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Parental Leave: What to Do About your Job When Expecting

At some point during your career, you or your partner may become pregnant, or decide to grow your family through foster care or adoption. Many people are surprised to learn that there is no single all-encompassing Parental Leave law, at least not yet. But a variety of federal and state laws work together to help ensure that new parents are allowed time off to bond with their baby before, during, and after the birth. Parental leave is a priceless benefit that allows time to strengthen family bonds and nurture young children. For California public sector employees, there are several laws as well as your employee organization's labor contract (MOU) and your Agency's rules and regulations that establish your rights to parental or "baby-bonding" leave. Here are some general answers. Contact your professional staff if you are expecting and need assistance.

State Disability Insurance – Paid Family Leave Benefits

When most employees think of parental leave, they think of **paid time** off to bond with their new child. Unfortunately, most laws don't provide this. There are several state and federal laws that protect your job and allow you to take **unpaid time** off to bond with and nurture your child, but they don't provide what's known as "wage-replacement" benefits.

The big exception to this is if you pay into the State Disability Insurance (SDI) system. Some agencies contract with SDI. A good way to know if your agency is one of them is to

check your pay stubs. If it shows a deduction for SDI, then you pay into it and are eligible for benefits. If there's no deduction, then you likely are not eligible. But you can establish SDI benefits as part of your MOU negotiations. Everyone in the bargaining unit must agree to participate, so it's important that ALL the benefits that SDI provides, including paid Parental Leave, are understood by members of the bargaining unit.

Considering the generous parental leave and disability insurance benefits, public sector employees have shown renewed interest in SDI in recent years. It's paid by the employee and it costs you approximately 1% of your pay. If you or your spouse are in SDI, the Paid Family Leave (PFL) Act extends wage replacement benefits to cover employees who must take time off work to bond with a new child. This type of leave, which began in 2002, is referred to as "Baby Bonding Leave." This program is funded through your contributions to SDI and allows for a total of up to 6 weeks of paid leave. You receive approximately 60-70% of your salary, with a maximum of \$1,252 per week. The Employment Development Department (EDD) provides an online calculator to help you estimate your weekly benefit amount. You may also be able to use accrued leave to supplement your wage replacement benefits and receive up to 100 percent of your pay.

PFL provides wage replacement benefits, not job protection. This is provided by other laws. PFL must be taken concurrently with leave under the federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), both of which provide 12 weeks of unpaid leave in a 12-month period. If you or your spouse pay into SDI, PFL will offer wage replacement benefits while the FMLA and CFRA will provide the job protection.

Job Protection Benefits

Even if you aren't eligible for wage replacement benefits, other laws do protect your job and allow for unpaid leave. Under the FMLA and CFRA, both male and female employees can take up to 12 weeks of job-protected unpaid leave to bond with a newborn baby, newly adopted or fostered child. Bonding leave must be taken within the first 12 months of the child's arrival in the home. You must have worked at least one year and 1,250 hours in the year prior to taking leave in order to be eligible. Under the CFRA you may take bonding leave in separate 2-week blocks, so long as it is within 1 year of birth. Under FMLA you are entitled to intermittent leave if you or your family member has a serious health condition related to the pregnancy. Otherwise, your employer must approve intermittent leave. Regardless, you may elect to use, or your employer may require you to use, your accrued paid leave. FMLA and CFRA apply to employers with 50 or more

employees. Public agencies are exempted from this requirement, so all public employees are covered under these laws, regardless of how many people the agency employs.

If your partner doesn't work for a public agency, and his or her employer has less than 50 employees, he or she may still be eligible for FMLA or CFRA leave under the New Parent Leave Act (SB 63). This law, which took effect in January 2018, extended coverage to employers with 20-49 employees. Your partner is eligible for either Parental Leave or FMLA/CFRA leave—not both. To be eligible for job-protected leave, he or she must have worked for the employer for at least one year and have worked at least 1,250 hours in the 12 months prior to the leave. Your partner may take bonding leave in separate 2-week blocks, so long as it is within 1 year of birth. This baby-bonding leave is unpaid unless your partner uses his or her own accrued paid time off. This type of leave will typically run after any unpaid leave under the Pregnancy Disability Leave Act (PDL).

