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

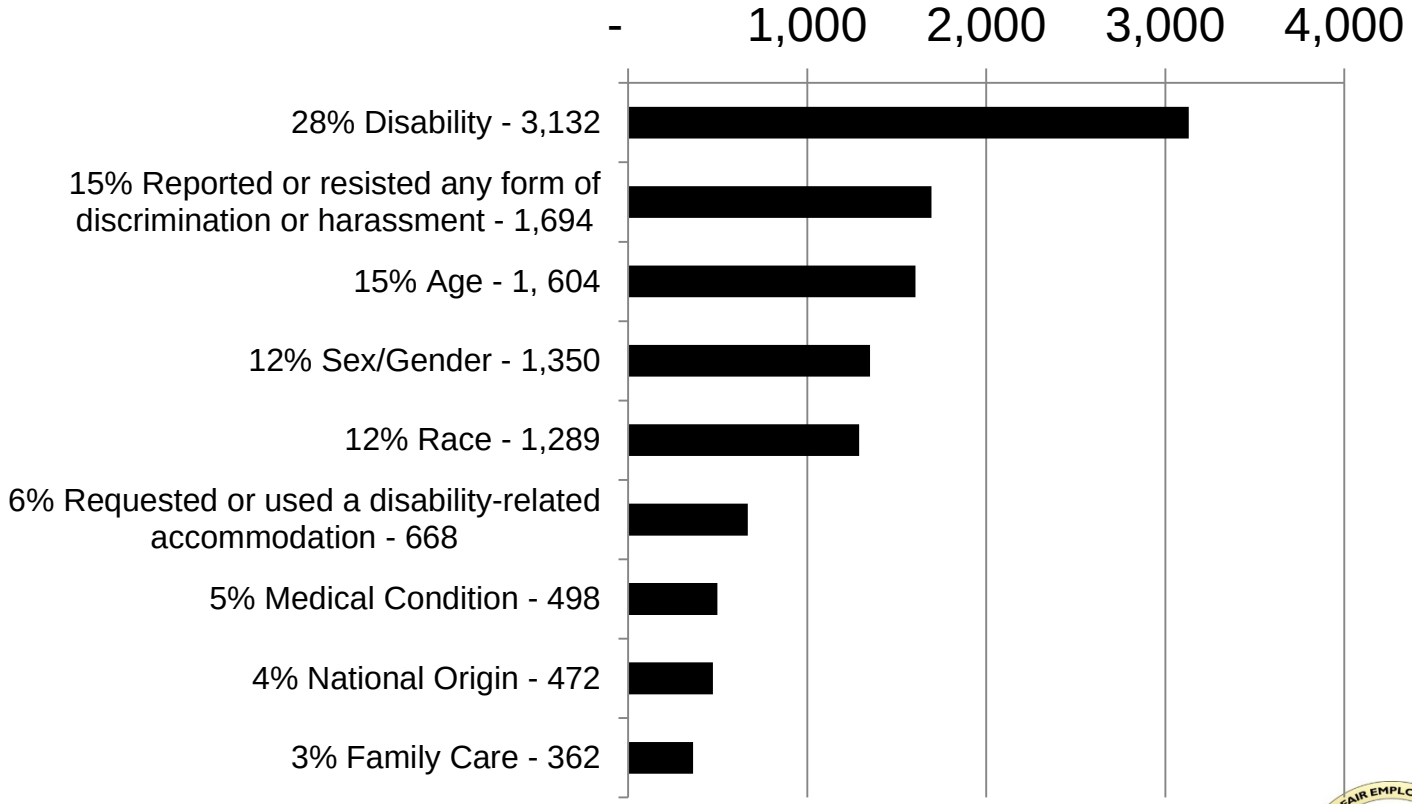
EMPLOYMENT

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



DFEH also issued 14,767 right-to-sue letters in 2018

2018 EMPLOYMENT FILINGS = 4,216 (2 OF 2)

Total Employment Bases = 13,842

Bases of Employment Complaints	Total
Age	1,604
Disability	3,132
Family Care	362
Medical Condition	498
National Origin	472
Race	1,289
Reported or resisted any form of discrimination or harassment	1,694
Requested or used a disability-related accommodation	668
Sex/Gender	1,350

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

PREGNANCY DISABILITY LEAVE (1 OF 3)

- 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 (3 OF 3)

§ 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 0F 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 0F 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)]

CFRA LEAVE (2 OF 3)

- 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)]

CFRA REINSTATEMENT RIGHTS (1 OF 2)

- 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)]

CFRA REINSTATEMENT RIGHTS (2 OF 2)

- 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).

CFRA DESIGNATION (2 OF 3)

- 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)

CFRA DESIGNATION (3 OF 3)

- 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 0F 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 0F 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.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR EMPLOYER HAS AN OBLIGATION TO:

- Reasonably accommodate your medical needs related to pregnancy, childbirth, or related conditions, such as temporarily modifying your work duties, providing you with a chair to sit on, or allowing more frequent breaks.
- Transfer you to other positions or facilities, as possible, before other employees, if your doctor recommends transfer because of your pregnancy and
- Provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in a month) for a period of 17 (17) weeks and return you to your previous job when you are no longer disabled by your pregnancy, or in certain situations, to a comparable job. Taking PDL, however, does not protect you from losing some seniority or your work actions, such as a layoff.
- Provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk or provide an alternative form of the lactation break.

FOR PREGNANCY DISABILITY LEAVE:

- PDL is not for an indefinite period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.
- Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you will return to work in your same position or to a comparable position. Your employer may require you to submit written medical certification from your health care provider stating the date you need to take your leave.
- PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, morning sickness breaks, severe morning sickness, gestational diabetes, pregnancy-induced high blood pressure, preeclampsia, recovery from childbirth or loss of child, pregnancy, medical complications, depression.
- PDL may not need to be taken all at one time or in blocks of time as needed, but as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.
- Your leave will begin or extend depending on your employer's policy for other medical leaves. You will also be eligible for Family Disability Insurance (Paid Family Leave (PFL)) administered by the California Employment Development Department.
- At your discretion, you can also only receive a differ paid leave (Paid Family Leave) PFL.
- Your employer may require you to take other available sick leave during your PFL.
- Your employer is required to continue your group health coverage during your PDL at the same level and on the same conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.
- Taking PDL may affect certain of your benefits and your seniority date. Please contact your employer for details.
- If possible, you must provide at least 30 days advance notice to the reasonable county (within the expected birth of a child or a planned medical treatment for yourself). For events that are unforeseable, we need you to notify us as soon as daily as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with the notice policy.

NOTICE OBLIGATIONS AS AN EMPLOYEE:

- Give your employer reasonable notice. To receive reasonable accommodation, pregnancy disability or pregnancy PDL, you must give your employer sufficient notice for your employer to make appropriate plans. Sufficient notice means 30 days advance notice if the need for the reasonable accommodation, transfer to PDL or reasonable alternative to leave is foreseeable. If the need is unexpected or unforeseeable.
- Provide written Medical Certification from your Health Care Provider. Except in a medical emergency where there is no time to obtain, you employer may require you to provide written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer to PDL or the need for an emergency or intermittent. You must provide the certification within the time the employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification. Your employer has a copy of a medical certification form to give to your health care provider to complete.
- Please note that if you fail to give your employer reasonable advance notice or if your employer requires a written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

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

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer and have worked at least 1,250 hours in the 12 month period before the date you want to begin your leave, and if you employ 50 or more employees at your workplace or within 75 miles of your workplace, you may have a right to a family care or medical leave (CFRA Leave). This leave may be up to 12 workweeks in a 12 month period 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. If you employ less than 50 employees at your workplace or within 75 miles of your workplace, but at least 20 employees at your workplace or within 75 miles of your workplace, you may have a right to a family care leave for the birth, adoption, or foster care placement of your child under the New Parent Leave Act (NPLA). Similar to CFRA leave, the NPLA leave may be up to 12 workweeks in a 12 month period. Unlike CFRA leave, the NPLA leave may only be taken for the birth, adoption, or foster care placement of your child. Under the New Parent Leave Act (NPLA), similar to CFRA leave, the NPLA leave may be up to 12 workweeks in a 12 month period. Unlike CFRA leave, the NPLA leave may only be taken for the birth, adoption, or foster care placement of your child. Under the New Parent Leave Act (NPLA), employees may choose or employers may require use of accrued paid leave while taking CFRA leave and/or certain circumstances and employees may choose or use accrued paid leave while taking NPLA leave.

