

Navigating the Turbulent Sea of Leave of Absence Laws in California



Presented by: Heffernan Consulting



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Presenter: C.J. Westrick, SPHR

- ❖ National Certification through the Human Resources Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR) since 2002
- ❖ HR consultant since 2006
- ❖ 25+ years in HR management
- ❖ Former President of National Human Resources Association (NHRA) – San Diego Chapter



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Disclaimer

The information provided in today's webinar is not intended to be legal advice and we strongly encourage you to seek legal counsel prior to making any significant employment decisions.



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Today's Objectives

- Leaves of Absence (LOA) under:
 - Federal Family Medical Leave Act (FMLA)
 - California Family Rights Act (CFRA)
 - New Parent Leave Act (NPLA)
 - Fair Employment & Housing Act (FEHA)
 - *California's Pregnancy Disability Leave (PDL)*
 - Americans with Disabilities Act (ADA)
- Workers Compensation Leave
- Other required leaves



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It's Complicated in California!

- ❖ Many leave laws overlap
- ❖ CFRA incorporates FMLA regulations
- ❖ Size matters
- ❖ Regulations change frequently
- ❖ Adhere to state and federal laws
 - Comply with the most employee friendly law



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FMLA/CFRA Leaves

- ❖ Federal Family and Medical Leave Act (FMLA)
 - 29 USC §§ 2601 et seq.; 29 CFR 825 et seq.
- ❖ Moore-Brown-Roberti Family Rights Act ...
aka California Family Rights Act (CFRA)
 - Gov Code §§12945.1 et seq.; Cal. Code Regs., tit. 2, § 7297
- ❖ Intended to balance demands of workplace with need of employees needing leaves for medical conditions and compelling family reasons



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Eligibility: FMLA / CFRA

- ❖ Employed for 12 months in the preceding 7 years
 - Limited exceptions apply to the seven year requirement
- ❖ Worked at least 1,250 hours during the 12 months preceding the date the leave would commence
 - Designate the 12 month period in your policy, such as rolling 12-month period that is measured backward /forward from the date the employee uses any leave
 - Part-time employees eligible on a proportionate basis
- ❖ Employed at a worksite where the company employs at least 50 employees within a 75-mile radius of that worksite



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Family Medical Leave Act (FMLA)

❖ 12 workweeks of leave in a 12-month period:

- Birth of a child and to care for the newborn child within one year of birth;
- Placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- Care for the employee's spouse, child, or parent who has a serious health condition;
- Serious health condition that makes the employee unable to perform the essential functions of his or her job;
- Qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or (military caregiver leave).

❖ 26 workweeks of leave during a single 12-month period:

- Care for a covered servicemember with a serious injury or illness who is the spouse, son, daughter, parent, or next of kin to the employee



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CA Family Rights Act

❖ 12 workweeks of leave in a 12-month period:

- Birth of a child for purposes of bonding
- Placement of child in employee's family for adoption or foster care
- Serious health condition of the employee's child, parent or spouse
- Employee's own serious health condition

CFRA



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Same for FMLA / CFRA

- ❖ Notice required
 - Employee and Employer
- ❖ FMLA/CFRA run concurrently:
 - To care for a family member with a serious health condition
 - For the employee's own serious health condition
- ❖ Intermittent/reduced hours
- ❖ Reinstatement
- ❖ Continue insurance benefits
 - Can require employee to continue to pay their own contribution to the premium



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FMLA and CFRA Differences

- ❖ 5 Big differences between FMLA and CFRA
 - Pregnancy is serious health condition under FMLA but is not under CFRA (it's under PDL instead)
 - CFRA covers baby bonding – FMLA does not
 - Domestic partners are not covered under FMLA
 - FMLA has "Qualifying Exigency" leave for employee's or family member's active military duty
 - FMLA has leave for care of injured or ill service member



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New Parent Leave (NPLA)

- ❖ Eligibility
 - Employed for 12+ months
 - Worked at least 1,250 hours in the 12 months
 - Employed at worksite where company employs 20+ employees within a 75-mile radius of that worksite
- ❖ Baby bonding only
 - New birth, adoption, or foster child
 - Use in 2-week blocks within first year (2 exceptions allowed)
 - Each child starts a new 12-week leave
- ❖ After PDL has ended



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CA Pregnancy Disability Leave (PDL)



- ❖ Eligible for PDL if disabled by pregnancy, childbirth or related medical conditions
 - Under CA Fair Employment and Housing Act (FEHA)
 - Eligible on 1st day of employment
- ❖ Employers with 5+ employees
 - Counts owners
 - Employees of nonprofit religious associations are not eligible
- ❖ Runs concurrently with FMLA (if eligible) for the period of disability
- ❖ Baby bonding not included
 - Can take < 12 additional weeks for baby bonding under CFRA or NPLA



