



**Palmer Kazanjian**  
Palmer Kazanjian Wohl Hodson LLP **Attorneys**

# Navigating Employee Leaves

PALMER KAZANJIAN WOHL HODSON LLP



# Palmer Kazanjian

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# Palmer Kazanjian

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## Larry M. Kazanjian, Esq.

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25+ years' experience advising executive management, in-house corporate legal counsel, labor relations administrators, and human resource professionals

Member of the Labor and Employment Law Sections of the State and County Bar Associations

University of the Pacific, McGeorge School of Law



# Agenda

1. Family and Medical Leave, California Family Rights, Pregnancy Disability Leave
2. Paid Sick Leave
3. Funeral and Bereavement Leave
4. Additional Leave
5. Questions

Family and Medical Leave

California Family Rights

Pregnancy Disability Leave

# Employer and Employee

## FMLA

### Employer

Employs 50 or more employees.

### Employee

Worked for the employer at least 1,250 hours during the 12-month period immediately before the leave starts.

## CFRA

### Employer

Employs 5 or more employees.

### Employee

Worked for the employer at least 1,250 hours during the 12-month period immediately before the leave starts.

## PDL

### Employer

Employs 5 or more employees.

### Employee

All employees who work for a covered employer.

# Qualifying Reasons for Leave

## FMLA

Birth, adoption, or foster placement of child.

Caring for a spouse, child (minor or dependent) or parent with serious health condition.

Employee's own serious health condition.

## CFRA

Birth, adoption, or foster placement of their child.

Caring for a spouse, registered domestic partner, child (minor or dependent adult), designated person, grandparent, grandchild, sibling, or parent with serious health condition.

Employee's own serious health condition, except pregnancy.

## PDL

Employees disabled by pregnancy, childbirth, or a related medical condition.

# “Designated Person”

## FMLA

FMLA does not include a  
“designated person.”

## CFRA

“Designated person” means blood related, or whose association with employee is equivalent of a family relationship.

**Typically, CFRA and FMLA run concurrently. However, if an individual exhausts their CFRA leave through a “Designated Person” that does not qualify for FMLA, that individual may still have leave available through the FMLA.**



# Duration, Notice, and Response

	<b>FMLA</b>	<b>CFRA</b>	<b>PDL</b>
Duration of Leave	12 weeks in a 12-month period.	12 weeks in a 12-month period.	17 1/3 weeks per pregnancy. PDL does not run concurrently with CFRA
Employee Notice	30 days if foreseeable or as soon as practicable.	30 days if foreseeable or as soon as practicable.	30 days if foreseeable or as soon as practicable.
Employer Response	5 business days of request unless extenuating circumstance.	As soon as practicable, no later than 5 calendar days after request.	As soon as practicable, no later than 10 calendar days after request.

# Paid Leave



## FMLA

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Employee can choose OR employer may require use of paid leave benefits.

Employer does not need to permit use of sick leave for other reasons than specified in the leave policy.

## CFRA

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Employee can choose OR employer may require use of paid leave benefits.

Sick leave that is for any other reason than the employee's own medical illness requires both employer and employee to agree.

## PDL

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Employee can choose OR employer may require use of paid sick leave.

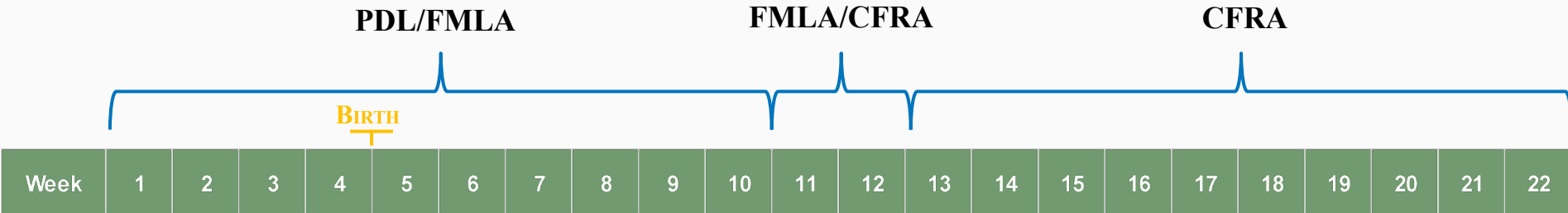
Employee may choose to substitute paid vacation or personal leave, but employer **MAY NOT** require.

# Reinstatement Rights

- Employee right to return to the same or comparable position after protected leave.
- If an employee's serious health condition continues past the time of protected leave under PDL/FMLA/CFRA, then the employer might be required to make a reasonable accommodation under ADA/FEHA, including an extension of the unpaid leave of absence. Reinstatement rights may be reduced.
- If an employee has been released to work by a health care provider after exhausting their protected leave and fails to return to work, employers should examine their attendance policy to determine whether a violation has occurred and what action(s) need to be taken.
- Written notice of the terms and conditions of the absence, including reinstatement rights is required by law and helps to regulate the absence and reinstatement expectations.

