



Navigating the Maze: Implementing New and Current Employee Leave Entitlements

Presented by:
Angela Okamura and Taylor Todd

Tulare County Office of Education
January 30, 2025

Lozano Smith



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Presenter



Angela Okamura

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Roadmap



1. Leaves Under Statute and Collective Bargaining Agreements
2. FMLA and CFRA
3. Leave Coordination
4. Parental Leave
5. Medical Reemployment Lists

Know Your Sources

- Know the law
- Know your board policies
- Read your CBAs
- Investigate your past practices
- If they provide more benefits than the law, you must follow them
- If they provide less than the law requires, update!

What is the first word that comes to mind when you think of employee leave laws?

Leaves under Statute/Collective Bargaining Agreements

Primary Leaves Available Under California Statutes

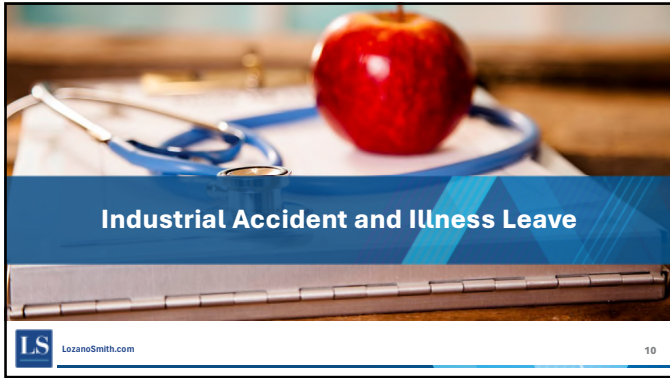
Leave	Certificated	Classified
Industrial Accident Leave	Ed. Code, § 44984	Ed. Code, § 45192
Sick Leave	Ed. Code, § 44978, Lab. Code 245 et seq.	Ed. Code, § 45191, Lab. Code 245 et seq.
Extended Illness Leave	Ed. Code, § 44977, 44983	Ed. Code, § 45196
Catastrophic Leave	Ed. Code, § 44043.5	Ed. Code, § 44043.5

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Examples of Other Possible Types of Leave

Bereavement	Union Leave / Organizational Leave	Jury Duty	Service-related disability - (EC § 45191.5/44978.2)
Military Leave	Sabbatical	Unpaid Leave of Absence	Disability leave for certificated employees (EC § 44986)
Compulsory Leave	Witness in Court	Paid Administrative Leave	Personal Necessity Leave

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Sick Leave: Education Code

Full-time certificated employees:

- 10 days

12-month classified employees:

- 12 days

Part-time employees:

- Pro-rated number of days



Other Permissible Uses of Accrued Sick Leave

One-half of “accrued and available sick leave” also available for:

- Kin Care
- Victim of Domestic Violence; Sexual Assault, or Stalking



Sick Leave: Labor Code

▪ **Healthy Workplaces, Healthy Families Act- Senate Bill (“SB”) 616 (Effective January 1, 2024)**

▪ **Changes to Sick Leave Requirements:**

- Employers must provide **no less than 40 hours or 5 days** of paid sick leave for use by the employee’s **200th calendar day** of employment
- Increase of annual carryover from **3 days/24 hours to 5 days/40 hours**
- Employees must be eligible to earn at least **5 days or 40 hours of sick leave** or paid time off within 6 months of employment
- Total accrual thresholds increase from **48 hours/ 6 days to 80 hours/ 10 days**





Extended Illness Leave – Certificated

Key Elements:

- Begins after an employee has exhausted all available sick leave
- One, five (5) month period per accident or illness
- Difference between the employee’s salary and what is paid to a substitute **OR** what would have been paid to a substitute if one was hired

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Alternative: 5 Months (100 days) at 50% Pay- Certificated

Employees receive at least 50% of their pay when absent due to illness or accident for a period of five school months or less

Old statute (last amended 1977), only interpretation by old AG cases (from 1950’s) and no cases

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5 Months/Differential Pay – Classified

Key Elements:

- Five months, runs concurrently with sick leave
- No “per accident or illness” language
- Employee is entitled to sub-deduct pay if a substitute is actually hired or full pay if no substitute is hired



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(Ed. Code, § 45196)

Alternative: 100 Day Extended Sick Leave

100 working days per year

Employees receive at least 50% of their pay

Exclusive of any other paid leave, holidays, vacation or compensatory time



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(Ed. Code, § 45196)

Quick Detour

Where does vacation fit in for classified employees?



