

Leaves of Absence

Medical Leaves of Absence



Family Medical Leave Act (FMLA)

Employers with at least 50 employees must provide qualifying employees with up to 12 weeks (26 weeks in certain instances) of unpaid leave for the birth or placement of a child for adoption, or to care for the serious health condition of the employee or the employee's close family member.

29 U.S.C. § 2611(4)(A)(i).

California Family Rights Act (CFRA)

Almost identical to FMLA, except pregnancy and military caregiver leave are not provided under CFRA. **Cal.Gov.Code §12945.2(c)(2).**



Medical Leaves of Absence (Cont'd)

Americans with Disabilities Act (ADA)

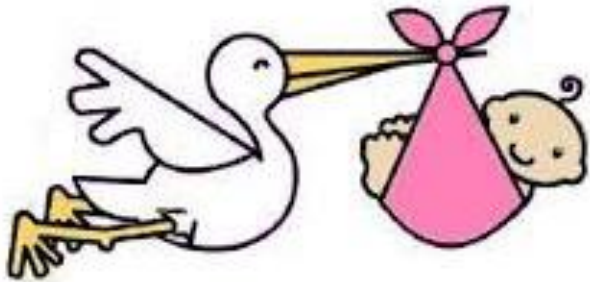
Employers with at least 15 employees must provide reasonable accommodations to employees with disabilities that require such accommodations due to their disabilities. **42 USC §12111(5)(A)**.



Fair Employment and Housing Act (FEHA)

Employers with at least 5 employees must reasonably accommodate employees with a known physical or mental disability, unless doing so would place an undue hardship on the employer. **West's Ann.Cal.Gov.Code § 12940(m)**.

Medical Leaves of Absence (Cont'd)



Pregnancy Disability Leave (PDL)

Employers with at least 5 employees must provide up to 4 months of unpaid leave per pregnancy to employees disabled by pregnancy, childbirth, or a related medical condition. **Cal. Gov't Code § 12945.**

Workers' Compensation Leave

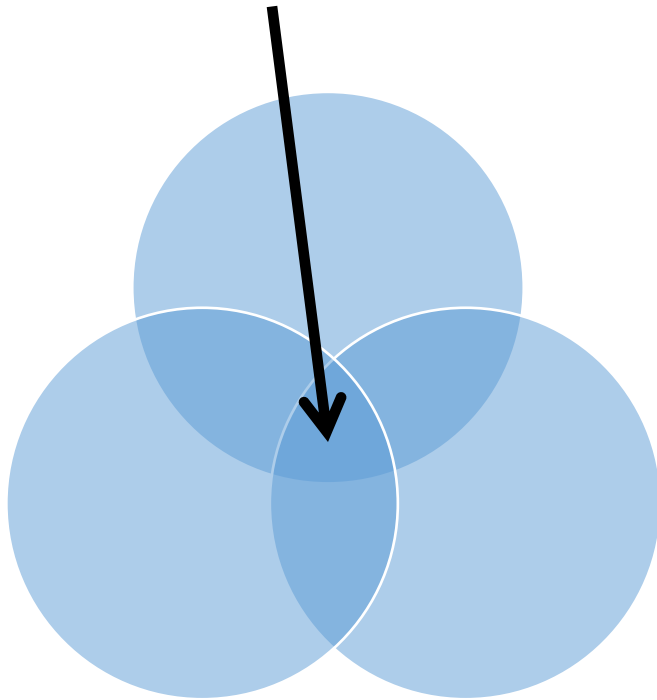
Employers will provide leave to employees temporarily or totally disabled due to a work related illness or injury. The duration of the leave will depend upon the rate of recovery and the business needs of the Company.

Cal.Lab.Code § 3300.



How do the Medical Leaves Interact?

Focus on whether the leaves run concurrently



For Example:

- PDL runs concurrently with FMLA, but not CFRA, which means an employee disabled by pregnancy may be entitled to up to 7 months of leave.
- Leave under workers' comp, ADA, or FEHA may be in addition to any leave provided under FMLA/CFRA.
 - But may also be the only leave required for employers with fewer than 50 employees.

Sick Leave

Sick Leave

Employers must provide at least 3 days or 24 hours of paid leave for employees suffering from illness or injury. The leave may also be used to attend to the diagnosis, care, or treatment of an existing health condition of, or preventative care for, the employee or the employee's family member. **Cal. Lab.Code §246.**



S.B.3

Amended the definition of “employee” for the purpose of sick leave to include providers of in-home supportive services.

Benefit Leaves

Vacation/PTO

An employer may provide time off for an employee to use however he or she wishes. Vacation pay accrues as it is earned, and cannot be forfeited, even upon termination of employment. ***Suastez v. Plastic Dress Up* (1982) 31 Cal.3d 774; Cal.Lab. Code. § 227.3.**

Bereavement Leave

Employers may provide time off for bereavement upon the death of a close relative.

