

APMA 40th Annual Forum

Monterey Plaza Hotel

Thursday, January 23, 2020

2:30 p.m. – 3:30 p.m.

Presented by:

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PATANE • GUMBERG • AVILA, LLP
ATTORNEYS AT LAW

***AN OVERVIEW OF THE
MANY MANDATORY
LEAVE LAWS IN
CALIFORNIA,
INCLUDING
FMLA/CFRA
WORKER'S
COMPENSATION, PDL,
PFL, PSL, ADA, SCHOOL
AND CHILD CARE
ACTIVITIES AND
MORE...***

Topics for Today's Presentation



Illnesses, Injuries and
FMLA/CFRA, W/C, PDL, PFL,
PSL, ADA and FEHA



Interplay between Leaves of
Absence under FMLA/CFRA, W/C,
PDL, PFL, PSL, ADA and FEHA



Practice Notes



Question & Answer

Family Care and Medical Leave

The California Family Rights Act (CFRA) is the California law that covers family and medical leave in California.

To the extent that The Family and Medical Leave Act (FMLA) is not inconsistent with CFRA, the federal regulations interpreting FMLA are incorporated into the CFRA regulations.

In March 2015, the California FEHC issued amendments to the CFRA regulations that clarified a number of definitions and rules from the prior CFRA regulations and were intended to bring the CFRA regulations more in-line with the FMLA regulations.

Family Care and Medical Leave

- Under the CFRA, an eligible employee of an employer with **at least 50 employees within 75 miles** of the employee's worksite is entitled to unpaid leave of up to 12 workweeks in a 12-month period for reason of
 - 1) birth, adoption, or foster-care placement of a child, or
 - 2) **serious health condition** of the employee or the employee's child, spouse, registered domestic partner, or parent.

What is a CFRA/FMLA “Covered Employer”?

Under CFRA a “covered employer” is any person or individual, including a successor in interest of a “covered employer,” engaged in business in California who directly employs 50 or more part-time or full-time employees in or outside of California.



The principles of “joint employers” and “integrated employers” are also recognized under CFRA. Under the CFRA, the entire relationship is to be viewed in the totality based on the economic realities of the situation.



Factors considered include:

Arrangement between employers to share an employee's services or to interchange employees

One employer acts directly or indirectly in the interest of the other employer in relation to the employee

One employer controls, is controlled by, or is under common control with the other employers

Employed for at least 12 months;

Worked for at least 1,250 hours during the 12-month period prior to the first day of leave; and

50 or more full-time or part-time employees within 75 miles of the employee's work site.

Actual hours worked (e.g., O.T., not vacation)

Exempt employees are presumed to have worked 1,250 hours in 12 months

Except in the case of CFRA leave after FMLA/PDL leave in which case the 1,250 hours is determined prior to the start of the FMLA/PDL period

Who is an "Eligible Employee" Under CFRA/FMLA?

Leave Granted to Care for Same-Sex Spouse

- Same-sex marriages are now lawful.
- An employee may take CFRA leave to care for a same-sex spouse with a serious health condition.
- Under the FMLA, spouse is defined as “a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including ‘common law’ marriage and same-sex marriage.

California's New Parent Leave Act



- “Covered employers” - at least 20 employees within 75 miles of the employee’s worksite
- “Eligible employees” - worked more than 12 months and at least 1,250 hours in past year
- Unpaid leave of up to 12 workweeks in a 12-month period to bond with a new child within a year of the child’s birth, adoption, or foster care placement.
 - If employing both parents need not provide more than 12 weeks in total to the employees and may choose to grant the leave for both parents simultaneously.
- Must maintain coverage for group health plans while the employee is on leave but can recover costs for employees who decide not to return after their leave exhausts, if the reason not to return is something other than a serious health condition (or other circumstances beyond the employee’s control).

FMLA vs. CFRA

- FMLA does not extend coverage to domestic partners.
- Difference in medical certification.
- Pregnancy is FMLA serious health condition, but not under CFRA (but separate entitlement under CA PDL).
- May require use of accrued time off for FMLA leave.
- May require use of accrued sick leave for CFRA leave for employee's own SHC; may be required to use, or may elect to use, vacation time or paid time off unless receiving PFL to bond with a new child.
- Military service member care leave and Qualifying Exigency Leave only offered under FMLA.



Employee entitled to intermittent leave for bonding without the employer's permission, and the basic minimum duration of that leave generally is two weeks.