Even if you are not eligible for CFRA or NPLA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period of actual disability. If you are CFRA- or NPLA-eligible, you have certain rights to take both a pregnancy disability leave and a CFRA or NPLA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement. For pregnancy disability it is to the same position and for CFRA or NPLA it is to the same or a comparable position, at the end of the leave, subject to any defense allowed under the law.

CONTACT US

TDD Free: (800) 884-1684
TTY (800) 700-2320
contact.center@dfeh.ca.gov
www.dfeh.ca.gov

Under the California Family Rights Act of 1993 you may have a right to a family care 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 denying or interfering with requests for Pregnancy Disability Leave.

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer and have worked at least 1,250 hours in the 12 month period before the date you want to begin your leave, and if you employ 50 or more employees at your workplace or within 75 miles of your workplace, you may have a right to a family care or medical leave (CFRA Leave). This leave may be up to 12 workweeks in a 12 month period 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. If you employ less than 50 employees at your workplace or within 75 miles of your workplace, but at least 20 employees at your workplace or within 75 miles of your workplace, you may have a right to a family care leave for the birth, adoption, or foster care placement of your child under the New Parent Leave Act (NPLA). Similar to CFRA leave, the NPLA leave may be up to 12 workweeks in a 12 month period. Unlike CFRA leave, the NPLA leave may only be taken for the birth, adoption, or foster care placement of your child. Under the New Parent Leave Act (NPLA), similar to CFRA leave, the NPLA leave may be up to 12 workweeks in a 12 month period. Unlike CFRA leave, the NPLA leave may only be taken for the birth, adoption, or foster care placement of your child. Under the New Parent Leave Act (NPLA), employees may choose or employers may require use of accrued paid leave while taking CFRA leave and/or certain circumstances and employees may choose or use accrued paid leave while taking NPLA leave.

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If possible, you must provide at least 30 days advance notice for foreseeable events such as the expected birth of a child or a planned medical treatment for yourself or of a family member. For events that are unforeseeable, we need you to notify us of your daily as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with the notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your child, parent or spouse, who has a serious health condition before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, the basic minimum duration of the leave is two weeks, and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you need more information regarding your eligibility for a leave and/or the impact of the leave on your benefits and benefits, please contact DFEH.

To schedule an appointment, contact the Communication Center below.

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by working with others by phone or, for individuals who can hear or have of hearing or have speech disabilities, through the California Relay Service (711), or contact us below.

CONTACT US

Toll Free: (800) 884-1684
TTY (800) 700-2320
contact.center@dfeh.ca.gov
www.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.

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

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 0F 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).*

REVIEW OF PROTECTIONS (2 0F 4)

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)*

REVIEW OF PROTECTIONS (3 0F 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)).*

REVIEW OF PROTECTIONS (4 0F 4)

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).*

In the News…

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.

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

contact.center@dfeh.ca.gov

accommodations@dfeh.ca.gov

(800) 884-1684 or

California Relay Service 711

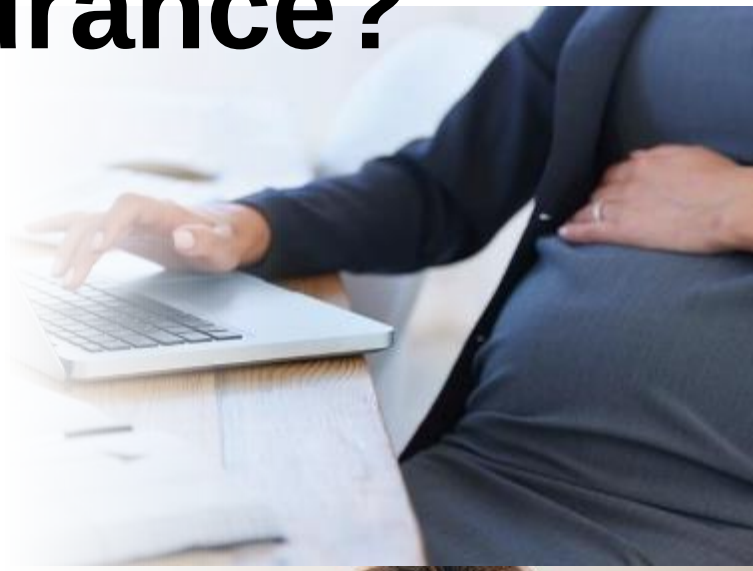
(800) 700-2320 TTY

California State Disability Insurance

2020 Pregnancy and Family Leave Workshop

Employment Development Department
State of California

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

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

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

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 Claim

- 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.**

Disability Insurance, Paid Family Leave, and New/Expecting Mothers

New mothers can take Disability Insurance leave followed by Paid Family Leave, for example:

Disability Insurance	→	Birth	→	Disability Insurance	→	Paid Family Leave
4 Weeks				6 - 8 Weeks		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

