

Taking Leave From Work: Pregnancy / Prenatal Care / Bonding with a New Child **YOUR LEGAL RIGHTS**

1.

**What legal rights do pregnancy disability and family/medical leave laws provide?**

You may be entitled under law to take up to seven months unpaid leave—without being terminated from your job—by combining pregnancy leave with leave to bond with your newborn child. In most cases, your employer must reinstate you to the same or comparable position after your leave, including the same pay, benefits and working conditions.

In addition, your employer must continue health care benefits for pregnant workers during pregnancy disability leave.

It is illegal for a covered employer to interfere with your right to take a leave for pregnancy, childbirth or related conditions, and/or to bond with your newborn child. Your employer may not harass you for taking such a leave, deny a valid leave request, or refuse to hire or promote you because you will take or have taken a leave. It is also illegal for your employer to retaliate against you for requesting a leave or for complaining about a violation of these laws.

Your employer may not fire you, force you to quit, or force you to take a leave because you are pregnant. Also, your employer may not take away seniority or accrued retirement benefits because of maternity leave; or force you to take a pregnancy leave if you are able to work. You are entitled to reasonable accommodations related to your pregnancy. Further, after returning from leave, your employer must provide lactation accommodations for nursing mothers.

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2.

**Am I entitled to pregnancy disability leave? What about bonding leave?**

**Pregnancy Disability Leave**

Even if you are not eligible for family/medical leave, you still are entitled to take unpaid pregnancy disability leave (PDL) if:

- you are disabled due to pregnancy, childbirth or related medical conditions; and
- your employer employs at least five employees.

Eligibility for pregnancy disability leave does not depend on how long you have worked for your employer nor on the number of hours you have worked. (If you are eligible for time off under the Family and Medical Leave Act (FMLA), discussed below, your PDL leave will run at the same time as your FMLA leave because both laws cover pregnancy-related conditions. However, bonding leave under the California Family Rights Act (CFRA) is a separate and distinct entitlement from PDL leave.)

Generally, health care providers will certify a pregnancy disability leave of up to 10 weeks for a normal pregnancy—4 weeks before childbirth and 6 weeks after a vaginal delivery, or 8 weeks after delivery by cesarean section. However, you may take up to 4 months of pregnancy disability leave for complications, severe morning sickness, or other disabilities related to pregnancy, childbirth, or a related medical condition. The specific duration of disability leave that you will be eligible for must be determined by your health care provider. (See [Section 12](#) below for information regarding disability payments during such leave.)

If you are disabled by pregnancy for more than 4 months before your baby is born and therefore need more than 4 months of pregnancy disability leave, your employer may—but is not required to—allow you to use additional leave provided by the California family/medical leave law (CFRA) for the rest of your pregnancy.

If you are disabled by pregnancy for more than 4 months and therefore need more than 4 months of pregnancy disability leave, your employer may be required to provide additional leave as a reasonable accommodation of your disability under the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Your employer also may allow you to use additional

leave provided by the California Family Rights Act (CFRA) for the rest of your pregnancy.

### Bonding Leave

You are eligible for unpaid, job-protected bonding leave under the federal Family and Medical Leave Act (FMLA) and the state California Family Rights Act (CFRA) if all of the following are true:

- you have worked for your employer for at least 12 months (even if temporary or part-time);
- you have worked at least 1,250 hours (an average of 25 hours per week) during the 12 months before the leave; and
- your employer employs at least 50 people within a 75-mile radius of your worksite.

Under the family/medical leave laws, you may take a leave of up to 12 weeks for the birth of your child, or the placement of a child with you for adoption or foster care. Bonding leave must be taken within the first year of the child's life or placement in your home. Under CFRA, the entitlement to bonding leave is separate and distinct from the right to pregnancy disability leave under PDL.

Pregnant employees who are also eligible for CFRA leave may take both a pregnancy disability leave (PDL) for the time they are disabled and a CFRA leave bond with their child. (FMLA and CFRA leave are also available for an employee's own serious health condition and to care for a family member who is seriously ill.) To qualify for a CFRA leave for a bonding leave that immediately follows a leave for pregnancy disability, you need to have worked 1,250 hours prior to the first day of your pregnancy disability leave, not prior to the first day of your CFRA bonding leave (and meet the other requirements under CFRA). However, if you return to work following your PDL and wish to take CFRA leave later, before your child's first birthday, you will have to count your 1250 hours from the first day of your request for CFRA leave as usual.