CA employers cannot require "medical facts" (e.g., symptoms or a diagnosis) and certain other information that the FMLA would permit as part of a medical certification.



CA employers cannot obtain a second or third medical opinion as to the serious health condition of a family member (as opposed to the employee's own medical condition, where it is permitted).

CFRA Provides More Employee Entitlements Than FMLA

Employee Right To Rely On Spokesperson While On Leave?

- Ordinarily, an employer can discipline an employee on leave who refuses to communicate.
- But a California appellate decision reversed a summary judgment for an employer that had dismissed an employee on leave for refusing to respond to repeated follow-up inquiries regarding his condition, and for insisting instead that any communication be through his wife or his workers' compensation attorney or his physician.
- To the employer, this was a clear case of insubordination, warranting dismissal, but the Court of Appeal found a triable issue of whether the employer itself had been reasonable in insisting on direct communication with its employee. The employee's psychiatrist had advised him to avoid stressful situations and he had felt "too stressed out" to speak with his employer directly.
- The Court of Appeal concluded that "nothing precluded [the employer], at a minimum, from contacting [the w/c] attorney," and that the record thus supported an inference that the employer had unreasonably refused to communicate with the employee's representatives.

What is a “Serious Health Condition” under CFRA?



A “serious health condition” refers to an illness, injury (including on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent or spouse of the employee that involves either:

In-patient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity; or
Continuing treatment, ongoing medical treatment, or supervision by a health care provider



A person is considered an “**inpatient**” when a health care facility formally admits her to the facility with the expectation that she will remain at least overnight and occupy a bed, even if, it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.



Incapacity means “the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.”

What is a “Serious Health Condition” under FMLA?

A period of incapacity of more than 3 consecutive calendar days, plus a subsequent period of incapacity for the same condition that results in a continuing course of treatment, such as prescription medications, therapy, etc., but not including things like OTC medications, general exercise, etc.

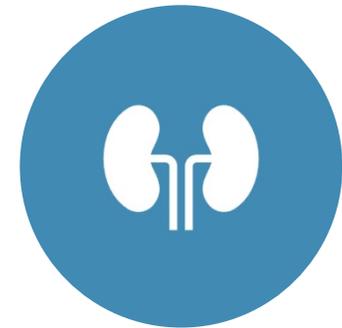
“Serious Health Condition” under FMLA Continued



INCAPACITY DUE TO A CHRONIC
SERIOUS HEALTH CONDITIONS
(ASTHMA, DIABETES, EPILEPSY, ETC.)



INCAPACITY DUE TO A LONG-TERM
CONDITION FOR WHICH TREATMENT
MAY NOT BE EFFECTIVE
(ALZHEIMER'S, TERMINAL CANCER,
ETC.); AND/OR



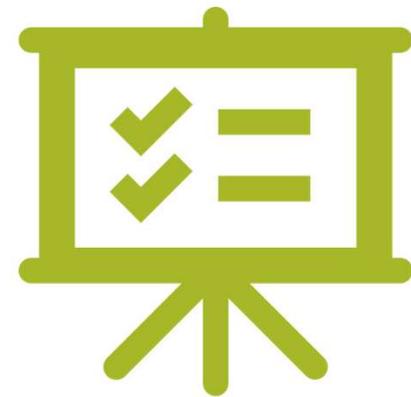
ABSENCES TO RECEIVE CONTINUING
TREATMENTS BY A HEALTH CARE
PROVIDER, AND TO RECOVER FROM
SUCH TREATMENT (CHEMOTHERAPY,
KIDNEY DIALYSIS, RADIATION
TREATMENTS, ETC.).

Employer Response Obligations Clarified

CFRA regulations provide a deadline for the employer's response:

An employer need not affirm or deny a request within five business days, but rather must "respond to" a request within that time. It is sufficient, therefore, for an employer to address a request and seek additional information from the employee; the employer need not reach its final decision within the five-day period.

Olofsson v. Mission Linen Supply, 211 Cal. App. 4th 1236 (2012)



Workers' Compensation

Basic Purpose:

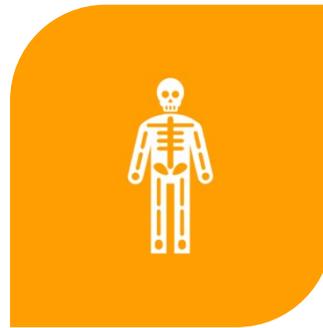
- To provide employees, who have suffered a work injury or illness during the course of their employment, with medical and disability benefits and to get them back to work as quickly as possible.
- For its part of this "compensation bargain," the employer is immunized from a civil action in which the employee might obtain a much larger recovery.



