

3 questions about pregnancy leave in California

What are California's rules on pregnancy leave?

Q. Are California employers required to provide disability leave for pregnant workers?

A. California Government Code Section 12945 makes it unlawful "to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work."

Simply being pregnant does not entitle an employee to pregnancy disability leave. The individual must be disabled by the pregnancy. That means that, in the opinion of her doctor, a mother-to-be "is unable because of pregnancy to perform any one or more of the essential functions of her job and to perform these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons."

Pregnancy disability leave applies if a doctor feels a woman needs time off due to severe morning sickness, gestational diabetes, preeclampsia, prenatal care, childbirth, postnatal care, postpartum depression, recovery from childbirth, miscarriage, recovery from a miscarriage and more. Notably, the law explicitly provides that it applies to transgender individuals.

California's pregnancy disability leave law applies to private employers with five or more full- or part-time employees, as well as people acting as agents of an employer and governmental entities.

In certain cases, employers may be required to provide more than four months of leave to employees.

The California Fair Employment and Housing Act prohibits employers from discriminating on the basis of sex. The law states that sex includes "pregnancy or medical conditions related to pregnancy," "childbirth or medical conditions related to childbirth," and "breastfeeding or medical conditions related to breastfeeding." So, if an employer were to provide more than four months of leave for similarly situated employees with temporary disabilities, the employer would also have to provide more than four months of leave for disability due to pregnancy.

How should we handle pay while someone is out on pregnancy disability leave?

Q. How are pay and benefits affected during pregnancy disability leave?

A. Under California Code of Regulations Section 11044, pregnancy disability leave can be unpaid. An employer may require the employee to use accrued paid sick leave for pregnancy disability leave. It is unlawful to require the employee to use vacation time for that purpose.

Employers must maintain and pay for group health coverage for employees who take pregnancy disability leave for the duration of the leave, not to exceed four months at no additional cost to the employee at the same level of coverage as the employee received before leave. An employer has the option, of course, to pay for these

benefits for longer than four months. Notably, providing group health coverage during pregnancy disability leave “shall not be used to meet an employer’s obligation to pay for 12 weeks of group health coverage during leave taken under .”

Further, employees on pregnancy disability leave must still be able to take part in other employment benefit plans, such as life insurance plans. The employee must continue to accrue seniority while on pregnancy disability leave, and the leave should not be considered a break in service.

How to count pregnancy disability leave?

Q. How should employers calculate four months of disability leave?

A. California Code of Regulations Section 11042 explains that employees are eligible for four months of leave per pregnancy, not per year. It also provides information on calculating what “four months” is to each employee.

Four months of leave means that the individual is given leave for the number of days she would usually work in four calendar months. For example, employees who work more or less than 40 hours a week, or who work on variable schedules, should have their four months calculated proportionally. If an employee’s schedule varies monthly, the employer can calculate the employee’s leave entitlement based on the previous four months.