



## Coffee Club

Having a Baby...Properly Handling Pregnancy Leaves



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## Introduction

Welcome to the AALRR monthly "Coffee Club" Webinar Series. Our series will focus on labor and employment law issues facing California employers and will provide you with a unique understanding and perspective on a variety of interesting and timely topics.



Join us the first Tuesday of every month @ 10:00 am for a new and exciting topic.

Today, we will be discussing *Having a Baby...Properly Handling Pregnancy Leaves*

Next Month, *Background Checks...What's Legal and What's Not?*



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## Disclaimer | Housekeeping

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.



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### Maternity Leave Laws



- Pregnancy Disability Leave Law (PDL)
- Family Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- Americans with Disabilities Act (ADA)/Fair Employment and Housing Act (FEHA)

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### Pregnancy Disability Leave ("PDL")

- State law (Govt. Code § 12945.)
- 4 months of leave, may be on intermittent basis or part-time schedule
- Leave for employee disabled by pregnancy, childbirth, or related medical conditions
- Requires employers to provide reasonable accommodation of disabilities arising from pregnancy, childbirth, or related medical conditions
- Reinstatement to same position
- No service eligibility criteria to qualify for leave
- Runs concurrently with FMLA, but not CFRA



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### Disabilities Related to Childbirth/ Pregnancy-Related Illness

- In California, expecting mothers are entitled to leave for more than the mere childbirth itself.
  - They have a right to time off for *disabilities* related to the pregnancy and childbirth.
- The definition of "disabled" is fairly broad.
- Disabled by pregnancy or childbirth if, in the opinion of her health care provider, she would be unable to:
  - perform an essential function of her job.
  - perform an essential function without undue risk to herself, to her pregnancy's successful completion, or to other persons.

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### Disabled by Pregnancy

- Examples include\*:
  - Severe morning sickness
  - Prenatal or Postnatal care
  - Bed rest
  - Gestational diabetes
  - Pregnancy-induced hypertension
  - Preeclampsia
  - Post-partum depression
  - Childbirth
  - Loss or end of pregnancy
  - Recovery from childbirth, loss or end of pregnancy
- \*This list is not exhaustive. Other illnesses related to pregnancy or childbirth may qualify as a disability

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### Pay During PDL

- In general, employers are not required to pay employees during PDL.
  - If the employer provides paid leave for other types of temporary disabilities, the employer must also provide paid PDL.
- Sick or Vacation pay.
  - Employer may require the use of accrued sick pay or sick leave time during the otherwise unpaid portion of PDL.
  - Employees may also opt to use their sick pay during this time.
  - Employers may not require employees to use their vacation pay or PTO during PDL.
  - Employees can elect to use their vacation pay or PTO.

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### Pay During PDL *continued*

- Employees often have a right to disability insurance. For more information about disability insurance, check the website for California's Employment Development Department: <http://www.edd.ca.gov/>

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### Pregnancy Disability Leave

- PDL gives female employees a right to maternity leave for **up to four months**.
  - If recovers faster than four months, may not be entitled to the entire four months of maternity leave.
- PDL defines four months as the number of days the employee would normally work within four calendar months.
  - If the number of days varies from month-to-month, the employer must calculate the average number of days the employee worked in the preceding four months.

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### Accruing Other Benefits

- Employees have the same rights during PDL as they would during other types of unpaid disability leaves.
  - Vacation or sick leave
  - Seniority
- May not *reduce* seniority during PDL.

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### Intermittent Leave

- What if the maternity leave for disabilities are not continuous?
- Employers must provide reasonable accommodations for employees if they're requested and if a health care provider has advised it.
- Intermittent leave is considered a reasonable accommodation
  - Explore temporary transfer to a similar position or alternative positions.

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### Family Medical Leave Act ("FMLA")

- Federal law (29 U.S.C. § 2601 et seq.)
- 12 work weeks of leave may be on intermittent basis or part-time schedule
- Family care/medical leave, including birth/adoption/foster care of a child
- Reinstatement to same or comparable position
- Covered employer
  - At least 50 employees
- Eligible employee
  - 12 months of service with at least 1250 hours in 12 months preceding leave at a location with at least 50 employees within 75 miles
  - 7 year look back for eligibility



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### California Family Rights Act ("CFRA")

- State law (Govt. Code § 12945.1 et seq.)
- 12 work weeks of leave, may be on intermittent basis or part-time schedule
- Family care/medical leave, excluding serious health conditions related to pregnancy and/or childbirth
- Reinstatement to same or comparable position
- Covered employer
  - At least 50 employees
- Eligible employee
  - 12 months of service with at least 1250 hours in 12 months preceding leave at a location with at least 50 employees within 75 miles



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### Intersection of PDL & CFRA

- The right to 12 weeks of bonding time under CFRA is separate and distinct from the right to pregnancy disability leave under PDL.
- Bonding time under CFRA may be taken *after* the employee's; pregnancy-related disability concludes
- May add up to **as much as seven months of leave**, or longer depending on the length of the employee's pregnancy disability.
- Don't Forget Reasonable Accommodation under ADA & FEHA

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### Americans With Disabilities Act/Fair Employment & Housing Act (ADA/FEHA)

- Leave of absence may be a reasonable accommodation for physical or mental disability.
  - May be required to continue leave at the end of 12-week FMLA/CFRA leave
  - No statutory limit on duration
  - But, not required to accommodate indefinite duration of leave
- ADA covers employers who employ 15 or more employees; FEHA covers employers with 5 or more employees.
- No minimum duration of employment required.



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### Reasonable Accommodation

- Employers must make reasonable accommodations
- Employers are permitted to require their employees to provide a medical certification
- What accommodations are "reasonable"? Courts consider many factors, including:
  - The employee's medical needs.
  - The duration of the needed accommodation.
  - The employer's legally permissible past and current practices.
  - Other factors that might be important.

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### Reasonable Accommodation *Continued*

- Providing intermittent maternity leave during the pregnancy is considered a reasonable accommodation.
- Transferring temporarily disabled employees to a less difficult job may also be a reasonable accommodation.

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**Thank You**

For questions or comments, please contact:

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