Workers' Compensation Cont'd



WORKERS' COMPENSATION INSURANCE IS MANDATORY.



GENERALLY SPEAKING, ALL "EMPLOYEES" ARE ENTITLED TO WORKERS' COMPENSATION COVERAGE. WCAB RESOLVES DOUBTS IN FAVOR OF FINDING COVERED EMPLOYMENT.



"INDUSTRIAL" INJURIES ARE COVERED BY WORKERS' COMPENSATION INSURANCE. INDUSTRIAL INJURIES ARE THOSE "ARISING OUT OF AND OCCURRING IN THE COURSE OF EMPLOYMENT (AOE/COE)."

Workers' Compensation Cont'd (Benefits)



Temporary Disability – wage replacement while recovering



Permanent Disability- compensation for reduction of ability to compete in labor market



Medical Treatment – all treatment reasonably required to treat injury



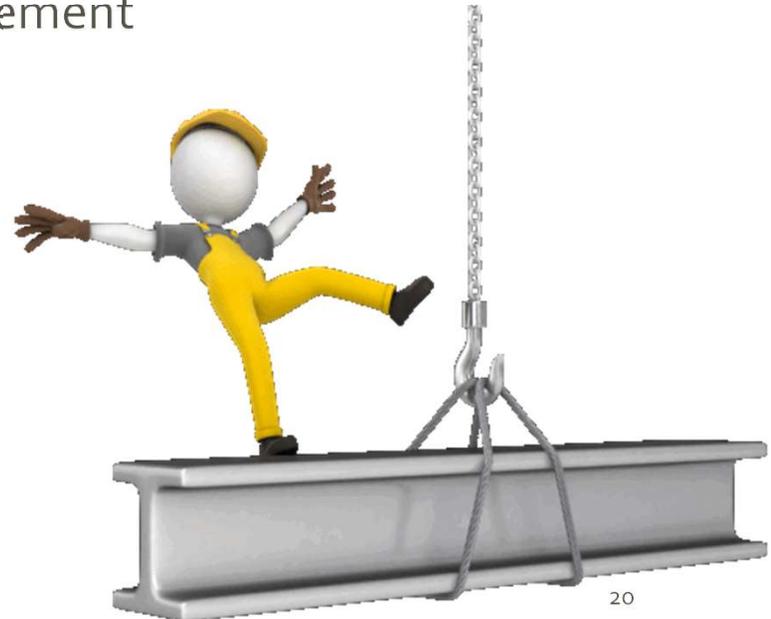
Vocational Rehabilitation – currently vouchers for job training when employee cannot return to his or her job, but can do other work

Workers'
Compensation
Cont'd
(Labor Code
§132a
Discrimination)

Most frequently arises when an employer must make a decision with regard to an employee who has been on an extended leave of absence due to an industrial injury.

Remedies:

- 50% increase in benefits paid, up to \$10,000;
- Costs up to \$250;
- Lost wages and work benefits; and
- Reinstatement



Workers' Compensation Overlap With FEHA/ADA and FMLA/CFRA

FMLA regulations require the employer to provide leave pursuant to the law that provides the employee with the greatest rights.



Thus, an employee on workers' compensation related leave may also be entitled to:

Accommodation leave under FEHA/ADA, if the employee has a disability that qualifies under the FEHA/ADA; and

Job protected family and medical leave under FMLA/CFRA, if the employee's work injury or illness qualifies as a serious health condition.

Workers' Compensation Overlap With FEHA/ADA and FMLA/CFRA Cont'd



If an employee sustains a work injury or illness that qualifies as a serious health condition under FMLA/CFRA, and the employee meets the eligibility criteria, the employer may count the time that the employee is on leave for the work injury or illness as FMLA/CFRA time, although the employee may choose not to count the work injury leave as FMLA/CFRA, and instead save a "bank" of FMLA/CFRA leave for use at a later date.



The employee must be notified in writing that the time off is being counted as FMLA/CFRA leave.

