

# Office Hours

## Health Benefits While on Leave: The Rules All Employers Need to Know

Audio

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# 2017 Office Hours YTD

<http://www.theabdteam.com/abd-insights/presentations/>

## **The San Francisco Paid Parental Leave Ordinance: Complying with the City's New 2017 Paid Leave Law**

- As of 2017, San Francisco is the first city to require employer-paid parental leave
- Supplements the amount available through California PFL for new child bonding

## **Health Benefits for Domestic Partners: Review of the Tax and Coverage Rules for Employers**

- Domestic partners may be same-sex, opposite-sex, registered, or company-defined
- Coverage, tax, and other compliance issues at the federal, state, and local levels

## **The American Health Care Act: Details on the ACA Repeal and Replace Bill**

- The AHCA passed the House on May 4, 2017 (similar bill currently stalled in the Senate)
- Review of the Top 10 changes in the AHCA that would affect employer plans

## **PEO Transitions: How to Take Control of Your Business Destiny**

- Many smaller employers utilize a PEO to form a co-employment relationship for benefits
- Review the main benefits/tax issues for employers to be aware of as they leave a PEO

# Leaves of Absence: The Big Picture

## What is a Leave of Absence?

### It could mean many things!

- It could be a job-protected leave under FMLA, CFRA, or PDL (or other state law), a paid leave under SDI or PFL (or other state/local law), an unpaid leave, an unprotected leave, or a leave pursuant to a company policy
- Each form of LOA comes with different health plan coverage, payment, and other compliance issues at the federal, state, and local level

## What are the Main Topics Covered?

- What rules apply to maintaining health benefit coverage during a protected leave?
- When can coverage terminate during a protected leave?
- How are benefits restored upon return from a protected leave?
- How does COBRA apply where an employee fails to return from a leave?
- What happens to health coverage during a non-protected leave?
- How can company leave policies be more generous with health benefits than the legal requirements without creating carrier issues?
- What about ACA pay or play issues? What about ADA issues?



# Protected Leaves Maintaining Active Coverage

# Protected Leaves: Maintaining Coverage

## Employers Must Maintain Active Group Health Plan Coverage

- Protected leave includes FMLA, CFRA, PDL, and many other state equivalents
- Employers must maintain active health plan coverage for an employee on a protected leave
- Employee cannot be required to pay more than the active employee-share of the premium while on protected leave
- *Note: You cannot charge employees at the 102% COBRA rate!*
- Open enrollment rights apply in the same manner as active employee

## Employee Right to Terminate Coverage

- FMLA requires that employees be provided the option to drop health plan coverage during the leave (e.g., because employee does not want to pay)
- Section 125 rules permit election change to revoke coverage election during a period of unpaid leave
- Coverage will cease for the leave period if employee makes the election to terminate coverage
- Upon return, employee still has the right to be reinstated in coverage on same terms prior to leave upon return (no waiting period etc.)

# Protected Leaves: Employee Payment for Coverage

The Section 125 rules provide three ways for employers to administer collection of the employee-share of the premium for coverage during an FMLA leave:

A

## Pre-Pay

- Employee pays for coverage in advance of the leave pre-tax through payroll
- Employee elects to pay all or portion of anticipated leave period on final or series of paychecks prior to the leave

*Two Limitations:*

- *Pre-pay cannot be the sole option offered (must offer at least one other)*
- *Pre-pay not available to pay for coverage in subsequent year*

B

## Pay-As-You-Go

- Employee pays for share of coverage in installments during leave
- Where leave is paid, employee can pay pre-tax through payroll
- Where leave is unpaid, employee will pay after-tax (similar to COBRA)

C

## Catch-Up

- Employee agrees in advance to pay for coverage upon return from leave
- Payment is pre-tax via payroll on first or series of paychecks upon return
- Likely not an issue where the leave straddles two years, but unclear

# Protected Leaves: Terminating Coverage

## Employers May Terminate Coverage if Employee Fails to Pay

- Employers can terminate coverage for an employee on FMLA leave if the employee is **more than 30 days late** paying the employee-share of the premium
- Must provide written notice to the employee that payment has not been timely received
- **Written notice must be mailed at least 15 days before coverage will terminate, and it must advise that coverage will terminate on a specific date at least 15 days after the letter**

