



California Independent Schools Business Officers Association

# HR WORKSHOP 2022

## Don't Let Leave Laws Leave You Confused!

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# Agenda

- I. Family and Medical Leave
- II. Pregnancy Disability Leave
- III. Paid Sick Leave
- IV. Leave as a Reasonable  
Accommodation
- V. COVID Leaves
- VI. Miscellaneous





## Pop Quiz

### **Which statement is false?**

1. A school can require an employee on CFRA leave who is receiving Paid Family Leave benefit payments from the EDD to use his PTO.
2. An employee may use CFRA leave to care for an *adult* child with a serious health condition.
3. An employee who exhausted COVID Emergency Paid Sick leave in 2021 is entitled to additional Supplemental Paid Sick Leave in 2022.
4. All of the above.

# **Part I: Family and Medical Leave**



# FMLA and CFRA Coverage

FMLA	CFRA
≥ 50 employees	≥ 5 employees
Employed at least 12 total months	
At least 1,250 hours worked during the 12 months preceding the leave	



# FMLA and CFRA Serious Health Condition

- Serious health condition of employee
  - CFRA excludes pregnancy
  - No minimum amount of leave
- Serious health condition of child, parent, spouse or domestic partner of employee
  - CFRA also includes parent-in-law, grandparent, grandchild, or sibling
  - FMLA excludes adult children



# FMLA and CFRA Baby Bonding

- Employer may not require baby bonding leave to be taken all at once under CFRA
  - Minimum duration of baby bonding is 2 weeks, except on any 2 occasions employer must grant leave for a period of less than 2 weeks
- Spouses/parents working for same employer
  - FMLA: Spouses only receive a collective 12 weeks for baby bonding
  - CFRA: Parents receive full 12 weeks each



## FMLA and CFRA Benefits

- Unpaid leave
  - Potential substitution of accrued leaves
  - Potential payments through State Disability Insurance (SDI) or Paid Family Leave Benefits (PFL)
- Medical benefits required during FMLA and CFRA Leave
- Right to reinstatement to same or equivalent position and pay
  - Exception: Normal business decisions which are not discriminatory towards the employee on leave



## Case Study

A fourth grade teacher, Dave, has been out for 12 weeks due to complications from his diabetes. He provides a doctor's note after 12 weeks on leave stating that he will need to be off of work for another 7 weeks.

**What step should the school take?**

# **Part II: Pregnancy Disability Leave**



## Pregnancy Disability Leave

- 4 months (or 17 1/3 weeks) of unpaid leave time for pregnancy-related disability
  - Can be used for disability before and after birth
- Employer can require substitution of sick leave for unpaid leave (unless employee is receiving SDI or disability payments)
- Employer cannot require use of vacation leave
- Medical benefits for up to four months



# Relationship Between PDL, FMLA, and CFRA Leaves

- PDL runs concurrently with FMLA but not CFRA
- **Example:** If an employee were disabled by pregnancy for 4 weeks and by birth for 6 weeks, the employee would be entitled to the following leaves:

	<b>Pre-birth Disability</b>	<b>Post-birth Disability</b>	<b>“Bonding”</b>	
<b>Health Care</b>	FMLA	FMLA	FMLA and/or CFRA	CFRA
<b>Job Protected</b>	FMLA and/or PDL	FMLA and/or PDL	FMLA and/or CFRA	CFRA
	4 Weeks	6 Weeks	2 Weeks	10 Weeks



## Case Study

A teacher at the school goes out on PDL leave 4 weeks before summer break. Four weeks after going out on leave she gives birth to a healthy baby. Summer break is 9 weeks. The teacher's FMLA, CFRA, and PDL leaves run during the summer break.

