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**2018 EMPLOYMENT LAW CONFERENCE**  
**MISSION=POSSIBLE**

**UNDERSTANDING LEAVES OF  
ABSENCE**  
SESSION 9

**Presented by:**  
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# AGENDA

- Introduction
- Various Leave Laws
  - FMLA/CFRA
  - PDL
  - NPLA
  - ADA/FEHA
  - Workers' Compensation
- Conclusion

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## OVERLAPPING LEAVE LAWS

- Family Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- Pregnancy Disability Leave (PDL)
- New Parent Leave Act (NPLA)
- Workers' Compensation Leave
- Military-Related Leaves
- Other Leaves





## FAMILY MEDICAL LEAVE ACT (FMLA) / CALIFORNIA FAMILY RIGHTS ACT (CFRA)

**Employer Coverage**

- Eligible employees may take unpaid leave for qualified medical and family reasons
- Eligible employees receive up to 12 weeks of time off
- Eligible for reinstatement to same or equivalent position
- Integrated vs. Joint Employer

MEDICAL STATEMENT  
Participant Record (Confidential Information)

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## FAMILY MEDICAL LEAVE ACT (FMLA) / CALIFORNIA FAMILY RIGHTS ACT (CFRA)

### Eligibility

- Serious health condition of employee or family member, birth of child and care of newborn; placement of child for adoption or foster care
- Employed for 12 months with employer either part/full time
- Worked 1,250 hours in 12 months
- Works for an employer that has 50 employees w/in 75 mile radius



## PREGNANCY DISABILITY LEAVE (PDL)

### Employer Coverage

- Eligible female employees receive up to 4 months of unpaid leave for disability related to pregnancy, childbirth, or related medical conditions



## PREGNANCY DISABILITY LEAVE (PDL)

### Eligibility

- Worked one day on the job
- Works for an employer with 5 or more employees
- Intermittent leave or block of time
- Runs concurrently with FMLA
- Reinstatement to same position or comparable



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## DIFFERENCES THAT MATTER

### FMLA

- PDL is a disability
- Covers spouses
- Provides qualifying military exigency leave
- Provides for 26 weeks of military leave

### CFRA

- PDL is not a disability
- Covers spouses and domestic partners
- Does not provide qualifying military exigency leave
- Does not provide 26 weeks of military leave



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## NEW PARENT LEAVE ACT (NPLA)

### Employer Coverage

- 20 or more employees
- 12 weeks of unpaid, job protected leave
- Bond with a new child within one-year of birth
- Does NOT apply to employees subject to the CFRA/FMLA
- Intermittent?
- Proposed Regulations



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## NEW PARENT LEAVE ACT (NPLA)

### Eligibility

- Employed for 12 months with employer
- Worked 1,250 hours in 12 months
- Works for an employer that has 20 employees w/in 75 mile radius
- Only available to employees not subject to both CFRA & FMLA



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## LEAVES UNDER DISABILITY LAWS



- ✓ Leave may be required as a reasonable accommodation under FEHA/ADA
- ✓ No per se rule as to length of leave
- ✓ EEOC: Leave should be extended if employee may return to work unless it creates an undue hardship
- ✓ EEOC: Leave without a fixed return to work date is reasonable
- ✓ Interactive process

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## WORKERS' COMPENSATION

- ✓ Injury or illness arising out of employment
- ✓ Does not alter obligations under FMLA, CFRA, PDL or disability laws
- ✓ May run concurrently under FMLA or CFRA



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## CONSIDERATIONS

- What are Serious Health Conditions?
- What are Chronic Conditions?
- Obligations of Benefits
- Other Considerations



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## WHAT ARE MY DUTIES AS AN EMPLOYER?

### Step 1:

- ✓ Recognize

### Step 2:

- ✓ Respond

### Step 3:

- ✓ Return



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## STEP 1: RECOGNIZE THE EMPLOYEE IS REQUESTING A LEAVE

- An employee directly asks for time off
- Employee states he is having a difficult time getting to work because of a health condition
- Employee provides you with a doctor's note stating that she is having pregnancy complications
- Employee is sick for four days
- Employee gets hurt on the job
- Employee cannot perform the essential functions of the job because he was in an accident

## STEP 2: RESPOND – PROVIDE NOTICE

### Eligibility Notice

- Notice that the employee is either eligible or not
  - If eligible, designate the type of leave
  - If not eligible, provide one reason why ineligible
- Notice of employees' rights and responsibilities
  - Including medical certification requested with a 15 day turnaround
- Notice must be provided within 5 business days

## STEP 2: RESPOND – DESIGNATION NOTICE

1. Informs the employee that the leave was approved
2. Whether the leave will be designated as FMLA/CFRA leave
3. Request for additional information to certify the leave (7 day turnaround)
4. Employee's responsibilities and consequences of failing to provide the requested information (medical)
5. Employee's rights regarding health insurance, return to work and substitution of unpaid leave (e.g., PTO, sick, vacation)
6. Key Employee: Designation



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## STEP 3: RETURN THE EMPLOYEE TO WORK

- Take Affirmative Steps to Communicate with the Employee toward the end of the leave
  - Provides opportunity for the employee to communicate status of leave and prepares employer to reinstate employee
    - Return date
    - Additional time needed
    - Limitations
    - Request for an accommodation
  - Recommend using a standard Notice (letter)
    - End date
    - Insurance ending/COBRA Notice
    - Option to extend leave with medical certification



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## STEP 3: RETURN THE EMPLOYEE TO WORK

- OBTAIN A MEDICAL RELEASE
- NO WORK LIMITATIONS, reinstate employee to same position unless no longer available then to an equivalent position
- WORK LIMITATIONS engage in the interactive process to determine whether the employee is disabled and qualifies for modified work, light duty, or a reasonable accommodation under the ADA – must accommodate unless an undue hardship.





**THANK YOU**  
For questions or comments,  
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