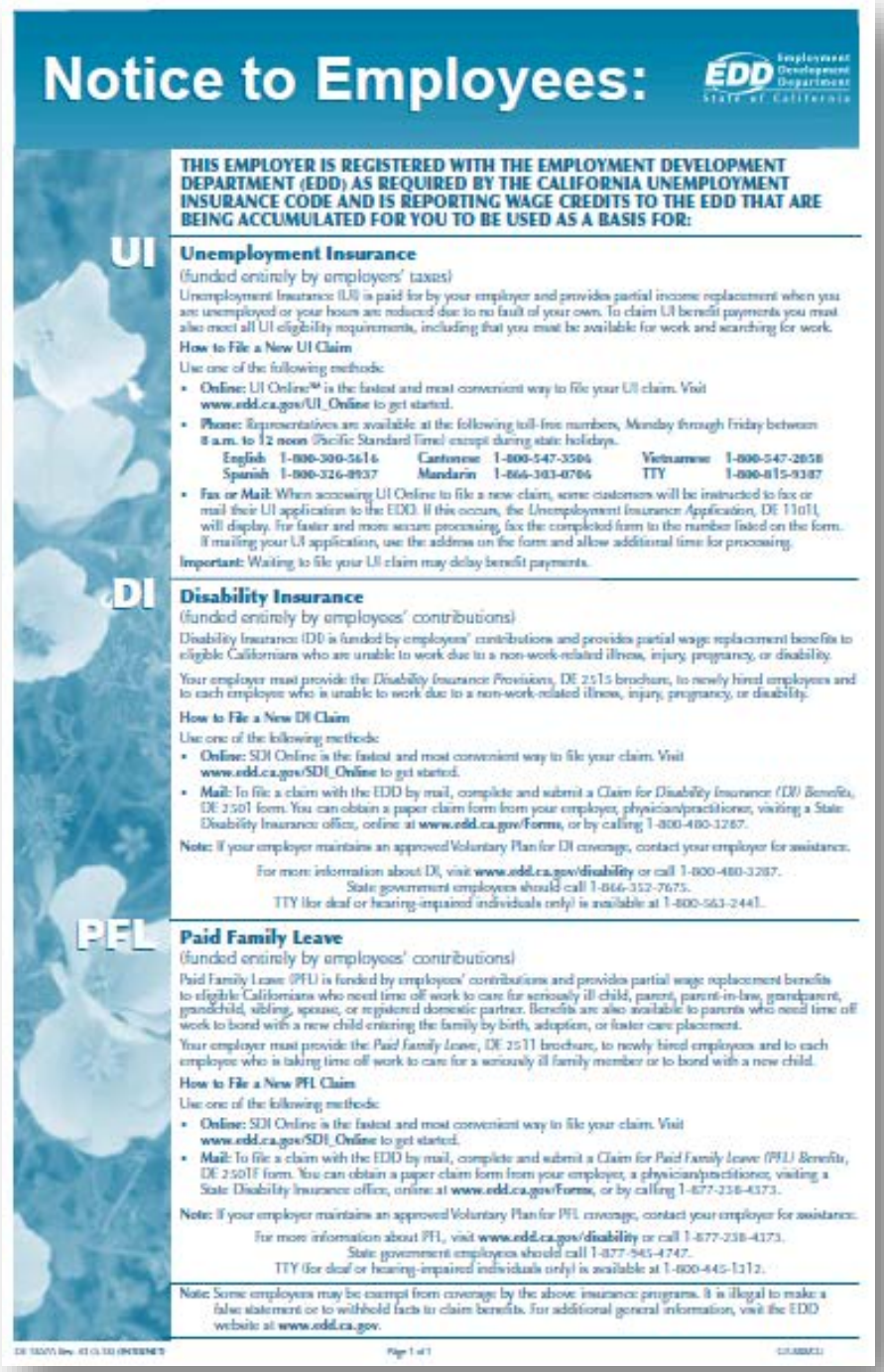
- For Paid Family Leave claims beginning on or after July 1, 2020, benefits will be expanded from six weeks to eight weeks.

- 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?



Notice to Employees:

EDD Employment Development Department State of California

THIS EMPLOYER IS REGISTERED WITH THE EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) AS REQUIRED BY THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE AND IS REPORTING WAGE CREDITS TO THE EDD THAT ARE BEING ACCUMULATED FOR YOU TO BE USED AS A BASIS FOR:

UI

Unemployment Insurance

(funded entirely by employers' taxes)

Unemployment Insurance (UI) is paid for by your employer and provides partial income replacement when you are unemployed or your hours are reduced due to no fault of your own. To claim UI benefit payments you must also meet all UI eligibility requirements, including that you must be available for work and searching for work.

How to File a New UI Claim

Use one of the following methods:

- **Online:** UI Online℠ is the fastest and most convenient way to file your UI claim. Visit **www.edd.ca.gov/UI_Online** to get started.
- **Phone:** Representatives are available at the following toll-free numbers, Monday through Friday between **8 a.m. to 12 noon** (Pacific Standard Time) except during state holidays.

English	**1-800-300-5616**	**Cantonese**	**1-800-547-3506**	**Vietnamese**	**1-800-547-2058**
Spanish	**1-800-326-8937**	**Mandarin**	**1-866-303-0706**	**TTY**	**1-800-815-9387**

- **Fax or Mail:** When accessing UI Online to file a new claim, some customers will be instructed to fax or mail their UI application to the EDD. If this occurs, the *Unemployment Insurance Application*, DE 1101I, will display. For faster and more secure processing, fax the completed form to the number listed on the form. If mailing your UI application, use the address on the form and allow additional time for processing.

Important: Waiting to file your UI claim may delay benefit payments.

DI

Disability Insurance

(funded entirely by employees' contributions)

Disability Insurance (DI) is funded by employees' contributions and provides partial wage replacement benefits to eligible Californians who are unable to work due to a non-work-related illness, injury, pregnancy, or disability.

Your employer must provide the *Disability Insurance Provisions*, DE 2515 brochure, to newly hired employees and to each employee who is unable to work due to a non-work-related illness, injury, pregnancy, or disability.

How to File a New DI Claim

Use one of the following methods:

- **Online:** SDI Online is the fastest and most convenient way to file your claim. Visit **www.edd.ca.gov/SDI_Online** to get started.
- **Mail:** To file a claim with the EDD by mail, complete and submit a *Claim for Disability Insurance (DI) Benefits*, DE 2501 form. You can obtain a paper claim form from your employer, physician/practitioner, visiting a State Disability Insurance office, online at **www.edd.ca.gov/Forms**, or by calling 1-800-480-3287.

Note: If your employer maintains an approved Voluntary Plan for DI coverage, contact your employer for assistance.

For more information about DI, visit **www.edd.ca.gov/disability** or call 1-800-480-3287.
State government employees should call 1-866-352-7675.
TTY (for deaf or hearing-impaired individuals only) is available at 1-800-563-2441.

PFL

Paid Family Leave

(funded entirely by employees' contributions)

Paid Family Leave (PFL) is funded by employees' contributions and provides partial wage replacement benefits to eligible Californians who need time off work to care for seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner. Benefits are also available to parents who need time off work to bond with a new child entering the family by birth, adoption, or foster care placement.

Your employer must provide the *Paid Family Leave*, DE 2511 brochure, to newly hired employees and to each employee who is taking time off work to care for a seriously ill family member or to bond with a new child.

How to File a New PFL Claim

Use one of the following methods:

- **Online:** SDI Online is the fastest and most convenient way to file your claim. Visit **www.edd.ca.gov/SDI_Online** to get started.
- **Mail:** To file a claim with the EDD by mail, complete and submit a *Claim for Paid Family Leave (PFL) Benefits*, DE 2501F form. You can obtain a paper claim form from your employer, a physician/practitioner, visiting a State Disability Insurance office, online at **www.edd.ca.gov/Forms**, or by calling 1-877-238-4373.

Note: If your employer maintains an approved Voluntary Plan for PFL coverage, contact your employer for assistance.

For more information about PFL, visit **www.edd.ca.gov/disability** or call 1-877-238-4373.
State government employees should call 1-877-545-4747.
TTY (for deaf or hearing-impaired individuals only) is available at 1-800-445-1312.

Note: Some employers may be exempt from coverage by the above insurance programs. It is illegal to make a false statement or to withhold facts to claim benefits. For additional general information, visit the EDD website at **www.edd.ca.gov**.