**True, False, or Maybe?**

# **Part III: Paid Sick Leave**



# California's Paid Sick Leave Law

- Labor Code § 246 - Requires almost all employers to provide the greater of 24 hours or three days of paid sick days per year
- Sick leave accrues at a minimum of 1 hour per every 30 hours worked
  - BUT accrual can be capped at 48 hours
  - Alternatively, sick leave can be provided as an annual lump sum of at least 24 hours or three days



# California's Paid Sick Leave Law

- Reasons for Paid Sick Leave
  - Diagnosis, care, or treatment of an existing health condition of or preventative care for the employee
  - Diagnosis, care, or treatment of an existing health condition of or preventative care for the employee's family member
  - An employee who is a victim of domestic violence, sexual assault, or stalking

# **Part IV: Leave as a Reasonable Accommodation**



# ADA: Reasonable Accommodation

- School has duty to engage in the interactive process to determine if a disabled employee can be reasonably accommodated
- Leave of absence is an option for accommodation
  - Reassignment to a vacant position



## Case Study

A Major Gifts Officer submits a doctor's note stating that she needs to avoid "stressful interactions with others" due to an anxiety disorder. The school determines it cannot accommodate those work restrictions and cannot afford to leave that position vacant. She asks to be reassigned to a vacant Assistant Admissions Director position that she previously held, for which the school has identified two very good finalists. The Admissions Director previously worked with the employee and thinks both of the finalists would do a much better job in the vacant position.

**What should the school do?**



# COVID and Disability Accommodations

- Is COVID-19 a Covered Disability?
  - Answer: It Depends
  - It will depend on whether the COVID-19 limits a major life activity (FEHA) – ADA is “substantially limits”
  - If covered disability prevents an employee from performing an essential job function
    - School must engage in the interactive process and attempt to accommodate



# Impact of COVID On Accommodations

- Work from home as a reasonable accommodation?
  - Look at each position individually
  - Accommodation must be effective
  - Employer must consider employee's requested accommodation, but not required to grant it
  - Not required to eliminate essential job functions

# **Part V: COVID Leaves**



# Overview: Qualifying Reasons (1-4)

Employee cannot work or telework because:

1. Employee is subject to a COVID-19 quarantine or isolation period (CDPH, CDC, or local public health officer).
2. Employee advised by a health care provider to isolate or quarantine due to COVID-19.
3. Employee is attending a vaccine or booster appointment for themselves or a family member.
4. Employee is experiencing symptoms, or caring for a symptomatic family member, related to a COVID-19 vaccine or booster.



# Overview: Qualifying Reasons (5-8)

Employee cannot work or telework because:

5. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. Employee is caring for a family member who:
  - A. Is subject to a CDPH, CDC, or local health officer order or guidance to isolate or quarantine, OR
  - B. Has been advised by a health care provider to isolate or quarantine.
7. Employee is caring for a child whose school or place of care is closed/unavailable due to COVID-19 on the premises.
8. Employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.



# Interaction between Laws: SPSL and the Cal/OSHA COVID-19 ETS

- SPSL
  - Paid sick leave – Employee cannot work or telework due to one of the eight qualifying reasons
- Cal/OSHA COVID-19 Emergency Temporary Standard (“ETS”)
  - Exclusion pay – Owed to work-related “COVID-19 cases” and close contact exposures
- Potential overlap:
  - SPSL qualifying reasons 1, 2, 5, 6, 7, and 8
- Note: Employers cannot require employees to use SPSL when excluded.



# Interaction between Laws: SPSL and Employer-Provided Sick Leave (cont'd)

- Practices to minimize risk while requiring excluded employees to use employer-provided sick leave:
  - Identify the maximum amount of statutory sick leave to which employee is entitled, under state and local laws.
  - Identify the amount of employer-provided sick leave the employee has accrued in excess of applicable statutory amounts.
  - Only require employees to use employer-provided sick leave that exceeds the applicable statutory amounts. Always ensure that the maximum amount of statutory sick leave is available in the employee's bank.



## Interaction between Laws: Example – SPSL and Cal/OSHA ETS

Felina becomes ill and is diagnosed with COVID-19. Felina's employer excludes her from the workplace under the ETS. Felina files for workers' compensation while excluded. Then, Felina recovers and returns to work. After returning, Felina requests that SPSL be applied retroactively to her exclusion period.

**How should the employer handle Felina's request?**

# **Part VI: Miscellaneous**



## Additional California Leaves

- School Activities
- Crime Victim
- Organ/Bone Marrow Donation
- Voting
- Jury/Witness
- Military Service



 **Thank You!**

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