Even if you use some CFRA leave time before the birth of a child to extend a 4-month pregnancy disability leave, your employer must allow you to use any remaining CFRA leave you may have to bond with your new child after he or she is born.

(Another use of family/medical leave is to take time off for your own serious health condition or to care for a family member with a serious health condition. See the section "Other Publications Regarding Family/Medical Leave" in this Fact Sheet if you would like further information about the right to take a leave for those reasons.)

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3.

### May any parent take a leave of absence to bond with a new child?

You do not have to be the birth mother of a new child to take parental leave. Any employee who qualifies for family/medical leave (see Section 2 above) may take up to 12 weeks of unpaid leave for the birth of the employee's child or for the placement of a child with the employee for adoption or foster care. This leave must be completed within one year of the birth, adoption or foster care placement of the child. Same sex spouses and registered domestic partners are also eligible to take CFRA bonding leave.

Where both parents have the same employer, the employer is required to grant only a total of 12 weeks of leave in connection with the birth or placement of a new child. The parents may divide the 12 weeks between them in any manner. After dividing a family/medical leave, each of the parent/employees has the right under CFRA to take additional leave for their own serious health condition or to care for an ill family member until he or she has used a total of 12 weeks of leave in a 12-month period.

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### Is my employer required to continue my health benefits during a leave?

Yes, covered employers must continue to pay for health care benefits for employees who take pregnancy disability leaves. In addition, under the family/medical leave laws (see Section 2), your employer must continue your health care benefits for at least the first 12 weeks of your unpaid leave when you are an eligible employee. Continuation of health care benefits includes any benefits your employer provides for your family members or dependents.

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5.

### Does my employer have to accommodate a request for an intermittent or reduced work schedule?

Pregnancy disability leave does not have to be used in a single, large block of time, but may be taken in short increments as needed. You are

“disabled” under the law and may take intermittent leave if, for example, you are suffering from severe morning sickness or need to take off time for prenatal care.

You may also take intermittent leave after the birth or placement of your child if you do not want to take all of your leave at once. You may use your CFRA bonding leave in two-week blocks of time, provided that all of your bonding leave is taken in the first year after the birth or placement of your child. However, your employer must grant leaves of at least one day but less than two weeks duration on two occasions during that time.

If you and your employer agree, you may be able to take bonding leave on an intermittent or part-time schedule. Your employer can temporarily transfer you to an alternative position with equivalent pay and benefits if that position better accommodates your need for intermittent leave or a reduced work schedule. Once you no longer need a reduced schedule, your employer must reinstate you to the same or equivalent position that you held before taking intermittent leave.

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[Is my employer required to grant my request for a transfer, duty restriction, or other reasonable accommodation for my pregnancy? What about after I give birth?](#)

Covered employers must provide reasonable accommodations for pregnancy or childbirth-related conditions, on the advice of an employee’s health care provider. For example, a pregnant woman may be entitled to use of a stool, frequent bathroom breaks, or modified job duties. Employers may not force a pregnant employee to take a leave of absence or a transfer that she has not requested.

In addition, if your doctor advises you to transfer to a less strenuous or hazardous position or to be restricted to less strenuous or hazardous duties, your employer must grant your request for a temporary transfer or duty restriction if that change can be reasonably accommodated.

For example, if your doctor finds that a restriction against lifting is medically advisable, your employer cannot force you to take pregnancy leave if, instead, you can be restricted to less strenuous or hazardous duties or transferred to a less strenuous position. Your employer is not required under these circumstances, however, to create additional employment, discharge another employee, transfer another employee with more seniority, or promote you to a job for which you are not qualified, unless it provides such accommodation for other temporarily disabled, non-pregnant employees.

Employers must provide reasonable accommodations for childbirth-related conditions on the advice of an employee’s health care provider. Employers also must provide accommodations specifically for lactation, including break time for expressing milk and a space for doing so that is private, free from intrusion, and in close proximity to your work area, that is not a bathroom. Employers must give lactating mothers additional break time beyond their regular paid breaks as needed, but the additional time may be unpaid.

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[Is my employer obligated to notify me of my leave rights?](#)

Employers with 5 or more employees must do the following:

- post a notice explaining employees’ right to request pregnancy disability leave, transfer, and accommodation; and
- provide a copy of the notice explaining employees’ rights to any employee who requests or inquires about pregnancy disability leaves, transfer, or accommodation.