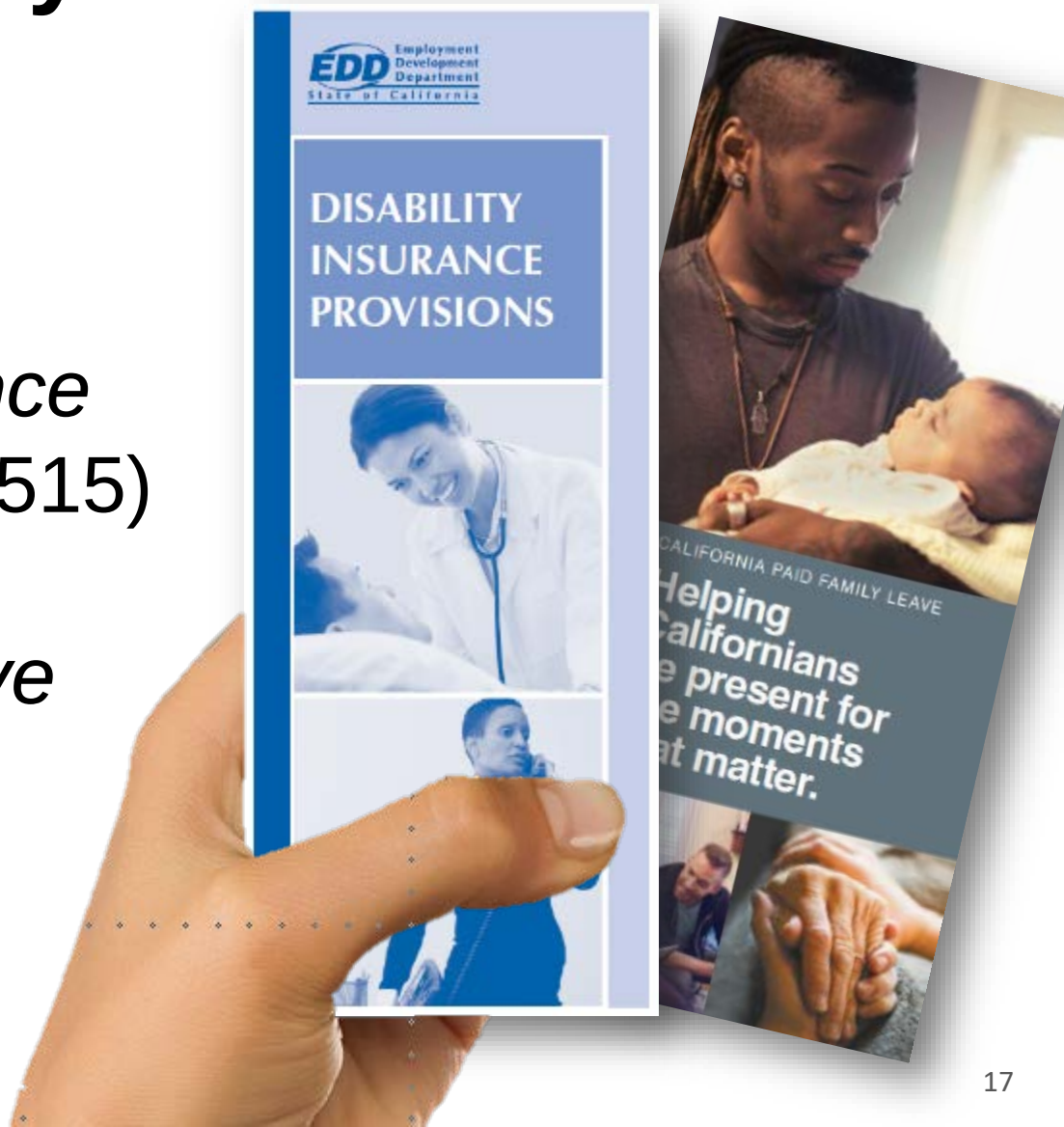
Page 1 of 1

Display the EDD Poster

Notice to Employees (DE 1857A)

Provide Employee Brochures

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



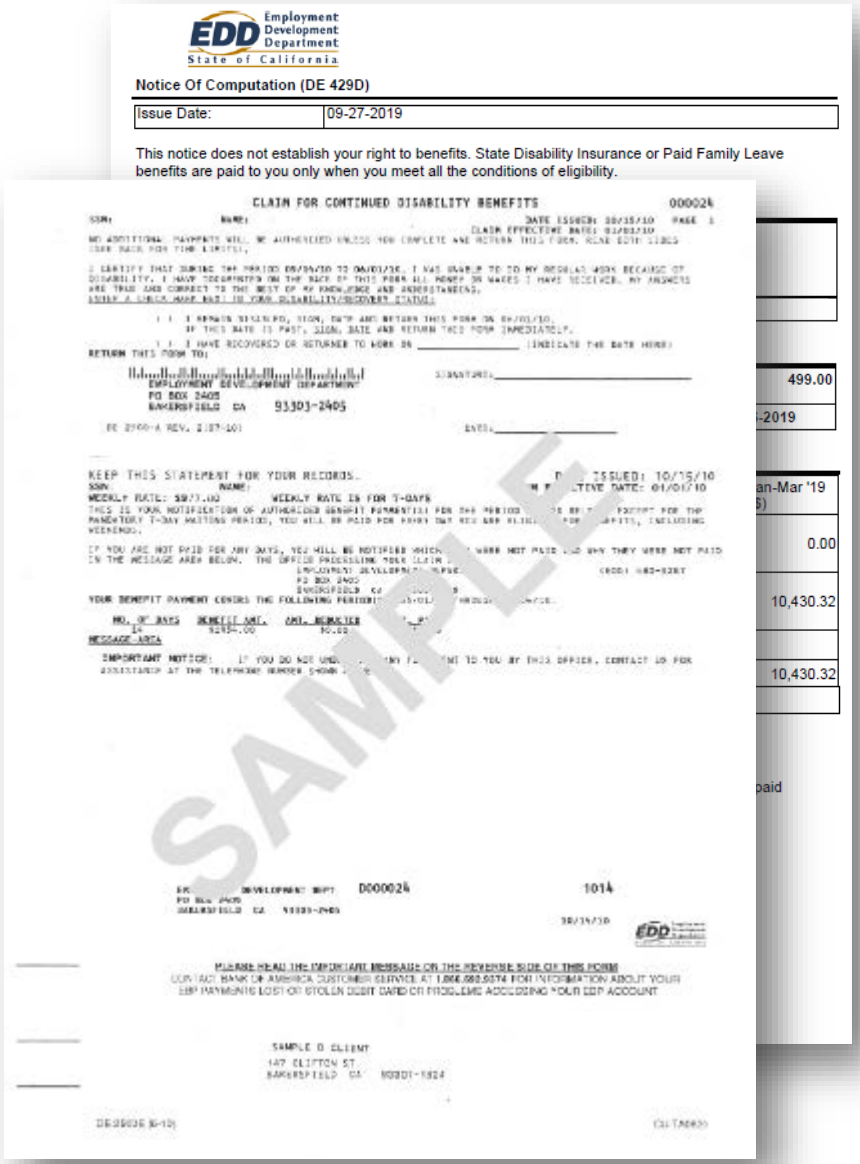
Wage Integration

- 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).


EDD Employment Development Department
State of California

Notice Of Computation (DE 429D)

Issue Date:	09-27-2019

This notice does not establish your right to benefits. State Disability Insurance or Paid Family Leave benefits are paid to you only when you meet all the conditions of eligibility.

