part A: Claimant’s Statement
• Parts B: Bonding Certification
• Documentation showing proof of relationship
PFL Claim Form for Care
Claim for Paid Family Leave (PFL) Benefits (DE 2501F)

- Part A: Claimant’s Statement
- Care Recipient’s Authorization
- Parts C: Statement of Care Recipient
- Part D: Physician Certification
What Happens Next?

Once a properly completed claim is received:

• Allow at least 14 days for processing.

• The EDD mails a *Notice of Computation* (DE 429D) after a properly completed claim is received.

• The *Electronic Benefit Payment Notification* (DE 2500E) is sent after claim is approved.

• A check or EDD Debit Card is sent after the first benefit payment is issued.
Benefit Payment Options

- EDD Debit Card
  Electronic Benefit Payment

- Check

- You can download the Bank of America App to access your account information.
Report Fraud

For Disability Insurance, Paid Family Leave, or Unemployment Insurance fraud:

• Submit a Fraud Reporting Form online at edd.ca.gov
• Call the Employment Development Department Fraud.
• Tip Hotline 1-800-229-6297.

To deter fraud, respond immediately to the Notice to Employer (DE 2503/DE 2503F).
Report Payroll Fraud

- Submit a Fraud Reporting Form online at edd.ca.gov
- Email: ueo@edd.ca.gov
- Call: 1-800-528-1783
- Fax: 1-916-227-2772
- Mail an *Underground Economy Operations Lead Referral/Complaint Form* (DE 660) English or (DE 660/S) Spanish.
Visit: 
- edd.ca.gov/Disability
- CaliforniaPaidFamilyLeave.com

Contact EDD:
- DI English: 1-800-480-3287
- DI Spanish: 1-866-658-8846
- PFL English: 1-877-238-4373
- PFL Spanish: 1-877-379-3819
SDI Contact Information

Employer Line: 1-855-342-3645
Any Questions?
The Employment Development Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.
Introductions

Presenters

Helen Morales
Deputy Labor Commissioner

Nora Cruz
Deputy Labor Commissioner

Bureau of Field Enforcement
455 Golden Gate Ave,
9th Floor
San Francisco, CA
94102
Division of Labor Standards Enforcement (DLSE)
www.dir.ca.gov/dlse

Responsible to vigorously enforce minimum labor standards to protect employees from working under substandard unlawful conditions and to protect employers who comply with the law from those who attempt to gain a competitive advantage
In 2002, the legislature enacted lactation accommodation labor code laws. (Labor Code §§ 1030-1033)

Senate Bill No. 142 amends Labor Code Sections 1030, 1031, and 1033. Adds Section 1034

Lactation accommodation law applies to all employers in the state regardless of size.

Exceptions – only if it would “seriously disrupt” the operations of the employer.

Penalties for failure to accommodate.
Requirements - Break Time

- California Labor Code Section 1030 – Every employer must provide a reasonable amount of break time...

  - Senate Bill 142 Specifies that the break time shall be provided each time such employee has need to express milk.

  - If the employee requires additional break time, the employer is still required to allow the lactation breaks at other times.

  - The employer does not have to pay for pumping time, beyond the standard break time.
Requirements - Location

- California Labor Code Section 1031. (a) An employer shall provide an employee with the use of a room or other location for the employee to express milk in private...
  - A lactation room or location shall NOT be a bathroom.
  - Must be safe, clean, and free of hazardous materials, as defined in Section 6382.
  - Contain a surface to place a breast pump and personal items.
  - Contain a place to sit.
Requirements – Location Continued

Labor Code Section 1031

• Some specific industries require additional accommodations.
• A Multipurpose room can be used for lactation and shall take precedence over other uses.
  ➢ An employer in a multitenant building or multiemployer worksite.
  ➢ Employers or general contractors coordinating a multiemployer worksite
  ➢ An agricultural employer, as defined in Section 1140.4 – including but not limited to farming, cultivating, growing, harvesting, raising of livestock...
Requirements – Employer Exception

– California Labor Code § 1031. (i) An employer that employs fewer than 50 employees may be exempt...

– California Labor Code § 1032 – An employer is not required to provide break time if to do so would seriously disrupt the operations of the employer.

