

HUMAN RESOURCES MEMORANDUM 14-010		DATE ISSUED: August 26, 2014
SUBJECT: Pregnancy Disability Leave		REFERENCE: PML 2014-019
TO: All DGS Employees		SUPERSEDES:

PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES

Purpose The purpose of this HR Memo is to summarize the Pregnancy Disability Leave (PDL) regulations promulgated by the Department of Fair Employment and Housing (DFEH) in effect at the time of this memo, and to clarify state policy regarding the continuation of health benefits during and after PDL.

Leave Entitlement and Employer's Duty to Accommodate

As outlined in the DFEH regulations, a female employee disabled by pregnancy is entitled to up to four months of unpaid PDL. The PDL regulations clarify that disabled by pregnancy includes the following conditions/situations: severe morning sickness, gestational diabetes, pregnancy induced hypertension, preeclampsia, post-partum depression, prenatal or postnatal care, bed rest, childbirth, loss or end of pregnancy, recovery from childbirth or loss/end of pregnancy, and lactation (medical condition related to pregnancy).

While PDL is an unpaid leave, the female employee may elect to use leave credits including accrued sick leave during any unpaid portion of PDL. Four months is defined as 17.33 weeks. If the employer provides more than four months (17.33 weeks) of unpaid leave for other types of disabilities, the same leave must be made available to the female employees who are disabled due to pregnancy, childbirth, or a related medical condition. Accordingly, the result is that there is a statutory floor of four months of PDL.

Unlike the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), there is no 1,250 minimum hours worked requirement under PDL. Rather, to qualify for PDL the female employee need only provide medical verification certifying she is disabled by pregnancy, as described above. If the female employee is disabled by pregnancy, she is entitled to a reasonable accommodation, or a transfer to a less strenuous position, as prescribed by the health care provider. Leave can be taken during any time the employee is physically unable to work because of pregnancy or a pregnancy related condition. Leave can be taken before or after birth, intermittently, or continuously. As PDL can be used intermittently, female employees on PDL can break the continuity of dock. When calculating the female employee's intermittent leave entitlement, multiply 17.33 by the employee's regular weekly work schedule. For example, a

Leave Entitlement and Employer's Duty to Accommodate (Cont'd)

female employee who is regularly scheduled to work 40 hours per week would be entitled to 693 hours of PDL. Again, as stated above, if the employer provides greater than four months (17.33) weeks of unpaid leave for other types of disabilities, the same leave must be afforded to the female employed disabled by pregnancy. For example, if the employer provided unpaid leave for six months for other types of disabilities, then the employer would multiply six months times the female employee's regular weekly work schedule to determine the employee's intermittent leave entitlement. If the female employee works an irregular schedule, the employer should look to the previous four months to determine the average number of hours worked per week.

PDL runs concurrently with any leave entitlement to which the employee may be eligible under the FMLA. For example, if the employee takes 4 months of PDL, her entitlement to 12 weeks of FMLA leave would run concurrently. Employees are entitled to take PDL in addition to any leave entitlement they may have under the CFRA. For example, if an employee's doctor takes her off work for 14 weeks based on a disability related to the pregnancy, she would take the 14 weeks PDL which would run concurrently with her FMLA leave, and up to 12 weeks CFRA leave to bond with her baby. The 12 weeks of CFRA leave for baby bonding runs consecutively to the PDL leave, i.e. when the PDL leave ends. Here is an illustration:

PDL (14 weeks)



FMLA (12 weeks – runs concurrent with PDL)



CFRA (12 weeks – baby bonding begins when the 14 weeks of PDL ends)



The state follows the calendar method for calculating the 12 week entitlement period in which employees may take FMLA/CFRA leave, meaning from January 1 through December 31 of each year, an employee is entitled to a maximum of 12 weeks of FMLA/CFRA leave. Pursuant to state law, in the event the CFRA leave entitlement for baby bonding, crosses two calendar years, the employee would be entitled to the maximum benefit in each calendar year. For example, if the employee started her baby bonding on December 15, 2013, she would take two weeks of her 12 week entitlement in calendar year 2013. Then on January 1, 2014, the clock would reset and she would be entitled to a new 12 week baby bonding leave entitlement under CFRA, meaning she would be afforded a total of 14 weeks of bonding leave for the birth of the baby. Bonding leave must be completed within one year of the event.