Workers' Compensation Overlap With FEHA/ADA and FMLA/CFRA Cont'd



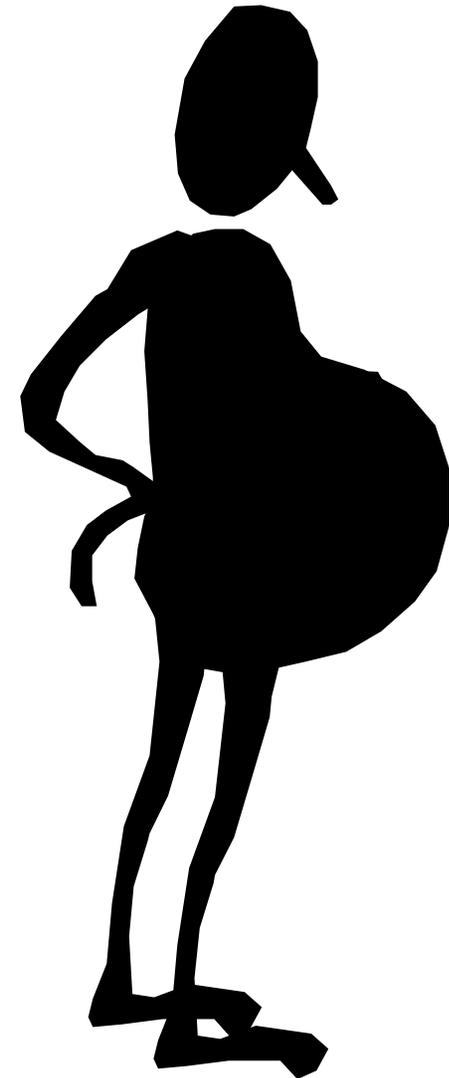
The FEHA/ADA may require an employer to provide an injured worker with additional accommodation leave *beyond* the 12 weeks available under the FMLA/CFRA, although the FMLA/CFRA leave may be considered in determining whether granting the additional leave as a reasonable accommodation would result in undue hardship.



However, unlike the FMLA/CFRA, the FEHA/ADA does not require an employer to provide time off as a reasonable accommodation for an employee to care for a family member or other individual with whom the employee has a relationship or association.

Pregnancy Disability Leave and CFRA/FMLA

- 5 or more full-time or part-time employees
- No length of employment/minimum hours
- Runs concurrently with FMLA, but not CFRA
- Can take CFRA baby-bonding after PDL
- PDL available for each pregnancy
- Must continue health insurance benefits for duration of PDL not to exceed 4 months; however continuation for 7 months if also take baby-bonding leave
- Serious health conditions arising from pregnancy
- Reinstatement to job prior to leave



Pregnancy Disability Leave

- A woman is “disabled by pregnancy, childbirth, or a related medical condition” if in the opinion of her health care provider, her pregnancy, childbirth, or related medical condition makes her unable to: i) work at all; ii) perform any of the essential functions of her job; or iii) perform those functions without undue risk to herself, to others, or to the successful completion of her pregnancy.

Pregnancy Disability and CFRA Leave



**4 months of pregnancy
disability leave**

Leave does not have to be taken at one time. Can be taken before or after birth, or during any period of time the employee is physically unable to work because of the pregnancy disability.



12 weeks of CFRA leave

California Paid Family Leave



ALL EMPLOYEES WHO
CONTRIBUTE TO THE STATE
DISABILITY INSURANCE
("SDI") FUND ARE ENTITLED
TO PFL



NO 50 EMPLOYEES
REQUIREMENT



NO MINIMUM EMPLOYMENT
REQUIRED (EITHER YEAR OR
HOURS)



NO REINSTATEMENT RIGHTS
OR BENEFIT CONTINUATION
RIGHTS, UNLESS BY OTHER
STATUTE OR EMPLOYER
POLICY



Paid Family Leave

- Provides up to 6 weeks of paid benefits to workers who suffer a wage loss when they take time off work to care for others.
- Employer may require an employee to take up to two weeks of vacation leave prior to the employee's initial receipt of PFL benefits.
- Presently does not have reinstatement requirement.
- Also known as 'FTDI'

Employee is not eligible to receive PFL benefits if:



They are claiming or receiving unemployment insurance or California DI benefits.



They are receiving workers' compensation benefits at a weekly rate equal to or greater than the PFL rate.



They fail to have an independent medical examination when requested to do so.



Another family member is ready, willing and able to provide care for the ill family member

Paid Sick Leave



- Employee who works in California for 30 or more days within a year from the date of hire is entitled to PSL.
- Accrues at a rate of no less than one hour for every 30 hours worked.
- Entitled to use accrued **sick** days beginning on the 90th day of employment.
- May limit (cap) an employee's use of **PSL** to three days (24 hours) for each 12-month period of employment.
- May carryover up to six days (48 hours) of **PSL**.
- Can provide "lump sum" of three days (24 hours) at the beginning of each calendar year, anniversary date or 12-month period – no carryover required.
- Is not **paid** out on separation of employment.