– The law does not define what *serious disruption* mean but it may consider the employer’s difficulty to comply due to space limitations, financial hardship and specific circumstances of the business.
Consequences of Violating Lactation Accommodation Laws

California Labor Code § 1033

- The denial of reasonable break time or adequate space to express milk shall be deemed a failure to comply for purposes of Section 226.7. An aggrieved employee may file a complaint under this subdivision with the Labor Commissioner pursuant to Section 98.

- The Labor Commissioner may issue a citation and may impose a civil penalty in the amount of one hundred dollars ($100) for each day that an employee is denied reasonable break time or adequate space to express milk.
Discrimination Related to Lactation Breaks

– Retaliation for requesting or using this accommodation is prohibited and will be investigated under Labor Code Section 98.6.

– Any employee who is a victim of retaliation for either asserting a right to lactation accommodation or for complaining to the Labor Commissioner about the failure of an employer to provide this accommodation may file a retaliation claim pursuant to Labor Code Section 98.7.

– An employee must file a retaliation claim with the Labor Commissioner’s Office within six months of the retaliation.
• California Labor Code § 1034. (a) An employer shall develop and implement a policy regarding lactation accommodation that includes the following:

(1) A statement about an employee’s right to request lactation accommodation.

(2) The process by which the employee makes the request described in paragraph (1).

(3) An employer’s obligation to respond to the request described in paragraph (1) as outlined in subdivision (d).

(4) A statement about an employee’s right to file a complaint with the Labor Commissioner for any violation of a right under this chapter.
Resources for Public Assistance

- General questions should be directed to DLSE2@dir.ca.gov
- Lactation Accommodation Questions: https://www.dir.ca.gov/dlse/Lactation_Accommodation.htm
- Labor Commissioner’s District Offices
  - Contact information available http://www.dir.ca.gov/dlse/DistrictOffices.htm
Q. Does an employer have to provide an employee with additional break time to express breast milk?
A. Yes, an employer must provide additional break time to employees who need it.

Q. Does an employer have to pay for the additional time to express breast milk?
A. No. While the employer must allow an employee to leave the work area to pump, the employer does not have to pay for pumping time, beyond the standard break time.

Q. Can my employer demand a doctor’s note or other medical documentation?
A. No. Your employer cannot require you to submit any documentation regarding your need to express breast milk.

Q. Does my employer have to provide me with a place to express breast milk?
A. Yes, your employer must make a reasonable effort to provide you with the use of a room or other location other than a bathroom and in close proximity to your work area. This may include the place where the employee normally works if it otherwise meets the requirements.
Thank You
Lactation in the Workplace & Family Friendly Workplace

Greg Asay
Deputy Director, OLSE
Lactation in the Workplace Ordinance
Legislative History

• Adopted by the Board of Supervisors in June 2017; took effect January 1, 2018

• Amends the San Francisco Police Code and San Francisco Building Code, establishing local standards to complement State and Federal law

• OLSE Rules July 2018
Covered Employers and Employees

• All employers – except for government entities – that have employees working in San Francisco are covered

• All employees working within the geographic boundaries of San Francisco, including part-time employees, are covered
## San Francisco vs. California Requirements

<table>
<thead>
<tr>
<th>Component</th>
<th>San Francisco vs. California</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lactation Breaks</td>
<td>No substantive differences</td>
</tr>
<tr>
<td>Lactation Location</td>
<td>• Same prescribed features</td>
</tr>
<tr>
<td></td>
<td>• CA allows cooler in lieu of refrigerator to store milk</td>
</tr>
<tr>
<td></td>
<td>• CA includes industry-specific provisions for general contractors and agricultural employers</td>
</tr>
<tr>
<td></td>
<td>• CA exemption possible for employers with fewer than 50 employees (no SF limit)</td>
</tr>
<tr>
<td>Lactation Policy</td>
<td>SF – prescribed time period (5 days) for employer to respond to employee’s lactation accommodation request</td>
</tr>
</tbody>
</table>
OLSE Rulemaking – Lactation Breaks

Rule 1.1. The number of minutes needed to express breast milk per Lactation Break and the number of Lactation Breaks needed per day varies from Employee to Employee, and may change over time for the same Employee. If an Employer seeks to limit the duration of an Employee’s Lactation Break or the number of Lactation Breaks per day, the Employer must demonstrate that the duration of the break requested by the Employee is unreasonable.