Employers with 50 or more employees must also do the following:

- post a notice explaining rights and responsibilities under the family/medical leave laws;
- provide detailed, written information about these rights and responsibilities to any eligible employee who requests leave;
- include employees’ rights and responsibilities under the family/medical leave laws in the employee handbook, if the employer has one; *and*
- designate a leave, whether paid or unpaid, as one covered by the family/medical leave laws and notify the employee of this designation.

If you have not been notified of your rights to pregnancy disability or family/medical leave and you think your employer is covered by these laws, ask your employer for information about your rights.

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## Under what terms do I take and return from leave?

If your employer has at least 5 but less than 50 employees and you take a pregnancy disability leave:

- Pregnancy leave is unpaid unless another type of paid leave (such as vacation time or short-term disability pay) is applied during the leave.
- Generally, you must be reinstated to the same or comparable position after your leave. However, if your job was eliminated for legitimate business reasons unrelated to your leave, or if reinstating you would substantially undermine your employer's ability to operate the business safely and efficiently, you are not entitled to reinstatement to the same position or to a comparable position.
- Your employer must continue your health insurance benefits during your pregnancy disability leave.

If your employer has 50 or more employees and you take a pregnancy disability leave and/or a family/medical leave:

- Pregnancy or family/medical leave is unpaid unless another type of paid leave is used in conjunction with the leave.
- In most cases, you must be reinstated to the same or equivalent position (same pay, benefits, and working conditions) after your leave. Although you are not entitled to be reinstated if your job was eliminated for legitimate business reasons unrelated to your taking leave, your employer may not refuse to reinstate you because it has filled your job or because of business necessity.
- Your employer must continue your health insurance benefits, if you have them, during your leave. This provision includes benefits you receive for your dependents or family members.

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## Am I required to notify my employer that I need a pregnancy or bonding leave?

You must give your employer notice 30 days before taking a pregnancy disability leave or a bonding leave, or before a transfer or accommodation is to begin, if the need for the leave, transfer, or accommodation is foreseeable. If you do not know approximately when the leave will begin (when the timing of the adoption or approximate due date for baby is unknown, for example), you must give notice as soon as you are able. If the need for leave is not foreseeable (such as in the case of a medical emergency), you must give notice as soon as possible.

The notice you give your employer, whether written or spoken, must be sufficient to make your employer aware that you need leave for pregnancy, childbirth or related medical conditions, or for the birth, placement or adoption of a child. It is a good idea to notify your employer in writing of your need for a family/medical leave, and make sure to obtain documentation of your employer's response.

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10.

## What information may your employer request about your leave?

For a pregnancy disability leave, your employer may require medical certification that you are unable to work due to pregnancy, childbirth or a related condition. In the case of a transfer or accommodation, your employer may require certification that it is medically advisable for you to be transferred to a less strenuous or hazardous position, restricted to less strenuous or hazardous duties, or otherwise reasonably accommodated.

Your employer may require you to obtain a "fitness for duty" certification from your health care provider only if your employer requires this kind of certification from employees returning from leaves for disabilities unrelated to pregnancy.

If you take a family/medical leave, your employer may require periodic reports about your status and intent to return to work. If you fail to return from leave, your employer may recover from you the cost of continuing your health care benefits during your leave, unless the reason you cannot return is beyond your control. Choosing to stay home to care for a well, newborn child after the employee's leave has expired is not a reason beyond the employee's control.

Be sure that you understand your employer's rules for leave before you take leave. Ask your employer for a written description of your rights and responsibilities for pregnancy disability leave and bonding leave.

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11.

## What information should medical certification contain?

Generally, your employer may require a certification of your need for leave, transfer, or reasonable accommodation due to pregnancy, childbirth or related medical conditions.

A certification for a pregnancy disability leave should contain:

- the date you became disabled due to pregnancy;
- the probable duration of the period or periods of disability; and
- an explanatory statement that due to your disability you are temporarily unable to work at all or temporarily unable to perform any one or more of the essential functions of your position.

Certification for a reasonable accommodation or transfer to a less strenuous or hazardous position should contain:

- the date on which the need for a reasonable accommodation or transfer became medically advisable;
- the probable duration of the need for the reasonable accommodation or transfer; and
- an explanatory statement that, due to your pregnancy, the reasonable accommodation or transfer is medically advisable.

