

Medical & Family Leave

The Family and Medical Leave Act (the FMLA) is the federal law that generally prevents an employee from being terminated for missing work because of a health problem or to care for a close family member with a serious health problem. The provisions of this law can be found at Section 2601 of Title 29 of the United States Code.

The California Family Rights Act (the CFRA) allows an employee to take up to 12 weeks of leave in a year. The CFRA, also known as the Moore-Brown-Roberti Family Rights Act is part of the California Fair Employment and Housing Act (the FEHA), which protects employees against various forms of discrimination and harassment. The CFRA forbids retaliation against an employee for taking a medical leave of absence. California Government Code Section 12940(h). The Family Medical Leave Act also prohibits retaliation for use of medical leave and interference with medical leave usage. Title 29 United States Code Section 2615(a)(1) and (2).

The CFRA can be found at Section 12945.2 of the California Government Code. The California law is generally preferable to the federal counterpart because it does not limit the amount of compensatory and punitive damages you may recover against the defendant if you prevail.

FMLA Eligibility

Under both the federal and the California law, an employee who is eligible for medical leave may generally take up to 12 work weeks of leave in a year. The employer is usually not required to pay the employee for such medical leave. However, the employer must allow the employee to return to work without any negative consequences.

To be eligible to take protected family medical leave, the employee must have worked for an employer 50 or more employees for over one year. Additionally, the employee may only take medical leave for her own serious health condition or that of her spouse, child or parent. A serious health condition is usually an injury or illness that prevents the employee from being able to do her job. The employer may require the employee provide a note from her physician certifying the health condition is serious. The birth of a child is also a reason to take medical leave.

California Paid Family Leave ("PFL") allows employees who take time off work to bond with a new child or to care for a close family or domestic partner member with a serious health problem to receive payments from the California State Disability Fund. The health problem includes pregnancies. An employee receives the benefits of this law if no other family member is available to provide the care required. A doctor's certificate is also necessary. This law can be found at Sections 2601 and 3301(a) of the California Unemployment Insurance Code.