Employer's Own Policy

An employer is not required to provide additional **paid sick** days if the employer has an existing **paid sick leave** or **paid** time off (PTO) policy that makes the **paid leave** available under the same conditions as stated in the new law; and, the existing policy either:

- 1) Satisfies the accrual, carry over, and use requirements of the Act; or,
- 2) Pursuant to the "grandfather" provision, the employer's policy provided **PSL** or PTO to employees before January 1, 2015.
 - Accrual must be on a regular basis so that an employee has no less than one day (8 hours) of accrued **PSL** or PTO within three months of employment of each calendar year, or each 12-month period, and the employee is eligible to earn at least three days (24 hours) of **PSL** or PTO within nine months of employment.

The Interplay Between the ADA, FEHA and FMLA/CFRA

The ADA and FEHA prohibit an employer from failing to make "reasonable accommodations" for the physical or mental disabilities of applicants or employees who, with or without reasonable accommodation, can perform the essential functions of the their position.

A "serious health condition" under CFRA/FMLA may (or may not) meet the definition of "physical or mental disability" under ADA/FEHA.



Americans with Disabilities Act & Fair Employment & Housing Act

“Covered Employers”:

- ADA – 15 or more employees
- FEHA – 5 or more employees

What is a “Disability” under ADA?

A “disability” under the ADA is defined as any of the following:

- A physical or mental impairment that “substantially limits” one or more of an individual's “major life activities” or “major bodily functions.”
- A “record of such an impairment.”
- Being “regarded as” having such an impairment.

A “physical or mental impairment” under ADA



Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; and endocrine; or



Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Disability” under ADA

A “major life activity” is “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”

A “major bodily function” is “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

What is a “Disability” under FEHA?

- A person may be disabled if he or she has a physical or mental condition that *limits a major life activity* (such as walking, talking, seeing, hearing, or learning).
- A person may be disabled if he or she has a *history* of a disability (such as cancer that is in remission).
- A person may be disabled if he or she is *perceived or regarded* as having a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

“Physical Disability” under FEHA?

Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of several body systems and limits a major life activity.



Body systems include the neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.



A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity, such as working, if it makes the achievement of the major life activity difficult.

“Mental Disability” under FEHA?

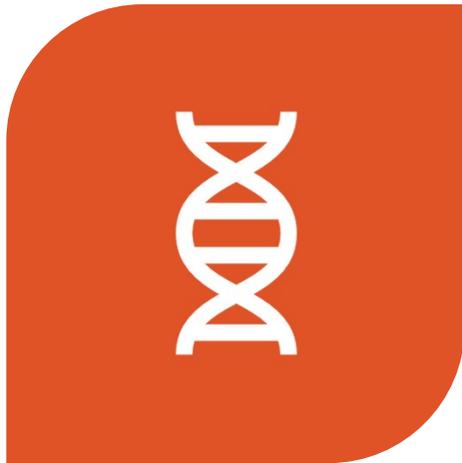


Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity, or having any other mental or psychological disorder or condition that requires special education or related services.

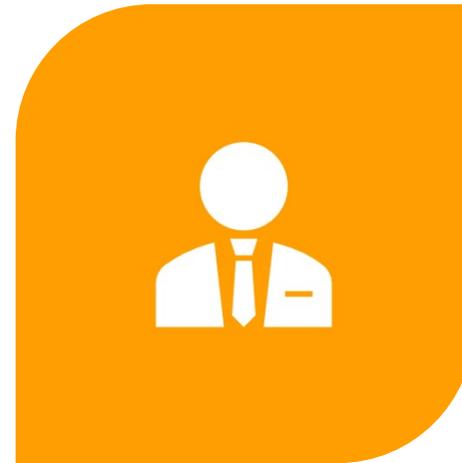


An employee who has a record or history of a mental or psychological disorder or condition which is known to the employer, or who is regarded or treated by the employer as having a mental disorder or condition, is also protected.

“Medical Condition” under FEHA?



ANY PHYSICAL OR MENTAL HEALTH IMPAIRMENT RELATED TO OR ASSOCIATED WITH A DIAGNOSIS OF CANCER OR A RECORD OR HISTORY OF CANCER, OR A GENETIC CHARACTERISTIC.