# Example 1

Betty, an employee of ABC Corporation, has worked there for close to 2 years. ABC employs over 50 employees. She requested leave for her pregnancy. Four weeks before she gives birth her doctor determines she must be put on pregnancy disability leave. She provides notice to her employer and her request is granted. Betty gives birth naturally. How much leave is she entitled to take?



Betty is entitled to:

PDL/FMLA

- Pre-Birth Disability: 4 weeks.
- Post-Birth Disability: 6 weeks (because of the natural birth).

FMLA/CFRA

- Bonding: 12 weeks (breaks down to 2 weeks of FMLA/CFRA and 10 more weeks of CFRA because FMLA has run out).

**Remember:**

PDL and FMLA run concurrently for up to 12 weeks while PDL and CFRA run consecutively.

## Example 2

Betty, an employee of ABC Corporation, has worked there for close to 2 years. ABC employs over 50 employees. She requested leave for her pregnancy. Four weeks before she gives birth her doctor determines she must be put on pregnancy disability leave. She provides notice to her employer and her request is granted. Betty gives birth via a cesarian section. Her doctor determines that she cannot return to work after her leave has run out. How much leave is Betty entitled to?

### PDL/FMLA

- Pre-Birth Disability: 4 weeks.
- Post-Birth Disability: 10 weeks (because of the Cesarian Section).

### FMLA/CFRA

- Because the Pre/Post Birth Disability leave has taken up 14 weeks: PDL & FMLA are now exhausted
- Bonding: Bonding Period starts when FMLA/PDL have completely exhausted. Betty would then be entitled to 12 additional weeks of leave in accordance with CFRA.

### REASONABLE ACCOMMODATION UNDER FEHA AND ADA

- After the 12 weeks of bonding, if Betty continues to have health related issues stemming from the pregnancy, she may be entitled to additional leave or other reasonable accommodations in accordance with FEHA and the ADA.

# Paid Sick Leave (“PSL”)

- Allows employees to take sick leave for their own health condition, designated person or family member. Employees can also take sick leave if they are victims of domestic violence, sexual assault, or stalking.
- Employers must provide at least 24 hours (or 3 days) of PSL per 12-month period.
- Employees must earn at least 1 hour of PSL for every 30 hours worked or employers may provide all sick leave up front.
- Employees can begin using accrued PSL beginning on 90th of employment.
- PSL can carry over to the next year. Employers can put a cap at 48 hours (or 6 days).
- “Designated Person” is defined as “a person identified by the employee at the time the employee requests paid sick days.”

# Funeral and Bereavement Leave

- Guarantees 5 days of unpaid bereavement leave for employees
- Leave must be taken within 3 months of death
- Employer may request documentation within 30 days
- Existing leave policy must be followed
  - If existing policy gives less than 5 days of paid leave, remainder unpaid
  - If no existing policy, employee may use vacation, personal leave, sick leave, or compensatory time off
  - New law does not expressly prohibit modification of existing compliant policy.

# Funeral and Bereavement Leave Example

Employee suffered a loss in their family on January 1 and requested to use bereavement leave on January 2 & 3, February 14 & 15, and April 6.

Company A: Existing Policy of 3 Days Paid Leave

- Required to provide paid leave for Jan. 2 & 3 and Feb. 14. February 15 leave can be unpaid and Employer is not required to provide leave on April 6

Company B: No Existing Policy

- Required to provide 5 days of unpaid leave up to three months. Employee is allowed to use vacation, personal leave, or accrued and available sick leave

Company C: Existing Policy of 10 Days Paid Leave within 6 Months of Loss

- Not affected by AB 1949, but must follow their policy. QUESTION: Can the policy be modified?



# Additional Leaves

- Medical leave of absence (5 or more employees)
- Military leave of absence
- Civil air patrol leave (15 or more employees)
- Drug/alcohol rehabilitation leave (25 or more employees)
- Time off for adult literacy programs (25 or more employees)
- Time off for organ and bone marrow donation (15 or more employees)
- Time off for attending child's school discipline
- Time of for attending child's school activities (25 or more employees)
- Time off for duty as election official
- Time off for jury and witness duties
- Time off for victims of crime, domestic violence, sexual assault, or stalking
- Time off for victims of certain felonies
- Time off for volunteer firefighters, emergency rescue personnel, and reserve peace officers
- Time off for voting
- Worker's compensation leave



Q & A

# Thank you for joining us!

We'll see you next time.  
Have a great day!

**Palmer Kazanjian**  
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