Rule 1.2. The time that it takes an Employee to get to and from the Employer’s designated Lactation Location and, if at a separate location, to and from a refrigerator and a sink with running water, shall not be included as part of the Employee’s break time.

Rule 1.3. The Employer may not impose a limit on the duration of a Lactation Accommodation (e.g., months or years).
OLSE Rulemaking – Lactation Location

Rule 2.1. Whether a Lactation Location, refrigerator, and sink with running water are “in close proximity to the Employee’s work area” depends on the specific situation. The Lactation Location, refrigerator, and sink with running water should not be placed so far away that it would be likely to deter a reasonable similarly situated person from exercising their rights under the Ordinance.

Rule 2.2. Subject to the requirements of state and local law . . . Employers may satisfy the Lactation Location requirements with temporary structures or spaces.

Rule 2.3. Subject to the requirements of state and local law . . . Employers are not required to provide a Lactation Location unless and until an Employee requests Lactation Accommodation.

Rule 2.4. Employers are not required to provide a refrigerator exclusively for Employees to store breast milk; provided, however, that the Employee’s need to store breast milk takes priority over other uses of the refrigerator.
OLSE – Lactation in the Workplace

www.sfgov.org/olse/lactation-workplace

• Legislative Text
• Rules
• Sample Employer Policy & Request Form

(415) 554-6406
lactation@sfgov.org
Family Friendly Workplace Ordinance
Covered Employers and Employees

Covered Employers
• Any employer who regularly employs 20 or more employees, worldwide.

Covered Employees
• Employed by the employer for six months or more
• Regularly works at least 8 hours per week in San Francisco
Employee Rights

Employees covered by the FFWO have the **right to request** a flexible or predictable working arrangement to assist with caregiving responsibilities for:

- A child or children for whom the employee has parental responsibility
- A person with a Serious Health Condition in a Family Relationship with the employee
- The employee’s parent, age 65 or older
Employee Rights (continued)

The employee’s request may include, but is not limited to, request for changes in:

- The number of hours worked
- Times worked
- Work location
- Work assignments
- Predictability of work schedule
Employer Response Requirements

After receiving a request, the employer is required to:

• Meet with the employee within 21 days
• Consider the request and respond within 21 days of the meeting

The employer may grant or deny the request.

If the employer denies the request, the employer is required to:

• Explain the denial in writing & provide a bona fide business reason for the denial
• Notify the employee of the right to request a reconsideration
OLSE – Family Friendly Workplace Ordinance

www.sfgov.org/olse/ffwo

• Legislative Text
• FAQs
• Sample Request Form

(415) 554-6424
FFWO@sfgov.org
Paid Parental Leave Ordinance

2020 Pregnancy & Family Leave Workshop for Employers
January 28, 2020

Maura Prendiville
Supervising Compliance Officer
pplo@sfgov.org
PPLO hotline: (415) 554-4190
https://sfgov.org/olse/paid-parental-leave-ordinance

Office of Labor Standards Enforcement
What is the Paid Parental Leave Ordinance (PPLO)?

• First of its kind in the United States; passed by Board of Supervisors in 2016 and enforced by OLSE since 2017.

• Provides eligible employees working in San Francisco with additional compensation from their employer while they are using Paid Family Leave (PFL) benefits.

• Why?
  • The PPLO was intended to help ensure that loss of income does not preclude parents in San Francisco from bonding with their new child.
Covered Employers

Applies to employers that have employee(s) who work(s) in San Francisco

• Employ Threshold Number of Employees:
  \textbf{Global} count of twenty (20) or more employees

• An Employer with fluctuating workforce – number of employees goes up and down over time – should average employees over PPLO Lookback Period

• Government entities are not covered employers
Covered Employees

1. Commenced employment at least 180 days before the **bonding** leave period.
   - The employee does not have to be covered by state or federal leave laws to receive the supplemental compensation!