Speaking of the PDL, this law allows a woman to take up to 4 months of job-protected leave for a disability due to pregnancy, childbirth or a related health condition, and for prenatal care. You may take your leave all at once or intermittently. The employer must continue employer-sponsored health insurance coverage. You may be required to use sick time and provide medical documentation, but you are not required *by law* to use vacation time or paid time off. Pregnant women are also entitled to reasonable accommodations at work, such as modified duties, frequent bathroom breaks, etc. In some cases, you may even receive additional unpaid leave beyond the 4-months as a reasonable accommodation for a pregnancy-related disability, but this isn't guaranteed.

Other Parental Leave Benefits

You can also use paid sick leave for absences to care for a sick child or spouse. Under the California Kin Care Law (Labor Code § 233), you may use one-half of your annual sick leave accrual. To be eligible, you must have accrued sick leave. Both men and women are entitled to baby bonding and parental leave under Kin Care. Men may not be able to secure leave for a pregnancy-related disability, but they can request it in order to care for a family member that is sick or experiencing a disability.

Don't forget to check your labor contract (MOU) and other Agency-specific policies. For example, if you don't participate in SDI, you may be covered under a private disability insurance policy through your Agency. Some policies allow for women who experience pregnancy-related complications to qualify for paid insurance benefits. If you're not covered by either SDI or a disability insurance plan through your Agency, contact your

employee organization. They can either help secure a policy for members of the organization, or bargain for SDI or for the Agency to provide one as part of a new MOU.

Another option is to specifically negotiate for wage replacement benefits for parents who take job protected parental leave. This can include going into SDI if you don't currently pay into it, so that you can secure the PFL program benefits. Or you could negotiate that your Agency, instead of SDI, pays wage replacement benefits during any unpaid leave.

You can also negotiate to clarify terms and definitions to make an existing parental leave policy more encompassing. This might include language that expands job protection and leave rights to care for a wider range of family members and relatives. Expanded definitions could allow more employees to take parental leave who otherwise aren't eligible under the law. You can also bargain for better sick leave language. This may include things like sick leave donation policies, or to obtain sick leave advances that are paid back from future accruals.

The law generally doesn't require you to use accrued sick or vacation for your protected leave, but it does allow your employer to require you to do so. Unfortunately, the need for time off for doctor's appointments and to care for sick children doesn't end once parental leave concludes. Because of this, many employees prefer *not* to use accrued paid time off while on parental leave, so they preserve a bank of paid time for when they return to work. You can negotiate into your MOU that using accrued paid leave while on parental leave is at the employee's option, not the Agency's. If you elect an unpaid status, keep in mind it's possible you may have to pay the full cost of your health insurance premium to maintain coverage, and you won't accrue service credit toward your pension.

A Brief Look at Workers Compensation Law

Agreed Medical Evaluator vs. Qualified Medical Evaluator: The Selection Process Packs Quite a Punch

If you have filed a workers' compensation claim for an on-the-job injury, you will likely need to be examined by a Qualified Medical Evaluator (QME) or an Agreed Medical Evaluator (AME) in order to resolve any disputes regarding the benefits to which you are entitled, such as temporary disability, permanent disability and medical treatment.

A QME is a physician selected from a list of doctors certified by the Division of Workers' Compensation Medical Unit to conduct the medical and legal patient evaluations. A QME

can be a medical doctor, chiropractor, dentist, osteopath, podiatrist, acupuncturist or optometrist. The person requesting the QME selects the specialty of the doctors on the list. An AME is a physician who is selected and agreed upon by both the employer's claim administrator and the injured worker's attorney. An AME is therefore only utilized if the injured worker has legal representation.

However, it's usually not so cut and dry, with each side maneuvering for the best outcome for his/her client — be it the injured worker (applicant attorney) or employer/insurance company (defense attorney). If both sides are on the same page when it comes to an AME, that physician will be the determining "voice" in terms of benefits such as medical treatment. But, if both sides cannot agree on a physician, the panel QME process begins.

