



PAID FAMILY LEAVE ISSUES

Legislative intent regarding Paid Family Leave:

”It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program, shall be funded through employee contributions, and shall be administered in accordance with the policies of the state disability insurance program” *Cal. Unemployment Insurance Code* §3300(g). ”Family temporary disability Insurance shall be known as Paid Family Leave.” *Cal. Unemployment Insurance Code* §3300(b).

Paid Family Leave shall not be "construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave." *Cal. Unemployment Insurance Code* § 3301(a)(2). "No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period." *Id.* at § 3301(d). The right to benefits pursuant to family temporary disability insurance does not provide leave rights or any form of job protection. *22 Cal. Code Regs.* §3301(a).

Question: If a person switches from state disability benefits to Paid Family Leave, does that person have to re-satisfy the seven-day waiting period?

Short Answer: It depends. If the reason for being on state disability is the same or related to the reason for being on Paid Family Leave, then there is no requirement of another wait period. However, if the reason for being on state disability is unrelated to Paid Family Leave, then an additional wait period must be completed.

Discussion: In order to receive disability benefits, ” [a] claimant must be unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period for which days no disability benefits are payable.” *22 Cal. Code Regs.* §2627(b)-1. Similarly, to be eligible for Paid Family Leave, ” [t]he individual [must have] been unable to perform his or her



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regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable.” *Cal. Unemployment Insurance Code* §3303(b).

However, when the waiting period has already been served for a disability, as in the case of pregnancy, there is no additional waiting period required for Paid Family Leave in order to bond with the new child. EXAMPLE: ”Claimant B gives birth on May 9, 2004, and receives State Disability Insurance benefits through June 19, 2004, for her pregnancy claim. She does not establish a Family Temporary Disability Insurance claim for bonding before returning to work in January 2005. After working through March 20, 2005, Claimant B established a claim for Family Temporary Disability Insurance benefits beginning March 21, 2005 to bond with her new child. Claimant B may receive up to six weeks of Family Temporary Disability Insurance benefits from March 21, 2005 through May 1, 2005, if otherwise eligible. Because Claimant B served a waiting period on her State Disability Insurance pregnancy claim, *she is not required to serve an additional waiting period.*” 22 *Cal. Code Regs.* §3303-1(b) (emphasis added).

In the example, because the reason for disability is substantially similar to the reason for Paid Family Leave, there is no additional waiting requirement. There is also no requirement that all state disability benefits be used up before switching to Paid Family Leave. Conversely, in the unlikely situation where an employee is on state disability, for example for a back injury, and wants to switch to Paid Family Leave, possibly to care for a sick parent, an additional waiting period would be required because the reasons for the claims are unrelated (22 *Cal. Code Regs.* §3303(b)-1(a) EXAMPLE 6).

Question: In determining the length of the required waiting period, is a partial day considered a full day?

Short Answer: Yes.

Discussion: ”Partial days of family care leave fulfill the waiting period requirement.” 22 *Cal. Code Regs* §3303(b)-1(a) EXAMPLE 3. An example is ”Claimant C establishes a claim on January 10 to provide care for his wife. Claimant C normally works eight hours per day five days per week. Claimant C was unable to work on January 10 and January 11. Beginning on January 12, Claimant C works four hours per day and spends the other four hours caring for his wife. Claimant C continues to work four hours per day through February 14 in order to provide care for his wife. Claimant C serves an uninterrupted seven-day waiting period from January 10 through January 16 since partial days of family care leave fulfill the waiting period requirement. Claimant C is eligible for benefits based on his wage loss for January 17 through February 14.” *Id.*

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Questions: Is it required that an *exempt* employee have time off deducted for FMLA or CFRA leave in order to qualify for Paid Family Leave? Will this deduction affect the exempt status of that employee? Is recording this deduction good practice for an employer?

Short Answers: It is always important for employers to keep accurate records with regard to workplace issues. This is especially true with FMLA and CFRA leave. If an employer does not keep track of this leave, an employee may be able to argue that they are entitled to more leave than allowed by law. Further, Paid Family Leave requires a seven-day waiting period, where the employee cannot receive any monetary compensation. Thus, record keeping is essential to support a claim for Paid Family Leave. Such record keeping will *not* affect the employee's exempt status.

Discussion: Leave granted under FMLA and CFRA is *unpaid* leave. 29 U.S.C. §2612(c); *see also* 2 Cal. Code Regs. §7297.5(a). Under FMLA and CFRA, exempt employees may have their salary deducted by an employer for any hours taken as intermittent or reduced leave within a workweek, without affecting the exempt status of the employee. 29 C.F.R. §825.206(a); *see also* 2 Cal. Code Regs. §7297.10. "The fact that an employer provides FMLA leave, whether paid or unpaid, and maintains records required by this part regarding FMLA leave, will not be relevant to the determination of whether an employee is exempt" 29 C.F.R. §825.206(a).

"Nothing in [the paid family temporary disability insurance program] shall be construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave." Cal. Unemployment Insurance Code §3301(a)(2).

Therefore, both FMLA and CFRA encourage record keeping by employers for leave taken by their employees. Both FMLA and CFRA allow employers to deduct leave time taken by exempt employees from that employee's salary without affecting the exempt status of the employee. And, finally, Paid Family Leave is designed to be consistent with the rights of employees and employers under CFRA. Thus, recording and deduction of time from exempt employees for Paid Family Leave should not affect an employee's exempt status.



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