2. Work at least 8 hours per week in San Francisco for the covered employer

3. Work in San Francisco at least 40% of weekly hours for the covered employer

4. Apply for and receive California Paid Family Leave (PFL) benefits **for new child bonding** from the Employment Development Department (EDD)
Covered Employees: Paid Family Leave (PFL)

- Six weeks *(soon to be 8 weeks)* of partial wage replacement to employees while bonding with a newborn, adopted or foster child
- Benefit, depending on income, is 60% to 70% up to cap (cap is $1300/wk in 2020)
- Both parents can take time off simultaneously or separately
- Can be taken consecutively or intermittently
- Must be taken within one year of birth, adoption or placement

PFL Questions: Call 1 (855) 342-3645
In 2019, the CA legislature expanded PFL benefits from 6 weeks to 8 weeks.

For Claim Effective Dates starting July 1, 2020 and going forward, employees can get 8 weeks of PFL benefits.

This means that for employees with Claim Effective Dates 7/1/2020 and going forward, all covered employers will be required to extend their Paid Parental Leave compensation from 6 to 8 weeks as well.
General Employer Requirements

• Covered employers must:
  • Display the [PPLO poster](#) at the workplace (available on our website)
  • Provide the [PPLO Form](#) to any employee who is expecting to become a parent.
    • If the employee speaks a language other than English, provide the PPLO Form in that language.
  • Pay supplemental compensation to Covered Employees.
  • Maintain records
General Employer Requirements

Steps for Employers

1. Post the PPLO Poster

2. Provide the PPLO form to any employee who indicates that they will be or have become a parent (in the language they speak)

3. Determine employee eligibility by seeing if they meet the definition of “Covered Employee”

4. Calculate and pay employee
Steps for Employees

1. Apply for California Paid Family Leave, on-line or in paper form
2. Complete the San Francisco Paid Parental Leave (PPL) form
3. Submit the completed SF PPL form and the Notice of Computation to Employer
4. Maintain records and receipts from EDD
Employer Requirements: Supplemental Compensation

1. Employee returns SF PPL form
2. Calculation Instructions:
   a. Normal Gross Weekly Wages, (minus)
   b. EDD Weekly Rate
   The sum of the EDD PFL benefit & employer provided supplemental compensation equals 100% of employee’s gross wages up to cap ($2,167 in 2020)

Example:
Claim Effective Date is after 7/1/2020.
If employee earns $1,000 per week and the EDD replaces $700, the employer will owe $300 per week for up to eight weeks ($2,400).

Payment is due at next regularly scheduled pay period
Common Compliance Issues & Misconceptions

• Failing to notify employees about their rights under PPLO: as soon as you become aware that an employee expects to become a parent via birth, adoption, or fostering, provide them with the PPLO form and document that you provided the form.

• Screening out employees incorrectly.

• Common misconceptions:
  • The City pays extra money to people on parental leave (not true!!)
  • PFL and PPLO compensation are only for birth mothers (not true!!)
  • An employee has to take their leave all at once (not true!!)
  • If an employee hasn’t worked for 180 days, I don’t need to notify them of their rights (not true!! The employee may become covered by PPLO at a later date, while they’re eligible for PFL!!)
Employer Best Practices

• Keep a log. Document, in detail:
  • Conversations with employees;
  • What documentation has been provided and when;
  • What documentation has been returned and when.

• Have a knowledgeable point person
  • Make sure others are aware of that person’s role
  • Train relevant staff to ensure parental leave inquiries are routed to the correct person

• If you outsource leave of absence issues → make sure your administrator has a mechanism in place to screen for SF-based employees and advise them appropriately.
Employer Resources on PPLO Website

https://sfgov.org/olse/paid-parental-leave-ordinance
• Mandatory PPLO Poster
• Mandatory PPLO Form
• Webinar slides and audio presentations
• Supplemental Compensation Calculators and Calculation Instructions
• FAQs and Rules
• Employee & Employer documents in multiple languages
• Get on OLSE’s email list: https://sfgov.org/olse/email-sign-employers-20-or-more-employees
Questions?
415.554.4190
pplo@sfgov.org
https://sfgov.org/olse/paid-parental-leave-ordinance

Office of Labor Standards Enforcement