

Navigating Route 66: Leaves  
Part One – A Primer  
Breakout Five

California Strong 2017 Employment Law Conference

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**Agenda**

- Introduction
- FMLA | CFRA
- PDL
- Workers' Compensation
- Disability Discrimination
- Other State and Local Laws

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**Family Medical Leave Act**

- ✓ Eligible employees up to 12 weeks of unpaid leave (26 weeks for service member care)
- ✓ Serious health condition of employee or family member, disabled by pregnancy or baby bonding
- ✓ 12 months (52 weeks) of service
- ✓ 1,250 hours in 12-month period
- ✓ 50 employees/75-mile radius
- ✓ Intermittent leave
- ✓ Reinstatement to same or comparable position
- ✓ Integrated | Joint Employer

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### California Family Rights Act



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### Military Leave - FMLA



- ✓ Military Caregiver Leave (up to 26 weeks)
- ✓ Military Qualifying Exigency Leave (up to 12 weeks)

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### Taking Leave Under FMLA/CFRA

Qualifying Circumstances

- Birth of a son or daughter, and to take care of a newborn child; and
- Placement of a son or daughter for adoption or foster care.

- Serious Health Condition
  - Inpatient Care
  - Incapacity and Treatment
  - Pregnancy or Prenatal Care—FMLA ONLY
  - Chronic Conditions
  - Permanent or Long-Term Conditions
  - Conditions Requiring Multiple Treatments

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### Taking Leave Under FMLA/CFRA

Considerations

- Amount of Leave
- Calculating Leave
- Sick/Vacation Benefits
- Health Benefits
- Obligation to Restore Benefits
- Intermittent Leave
  - Transfer is Allowed
  - For variable schedule--must calculate average hours using last 12 months
  - Leave increments not greater than one hour

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### Taking Leave Under FMLA/CFRA

Notice Requirements

- Employee Notice
  - As soon as practicable
- Employer Notice
  - General Notice Required to All Employees—Employee Handbook, Bulletin Board, New Hire Packet
  - Notice of Eligibility must be sent within five (5) business days advising employee:
    1. Whether employee is eligible or not for leave;
    2. If employee is not eligible, list reason why; and
    3. Must be translated if significant number of employees are not fluent in English

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### Taking Leave Under FMLA/CFRA

Rights and Responsibilities Notice:

- Each time the Eligibility Notice is Provided, the Rights and Responsibilities Notice must be provided.
- Listing responsibilities of employee while on leave of absence
- Provide employee with a medical certification form when sending Rights and Responsibilities Notice

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### Taking Leave Under FMLA/CFRA

Designation

- Employers must provide employees with a Designation Notice. (29 C.F.R. § 825.300(d).)
  - Within five (5) business days of determining leave is for a FMLA-qualifying reason or not
  - If employer requires the substitution of paid leave
  - If Fitness for Duty Certificate required in order to return
  - Retroactive Designation: An employer may retroactively designate leave as FMLA qualifying unless the employee is able to demonstrate harm from the untimely designation.

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### Pregnancy Disability Leave



- ✓ Applies to employers with five or more employees
- ✓ Up to four months of leave for disability related to pregnancy, childbirth, or related medical conditions
- ✓ May be intermittent
- ✓ Requires reinstatement upon return
- ✓ Runs concurrently with FMLA
- ✓ Does not run concurrently with CFRA

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### Workers' Compensation

- Injury or illness arising out of employment
- If illness or injury requires ongoing medical care and absence longer than three days, will run concurrently with FMLA/CFRA leave (if over 50 employees)
- Cannot terminate employee at end of 12-week period



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### Disability

- Leave Under The Disability Discrimination Laws



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### Federal Law



- Americans with Disabilities Act of 1990 (ADA)
  - Disability = physical or mental impairment that **substantially** limits a major life activity
  - Protection to “qualified individual”
- Equal Employment Opportunity Commission (EEOC)
- 15 employees or more

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### California Law



- California Fair Employment and Housing Act (FEHA)
  - Disability = an impairment that merely **limits a** major life activity
  - Protection to “qualified individual”
- Five employees or more

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### Federal vs. California Law

- Both ADA & FEHA prohibitions apply to job application procedures, hiring, advancement, and discharge of employees, workers' compensation, job training, and other terms, conditions, and privileges of employment.
- FEHA broadens protections to include:
  - Definition = "limit" activity
  - Employees correcting their disabilities

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### Interactive Process

- Collaborative effort involving employer and employee communications to determine what, if any, accommodation should be provided.
- Both the ADA and the FEHA require employers to engage in a timely, good faith interactive process with employees in need of a reasonable accommodation, which may include a leave of absence.
- The employer should not adopt a "one-size-fits-all" approach to processing requests for reasonable accommodations.

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### Triggers

- Employer's obligation to engage in the interactive process begins when a request for a reasonable accommodation is made to:
  - Employee's supervisor;
  - A manager or supervisor in the employee's chain-in-command;
  - An EEO officer;
  - An office designated by the employer to handle the reasonable accommodation process.



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### The Interactive Process

**When engaging in the interactive process:**

- Assess the nature of the condition;
- Determine the extent to which the condition imposes limitations on ability to perform essential functions of the job;
- Identify possible accommodations that may or may not overcome those limitations;
- Analyze the reasonableness of the accommodation; and
- Implement the most appropriate accommodation, if any.

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### Summary



- Definition expansion continues
- Potentially all physical and mental conditions could qualify as a disability
- Be aware when faced with the issue of accommodating employees

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### Paid Sick Leave - State



- ✓ Effective July 1, 2015
- ✓ Minimum of three sick days or 24 hours
- ✓ Accrual starts on the first day of employment, but may limit use until 90<sup>th</sup> day of employment
- ✓ Accrual rate is one hour for every 30 hours of work

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### Sick Leave Laws – Local

- **Los Angeles:** 6 days (effective 7/1/16 – 26+ employees and 7/1/17 <25 employees)
- **San Diego:** 5 days – (effective 7/11/16)
- **Santa Monica:** (1/1/17)  
32 hours (<25 employees)  
40 hours (26+ employees)  
(1/1/18)  
– 40 hours (<25 employees)  
– 72 hours (26+ employees)



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### Sick Leave Laws - Local

- **Oakland:**  
40 hours (<10 employees)  
72 hours (10+ employees)
- **San Francisco:**  
40 hours (<10 employees)  
72 hours (10+ employees)
- **Emeryville:**  
48 hours (<56 employees)  
72 hours (56+ employees)



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### Leave Summary



- Rights to leave expansion continues
- Employee rights depend on employer size
- Sick leave administered on state and local levels
- Obligations to provide leave do not end once statutory rights expire...

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