Your employer cannot ask you or your doctor for more than this basic information. If your certification contains this basic information, your employer must accept it as sufficient. Your employer must keep any medical information provided in a certification confidential.

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12.

## How do pregnancy and bonding leave relate to other kinds of leave?

Both pregnancy disability leave and CFRA bonding leave are unpaid leaves. However, you may be able to use other forms of paid time off or wage replacement benefits during your pregnancy and/or bonding leave.

### Paid Disability Leave

When you are disabled because of pregnancy, your employer must treat you the same as other workers with temporary disabilities unrelated to pregnancy. If, for example, your employer offers paid short-term disability leave for conditions requiring bed rest, your employer must also give you paid short-term disability leave if you are unable to work due to pregnancy, childbirth or related medical conditions requiring bed rest. Check your benefits to see what your employer provides.

You may also qualify for State Disability Insurance (SDI) payments during your leave if you contribute to the program and your health care provider certifies that you are unable to work due to a disability related to pregnancy, childbirth, or a related medical condition. You should be entitled to receive disability payments for the entire duration of your disability leave (less a one-week waiting period), before and/or after delivery, as long as the leave is medically necessary, even if it exceeds four months. For more information, contact the Employment Development Department ([www.edd.ca.gov](http://www.edd.ca.gov) or 1-800-480-3287).

### Paid Family Leave

Paid Family Leave (PFL) entitles employees who participate in the State Disability Insurance (SDI) system to receive a maximum of six weeks of partial pay each year when they take off work to bond with a newborn, newly adopted or newly placed foster child. Mothers who are receiving SDI benefits for pregnancy disability will automatically receive a claim form for Paid Family Leave benefits. Both mothers and fathers, including same-sex parents, can apply for Paid Family Leave benefits anytime within the first year of the child's life or placement in the home.

The Paid Family Leave Act does not expressly require employers to protect employees' jobs while they receive the six weeks of PFL benefits. Employees who are eligible for CFRA bonding leave should collect PFL at the same time as their unpaid CFRA bonding leave so their jobs are protected. However, employees who are not eligible for job-protected CFRA bonding leave but who pay into SDI are still eligible to receive Paid Family Leave benefits to bond with a new child, regardless of the size of the employer or length of employment. Such employees should make arrangements with their employers to secure the time off. For more information about Paid Family Leave, see our Fact Sheet [Paid Family Leave Benefits](#) or contact the Employment Development Department at 1-877-BE-THERE.

### Sick Time and Vacation Time

Either you or your employer may choose to apply your accrued sick leave during any unpaid leave you take for pregnancy, childbirth or related medical conditions. You may also choose to use your paid vacation or personal time during a pregnancy disability leave, but your employer may not require you to do so against your will.

The rules for using paid time off during a leave to bond with your new child are different than those for pregnancy. For example, you may use your accrued sick leave during your bonding leave only if you and your employer mutually agree to it. Either you or your employer may choose to apply your vacation, personal time, or paid parental leave during a bonding leave.

**Compensatory (“Comp”) Time**

Your employer may not require you to use accrued compensatory time off during any of your leave.