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Catastrophic Leave

Optional leave—subject to bargaining

- Conditions set forth by law (Ed. Code, §44043.5), include, but are not limited to:
 - Maximum period of use – 12 consecutive months
 - Leave donations must irrevocable
 - Employee must use paid leave that accrues monthly prior to receiving paid leave under catastrophic leave program

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Hypothetical #1.1

You are the Human Resources director at 123 School District. You receive a doctor's note regarding one of the District's full-time permanent high school science teachers, Mr. S. The doctor's note states that Mr. S. has injured his back, needs surgery, and will be unable to return to work for three to four months.

- What is/are the first thing(s) you typically do?

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Hypothetical #1.1

Ask: Did Mr. S injure his back at work?

Review:

- Available leave balances
- Applicable CBA
- BP/ARs
- Past practice

Hypothetical #1.2

Based on the information we received from Mr. S.'s doctor, which type, or types of leave might Mr. S be eligible for?

- A. Industrial Accident Leave
- B. Sick Leave
- C. Differential Leave
- D. Catastrophic Leave
- E. B and C Only
- F. A through D




Family and Medical Leave

Family & Medical Leave (State & Federal Law)

CFRA	<ul style="list-style-type: none">Gov. Code § 12945.2Cal. Code Regs., tit. 2, §11087, et. seq.
FMLA	<ul style="list-style-type: none">29 U.S.C. § 2601 et seq.29 C.F.R. § 825.100 et seq.

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Eligibility for FMLA/CFRA



- 12 months of service (at any time)
- 1,250 hours during the 12-month period before leave begins
- FMLA only:** employee must work at location with at least 50 employees in a 75-mile radius of his/her employer

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Family & Medical Leave (State & Federal Law)

- Basic protection: 12 weeks of unpaid, job-protected leave with benefits in any 12-month period
- Runs concurrently with all other qualifying leaves
- Whether employer can require, or employee can elect concurrent use of paid leave will depend on specific factors. Refer to regulations for restrictions.



How Does the District Define “12 Months” for Leave Entitlement Purposes?

Recent Changes to CFRA - SB 1383 (Effective 1/1/21) AB 1033 (Effective 1/1/22) & AB 1041 (Effective 1/1/23)

Main Changes/Departures from FMLA:

- Removal of exception for employers with less than 50 employees within 75 miles
- Expansion of list of covered family members
- Revisions to definition of “child”
- Revisions to definition of “parent” to include “parent-in-law”
- Two parents working for the same employer- 12 workweeks **each**
- Right to reinstatement

**Recent Changes to CFRA - AB 1041 (2022)
(Effective January 1, 2023)**

Addition of “Designated Person”

- “Designated person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship
 - Discretion given to employee to determine relationship
- The “designated person” may be identified by the employee at the time the employee requests the leave
- An employer may limit an employee to one designated person per 12-month period for family care and medical leave

Family & Medical Leave: Reasons for Use

FMLA

- Employee’s own serious health condition
- Serious health condition of parent, spouse, or child
- Birth, adoption, or placement of child with employee for foster care
- Qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active-duty status)
- **To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember***

CFRA

- Employee’s own serious health condition
- Serious health condition of **child, spouse, domestic partner, parent*, grandparent, grandchild, sibling or designated person**
- Birth, adoption, or placement of child with employee for foster care (within one year of birth or placement)
- Qualifying exigency arising out of the fact that the employee’s spouse, domestic partner, child, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active-duty status)

FMLA/CFRA: Parent, Child, Spouse

Parent:

- **FMLA:** A biological, adoptive, step or foster father or mother, [legal guardian] or any other individual who stood in loco parentis to the employee when the employee was a child. Does not include parents “in law.”
- **CFRA:** Biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