CLAIM FOR CONTINUED DISABILITY BENEFITS

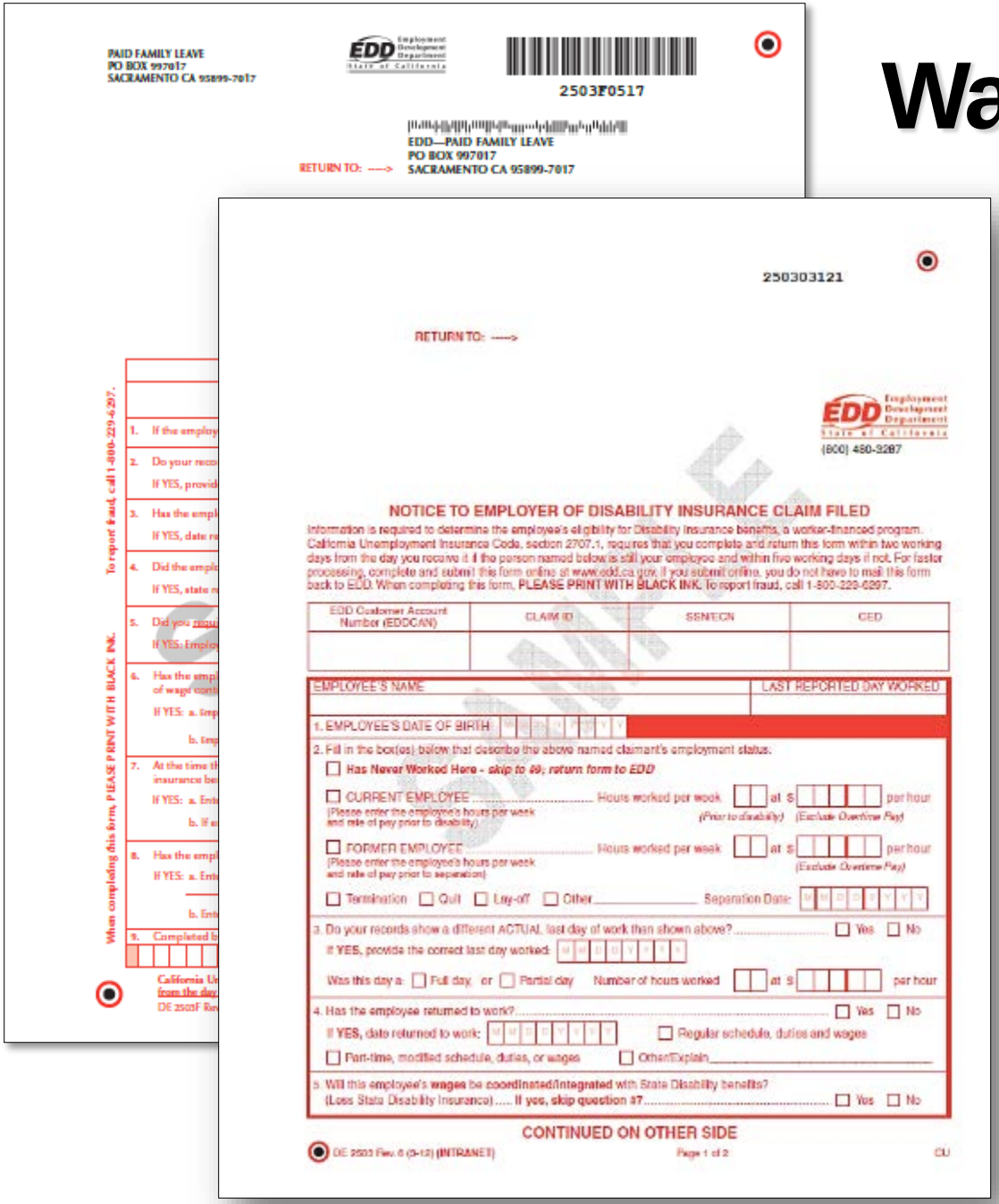
RETURN THIS FORM TO:
EMPLOYMENT DEVELOPMENT DEPARTMENT
PO BOX 2405
BAKERSFIELD CA 93303-2405

KEEP THIS STATEMENT FOR YOUR RECORDS.

SAMPLE

499.00
-2019
an-Mar '19
0.00
10,430.32
10,430.32
paid

Wage Integration Documents


PAID FAMILY LEAVE
PO BOX 997017
SACRAMENTO CA 95899-7017

2503F0517

EDD—PAID FAMILY LEAVE
PO BOX 997017
RETURN TO: ----> SACRAMENTO CA 95899-7017

250303121

RETURN TO: ---->

(800) 480-3287

NOTICE TO EMPLOYER OF DISABILITY INSURANCE CLAIM FILED

Information is required to determine the employee's eligibility for Disability Insurance benefits, a worker-financed program. California Unemployment Insurance Code, section 2707.1, requires that you complete and return this form within two working days from the day you receive it if the person named below is still your employee and within five working days if not. For faster processing, complete and submit this form online at www.edd.ca.gov. If you submit online, you do not have to mail this form back to EDD. When completing this form, PLEASE PRINT WITH BLACK INK. To report fraud, call 1-800-229-6297.

EDD Customer Account Number (EDDCAN)	CLAIM ID	SSN/ECN	CED

EMPLOYEE'S NAME | LAST REPORTED DAY WORKED

1. EMPLOYEE'S DATE OF BIRTH M M D D Y Y Y Y

2. Fill in the box(es) below that describe the above named claimant's employment status.

☐ Has Never Worked Here - skip to #9; return form to EDD

☐ CURRENT EMPLOYEE ..... Hours worked per week ☐☐ at $ ☐☐☐☐ per hour
(Please enter the employee's hours per week and rate of pay prior to disability) (Prior to disability) (Exclude Overtime Pay)

☐ FORMER EMPLOYEE ..... Hours worked per week ☐☐ at $ ☐☐☐☐ per hour
(Please enter the employee's hours per week and rate of pay prior to separation) (Exclude Overtime Pay)

☐ Termination ☐ Quit ☐ Lay-off ☐ Other _____ Separation Date: M M D D Y Y Y Y

3. Do your records show a different ACTUAL last day of work than shown above? ..... ☐ Yes ☐ No
If YES, provide the correct last day worked: M M D D Y Y Y Y

Was this day a: ☐ Full day or ☐ Partial day Number of hours worked ☐☐ at $ ☐☐☐☐ per hour

4. Has the employee returned to work? ..... ☐ Yes ☐ No
If YES, date returned to work: M M D D Y Y Y Y ☐ Regular schedule, duties and wages
☐ Part-time, modified schedule, duties, or wages ☐ Other/Explain _____