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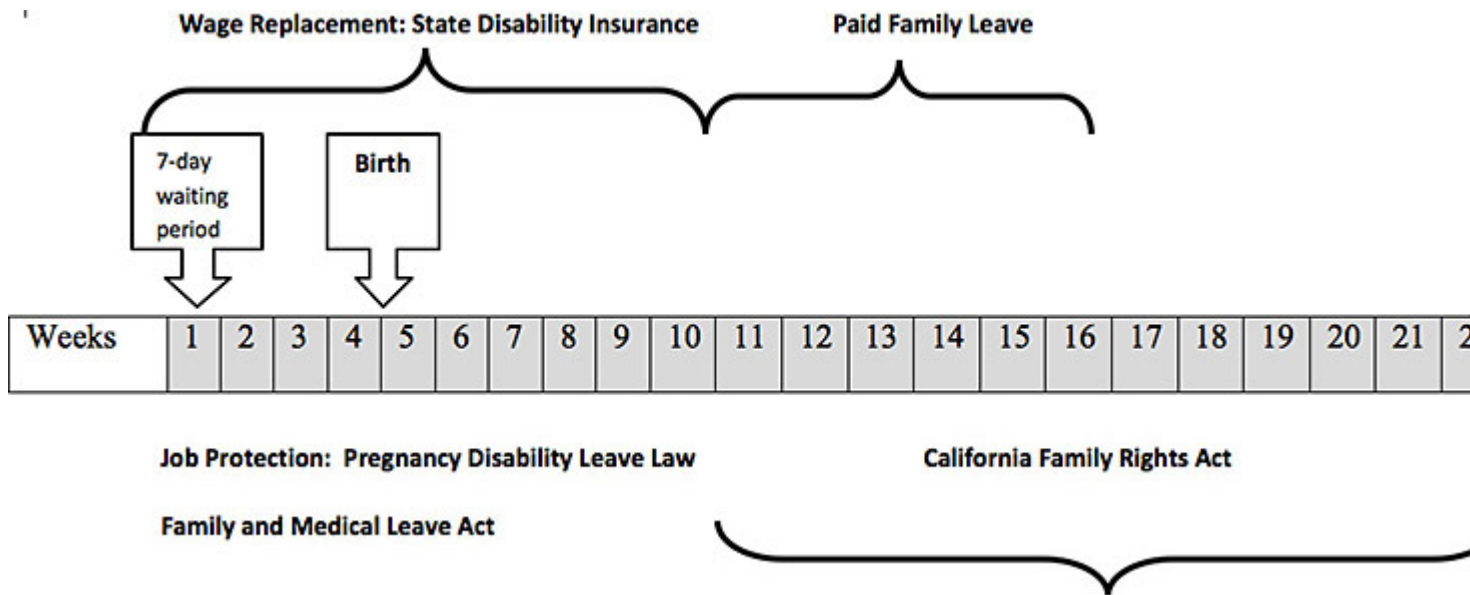
13.

**What is the maximum leave entitlement for pregnant employees and new parents?**

These timelines show the interaction of various leave entitlements. Above the line indicates wage replacement, while below the line indicates job protection.

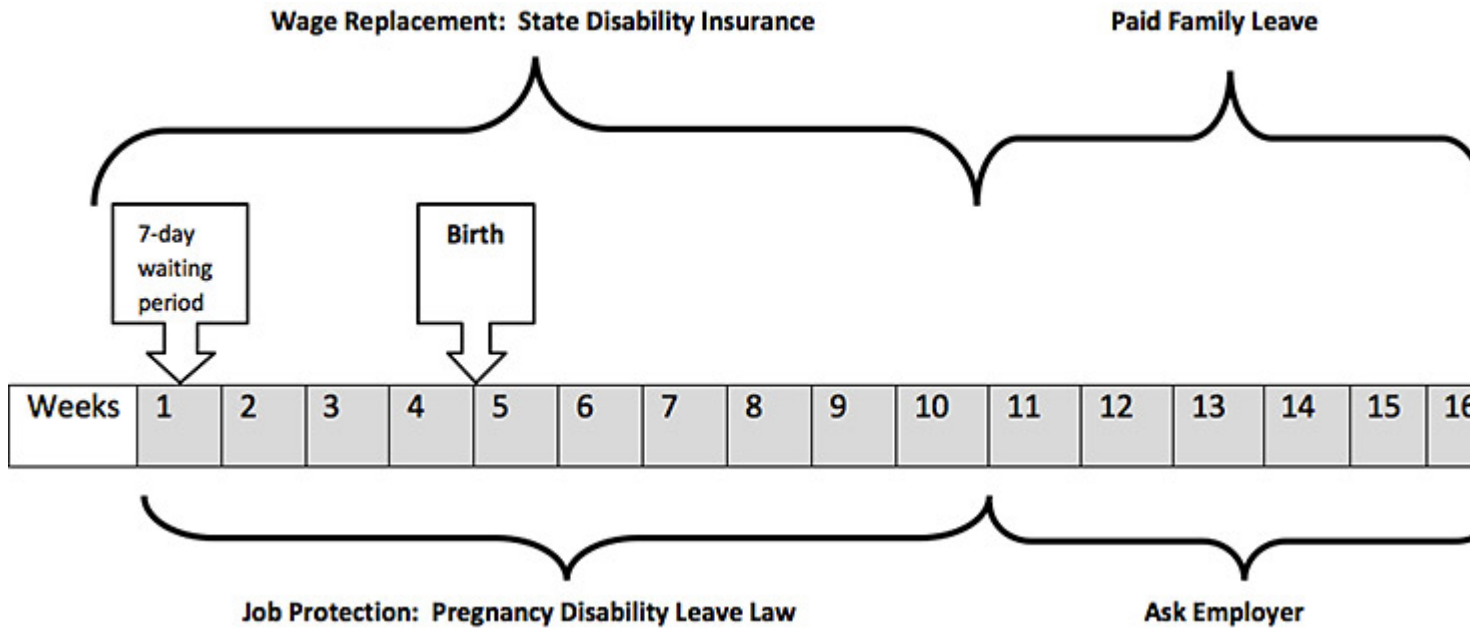
The timeline below represents the entitlement for an employee who is eligible for CFRA bonding leave. The employee may receive 7 months of unpaid job protection, partial wage replacement through State Disability Insurance for the duration of pregnancy disability leave (including recovery from childbirth), and six weeks partial wage replacement from Paid Family Leave benefits.

