

Basics of Federal and California Family and Family Military Leave Laws

	Employers Subject to Leave Laws	Criteria for Eligibility	Reasons for Leave	Maximum Length of Leave	California Paid Family Leave (PFL)
Federal	<p>Private employers with 50 or more employees working every day in 20 or more calendar workweeks of the current or preceding year. 29 U.S.C. § 2611(4)(a)(i).</p> <p>All public agencies regardless of number of employees. 29 U.S.C. § 2611(4)(a)(iii).</p>	<p>Employee must have been employed for at least 12 months and have been employed for 1,250 hours during the 12-month period immediately preceding the start of FMLA leave. 29 U.S.C. § 2611(2)(A).</p> <p>The 12 months of employment need not be consecutive, but the 1,250 hours must have been in the previous 12 consecutive months.</p> <p>Both parents are eligible for FMLA for childbirth. 29 C.F.R. § 825.120(a)(1).</p>	<ol style="list-style-type: none"> 1. Birth of a child 2. Placement of a child with the employee for adoption or foster care 3. To care for a family member with a serious health condition 4. The employee's own serious health condition 5. Qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty in support of a contingency operation 6. To care for a covered servicemember with a serious injury or illness <p>Both parents are eligible for FMLA for childbirth. 29 C.F.R. § 825.120(a)(1).</p>	<p>For birth or adoption of a child, for serious illness or to care for a spouse, child or parent with a serious illness, 12 weeks in a 12-month period. 29 U.S.C. § 2612(a)(1).</p> <p>To handle exigencies arising from a spouse, child or parent in the National Guard or Reserves being called to active duty (other than for annual training), 12 weeks in a 12-month period. 29 C.F.R. § 825.126.</p> <p>To care for a wounded servicemember injured in the line of duty on active duty, 26 weeks in a 12-month period. 29 C.F.R. § 825.127.</p>	
California	<p>Public and Private Employers with 50 or more employees for family and medical leave. Cal. Gov't Code § 12945.2.</p> <p>For family military leave, public and private employers with 25 or more employees. Cal. Mil. & Vet. Code § 395.10</p>	<p>For family and medical leave, employee must be employed for at least 1 continuous year, for a minimum of 1,250 hours per year. Cal. Gov't Code § 12945.2.</p> <p>For family military leave, employee must work an average of 20 or more hours per week. Cal. Mil. & Vet. Code § 395.10.</p>	<ol style="list-style-type: none"> 1. Birth of a child 2. Placement of a child with the employee for adoption or foster care 3. To care for a family member with a serious health condition 4. The employee's own serious health condition 	<p>For family and medical leave, 12 weeks in a 12-month period. Cal. Gov't Code § 12945.2(a).</p> <p>For female state employees, pregnancy and childbirth leave may be up to 4 months, as determined by employer. Cal. Gov't Code § 12945(a).</p> <p>For family military leave, up to 10 days. Cal. Mil. & Vet. Code § 395.10.</p>	<p>California employees who are covered by State Disability Insurance (SDI) can receive partial wage benefits for up to 6 weeks in a 12-month period to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new minor child. This does not create a right to take time off. It merely provides up to 6 weeks of paid benefits to workers who suffer a wage loss when they take time off from work to care for others. CFRA and FMLA run concurrently with any PFL taken.</p>

Untangling the Leave Laws' Web
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& STRAWN
LLP**

Four Big Differences

	Pregnancy	Registered Domestic Partners	Active Duty Military Service	Caring for Ill or Injured Servicemembers
Federal	Covered as a Family and Medical Leave Act (FMLA) serious health condition, including prenatal care. 29 C.F.R. § 825.120(a)(1).	Not covered under FMLA.	FMLA-eligible employees are entitled to up to 12 weeks of leave for “any qualifying exigency” arising because the spouse, son, daughter, or parent of the employee is on active military duty, or has been notified of an impending call to active duty status, in support of a contingency operation. The family member must be a member of the National Guard, Reserves, or be a retired member of the Armed Services. 29 C.F.R. § 825.126.	An employee who is the spouse, child, parent or next of kin of a covered servicemember may take a total of 26 weeks of leave during a 12-month period to care for a covered servicemember who is ill or injured in the line of duty on active duty. 29 C.F.R. §825.127.
California	Not covered under CFRA. Instead, a pregnant employee is entitled to a pregnancy disability leave (PDL) of up to 4 months. Employer needs to have only 5 or more employees & no eligibility period for employees. Eligible CFRA employee can then take a 12-week CFRA baby-bonding leave. First 12 weeks of PDL can run concurrently with FMLA for eligible employees, and for that period, employer needs to maintain health benefits.	Covered under CFRA, just like spouses. Cal. Fam. Code § 297.5(a). Note that this may give a domestic partner more family leave than a spouse, because the domestic partner will not have exhausted his/her FMLA leave taking CFRA leave to care for a domestic partner, and could therefore take FMLA leave to care for a sibling or parent, injured servicemember, or for a qualifying exigency.	Not covered under CFRA. Thus, CFRA is not exhausted when FMLA is used. NOTE: under Cal. Mil. & Vet. Code § 395.10, an employee who works 20+ hours per week for an employer with 20+ employees can take an unpaid leave of up to 10 days while the military spouse is on leave from deployment. Some or all of this may run concurrently with exigency leave.	Covered under CFRA if family member is a covered CFRA employee, <i>i.e.</i> a spouse, child or parent, and the injury or illness is a serious health condition. Cal. Code Regs. tit. 2, § 7297.0(h)(2). If “next of kin” is not within these categories, or does not have a serious health condition, CFRA leave would not be exhausted when FMLA used. Furthermore, CFRA leave is only 12 weeks. Employee could take up to 14 additional weeks.