## Restoring Coverage Upon Return

- Upon return from protected leave, the employer must restore any benefits that were terminated during the leave (unless otherwise elected by the employee)
- **Restoration requirement applies even if the employee lost coverage for failure to pay during the leave**
- Employee cannot be required to satisfy the plan's waiting period (if any) again upon return
- However, the employer may recover the **employee-share of the premium** not paid by the employee during the period coverage was in effect

# Protected Leaves: Failure to Return from Leave

## COBRA Rights

- If the employee fails to return from protected leave, active coverage will generally terminate as of the end of the last day of the protected leave (absent a company leave policy to extend coverage beyond the protected leave period)
- Failure to return from FMLA leave is a COBRA qualifying event
- The employee (and any covered spouse/dependent) experiences a COBRA qualifying event as of the last day of the FMLA leave
- If coverage terminated prior to the end of the protected leave because the employee failed to timely pay, there will be a coverage gap from the loss of coverage until the last day of the FMLA leave when the qualifying event occurs

## Recovery of Premiums

- Employers have the right to recover the employer-share of the premium if the employee does not return to work (plus any unpaid employee-share)
  - Excludes failure to return due to serious health condition, military issues, and other circumstances beyond employee's control
  - Employee is considered to "return" upon completing at least 30 calendar days
- Treated as a debt owed by the non-returning employee to the employer

### Reality Check:

- In some cases, there will be ability to recover the debt from vacation/PTO
- Where that's not an option, rules suggest employer may "initiate legal action against the employee to recover the costs"
- Would many employers really do that?



# Protected Leaves:

## Account-Based Plans

### Health FSA: Group Health Plan with Employee Contributions

- Coverage (i.e., ability to incur reimbursable claims) remains in effect during the protected leave period unless the employee revokes coverage
- Contributions handled through one of the three methods outlined on Slide 7
- Employee on unpaid FMLA leave must have option to revoke health FSA coverage (unless catch-up option is offered—in which case employer may require it)

#### *Employee Revokes Health FSA Coverage During Leave:*

- Health expenses incurred during the leave period are not eligible for reimbursement
- Upon return, employee has two options:
  - 1) Full Election: Employee resumes election amount in effect before leave and makes up the unpaid contributions during leave (but no coverage during leave period)
  - 2) Reduced Election: Employee does not make up the unpaid contributions upon return, resulting in lower total election (i.e., coverage) amount available for the year

### HRA: Group Health Plan without Employee Contributions

- Identical ability to incur/reimburse claims while on leave as if active employee

### HSA: Not a Group Health Plan

- Not subject to leave laws—may discontinue contributions during leave period



Non-Protected Leaves  
**Employer Policies to  
Extend Active Coverage**

# Non-Protected Leaves: The Big Picture

## What are Non-Protected Leaves?

- Any leave not protected by FMLA, CFRA, PDL (or other state equivalents)
- Many reasons employers may make non-protected leaves available:
  - Employer is not subject to FMLA/CFRA
  - Employee is not eligible for FMLA/CFRA
  - Leaves that extend beyond protected leave period (e.g., longer new child leaves)
  - Sabbatical leaves as a way to reward/retain long-term employees
- In many cases, employers will be very accommodating in these situations (i.e., provide some form of company leave, not terminate EE for job abandonment)

## Plan Eligibility Generally Limited to Full-Time Employees

- Default approach is coverage will terminate for employees not working full-time
- Non-Protected Leave from Outset: Coverage will generally terminate as of the start of leave (or end of the month in which the leave begins)
- Transition from Protected to Non-Protected Leave: Coverage will generally terminate as of the end of protected leave status (or end of that month)
- COBRA qualifying event occurs in either case:
  - Loss of coverage caused by reduction in hours or failure to return from FMLA leave

# Non-Protected Leaves: Employer Leave Policy

Employers frequently have a leave policy to permit continuation of active health coverage during non-protected leaves. Within limits, carriers will generally permit this policy.