Other Protected Leaves Required for All Employers



Military Leave

Leave must be provided to employees on active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty and for examinations to determine fitness for any such duty. **38 U.S.C.A. § 4312.**

Attending Child's School Discipline

Employers must provide employees with children time off as necessary to attend disciplinary conferences. **Cal.Lab.Code § 230.7.**



Other Protected Leaves Required for All Employers



Time off for Voting

If employees do not have sufficient time to vote before or after work, employers must provide time off to vote. The first two hours of leave must be paid, but any additional time can be unpaid. **Cal.Elections Code § 14000.**

Time off for Jury and Witness Duties

Employers must provide leave as necessary to attend jury duty or perform witness duties. **Cal.Lab.Code § 230; 28 U.S.C. § 1861.**



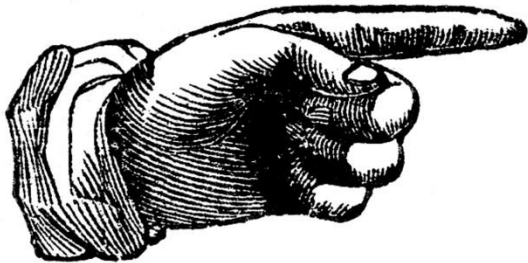
Domestic Violence Leave

Domestic Violence Leave

Employers with at least 25 employees must provide leave as necessary to seek medical attention for injuries caused by domestic violence, sexual assault, or stalking. It also applies to employees who need leave to care for family members who have been victims of these crimes.

Cal.Lab.Code § 230.1.

Please Notice This



A.B. 2337

Requires employers to notify employees in writing, upon hire, and any current employee upon request of their right to this leave.

Marijuana in the Workplace

California Passes Proposition 64

Basic Provisions

- Permits recreational use of marijuana for adults 21 and older
- Adults may possess small amounts of nonmedical marijuana and grow small amounts for personal use
- Allows local regulation and taxation of marijuana.



Employee: “Does this mean I can smoke marijuana before heading to work?”



NO. Employers have a right to prohibit drug use in the workplace and require that employees not be under the influence of illegal drugs or alcohol in the workplace



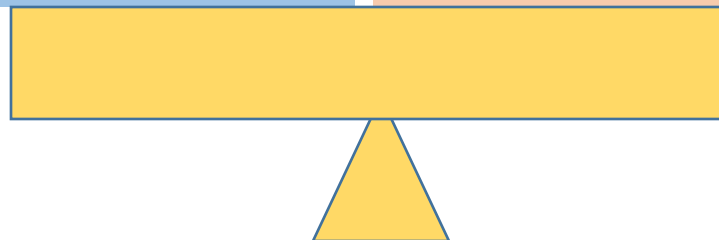
Employee Rights v. Employer Rights

Employer Rights

- **Controlled Substances Act (CSA)**
- **U.S. Supreme Court has Upheld Federal Regulation of Marijuana**
- **DOT**
- **Marijuana Use/Possession Prohibited under Health and Safety Code**

Employee Rights

- **Privacy Rights**
- **Fair Employment and Housing Act (FEHA)**
- **Americans with Disabilities Act (ADA)**



Employers Have a Right to Prohibit Drug Use in the Workplace

- Notwithstanding protections under ADA, FEHA and Constitutional right to privacy, employers are permitted to require that:
 - Employees not be under the influence of illegal drugs or Alcohol in the workplace
 - Employees not use drugs and alcohol in the workplace
 - Employees comply with drug-free workplace policies
 - Employees who use drugs or drink alcohol are held to the same behavioral and performance standards

Employers Are Not Required to Reasonably Accommodate Medical Marijuana Use

***Ross v. RagingWire Telecommunications* (2008) 42 Cal. 4th 920.** Employee with a valid medical marijuana license failed a drug test at work and was fired as a result. Employee filed action against former employer, alleging that employer had failed to reasonably accommodate his disability in violation of the California Fair Employment and Housing Act (FEHA).

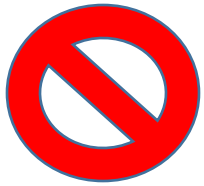
- Court concluded that FEHA does not require employers to accommodate marijuana use because marijuana, even if prescribed by a physician, remains an illegal drug under federal law.

Employers May Restrict Marijuana Use Outside of Work Hours

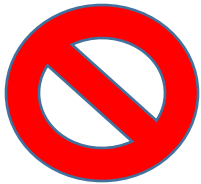
Coats v. Dish Network, LLC, 2015 CO 44, p. 3, 350 P.3d 849. Terminated employee brought employment discrimination action against employer, alleging that termination based on his state-licensed use of medical marijuana outside of working hours violated the Lawful Activities Statute.

- Colorado Supreme Court found that That Dish Network had legally terminated employee for testing positive for Marijuana.

Employer Restrictions



Labor Code Section 432.8. Employers are prohibited from asking about non-felony convictions for marijuana possession that are more than two years old.



Routine Random Drug Testing. Constitutional right to privacy protects against random drug tests not based on reasonable suspicion

EXCEPTION: Randomized Drug Testing Is Permissible for Employers Subject to Certain Federal Authorities

Examples of Federal authorities imposing such a requirement include:

- The Department of Transportation (DOT)
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- Federal Aviation Administration
- Federal Transit Administration
- Pipeline and Hazardous Materials Safety Administration
- United States Coast Guard.

Preventing Drug Use In the Workplace

- Employers should have in place a **Workplace Drug & Alcohol Testing Policy** that is clearly communicated to employees and consistently applied
 - **Clear policy purpose**
 - **Drug testing**
 - pre-employment
 - during employment
 - **Consequence of employee refusal to submit to drug testing**
 - **Disciplinary action up to termination for positive drug test results**
 - **Employee Awareness and Assistance**



What this means for employers

- Employers are not required to permit or accommodate marijuana use
- Employers are free to strictly prohibit marijuana use by employees and prospective employees
- Employers looking to maintain a drug-free workplace should have in place a drug testing policy