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CA PDL *cont.*

- ❖ < 4 Months (693 hours) of leave if full-time
 - Count hours (17 1/3 weeks = 1/3 of year)
 - Pro-rate based on hours normally worked
 - 20+ hours per week = 346.6 hours of leave
 - 48 hours per week = 832 hours of leave
- ❖ Only for period covered by doctor's notes (disability ONLY)



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CA PDL *cont.*

- ❖ Accommodations
 - Transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties, if this transfer is medically advisable.
 - Receive reasonable accommodation for conditions related to pregnancy, childbirth, or related medical conditions at the advice of a health care provider.
- ❖ Reinstatement
- ❖ New insurance continuation requirement
 - Require employee to pay any contributions



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PDL Scenario

- ❖ Suzie, an employee of 5 years, is pregnant and has severe morning sickness all day. She also has many doctors appointments for prenatal care.
 - Is she entitled to take time off?



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PDL Scenario

- ❖ Suzie, an employee of 5 years, is pregnant and has severe morning sickness all day. She also has many doctors appointments for prenatal care.
 - Is she entitled to take time off?
- ❖ Answer:
 - If Suzie is eligible for PDL, the time she takes off for medical reasons related to pregnancy are counted against her 4 months of CA PDL
 - Get a doctor's note!



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PDL Scenario cont.

- ❖ Suzie ended up taking 4 months off during her difficult pregnancy -- now she wants another 3 months to stay home and bond with her baby
 - Is she entitled to do so?
 - Do you have to continue her health benefits?



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PDL Scenario cont.

- ❖ Suzie ended up taking 4 months off during her difficult pregnancy -- now she wants another 3 months to stay home and bond with her baby
 - Is she entitled to do so?
 - Do you have to continue her health benefits?
- ❖ Answer:
 - Under CFRA she is entitled to the time off and to continue her insurance

yes yes



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Paid or Unpaid Leave

- ❖ Does your Company have a policy for salary continuation?
- ❖ Does your Company offer PTO / vacation?
- ❖ What is your sick leave policy?
- ❖ Does your Company offer a Short Term Disability Insurance or Long Term Disability Insurance plan?



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SDI Partial Wage Replacement



- ❖ State Disability Insurance (SDI) covers < 52 weeks in CA for disability (injury/illness)
 - Funded by employee contributions
 - Administered by the CA Employee Development Department (EDD)
- ❖ Employees apply through EDD



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PFL Partial Wage Replacement

- ❖ Paid Family Leave (PFL) covers < 6 weeks in CA for baby bonding
 - Funded solely by employee contributions
 - Administered by the CA Employee Development Department (EDD)



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Pregnancy - Scenario 1



- ❖ PDL / FMLA running concurrently for 8 weeks
- ❖ Once released for work by healthcare provider, eligible for <12 weeks of CFRA for baby bonding
 - Here, the remaining 4 weeks of FMLA run concurrently with CFRA
- ❖ Eligible for 20 weeks of protected leave
 - 8 Weeks PDL + 12 Weeks of baby bonding under CFRA



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Pregnancy - Scenario 2

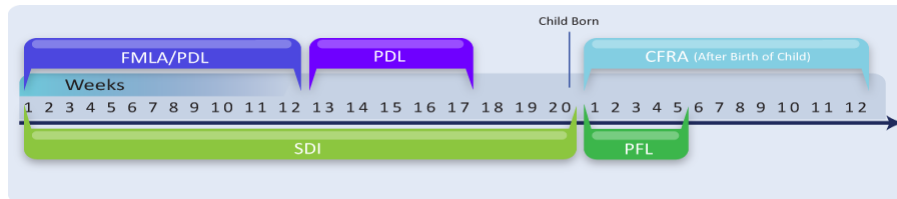


- ❖ Total amount of time available for eligible, pregnant full-time employee
 - PDL / FMLA running concurrently for 8 weeks
 - PDL continuing for up to a total of 17 1/3 weeks
 - CFRA baby bonding for up to 12 weeks
- ❖ Healthcare provider determines actual length of disability



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Pregnancy - Scenario 3



- ❖ When employee uses all PDL / FMLA before birth
 - Company policy fills the gap



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New Parent Leave - Scenario



- ❖ Baby bonding only
 - < 12 Weeks within 1 year after date of birth, adoption, fostering
 - May use accrued vacation, paid sick time, etc.
 - May be eligible for PFL
- ❖ Include policy if have 20+ employees anywhere



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Counting Employees

- ❖ DFEH counts all employees for employer PDL eligibility
 - 1 CA employee, who is pregnant
 - 2 ME employees
 - 3 TX employees
- ❖ CA employee is eligible for PDL because there are 5+ total employees in the Company.



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Counting Employees cont.