## Typical Employer Leave Policy: Continuing Active Coverage

**Common approach will continue active coverage until the later of:**

- 1) The end of the protected leave period (if any); or**
  - 2) Six months following the start of the leave**
- Note: Protected leave period can extend up to seven months for extended pregnancy disability leaves followed by CFRA baby bonding
  - COBRA rights at end of this period

## Important Consideration: Insurance Carrier Approval

- Insurance carriers (or stop-loss providers for self-insured plans) typically permit the employer to offer active coverage during a non-protected leave period pursuant to the employer's leave policy
- **Must be very careful not to extend active coverage beyond the period the carrier will permit**
- That could result in the need for employer to self-fund claims (or no stop-loss coverage)
- **Most carriers permit employer policies that extend coverage up to six months**

# Non-Protected Leaves: **Extremely Generous Employers**

Some very generous employers have policies that permit non-protected leaves to extend beyond six months. In that scenario, **you need to be sensitive to the insurance carrier (or stop-loss provider) limitations**—they generally will not extend active coverage beyond six months.

## *Post-Six Months Solution #1*

### **Fully Insured Plan: COBRA Subsidies**

**Provide a COBRA subsidy in the amount of the employer-share of the premium for active employees (+2%)**

- Note: The ACA added fully insured plan nondiscrimination rules
- Those §2716 rules are currently delayed indefinitely until further notice from IRS/DOL/HHS
- Employer should consider stating in any materials communicating the subsidy that it may cease if the rules take effect during the subsidy term

## *Post-Six Months Solution #2*

### **Self-Insured Plan: Taxable Compensation**

**Pay the employee an amount equal to the employer-share of the premium for active employee (+2%) in standard taxable compensation**

- This is frequently the only method that will avoid creating issues under the §105(h) nondiscrimination rules that apply only to self-insured plans
- Employer may choose to gross up employees to make them whole
- Payment cannot be conditioned on the employee electing COBRA



ACA Complications  
**The Look-Back  
Measurement Method**

# ACA Complications:

## THERE ARE TWO DIFFERENT MEASUREMENT METHODS!

- ALEs subject to the ACA pay or play rules generally may apply either measurement method to determine employees' full-time status:
  - The Monthly Measurement Method (MMM); or
  - The Look-Back Measurement Method (LBMM)
- These slides primarily address the LBMM because of the complications
- However, you may utilize the MMM and avoid much of this!
- See here for full details on the pros/cons of each measurement method depending on your situation: <http://www.theabdteam.com/blog/the-dark-side-of-the-aca-health-information-reporting-industry/>

# Employer Mandate “Pay or Play” Look-Back Measurement Method

The look-back measurement method provides an alternative to the monthly measurement method. Under look-back, employers test whether an employee averages 30 hours of service per week in a measuring period to lock in full-time or part-time status for the associated stability period. Employers can also place new variable hour, seasonal, and part-time employees in an initial measurement period prior to reaching full-time status.

## ONGOING EMPLOYEES

- Generally, if look-back measurement method is used for one employee to determine full-time status, it must be used for all employees
- Exception: Employer can choose separate measurement methods for:
  - Hourly vs. salaried
  - Employees in different states
  - Union vs. non-union
  - Employees in different union groups
- **Typical structure:**
  - **Measurement period: 10/15 – 10/14**
  - **Administrative period: 10/15 – 12/31**
  - **Stability period: 1/1 – 12/31**

Note: 90-day administrative period limit prohibits measurement period running from 10/1.

## NEW HIRES

- New full-time employees must be offered coverage by the first day of the fourth full calendar month of employment to avoid potential penalties
- New variable hour, seasonal, and part-time employees may be placed in an initial measurement period before being treated as full-time
  - Combined duration of initial measurement period and initial administrative period cannot exceed 13 months (plus a partial month for mid-month hires)
- **Typical structure for new variable/seasonal/part-time employee:**
  - **Hired on March 15, 2016**
  - **Initial administrative period: 3/15/16 – 3/31/16 (front-end of split administrative period)**
  - **Initial measurement period: 4/1/16 – 3/31/17**
  - **Initial administrative period: 4/1/17 – 4/30/17 (back-end of split administrative period)**
  - **Initial stability period: 5/1/17 – 4/30/18**

Note: Special rule permits 11-month initial measurement period, which would allow a two-month back-end initial administrative period.