Figure 1: Pregnancy Disability and Bonding Leave for Birth Mother Eligible for FMLA/CFRA (typical, uncomplicated pregnancy & childbirth)



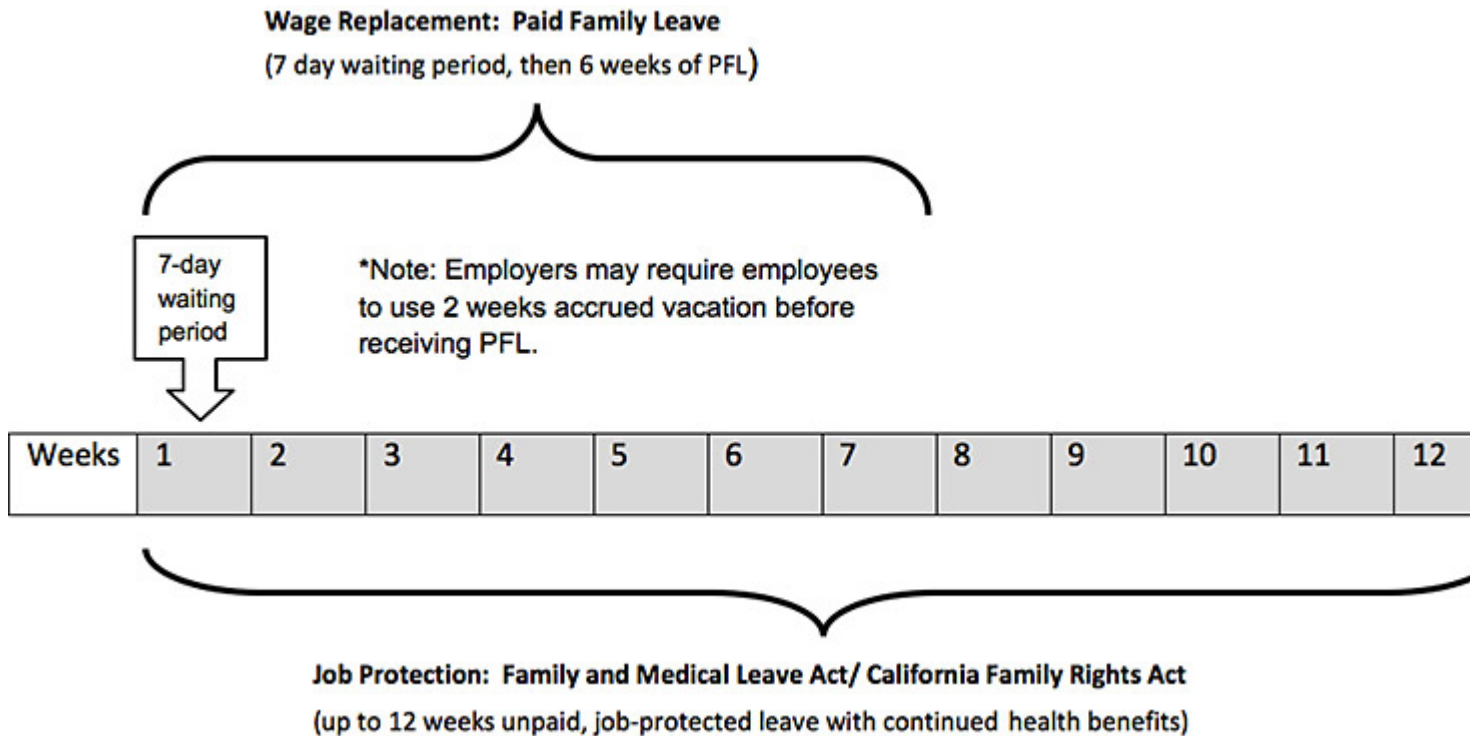
The timeline below represents the entitlement for an employee who is not CFRA eligible, but whose employer has five or more employees. She is entitled to job protection and may collect SDI while she is unable to work throughout her pregnancy disability (including recovery). After recovery from childbirth, she is eligible for six weeks of Paid Family Leave but not job protection. She should ask her employer to provide the additional time off.