Child:

- **FMLA:** A biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, or a child of an employee who stands in loco parentis to that child, who is either under 18 years of age or an adult dependent child.
- **CFRA:** A biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

Spouse:

- **FMLA:** “husband or wife.” Includes same-sex or common law marriages if entered into in a state that recognizes such a marriage (or is valid in the place where entered into and could have been entered into in at least one state)
- **CFRA** includes registered domestic partner

CFRA Only: Grandchild, Grandparent, Sibling, Designated Individual

- **Grandchild:** Child of the employee's child
- **Grandparent:** A parent of the employee's parent
- **Sibling:** A person related to another person by blood, adoption, or affinity through a common legal or biological parent.
- **Designated person:** Any individual related by blood or whose association with the employee is the equivalent of a family relationship

Family & Medical Leave (State & Federal Law)



What triggers a CFRA/FMLA determination?

- Employee request
- Employer acquiring knowledge that employee leave may be for a qualifying reason

Family & Medical Leave (State & Federal Law)

Notices required by employer

- General notice
- Eligibility notice
- Rights and responsibilities notice
- Designation notice

Family & Medical Leave

If employers do not “designate” leave as CFRA and/or FMLA, it may not run

“Designate” – inform the employee in writing their leave qualifies as CFRA/FMLA

Intermittent Leave

Is intermittent leave allowed for the employee's:

- Own serious health condition?
- Care for family member with serious health condition?
- Baby-bonding?

If so, how do you calculate this? How do you track it?


Family & Medical Leave (State & Federal Law)





Reinstatement Rights of Employee:

- Same or comparable (virtually identical) position
 - Pay
 - Benefits
 - Working conditions

Leave Coordination


Extended Illness Leave: Up to Five School Months of Differential Leave			Certificated	
60 Days Industrial Accident Leave (if applicable) Education Code § 44984	Regular and Accumulated Sick Leave Education Code § 44978	Differential Pay Regardless of Whether Substitute is Hired Education Code § 44977	Catastrophic Leave (if applicable) Education Code § 44043.5 Board Approved Leave (if applicable)	Placement on Reemployment List 24 Months – Probationary 39 Months – Permanent Edu. Code § 44978.1
CFRA and FMLA may run concurrently with all other paid and unpaid leaves as of the first day of the qualifying "serious medical condition"				
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Extended Illness Leave: Up to Five School Months of Differential Leave*			Classified	
60 Days Industrial Accident Leave (if applicable) Education Code § 45192	Regular and Accumulated Sick Leave Education Code § 45191	Differential Pay or Full Pay if Substitute Not Hired Education Code § 45196	Catastrophic Leave (if applicable) Education Code § 44043.5 Board Approved Leave (if applicable) Ed. Code § 45195	Placement on 39-Month Reemployment List Education Code § 45192, 45195
CFRA and FMLA may run concurrently with all other paid and unpaid leaves as of the first day of the qualifying "serious medical condition"				
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Extended Illness Leave: Up to 100 Working Days Period Begins to Run – Does Not Include Holidays, Vacation, Compensatory Time Off, and other Paid Leave			Classified	
60 Days Industrial Accident Leave (if applicable) Education Code § 45192	Regular and Accumulated Sick Leave Education Code § 45191	50 Percent Differential Pay Education Code § 45196	Catastrophic Leave (if applicable) Education Code § 44043.5 Board Approved Leave (if applicable) Ed. Code § 45195	Placement on 39-Month Reemployment List Education Code §§ 45192, 45195
CFRA and FMLA may run concurrently with all other paid and unpaid leaves as of the first day of the qualifying "serious medical condition"				
 First Day of Leave →				
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Leave Coordination Hypotheticals

Hypothetical #2.1



Teacher injures both her knees at work at the start of the 24-25 school year (August 2024). She requires surgery on her knees and must be out until January 10, 2025. She has worked for the District for five years and worked full time last school year.

- What leaves would this certificated employee be entitled to?
- What pay rate(s) will she receive during her leave?