# Hours of Service in LBMM

## Paid Leave of Absence

**Paid leave is considered hours of service for purposes of pay or play**

This is because with paid leave, the employee is entitled to payment for a period of time during which no duties are performed due to the leave of absence

Means that a period of paid leave will be treated the same as a period of active employment duties

When using the look-back measurement method, the employee will have **hours of service credited in the measurement period for the duration of the paid leave** as if active or on paid vacation

## Unpaid Leave

**An unpaid leave of absence that does not qualify as “special unpaid leave”**

In this case, the employee will not receive any hours of service credit

When using the look-back measurement method, the employee will have **no hours of service for the duration of the unpaid leave**

If the employee is at or near 30 hours per week when active, the period of unpaid leave could cause the average over the course of the full measurement period to dip below 30—resulting in the employee being treated as part-time for the associated stability period

## “Special” Unpaid Leave

**Unpaid leave that is:**

**Subject to FMLA**

**Subject to USERRA; or**

**On account of jury duty**

When using look-back measurement method, two options for addressing special unpaid leave:

**Excluded Period:** Exclude the period of special unpaid leave from the measurement period computation by determining the employee’s average hours of service without the period of special unpaid leave

**OR**

**Imputed Hours:** Credit the employee with hours of service during the period of special unpaid leave at a rate equal to the average weekly hours of service for weeks that were not part of the special unpaid leave

# Returning from a LOA (or Rehire)

## Break in Service: 13 or More Consecutive Weeks

Where the employee did not have an hour of service for the company for a period of at least 13 consecutive weeks

Upon return from leave, the employee can be treated as a new employee

The same principles in this case would apply to a new hire

If full time, must offer coverage no later than the first day of the fourth full calendar month to avoid penalties

If variable hour, seasonal, or part-time, employer can put the returning employee through a new initial measurement period before offering coverage

Note that the break period must be 26 weeks to treat the employee as a new employee if the employer is an educational organization

## Break in Service: Rule of Parity

Rule of parity applies where the break in service is at least four consecutive weeks, but shorter than 13 consecutive weeks (26 weeks for educational organization)

Under the rule of parity, a break in service occurs if the employee's period of time with no credited hours of service is longer than the employee's immediately preceding period of employment

For example, employee works three weeks for an employer prior to going on unpaid leave (not "special") of ten weeks

- The ten-week period with no hours of service is a) at least four weeks long, and b) longer than the immediately preceding three-week period of employment
- Under the rule of parity, this is a break in service, and the employer may treat the employee as a new employee upon return

## No Break in Service: Continuing Employee

Where the period of leave (or period between termination and rehire) is not a break in service, the returning employee must be treated as a "continuing employee"

Under the look-back measurement method, a continuing employee will return to the same status in the stability period

This means that if the continuing employee returns in a stability period in which the employee was being treated as full-time before the leave, the employee will be treated as full-time upon return and through the end of the stability period

Continuing full-time employees enrolled prior to termination must be offered coverage upon first day of return, or, if later, as soon as administratively practicable

- Rules deem first day of the calendar month following return to always comply under this standard

# General Hours of Service Rules

Treas. Reg. §54.4980H-1(a)(24)  
defines an “hour of service” as follows:

(1) **Active Duties:** Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and

(2) **Inactive Payments:** Each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to:

- (a) *Vacation,*
- (b) *Holiday,*
- (c) *Illness,*
- (d) *Incapacity (including disability),*
- (e) *Layoff,*
- (f) *Jury duty,*
- (g) *Military duty, or*
- (h) *Leave of absence.*

Treas. Reg. §54.4980H-3(b)  
sets forth the calculation rules:

## Hourly Employees:

**Actual Hours:** Employer must calculate actual hours of service from records of hours worked and hour for which payment is made or due

- Generally pretty straightforward data from payroll
- Special exceptions for hard to track hours