KEEP IN MIND, HOWEVER, THAT GOV. CODE SECTION 12940(O) MAKES IT AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER TO SUBJECT, DIRECTLY OR INDIRECTLY, ANY APPLICANT OR EMPLOYEE, TO A TEST FOR THE PRESENCE OF A GENETIC CHARACTERISTIC.

What are “Essential Functions” under ADA & FEHA?

- “Essential functions” are those that are the main purpose of the job.
- If the employer does not think the function is essential enough to include in a job description, it is probably not essential.
 - Employers: have and update your job descriptions!

What are “Essential Functions” under ADA & FEHA?

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If not in a job description, it is probably not essential.

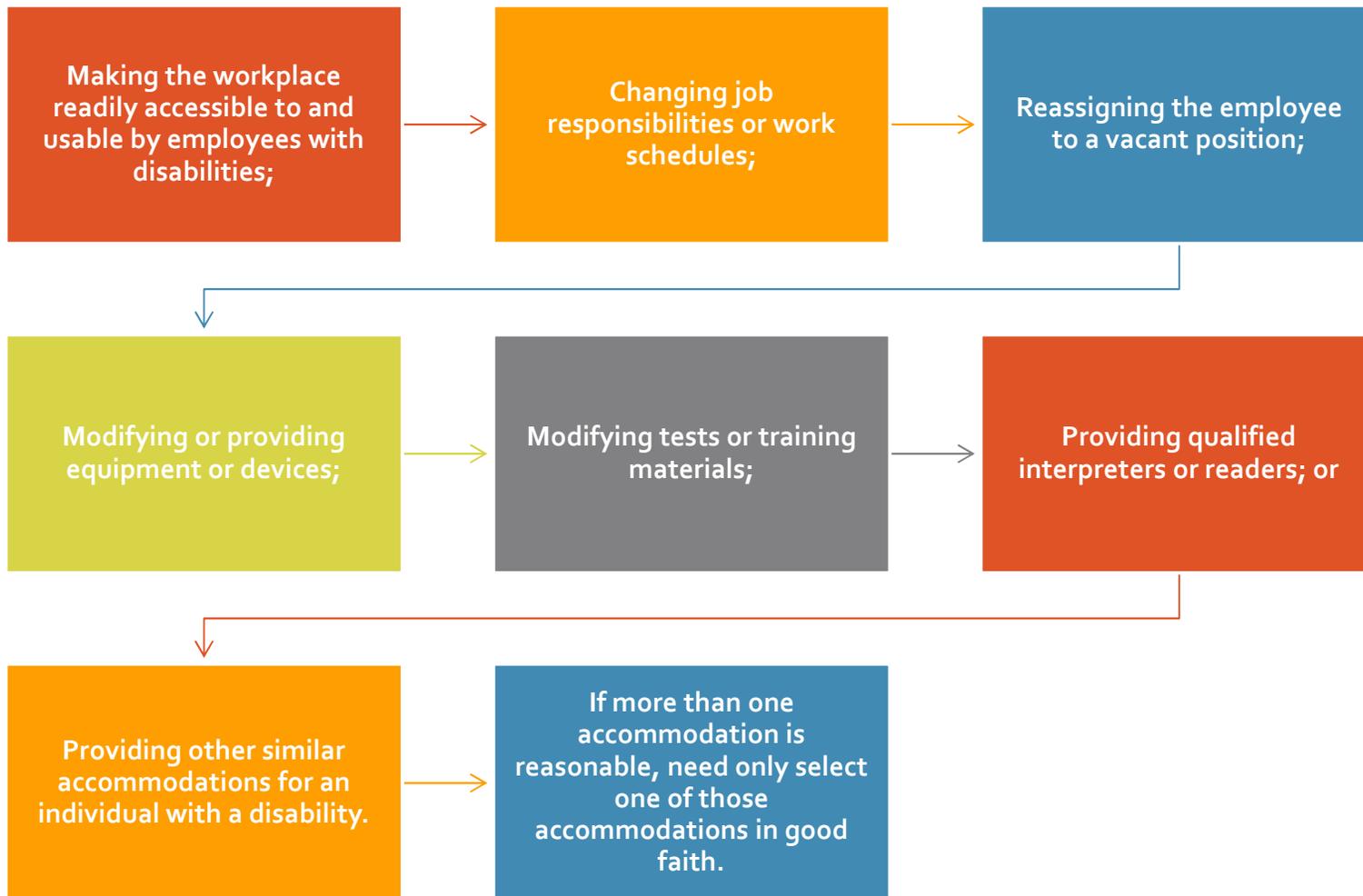
“Reasonable Accommodation”



A reasonable accommodation is a reasonable change to the workplace that:

- Gives a qualified applicant with a disability an equal opportunity in the job application process;
- Allows an employee with a disability to perform the essential duties of the job; or
- Allows an employee with a disability to enjoy the same benefits and privileges of employment that are available to employees without disabilities.