Figure 2: Pregnancy Disability and Bonding Leave for Birth Mother Who is NOT Eligible for FMLA/CFRA (typical, uncomplicated pregnancy & childbirth)



The timeline below shows the entitlement of a non-birth parent employee who is eligible for FMLA/CFRA leave to bond with a newborn, adopted or foster child within the first year of birth or placement in the home. Such an employee can receive 12 weeks of job-protected bonding leave under FMLA and CFRA. During that time, the employee can receive 6 weeks of Paid Family Leave benefits.

Figure 3: Non-Birth Parent Bonding Leave for Worker Eligible for FMLA/CFRA

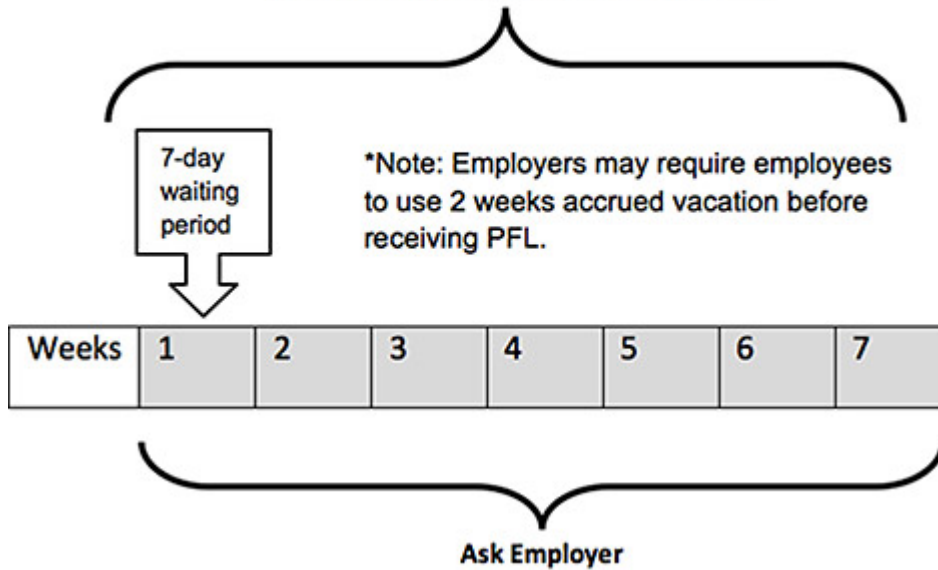


The timeline below shows the entitlement of a non-birth parent employee who is not FMLA/CFRA eligible. The employee can receive up to 6 weeks of Paid Family Leave benefits, but her job is not protected during this time. The employee should ask his/her employer for this time off.

Figure 4: Non-Birth Parent Bonding Leave for Worker NOT Eligible for FMLA/CFRA



**Wage Replacement: Paid Family Leave  
(7 day waiting period, then 6 weeks of PFL)**



14.

Where can I get help regarding my family/medical leave rights?

For information about the application of family and medical leave rights to your particular situation, contact our [Work & Family Project](#).

If you think your employer has violated family/medical leave laws, you can file a complaint with your local office of the [United States Department of Labor, Wage and Hour Division](#) within two years after the earliest discriminatory act or with the [California Department of Fair Employment and Housing](#) within one year after the first discriminatory act.

Strict time limits apply. You should take action immediately if you think your rights have been violated.

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15.

Other publications regarding family/medical leave

The Legal Aid Society–Employment Law Center has produced the publications listed below to educate workers about their rights relating to family/medical leave. To request any of these publications or to get information regarding your specific legal rights, please contact our [Work and Family Project](#) or view the following fact sheets:

- o [Family/Medical Leave: Caring for a Family Member](#)
- o [Family/Medical Leave: Your Own Health Condition](#)
- o [Pregnancy Discrimination](#)
- o [Paid Family Leave Benefits](#)

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For further information about your employment rights, contact the [Work & Family Project](#) at 800-880-8047.

For further information about your employment rights, contact the [Work & Family Project](#).

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.