For Example

Let's say Bob Jones suffered an on the job injury, and retained workers' compensation attorney, Steve Anderson, Esq. Mr. Anderson sends a list of five doctors (AMEs) to the employer's claim administrator who, in turn, decides he doesn't agree with any of the doctors on that list, and replies with a list of five other doctors (also AMEs). Mr. Anderson does not agree with any doctor on that list of five. At this point, Mr. Anderson requests a list of QMEs from the Division of Workers Compensation. From that list of three panel QMEs, Mr. Anderson may strike one physician (if he feels the doctor wouldn't be favorable to his client). The employer's claims administrator may strike one physician (if he feels that doctor could be detrimental to *his* client's cause). The remaining physician from the panel list will be the one determining Bob's benefits.

Legal Representation Is Vital

If you have filed a Workers' Compensation claim (and don't have an attorney) you will likely receive a letter from the State of California stating that you must pick a doctor from a QME list. However, you have an alternative option before complying with this request. Instead, immediately contact an experienced workers' compensation attorney who can help you find a different choice instead of blindly picking a random doctor off a state-issued list. Keep in mind, however, that if you attend and participate in the state panel QME examination, even an attorney cannot help you in selecting a new and different QME doctor, and you are stuck with that doctor for the life of your case.

Stop and Consider the Consequences: the doctor chosen from a QME list could have a significant impact on your case, your future, and your family's future. If you are injured on the job and need workplace representation, contact your professional staff, who can refer you to a good workers compensation attorney.

News Release - CPI Increases!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation. Here's a look at this month's figures:

2.0% - CPI for All Urban Consumers (CPI-U) Nationally
2.9% - CPI-U for the West Region
3.3% - CPI-U for the Los Angeles Area
2.8% - CPI-U for the Riverside Area (from March)
2.2% - CPI-U for San Diego Area (from March)
4.0% - CPI-U for San Francisco Bay Area

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: I got a DUI on Sunday May 5th. I'm required to drive a vehicle for work. I'm now going to have my driver's license suspended. I'm working with the DMV on getting my license back and with a lawyer on getting my DUI overturned. But I want to know what I should do about my job. Should I let my employer know that I got a DUI? Should I just tell them that I lost my license?

Should I say nothing and hope they don't find out? I'm worried that if they find out I will lose my job. I've been a good worker and have never done anything wrong. But I did get pulled over driving home from a family party and now my life is turned upside down. Also, do I have to take the field sobriety test? I didn't think I was impaired so I agreed to it but now I'm thinking I

should have refused. What are my rights when it comes to my job?

Answer: If you are required to drive or maintain a valid license for work, self-reporting is the best way to go. Your Agency probably has you in the DMV “pull notice” program, meaning that the DMV will report any DUI arrest to your Agency. Since driving is a requirement of the job, self-reporting provides you the opportunity to explain the situation on your terms and ask for leniency, such as time off from work and/or a non-driving assignment. The Agency does not have to grant this, and often times they won’t. But the Agency is more likely to be lenient if you are proactive and direct with them about this rather than letting the DMV break the bad news first.

If the Agency approaches you first, do not lie about the DUI. That would give your Agency the opportunity to discipline or potentially discharge you based on the lie, as well as the suspended license. If the Agency decides to terminate your employment, contact your professional staff for help in appealing the decision.

Ask your criminal law attorney about advice regarding field sobriety tests. You may have the “right” to refuse one, but there are still consequences, including being detained, other penalties or fees, and your license may still be suspended.

Question: The City Manager directed public works staff to repair potholes

outside City boundaries. Meaning they were fixing streets in a neighboring City and unincorporated part of the County (spending our City tax dollars to benefit other residents). Are city workers restricted to working in their own City while on duty? Or can they be directed to work in other cities without an understanding or agreement for services with the adjoining communities? Is there an understanding between municipalities that justifies street repairs bordering adjacent communities if they go untreated for too long? What should staff do if directed to work on these projects?

Answer: If you are told to work on a project where there is no service agreement, or you suspect there is none, it’s best to perform the work so that you are not disciplined for insubordination. But you can raise this concern with management. Frequently there’s a work sharing agreement between your employer and an outside entity. It’s perfectly fine to ask management if one exists and to request a copy.