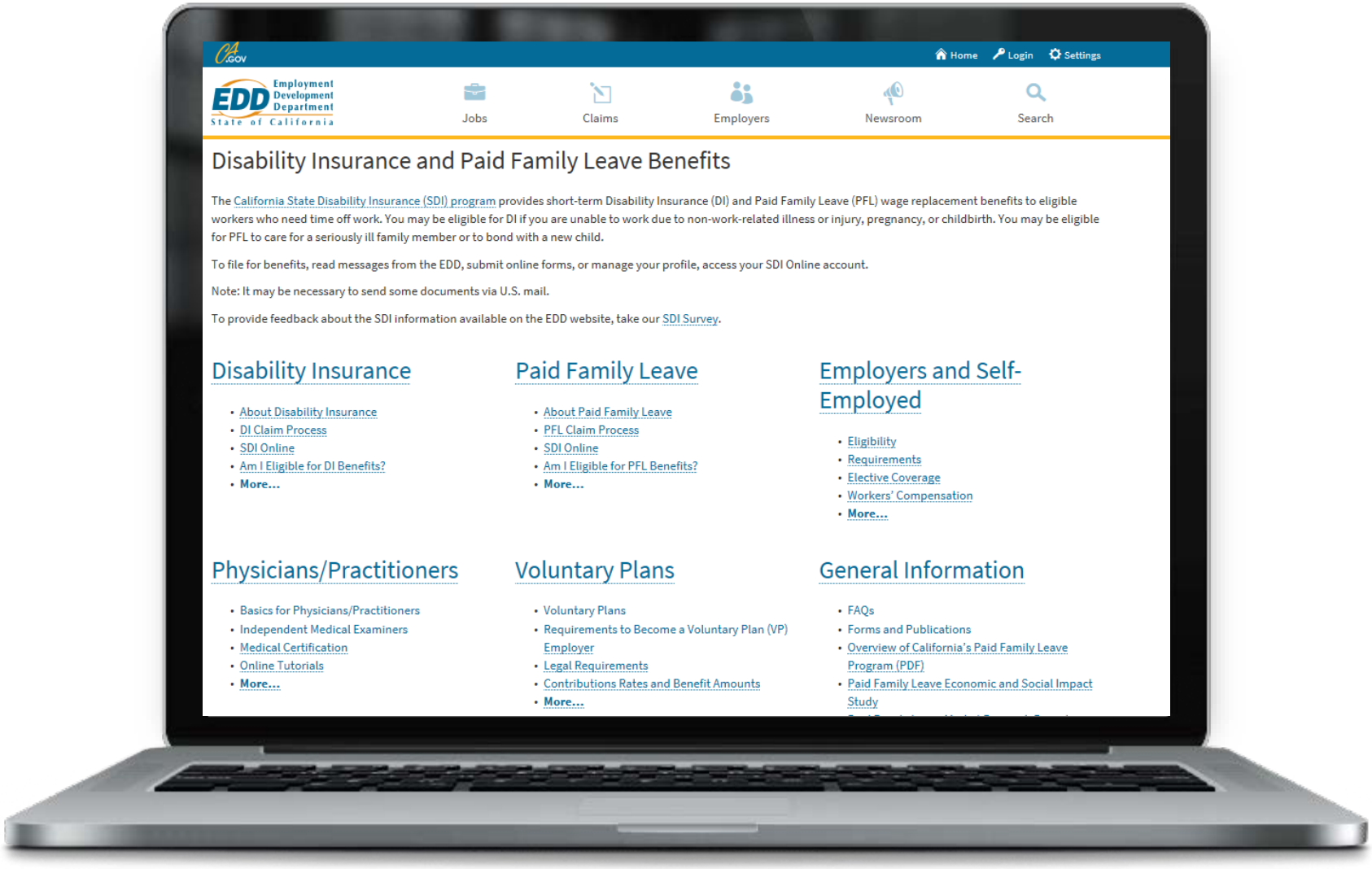
5. Will this employee's wages be coordinated/integrated with State Disability benefits? (Loss State Disability Insurance) ..... If yes, skip question #7 ..... ☐ Yes ☐ No

CONTINUED ON OTHER SIDE

DE 2503 Rev. 6 (3-12) (INTRANET) Page 1 of 2 CU

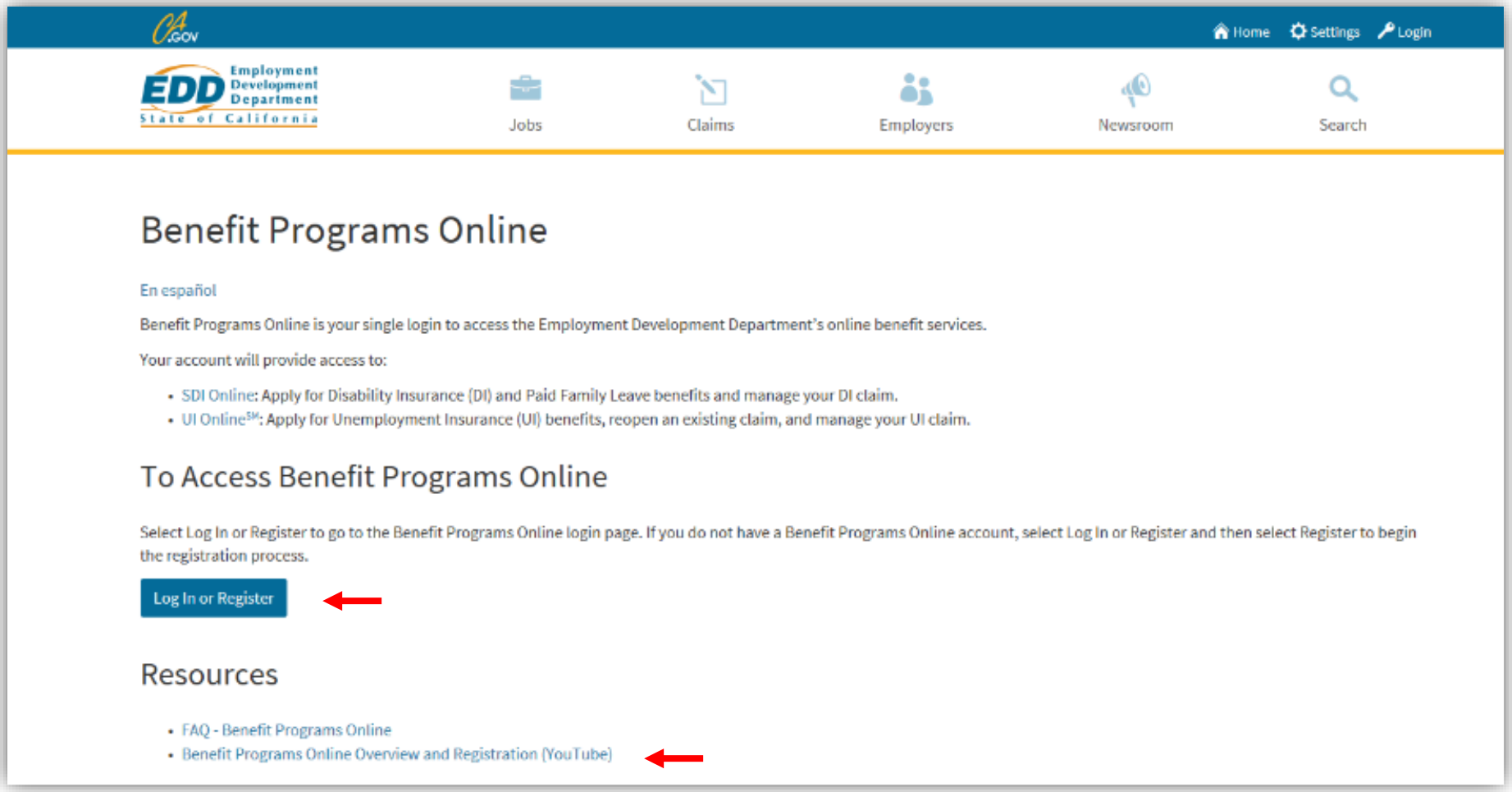
Return the ***Notice to Employer*** **(DE 2503/2503F)** to the EDD within two working days.

What is SDI Online?