- ❖ FMLA
 - “An employee’s personal residence is not a worksite in the case of employees, such as salespersons, who travel a sales territory and who generally leave to work and return from work to their personal residence, or employees who work at home, as under the concept of telecommuting. Rather, their worksite is the office to which they report and from which assignments are made.”
- ❖ Example
 - Boston MA office has 50 employees
 - 1 long-time employee works from her home in San Diego
 - San Diego employee is eligible for leave under FMLA because she reports to Boston office



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Workers' Compensation Leave

Labor Code sections 3200 -6145

- ❖ Injury / illness occurs while performing services growing out of and incidental to employment and is acting within the scope of employment
- ❖ Injury is caused by employment
 - No relief for psych injury arising from good faith and non-discriminatory personnel action
- ❖ Employee receives a portion of salary through workers compensation insurance



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Workers' Compensation

- ❖ Runs concurrently with FMLA/CFRA
 - MUST designate and notify employee
- ❖ Leave for work-related disability
 - Have no threshold service requirements, no size limits, and may go on almost indefinitely
 - Reinstatement required unless can prove employee unable to return or business necessity
 - You must comply with reasonable accommodation and interactive process requirements of FEHA
- ❖ Can require employee to continue to pay insurance contributions for duration of FMLA, then COBRA
- ❖ No retaliation / discrimination or hit with 132a action



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Americans with Disabilities Act (ADA)



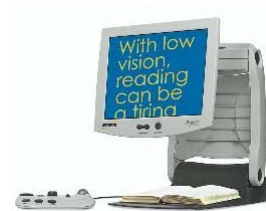
- ❖ Legally required to provide reasonable accommodation to an employee or job applicant with a disability
 - Unless doing so would cause significant difficulty or expense
- ❖ If still disabled when FMLA/CFRA/PDL/Workers' Comp ends... then consider ADA provisions



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Americans with Disabilities Act cont.

- ❖ Reasonable accommodations
 - Any change in the work environment (or in the way things are usually done) to help a person with a disability
 - *apply for a job*
 - *perform the duties of a job*
 - *enjoy the benefits and privileges of employment*
- ❖ Examples
 - Making the workplace accessible for wheelchair users
 - Providing a reader or interpreter for someone who is blind or hearing impaired



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Other Legally Mandated Leaves

- ❖ All CA employees
 - Victims of domestic violence, sexual assault, or other crimes
 - Crime victims
 - Child's suspension
- ❖ 25+ CA employees
 - Drug and alcohol treatment
 - Military spousal leave
 - Literary assistance
 - Domestic violence
 - Domestic violence and sexual assault
 - School or day care activities leave
- ❖ Different for companies with <50 versus 50+ employees
 - Emergency duty personnel



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Organ and Bone Marrow Donor

- ❖ PAID Leave if 15+ employees
 - < 30 days in a 12-month period for donating organ
 - < 5 days in a 12-month period of for donating bone marrow
- ❖ Donation must be to another person
- ❖ Job-protected leave
- ❖ Health insurance must be maintained and paid during leave



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Special Rules

- ❖ FMLA / CFRA
 - You may use accrued vacation while worker is on leave
 - Not allowed with workers' compensation or PDL leaves
- ❖ SDI and PFL
 - Employee must qualify for an applicable leave or policy
 - If qualified, employee may collect state benefits
- ❖ Company policy
 - Additional leaves or rights may be available per your policies



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Practical Application

- ❖ Determine which leaves apply
- ❖ Review/revise policies and notices
 - For compliance
 - Designate 12-month period
 - Require payment of insurance contributions
 - Determine when COBRA will begin
- ❖ Properly designate and track leaves
- ❖ Provide required notices and documentation
- ❖ Consider ADA issues before termination



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Internet Resources

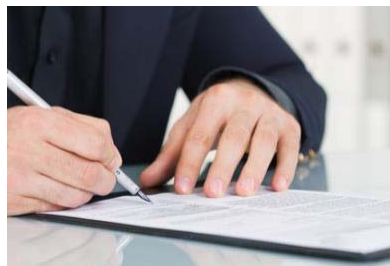
- ❖ Resources are available on the internet
 - Federal Dept of Labor: Family Medical Leave Act (FMLA) provisions
 - <http://www.dol.gov/compliance/guide/fmla.htm>
 - CA EDD Paid Family Leave Brochure
 - http://www.edd.ca.gov/pdf_pub_ctr/de2511.pdf
 - PDL, CFRA and FMLA frequently asked questions
 - <https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/pdl-cfra-fmla-guide/>
 - Your Rights And Obligations As A Pregnant Employee (required notice)
 - <https://www.arb.ca.gov/personnel/posters/pregnancydisabilityleavenotices.pdf>
 - CA EDD CA State Disability Insurance (SDI) brochure
 - http://www.edd.ca.gov/pdf_pub_ctr/de2515.pdf



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Practical Advice

- ❖ Seek advice from attorney or HR professional when dealing with complex issues
 - Proactive advice is always better
- ❖ Document (in detail) your process for all leave requests and accommodation requests



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Additional Questions?



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