

Domestic Violence & Employment Taking Leave to Care For A Family Member

YOUR LEGAL RIGHTS

Domestic violence survivors often need time off from work to care for a family member who has a serious health condition (whether mental or physical), which is caused or made worse by domestic violence abuse. Under the federal Family and Medical Leave Act and the California Family Rights Act, those employees may be able to take up to twelve weeks of job protected (but unpaid) time off from work each year to care for a child, parent, spouse or registered domestic partner with a serious health condition. California state law provides strong privacy protections for survivors that may allow an employee to take time off from work without disclosing the domestic violence or underlying diagnosis of the survivor to their employer.

1. What rights do family/medical leave laws provide?

Federal and state law provide certain employees with the right to take an unpaid leave from work to care for a family member who has a serious health condition. The federal law is the **Family and Medical Leave Act (FMLA)**; the state law is the **California Family Rights Act (CFRA)**.

If you qualify for a family/medical leave under these laws, your employer:

- may not fire you for taking up to 12 weeks of leave;
- must give you back the same or equivalent job (same pay, benefits, and working conditions) after your leave; and
- must continue to pay for your health insurance benefits — if you have them — during your leave.

Family/medical leave laws also make it illegal for your employer to interfere with your right to take a family/ medical leave, to harass you for taking a family/medical leave, to deny a valid leave request, or to refuse to hire or promote you because you have taken or will take a family/medical leave. It is also illegal for your employer to retaliate against you for requesting a family/medical leave or for complaining about a violation of family/medical leave laws.

Other laws also prohibit your employer from discriminating against you because your employer believes you will have to miss work to care for a family member with a disability.

2. Are you covered under family/medical leave laws?

You must meet all of the following conditions to be covered by the family/medical leave laws:

- you have worked for your employer for at least 12 months (even on a part-time or temporary basis);
- you have worked at least 1,250 hours (an average of 25 hours per week) during the 12 months before the leave;
- your employer employs at least 50 people within a 75-mile radius of your worksite; and
- you need time off from work to care for a parent, child, spouse or registered domestic partner who has a *serious health condition*. (Time off from work for your *own* serious health condition, for pregnancy or prenatal care, or for the birth, placement or adoption of a child is also covered by family and medical leave laws.)

3. What do the terms in family/medical leave laws mean?

“serious health condition”

Under the family/medical leave laws, a *serious health condition* is an illness, injury, impairment, physical condition, or mental condition that causes a period of incapacity (meaning inability to work, attend school or perform other regular daily activities) and requires at least one of the following:

- an overnight stay in a hospital, hospice, or residential medical-care facility (any incapacity or subsequent treatment in connection with the inpatient care is also covered); or
- continuing treatment by a health care provider.

“continuing treatment”

Under family/medical leave laws, the *continuing treatment* provision requires one of the following:

- a condition causing incapacity for more than three days that requires: (1) two or more visits to a health care provider, or (2) one visit with a regimen of continuing treatment and supervision;
- a chronic condition continuing over an extended period of time and requiring periodic doctor visits, and which may cause episodic rather than continuous incapacity;
- permanent or long-term absences due to a condition for which treatment may not be effective (such as terminal cancer) where the patient is under the supervision of, but not necessarily being actively treated by, a health care provider;

- absences to receive multiple treatments for (1) restorative surgery, or (2) a condition which would likely cause a period of incapacity of more than three days if not treated; or
- pregnancy and prenatal care.

Cosmetic treatments or surgery, and treatments for routine conditions, such as the flu, are *not* generally considered sufficient to count as a serious health condition.

“treatment”

Treatment under family/medical leave laws includes examinations to determine if a serious health condition exists and evaluation of that condition. Treatment does not include routine physical, eye or dental exams.

“health care provider”

The term health care provider includes:

- licensed medical doctors;
- clinical psychologists;
- optometrists, dentists, podiatrists;
- licensed nurse practitioners and nurse-midwives;
- clinical social workers; and
- chiropractors (depending on the treatment provided).