Website: edd.ca.gov/disability

Benefit Programs Online



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:

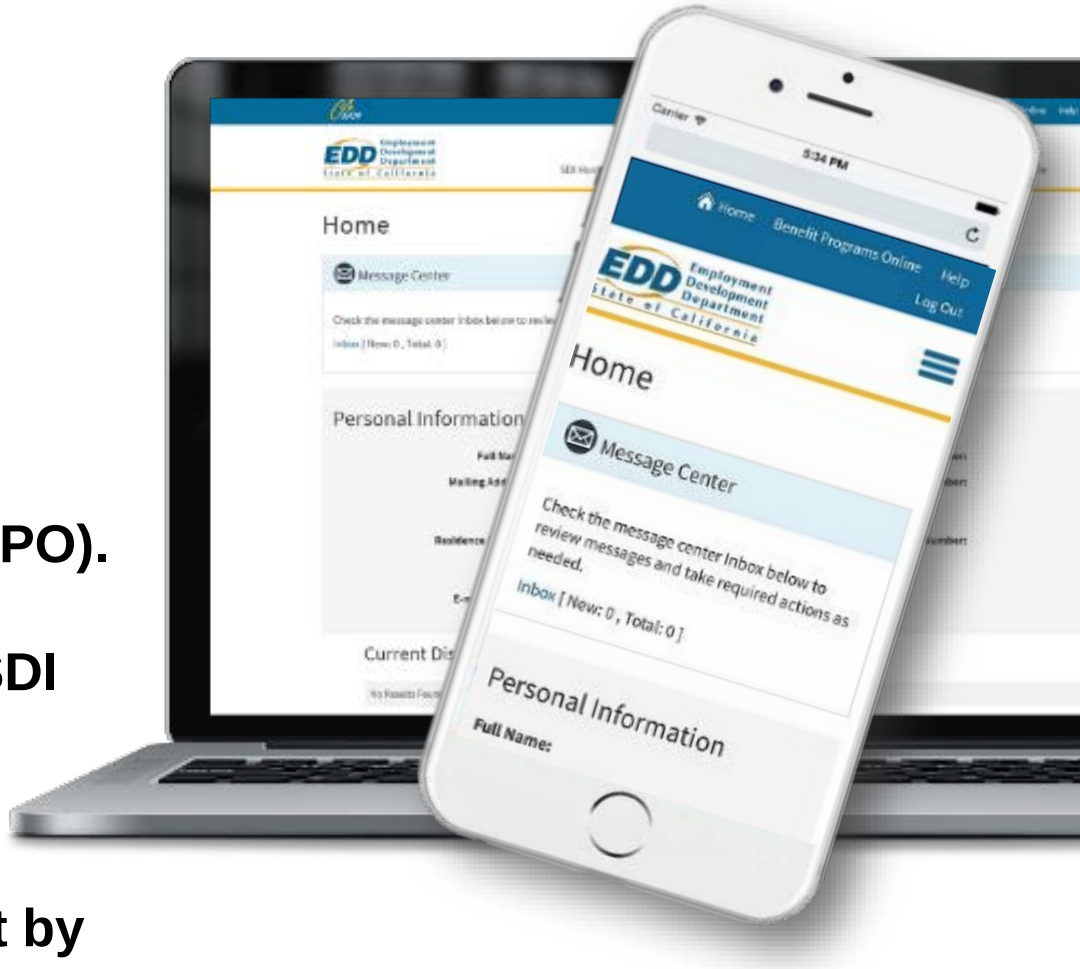
- EDD Employer Account Number.
- ZIP Code.
- Total subject wages from the *Quarterly Contribution Return and Report of Wages (*DE 9C).

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.**



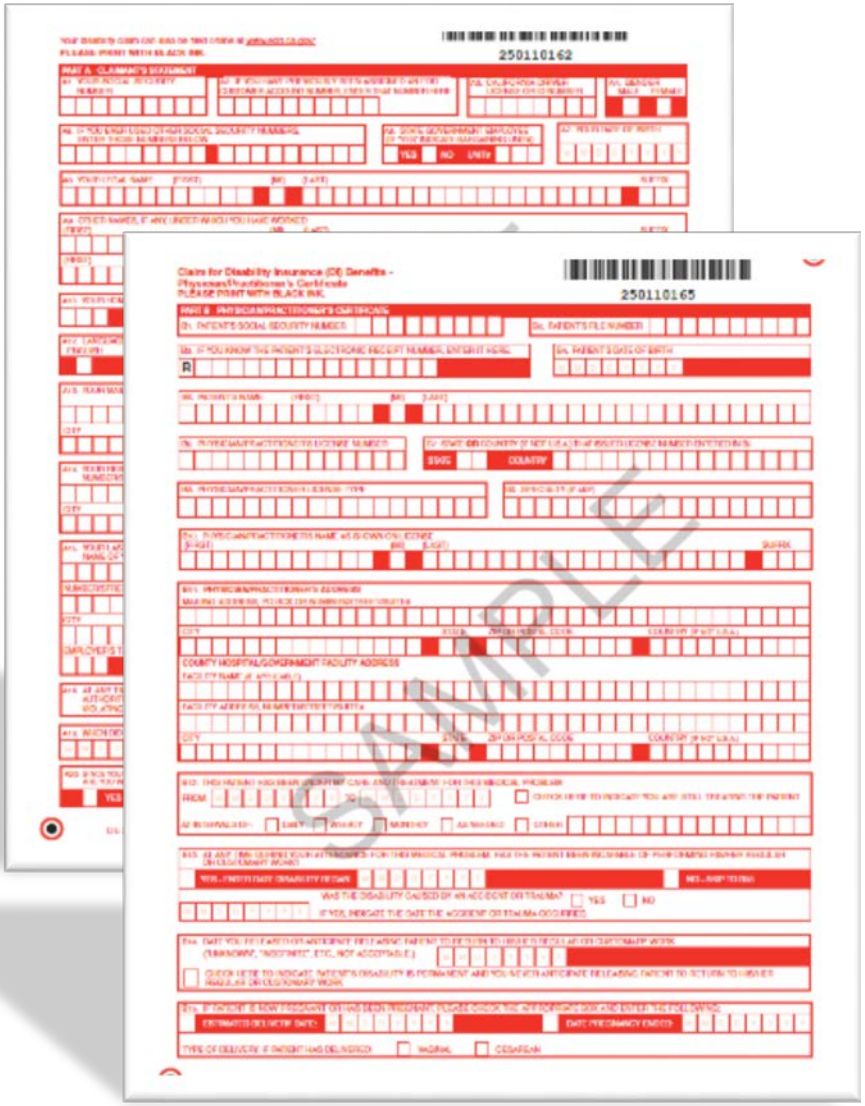
Create or access your account by visiting edd.ca.gov/BPO

DI Claim Form

Claim for Disability Insurance (DI) Benefits (DE 2501)

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

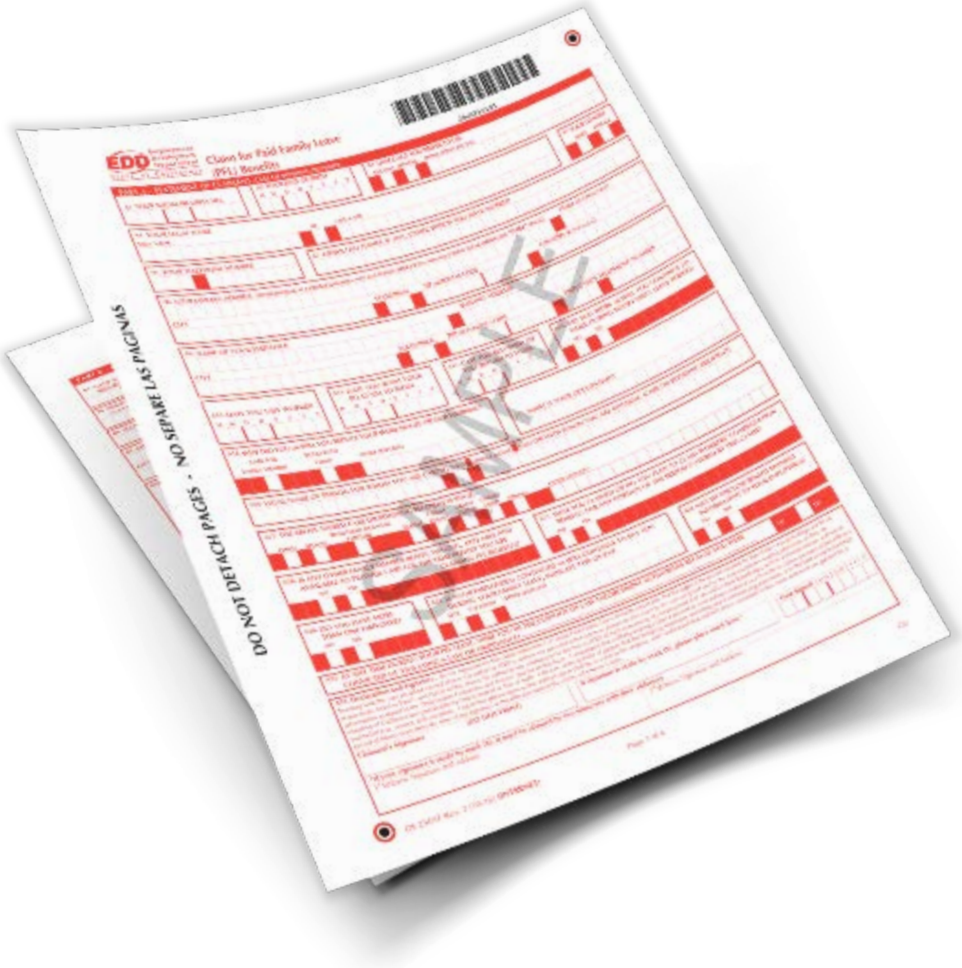
Part B: Physician Certification (Pages 5-7)