Reasonable Accommodations May Include...



Employer's Duty to Provide...

Duty is broader under the FEHA than under the ADA.



If know of the disability, employer has an affirmative duty to make known to the employee other suitable job opportunities with the employer and to determine whether the employee is interested in, and qualified for, those positions, IF:

the employer can do so without undue hardship or

the employer offers similar assistance or benefit to other disabled or nondisabled employees or has a policy of offering such assistance or benefit to any other employees.”.

“Undue Hardship” under ADA & FEHA?

An employer need not accommodate the individual if it can demonstrate that the accommodation would produce an undue hardship on the operation of its business.

“Undue hardship” defined as
“an action requiring significant
difficulty or expense.”

Factors to consider:

- Cost;
- Financial resources of the employer;
- Size of the business; and
- Type of business

Undue Hardship Analysis



Factors to consider:

- 1) The nature and cost of the accommodation needed;
- 2) The overall financial resources of the Company;
- 3) The number of persons employed at this facility; the effect on expenses and resources of the facility;
- 4) The type of operation of the employer, including the structure and functions of the workforce; and
- 5) The impact of the accommodation on the operation of the facility

Paid Leave for Organ or Bone Marrow Donation

- Employee must be employed for at least 90 days
- Up to 5 business days of paid leave during any one-year period to donate bone marrow.
- Up to 30 business days of paid leave during any one-year period to donate an organ.
- One-year period is measured forward from the date leave begins.
- May require use of up to 5 days of PSL, vacation or PTO during the initial bone-marrow donation leave.
- May require use of up to 2 weeks of PSL, vacation or PTO during the initial organ-donation leave.
- Not a break in service for benefits and seniority.
- Does not run concurrently with FMLA and CFRA leaves.
- Must be reinstated to same position or an equivalent position.

Accommodation of Addicts and Illiterates

Employers of 25 or more employees must provide a “reasonable accommodation” (e.g., an unpaid leave) for employees who wish to participate in alcohol or drug rehabilitation programs or adult literacy programs.

The employer need only grant the leave or schedule modification that is possible without creating an undue hardship on the employer’s business operations.

Must take reasonable steps to safeguard the privacy of the employee who has enrolled in a rehabilitation program.

School Related Leave

An employer may have to provide an employee with two types of school related leave, depending on the circumstances:



SCHOOL APPEARANCE LEAVE (WHICH PERTAINS TO LEAVE REQUIRED AS A RESULT OF A STUDENT'S SUSPENSION FROM SCHOOL; OR



SCHOOL AND CHILDCARE ACTIVITIES LEAVE.

School Appearance Leave

Applies to all employers, regardless of size.

Required to provide unpaid time off from work for an employee, who is the parent or guardian of a student, to:

Employee must give reasonable notice

Appear at the student's school pursuant to a request by the school for disciplinary purposes related to the student.

Attend a portion of a school day in the classroom of child who has been suspended

School Activities and Childcare Emergency Leave

Applies only to employers with 25
or more employees

Must grant unpaid leave of up to
40 hours each year to an
employee who is a parent to
participate in various activities of
the parent's child in grades
kindergarten through 12, or at a
licensed childcare provider

Employee must provide advance
notice

Among the activities covered are
finding and enrolling in school or
licensed childcare activities and
addressing a school or child-care-
provider emergency

“Childcare provider or school emergency” includes:



A request that the child be picked up from school or childcare



An attendance policy that prohibits the child from attending the school or licensed childcare provider



Behavioral or discipline problems



Closure or unexpected unavailability of the school or childcare provider (excluding planned holidays)



A natural disaster.

California “Kin” Care Law (Labor Code §233)



Requires employers providing PSL to permit employees to use a portion of the leave to care for certain family members.



Kin care law has little relevance in light of the new paid sick leave law, which does not distinguish between time off for the employee’s own medical condition and time off to attend to a family member



The rule applies practically only to grants of sick leave in excess of the statutory minimum of 24 hours (or 3 days) annually.