**Benefit
Coverage
During PDL**

Pursuant to Title 2 California Code of Regulations section 11044, the state employer shall maintain up to four months of health, dental, and vision benefits for female employees on PDL.

Coordination of Health Insurance Coverage with Other Employee Benefits

FMLA/CFRA

In addition, if the female employee is eligible for CFRA, then the employee may take leave under CFRA, and the state employer is required to continue benefits for the employee while she is on CFRA. Bonding leave is not limited to female employees. Eligible male employees may take up to 12 weeks of bonding leave under CFRA. The regulations clearly provide that benefits continuation under FMLA or CFRA cannot be used to satisfy any of the four months of PDL benefits continuation. The entitlements to employer-paid group health coverage during pregnancy disability leave and during CFRA leave are two separate and distinct entitlements. Accordingly, benefits can continue under PDL/FMLA (concurrent), and CFRA (consecutive), up to a total of 29.33 weeks.

State Disability Insurance (SDI)/Nonindustrial Disability Insurance (NDI)

Pursuant to the Employment Development Department (EDD), which administers the SDI1 and NDI2 programs, the usual disability period for a normal pregnancy is up to four weeks before the expected delivery date and up to six weeks after the actual delivery. However, a physician/practitioner may certify a longer period if the delivery is by Cesarean section, if there are medical complications, or if the female employee is unable to perform her regular or customary job duties based on a disability due to pregnancy. Under the SDI program, the employer will pay the employer's portion of the health benefits premium for up to 26 weeks. Under the NDI program, the employer will pay the employer's portion of the health benefits premium for up to 26 weeks.

FlexElect

Reimbursement account and/or cash option (Flex or CoBen) enrollment will stop while the employee is on an unpaid leave of absence. If the employee returns to pay status in the same plan year, the enrollment will resume. Reimbursement account deductions will continue for employees who have sufficient pay issue to cover the deduction during any given pay period. Pay may issue for time worked, leave credits used to cover the FMLA, CFRA, or PDL absence, NDI or ENDI payments, or supplementing SDI with the use of leave credits.

¹ The SDI program was negotiated for employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21.

² Non-Industrial Disability Insurance (NDI) covers excluded employees and rank-and-file employees in bargaining units 2, 5, 6, 7, 8, 9, 10, 12, 13, 16, 18, and 19.

If an employee is enrolled in the medical reimbursement account and wishes to continue to submit claims for services provided during the leave of absence, the employee may elect to continue making contributions through COBRA.

**Employment
History /
Payroll
Processing**

Departments are required to track FMLA, CFRA and PDL hours used by the employee. Accurate record keeping is necessary and subject to audit by CalHR. For departments utilizing the State Controller's Office (SCO's) Leave Accounting System, a Leave Accounting Letter will be issued when PDL and CFRA codes have been established. Until the Leave Accounting Letter is issued, manual tracking is required for all departments regardless of whether or not they are using the SCO's Leave Accounting System.

Departmental Human Resources staff is responsible for documenting a PDL leave of absence and requesting pay and benefit coverage via the SCO. SCO will distribute a Payroll Letter that includes documentation instructions.

Questions

For questions related to this PML, your headquarters' personnel office liaisons should contact Department of Human Resources, Personnel Services Branch at the telephone number or email address provided above.

ANGIE BOLDRINI, Personnel Officer
Office of Human Resources

AB:tbw

ATTACHMENTS³

- [Employee's Rights and Obligations As a Pregnant Employee](#)
- [Family Care and Medical Leave and Pregnancy Disability Leave](#)
- [Certification of Health Care Provider for PDL, Transfer, and/or Reasonable Accommodation](#)

³ The attached documents are from DFEH. The most current documents are available on DFEH's website at the following link: http://www.dfeh.ca.gov/Publications_Publications.htm.