## Non-Hourly Employees (e.g., Salaried):

- 1) **Actual Hours:** Use actual hours of service from records of hours worked and for which payment is made or due;
- 2) **Days-Worked Equivalency:** Employee is credited with eight hours of service for each day the employee is paid or entitled to pay; or
- 3) **Weeks-Worked Equivalency:** Employee is credited with 40 hours of service for each week the employee is paid or entitled to pay

# Employees on Leave:

## Inactive Payments and Hours of Service

### Included in Hours of Service

- IRS confirmed that payments are generally deemed to be made by the employer **regardless of whether the payment is made directly by the employer**
  - For example, payments made from an insurance carrier or trust fund to the employee are still considered made by the employer
- Most disability payments (other than state statutory plans) count as hours of service if the employee has not been terminated from employment
  - **Includes STD and LTD**—even where benefit payments made by carrier

### Excluded From Hours of Service

- Workers' compensation payments
- Unemployment payments
- State disability payments (or voluntary replacements to comply with state STD requirements)
  - California SDI
  - California Voluntary Plan
  - Statutory disability plans (or private replacements) in Hawaii, New Jersey, New York, and Rhode Island
- Disability plan payments made from arrangements to which the employer did not directly or indirectly contribute
  - Requires that the premium was exclusively paid by employee after-tax contributions to qualify

# The ACA's Employer Mandate “Pay or Play” §4980H Penalties

## §4980H(a)—The “A Penalty”

### Aka: The “Sledge Hammer Penalty”

- **Failure to offer MEC to at least 95% of all full-time employees (and their children to age 26) in 2016 and beyond**
- The A Penalty is triggered by at least one such full-time employee who is not offered MEC enrolling in subsidized exchange coverage
- **2017 A Penalty liability is \$2,260 annualized (\$188.33/month) multiplied by all full-time employees**
  - **30 full-time employee reduction from multiplier in 2016 and beyond**

## §4980H(b)—The “B Penalty”

### Aka: The “Tack Hammer Penalty”

- Applies where the employer is not subject to the A penalty
- **Failure to:**
  - 1) Offer coverage that's affordable**
  - 2) Offer coverage that provides MV**
  - 3) Offer MEC to a full-time employee (where the employer has still offered at a sufficient percentage to avoid A Penalty liability)**
- The B Penalty is triggered by any such full-time employee enrolling in subsidized exchange coverage
- **B Penalty liability is \$3,390 annualized (\$282.50/month) multiplied by each such full-time employee who enrolls in subsidized exchange coverage**
  - Note that although the B Penalty amount is higher (\$3,390 vs. \$2,260), the multiplier is generally much lower
  - The multiplier is only those full-time employees not offered affordable/minimum value coverage who enroll in subsidized exchange coverage—not all full-time employees



ADA

**No Coverage Rights**

# ADA Leave: No Coverage Rights

## EEOC FMLA/ADA Fact Sheet FAQ, Q/A-15:

- <https://www.eeoc.gov/policy/docs/fmlaada.html>

15. Q: Do the ADA and the FMLA require an employer to continue an employee's health insurance coverage during medical leave?

A: Under the ADA, an employer must continue health insurance coverage for an employee taking leave or working part-time *only if the employer also provides coverage for other employees in the same leave or part-time status*. The coverage must be on the same terms normally provided to those in the same leave or part-time status. (emphasis added)

Under the FMLA, an employer always must maintain the employee's existing level of coverage (including family or dependent coverage) under a group health plan during the period of FMLA leave, provided the employee pays his or her share of the premiums. An employer may not discriminate against an employee using FMLA leave, and therefore must also provide such an employee with the same benefits (e.g., life or disability insurance) normally provided to an employee in the same leave or part-time status.