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Hypothetical #2.1

- FMLA/CFRA
 - Unpaid, runs concurrently
- Industrial Accident/Illness Leave
 - Full pay for 60 days
- Paid Sick Leave
- Extended Illness Leave
 - Differential pay, begins to run after sick leave exhausted
- Catastrophic (maybe)

Hypothetical #2.2

After returning to work, the employee gets into a car accident in February 2025 and injures her back, requiring her to be on leave again.

- What leaves does she have remaining?

Hypothetical #2.3

Two years later, Employee's knees continue to deteriorate as a result of the workplace injury, requiring an additional surgery.

- What leaves will she be able to utilize?

Pregnancy-Related/ Parental Leave

Parental Leave – Certificated and Classified Employees

Birthing Parent		Non-Birthing Parent	
Unpaid Leaves	Paid Leaves	Unpaid Leaves	Paid Leaves
Pregnancy Disability Leave <ul style="list-style-type: none"> Runs concurrently with FMLA if designated 	Sick Leave/Extended Illness Leave	CFRA <ul style="list-style-type: none"> Runs concurrently with FMLA if designated 	Education Code Parental Leave <ul style="list-style-type: none"> Sick Leave/ Differential Pay (No less than 50% pay)
CFRA <ul style="list-style-type: none"> Runs concurrently with FMLA if designated 	Education Code Parental Leave <ul style="list-style-type: none"> Sick Leave/ Differential Pay (No less than 50% pay) 		

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Pregnancy Disability Leave (“PDL”)

PDL:

- Gov. Code § 12945
- Cal. Code Regs., tit. 2, § 11035, et. seq.

See Also:

- Ed. Code, § 44965 (certificated)
- Ed. Code, § 45193 (classified)



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Pregnancy Disability Leave

- **Basic Protection:** Up to 4 months, as needed, of unpaid, job-protected leave with benefits when employee is disabled due to pregnancy, childbirth, or a related medical condition.
- Per pregnancy, not per year.
- No eligibility requirement, such as minimum hours worked or length of service, before an employee affected or disabled by pregnancy is eligible for reasonable accommodation, transfer, or disability leave.

Pregnancy Disability Leave

- Whether employer can require, or employee can elect concurrent use of paid leave will depend on specific factors.
- Runs concurrently with FMLA. Does not run concurrently with CFRA.
- Maximum statutory leave entitlement for both PDL and CFRA leave for reason of the birth of the child and/or the employee's own serious health condition: 29 1/3 workweeks.

Education Code Parental Leave

Ed. Code, § 44977.5
(certificated)

Ed. Code, § 45196.1
(classified)



Education Code Parental Leave

Key Elements:

- Employee may use sick leave for purposes of parental leave for up to twelve workweeks.
- Upon exhaustion of sick leave, employee out on leave pursuant to the CFRA may access differential pay at no less than 50% of their regular salary for the remainder of the 12-workweek period.
- Employee does not need to meet 1,250 hours of work requirement in order to qualify for differential pay despite CFRA eligibility requirements.
- Ed. Code Parental Leave runs concurrently with leave taken under CFRA. Aggregate amount of Ed. Code Parental Leave and CFRA shall not exceed 12 workweeks in a 12-month period.

Reproductive Loss Leave: SB 848

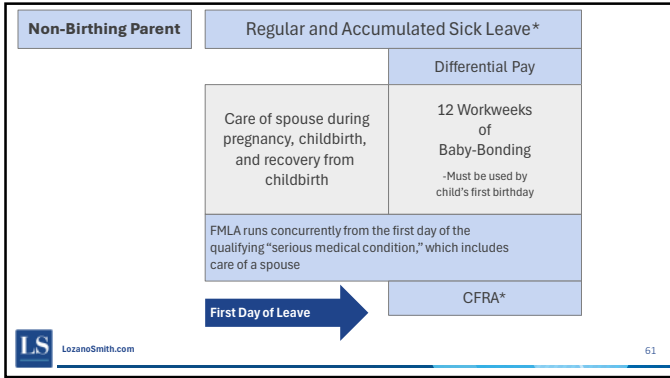


- Amended Government Code to allow for up to 5 days of leave following a reproductive loss event.
- Reproductive loss event: Failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction.
- Taken within 3 months of the event.
- Leave is unpaid unless the employee has leave available.