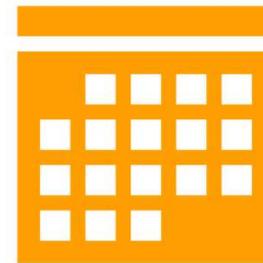


Employers who provide paid time off (PTO) may unwittingly subject themselves to additional kin care requirements, as PTO can be considered a form of additional sick leave.

Voting Leave



California employers must post, at least ten days before each statewide election, a notice that employees who lack time to vote during nonworking hours may take paid leave of up to two hours to vote.



This time off to vote should be at the start or end of the regular work shift, whichever allows the most time for voting.

Time Off for Court Appearances (Jury Duty, Witness Leave, etc.)

California employers must grant unpaid leave to, and must not discriminate against, employees who:

- 1) are summoned for jury duty or for a court appearance as a witness,
- 2) appear in court to seek relief as a victim of domestic violence, stalking, or sexual assault, or
- 3) are victims of certain felonies or are closely related to such victims.⁴



An employer may require that employees on jury duty report to work when not called to serve on a jury



a partial-week jury leave may amount to fully paid leave for exempt employees.

Jury Duty



Must not discharge, discriminate, or retaliate against an employee who takes time off, after giving reasonable advance notice (where feasible), to appear at any proceeding involving the right of a victim of any of certain crimes.



The information needed to certify the absence can include a police report, court order, or medical documentation.



A “victim” protected under this law includes the employee or the employee’s spouse, parent, child, sibling, or guardian.

Victim-related Court Appearances

California Military Spouse Leave (Military & Veterans Code §395.10)



Requires employers with 25 or more employees to allow spouses of military personnel to take up to 10 days of unpaid leave when their spouse is on leave from deployment to a designated combat zone, or deployment during a period of military conflict.



Must be regularly scheduled to work at least 20 hours /week.



Must provide notice within two business days of receiving official notice that the employee's spouse will be on leave from deployment.



Must provide the employer with written documentation certifying the spouse will be on leave from deployment.

Emergency Duty Leave

Must provide unpaid leave to an employee who needs time off from work to perform emergency duty as a volunteer firefighter, a reserve.



Statute does not specify amount of leave; must be made on a case by case basis.



Employers with 50 or more employees must also provide up to 14 unpaid days off per calendar year for employees who are engaging in voluntary fire or law enforcement training, peace officer, or emergency rescue personnel.



Employees must be reinstated upon return from

when an employee sustains a work-related injury that will require time off from work, employers should immediately provide the employee wi

PRACTICE NOTES

When an employee sustains a work-related injury that will require time off from work, employers should immediately provide the employee with the “Workers’ Compensation Claim Form”



This will permit the employer to obtain the information necessary to determine if the employee has a serious health condition to trigger FMLA/CFRA leave.

W/C, FMLA & CFRA Practice Point

Accommodation Practice Point

An employer must initiate an interactive process when it becomes aware of the possible need for an accommodation, such as additional leave, because the employee with a disability has exhausted leave under:

- the California Workers' Compensation Act;
- the FMLA/CFRA for the employee's own serious health condition;
- any other federal or state law, such as PDL;
- the employer's own leave of absence policy; *and*
- the employee or the employee's health care provider indicates that additional leave is still necessary to enable the employee to recover sufficiently and return to work.

Final Tips for Successfully Administering Leaves of Absence



Posters and Notices. Keep them up-to-date.



Job Descriptions. Keep them up-to-date and make sure they list the “essential functions.”



Policies. Ensure they reflect the required information under all applicable leave laws that apply to your company.



Clear and Timely Communication. Be sure to keep the lines of communication open with employees needing a leave or an accommodation.



Documentation and Tracking. Provide all required documentation to employees and utilize a standard procedure to track leaves of absence (including accommodation leaves).

Final Tips for Successfully Administering Leaves of Absence Cont'd

Medical Certifications. Obtain the medical information needed to support a leave of absence. Employers may not ask for specific medical information in connection with CFRA leave.

Keep medical information in a separate and secure file.

Training. Train your supervisors in connection with the various leave of absence and reasonable accommodation laws.

Employment Counsel. Work with your employment counsel whenever there is doubt or concern over a leave or accommodation situation that could give rise to potential liability.



Question and Answer

THANK YOU!



PATANE • GUMBERG • AVILA, LLP

ATTORNEYS AT LAW