PFL Claim Form for Bonding

Claim for Paid Family Leave (PFL) Benefits (DE 2501F)

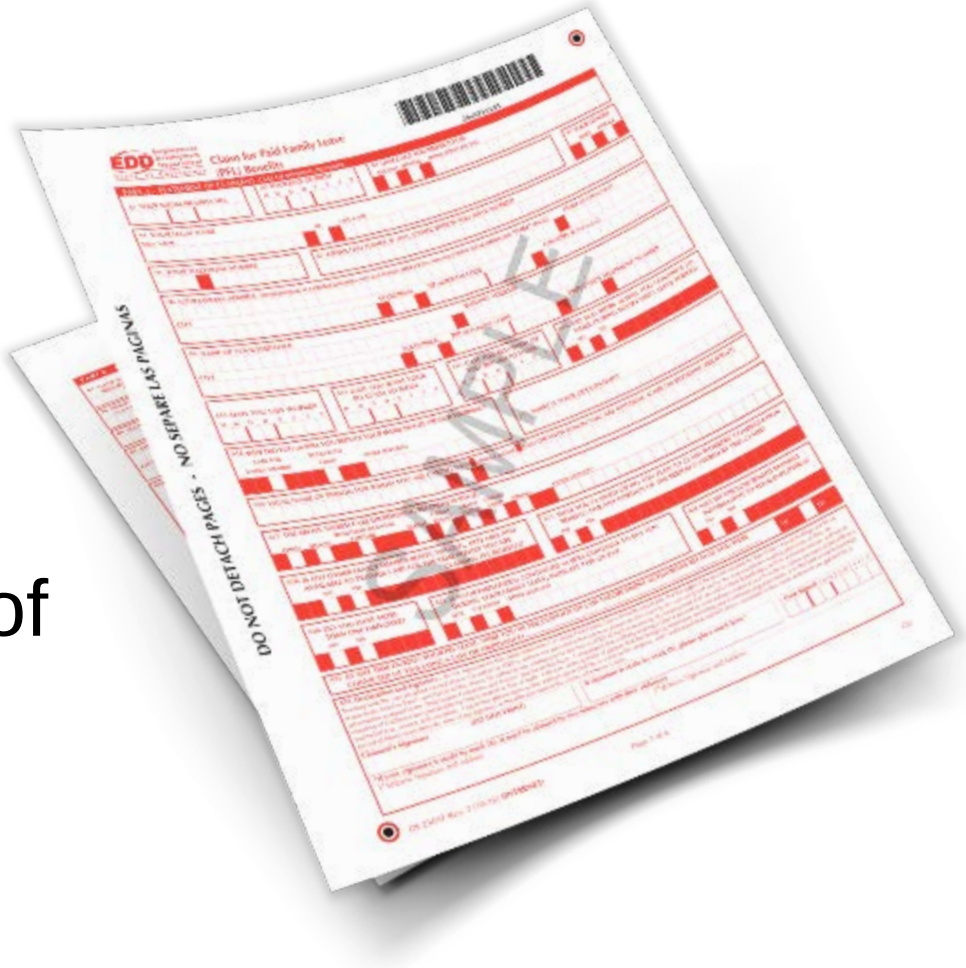
- Part A: Claimant's Statement
- Parts B: Bonding Certification
- Documentation showing proof of relationship



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.

Fraud Prevention

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).

Fraud Prevention

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.

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

Visit:

- edd.ca.gov/Disability
- CaliforniaPaidFamilyLeave.com

EDD Employment Development Department State of California

CALIFORNIA PAID FAMILY LEAVE moments matter.

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

Agency Overview

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

Lactation Breaks – California Law

- 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.

Policy : Lactation Accommodation

- **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

FAQ's

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

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

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:

  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

Covered Employees: Upcoming Changes to PFL and the Impact on PPLO

- 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

EMPLOYER'S
Guide to the San Francisco
Paid Parental Leave Ordinance

Step #1

Give Notice to Employees

Post Notice created by OLSE.

Include a description of the right to Supplemental Compensation under the SF Paid Parental Leave Ordinance (PPLO) in employee handbook.

Step #2

Give Employee SF Paid Parental Leave Form (SF PPL Form)

Available at: http://sfgov.org/pplo

Provide a copy as soon as employee asks about parental leave or tells you she/he is expecting a newborn, adopted or foster child. It is also recommended to provide it to all new employees.

Step #3

Determine Employee's Eligibility

The employee is eligible if he/she: (1) commenced work for you at least 180 days before leave period; (2) works at least 8 hours per week and 40% of total weekly hours in San Francisco; (3) has applied for and is eligible for CA Paid Family Leave (PFL).

Step #4

Calculate & Pay Supplemental Compensation

You will need the employee's Normal Weekly Wages and EDD Weekly Benefit amount. This information should be on the SF PPL Form and EDD Notice of Computation, which the employee receives from EDD.

Calculation instructions available on the OLSE website.

Remember to Maintain Records and that Retaliation is Prohibited Under the Ordinance.

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EMPLOYEE'S
Guide to the San Francisco Paid Parental Leave Ordinance

Step #1 — **Apply for CA Paid Family Leave (PFL) Benefits**

Online or paper application through Employment Development Department (EDD).

Be sure to check the box allowing EDD to disclose your benefit amount.

Step #2 — **Complete SF Paid Parental Leave Form (SF PPL Form)**

Form is available on the OLSE Website and should be provided by your employer.

If you have multiple employers, complete a form for each employer.

Step #3 — **Submit SF PPL Form & EDD Notice of Computation to Employer**

When you apply for PFL benefits, the EDD will send you a Notice of Computation that includes your weekly benefit amount.

Step #4 — **Notify Employer When You Receive First PFL Payment**

If requested, provide your employer with the EDD Notice of Payment (also known as the Electronic Benefit Payment Notification).

STOP: Your Application is Now Complete!

Please contact the Office of Labor Standards Enforcement at ppl@sfgov.org or at (415) 554-4190 with any further questions or online at http://sfgov.org/ppl

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)

<u>Example</u>:

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).

<u>Payment is due at next regularly scheduled pay period</u>

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?

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