If management does not provide it, or admits there is none, contact your union leadership or professional staff. Having a friendly relationship with an elected official can also be helpful. If you know a City Council member, you can reach out and ask for their help. Decisions over what services the City provides, how, by whom, and whether to charge for it are

all policy choices made by your elected officials, hopefully after public comment.

Question: If there is a full-time position that has been “frozen” and is currently being performed by a contract/part-time employee, can we press the Agency to “unfreeze” the position? It is a secretary position in one of our departments. Our Agency has a “must answer” phone policy that isn’t being adhered to by that department. But they have no real choice since the contract worker works a reduced schedule. If the Agency fills the position full time, there will always be someone there to answer and it won’t burden everyone else who are pitching in when that person is out. It seems like the need is there for full time staff, but our director keeps telling us it’s “frozen.” What can we do to fix this?

Answer: Yes, you absolutely can press the Agency to fill the position with a full-time bargaining unit employee. You can also demand that the Agency stop using non-bargaining unit labor to perform bargaining unit work. Just know that the right to choose whether to fill a vacant position, or to “freeze” it, ultimately belongs to the Agency.

At the very least, your union should request to meet and confer. It seems the position isn’t really “frozen” after all. Someone else is filling the position, even if it’s only temporary or for reduced

hours. It’s also causing disruption in the workplace. Everyone else must pick up some of the tasks that the person who used to fill the position did previously.

It’s possible your union may be able to challenge this, especially if the Agency did not provide prior notice and an opportunity to meet and confer. At the very least, you can request to meet and confer over the Agency’s continued use of non-bargaining unit labor to perform bargaining unit work.

Question: I recently was passed over for a promotion to a supervisory position. I was ranked number one based on testing for the job and the person who got the job was ranked number three. I was told I didn’t interview well, which just seems like an excuse for wanting to hire someone else. The person they hired is in his early thirties and I’m in my late fifties. I’m now on the list for another supervisory position. I’m the only qualified applicant. What can I do to make sure I’m not passed over again? My manager has done everything in his power to deny me a promotion. Frankly, it’s getting pretty old.

Answer: Request a copy of the rules governing promotions and recruitments. Often there’s a rule governing the selection process. It may even specify the “weight” that is given to various factors, such as test scores or interviews. You’ll want to see if they followed the

rules. Also check to see if there are appeal rights for being passed over. Some rules provide a procedure for challenging a recruitment. It may even include a hearing before a Civil Service Commission or a Personnel Board. If it's specifically covered under the grievance procedure, it may include a hearing before top management or an arbitrator.

Just know that the Agency's recruitment rules often give a fair amount of discretion to the Agency to pick the "best candidate" out of the top finalists. If you can prove the reason you were passed over is because of your age, then you may have a good age discrimination case.

You can raise the age issue in your appeal or grievance. Or you can file a charge of age discrimination with the Department of Fair Employment and Housing, and ultimately take the matter to court.

Question: I was injured on the job and have been out on medical leave. The Agency has now asked me to attend a meeting to discuss the results of the fitness for duty exam that they sent me to a few weeks ago. I have a surgery coming up in a few weeks which may make the meeting unnecessary. I advised our HR Manager of my surgery date by email last week. Do I have to go to this meeting? I feel like the Agency is

rushing me back to work when I'm not ready. Can they make me go back to work if the fitness for duty report says I'm good enough to return to my old duties, even though I have the upcoming surgery? Can I get a second fitness for duty from a doctor of my own choice if I disagree? How should I handle this?

Answer: You can ask management to postpone the meeting due to an upcoming surgery, since that may change your current medical condition. You can also request leave under the FMLA or as an accommodation under the ADA. You cannot refuse to go to the meeting, but you can ask what the meeting is about and if you can bring a representative.

The Americans with Disabilities Act (ADA) sets ground rules for when an employer can demand a fitness for duty. To require a fitness for duty examination, the employer must have a reasonable belief, based on objective evidence, that either 1) the employee's ability to perform his or her essential job functions is impaired by a medical condition or 2) the employee poses a direct threat to safety of others due to a medical condition.

Contact professional staff for help with your upcoming meeting, return to work, and any accommodations that you need.