If your employer’s health care plan accepts certification from your family member’s doctor of the existence of a serious health condition to substantiate a claim for benefits, your family member’s doctor probably counts as a health care provider under the family/medical leave laws.

“family member”

You may take time off to care for your parent, child, spouse or registered domestic partner with a serious health condition. *Parent* means a biological parent or an individual who cared for you as a parent when you were a child. Parents-in-law are not included. *Spouse* means a husband or wife as recognized by the state in which you live. *Registered domestic partner* means partners of the same sex who have filed a Declaration of Domestic Partnership with the Secretary of State.

Child means a biological, adopted or foster child, a legal ward, or a child for whom you act as a parent even if you have not formally adopted the child. A child must be either (1) under the age of 18, or (2) 18 or older and incapable of self-care because of a mental or physical disability.

4. What types of care are covered under family/medical leave laws?

Family/medical leave laws recognize that you may be needed to provide physical or psychological care, or both. So, for example, you may take a family/medical leave when you are needed to provide physical care for a family member with a serious health condition (such as bathing, administering medication, feeding, or transporting to the doctor where the family member is unable to take care of these needs by himself/herself) or if a doctor determines that your providing psychological comfort or reassurance to a family member would be beneficial (staying with a family member who is undergoing surgery, for example). You may also take leave when you are needed to arrange changes in care or to fill in for others who are caring for the family member.

5. What are your employer's obligations in notifying you of your family/medical leave rights?

An employer that is covered by the family/medical leave laws (employs 50 or more employees) must 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 gives notice of the need for 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 the employee is paid or unpaid, as one covered by the family/ medical leave laws and notify the employee of this designation.

If your employer has not notified you of your family/medical leave rights and you believe your employer is covered under the family/medical leave laws, ask your employer for information about these rights.

6. What are the terms of a family/medical leave?

- Leave covered under the family/medical leave laws is unpaid unless another form of paid leave is used in conjunction with the leave (for example, sick time or vacation time).
- In most cases, you must be reinstated to the same or equivalent position after your leave. You are not entitled to be reinstated if your job was eliminated during the leave for legitimate business reasons unrelated to your taking leave.
- If you receive health insurance benefits, your employer must continue to pay for them during your leave. This includes any benefits you receive for your dependents or family members.
- 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 (for example, your family member continues to require your care).

7. Are you required to notify your employer that you need to take family/medical leave?

You must give your employer notice 30 days before taking a family/medical leave that is foreseeable, such as for major surgery scheduled in advance. If you need leave suddenly to care for a family member or if a family member has a medical emergency, you must tell your employer as soon as possible, usually within a couple of days. You should notify your employer in writing of your need for a family/medical leave, and make sure to have documentation of your employer's response.

You are not required to disclose to your employer your family member's diagnosis, but you must give your employer enough information to understand that you are needed to care for a family member who has a serious health condition.

Be sure you understand your employer's rules for family/medical leave before you take leave. Also ask your employer for written information about your rights and responsibilities for family/medical leave.

8. What information may your employer request about your leave?

If you take a family/medical leave, your employer is allowed to request from you:

- confirmation of your relationship to a family member, such as a birth or marriage certificate;
- medical certification from a health care provider (such as a doctor's note) regarding the family member's serious health condition;
- recertification if the original certification expires, you request an extension of leave, or circumstances change; and
- periodic reports during the leave about your status and intent to return to work.

9. What information should medical certification have?

Your employer may ask for written medical certification (such as a doctor's note) showing you are needed to care for a family member with a serious medical condition. The certification does not have to disclose your family member's actual diagnosis, but it must provide enough information for your employer to verify your need for leave. A doctor's note should contain:

- the date your family member's serious health condition began;
- the probable duration of the condition;

- an estimate of the amount of time that the health care provider believes you need to care for your family member;
- a statement that the serious health condition warrants your participation to provide care during a period of treatment or supervision of your family member; and
- a statement verifying your need for intermittent leave or a reduced schedule, if applicable.