Birth Parent

Regular and Accumulated Sick Leave & Extended Illness Leave			Sick Leave & Differential Pay*
Pregnancy	Childbirth	Recovery from Childbirth	12 Workweeks of Baby-Bonding After Medically Able to Return to Work -Must be used by child's first birthday*
PDL			CFRA
12 workweeks of FMLA runs concurrently from the first day of the qualifying "serious medical condition" which includes pregnancy			

First Day of Leave →




Pregnancy/Parental Leave Hypothetical

Hypothetical #3

A 12-month, 8-hour classified employee is pregnant with a due date of November 1, 2025. The doctor will release the employee to return to work February 1, 2026.

- What leaves would this employee be entitled to?
- What about parental/baby-bonding leave?



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Regular and Accumulated Sick Leave & Extended Illness Leave			Sick Leave & Differential Pay*
Pregnancy	Childbirth	Recovery from Childbirth	12 Workweeks of Baby-Bonding After Medically Able to Return to Work
PDL			-Must be used by child's first birthday*
			CFRA
12 workweeks of FMLA runs concurrently from the first day of the qualifying "serious medical condition" which includes pregnancy			
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<p>Medical Reemployment List</p> <hr/> <p>Certificated employees – 24 months or 39 months</p> <p>Classified employees – 39 months</p>
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Classified Reemployment List



Must inform permanent classified employees in writing beforehand:

- Right to request paid or unpaid leave from Board (Ed. Code, §§ 45192 & 45195)
- Potential eligibility for CalPERS disability retirement

Medical Reemployment List

Return to work from reemployment list

- Certificated
- Classified

Other Issues

- When does the ADA/Accommodations process kick in?

Hypothetical #4

During winter break, a 10-month, 8 hour classified employee is diagnosed with cancer. The employee submits a doctor's note excusing them from work for the remainder of the 2024-2025 school year for treatment. The employee has worked for the District for ten years and worked full time last school year.

The District has negotiated 100 days/50% pay Extended Illness Leave for classified employees.

- How should the District coordinate this employee's leave rights?
- What if the employee is not released to return to work for the 2025-2026 school year?

Hypothetical #4

- FMLA/CFRA
 - Unpaid, runs concurrently
- Paid Sick Leave
- Extended Illness Leave
 - 100 days begins first date of leave, 50% pay after sick leave
 - Can take remainder of 100 days in following school year
- Catastrophic Leave, Unpaid Leave (if granted)
- 39-Month List

Recent Legal Updates

Bereavement Leave: Government Code § 12945.7

*It shall be an unlawful employment practice for an employer to refuse to grant a request by an employee to take **up to five (5) days** of bereavement leave upon the death of a family member.*

- *If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.*

Bereavement Leave: Examples

Employee #1- Out-of-State Travel Required

- 5 paid days of bereavement leave → **No Impact**

Employee #2- In-State Travel

- 3 paid days/PN available (up to 7 paid days) → **No Impact**

Employee #3- In-State Travel

- 3 paid days/No PN (or less than 2 days available) → **Impact** (provide up to 2 unpaid days → total of 5 days of leave)

AB 2499: Expanded Protections and Accommodations for “Qualifying Acts of Violence”

- Expanded leave protections and accommodations for victims of “qualifying acts of violence,” and their family members
- Protections under the Fair Employment and Housing Act
- “Qualifying Acts of Violence” include domestic violence, sexual assault, stalking, bodily injury, brandishing/using a firearm or dangerous weapon, making a reasonably perceived or actual threat to use force to cause injury or death
- Protected time off
- Duty to engage in the interactive process and provide accommodations

Final Thoughts

Coordination of Leaves Between Departments

- When to notify
Risk Management?
HR?
Payroll?
- When to discipline?



Takeaways

- Know your CBA leave provisions
- Document, document, document
- Coordinate between departments
- Communicate with employees



Questions?



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