Your employer may not ask you or your family member's doctor for more than this basic information. If the certification for your family member's serious health condition meets these requirements, your employer must accept it as sufficient. Your employer may not demand a second or third opinion for certification of a family member's serious health condition. **Your employer must keep any medical information provided in a certification confidential.**

10. Can you take intermittent or part-time leave?

You may take family/medical leave on an intermittent or reduced (part-time) work schedule when your family member's care is best accommodated through an intermittent or reduced work schedule. You may take intermittent leave not only where the family member's need for care is intermittent (for monthly counseling, for example), but also where you are needed only intermittently (such as when sharing care responsibilities with others).

If you need intermittent leave or a reduced work schedule, you must attempt to arrange a schedule with your employer that minimizes disruption of your employer's operations, but still meets your family member's need for care as determined by the health care provider. Your employer may temporarily transfer you to an alternative position with equivalent pay and benefits if that position better accommodates your need for intermittent leave.

Your employer cannot make you take more leave than is medically necessary to care for your family member, nor transfer you to a different position to punish you for taking leave (by transferring you to the late night shift, for example). 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.

11. How does family/medical leave relate to other kinds of leave?

Vacation/Personal Leave/Sick Time

Either you or your employer may choose to apply any accrued paid vacation or personal leave during your leave to care for a family member. However, your employer may apply your vacation or personal leave time only if you request leave for a reason that is covered under the family/medical leave laws. In addition, if your employer's sick leave policy covers time to care for family members, you or your employer may choose to apply your accrued sick time during your leave to care for a family member.

If paid leave of any type is applied during a family/medical leave and your employer's requirements for using that paid leave are less stringent than those in the family/medical leave laws, only those less-stringent requirements may be imposed. (For example, if you do not need to submit a doctor's note to verify your need for personal leave, then your employer cannot ask you to submit a doctor's note to verify your need for family/medical leave.) Your employer may not retroactively designate paid time off as a family/medical leave after you return to work.

Paid Family Leave

Paid Family Leave entitles employees who participate in the State Disability Insurance system to receive a maximum of six weeks of partial pay each year when they take off work to care for a family member with a serious health condition. An employee can receive Paid Family Leave benefits while taking family/medical leave.

Employees who are not eligible for job-protected family/medical leave may still be eligible to receive Paid Family Leave benefits if they pay into State Disability Insurance, and must miss work to care for a family member. All employees who pay into SDI are eligible to receive Paid Family Leave benefits, regardless of the size of the employer or length of employment.

Kin Care

Employers who provide sick leave to their employees must allow employees to use at least half of their annual sick leave time to care for a child, spouse, domestic partner or parent. If you qualify for sick leave, you can use this time to care for these family members (including domestic violence survivors) and your employer cannot discipline you for taking this needed time off.

Leave Specified by Contract

Family/medical leave laws establish minimum family/medical leave rights. If your employer provides greater family/medical leave benefits under a union contract, other contract, policy or practice, you are entitled to the more generous benefits.

Compensatory ("Comp") Time

Your employer may not require you to substitute comp time off for unpaid family/medical leave.

12. Where can you get help regarding your family/medical leave rights?

For information about the application of family and medical leave rights to your particular situation, contact the **Domestic Violence and Employment Project** of the Legal Aid Society – Employment Law Center **toll-free at (888) 864-8335**. The Project can help you to understand what your rights are, how to exercise your rights, and what to do if your rights are violated.

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 no later than two years after the earliest discriminatory act (check the U.S. Government listing at the front of your local telephone directory) or with the California Department of Fair Employment and Housing no later than one year after the first discriminatory act (for information, call 1.800.884.1684).

If you sue your employer for violating family/medical leave laws, the court may reinstate you to your job and award you wages you should have been paid or a promotion you should have received, as well as reimbursement for legal costs.

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

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.

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For further information about your employment rights, call:

The Domestic Violence & Employment Project

Toll-free in California: (888) 864-8335 Outside California: (415) 593-0033

The Domestic Violence and Employment Project is a Project of the Legal Aid Society – Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.