## Health Coverage Terminates (Even Though Employment Does Not)

- The employee may not be terminated from employment until after exhausting protected leave rights and/or the ability to continue coverage through an company leave policy
  - Could take over a year to determine whether the employer is able to make an appropriate reasonable accommodation for a disabled employee (or if that would create an undue hardship)
- ADA does not come with any requirement to continue health coverage (unlike FMLA, CFRA, PDL, or another state equivalent)
- Health coverage will generally terminate after the protected leave period (if any) and company leave policy for coverage has ended—and the employee will have COBRA rights
  - Loss of coverage caused by reduction in hours or failure to return from FMLA leave



# Wrap Up Takeaways



# Health Benefits While on Leave: Takeaways

## Three Key Points to Remember:

A

Employees on protected leave under FMLA, CFRA, or PDL (or another state equivalent) must have the option to continue active coverage at the active employee-share of the premium. There are three methods for collecting payment. COBRA rights apply upon failure to return.

B

For non-protected leaves, the default approach would be to terminate active coverage (and offer COBRA). However, many employers have a leave policy to extend active coverage for some period where no protected leave is available, or after the protected leave period expires. Be careful to coordinate this approach with the insurance carriers or stop-loss providers.

C

Applicable Large Employers subject to the ACA pay or play rules will need to pay particularly close attention to avoid potential tax penalty liability if they utilize the look-back measurement method to determine employees' full-time status. And don't forget that ADA leave is not protected leave for coverage purposes—even if the employee has not been terminated from employment.

A person's hands are shown holding a pen over a laptop. The laptop screen displays a bar chart with several bars of varying heights. The background is a solid magenta color.

Appendix

# Typical New Child Leaves

# Appendix Overview:

## PDL, FMLA, CFRA Eligibility

### This Appendix Assumes PDL, FMLA, and CFRA Apply!

- Not all employer are subject to PDL, FMLA, and CFRA
- Not all employees are eligible for FMLA/CFRA
- Different rules apply where an employer is not subject to one or more of these laws, or where an employee is not eligible for FMLA/CFRA
- See the full ABD Federal/CA Leave Chart [HERE](#) for details

### FMLA/CFRA Fast Facts

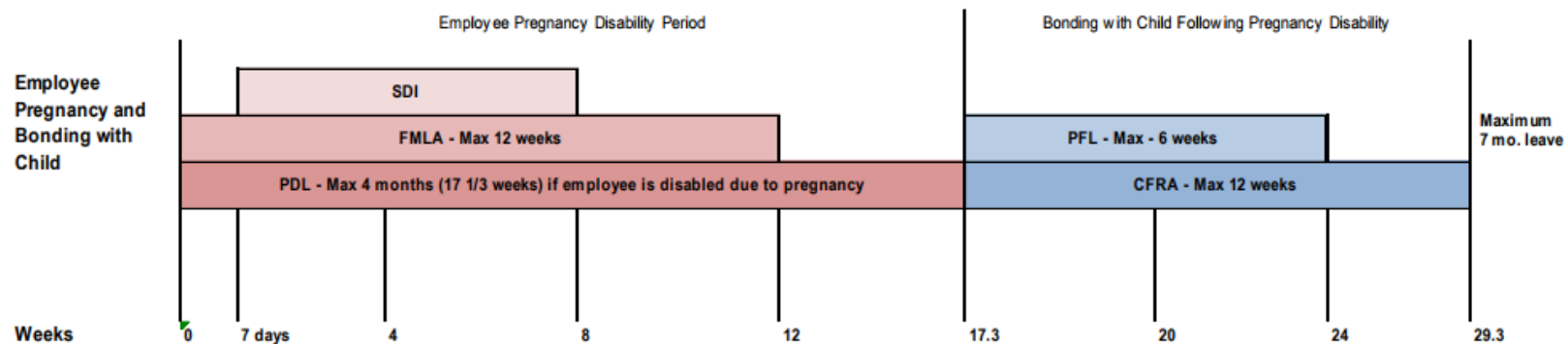
- **Covered Employers:** 50 or more employees for at least 20 workweeks in preceding calendar year
- **Eligible Employees:** At least 12 months worked, 1,250 hours worked in 12-months prior to start of leave, and at least 50 employees within 75 miles of the worksite
- **Reasons for Leave:** Childbirth and new child bonding, unable to work because of a serious health condition, to care for an immediate family member with a serious health condition, qualifying exigencies related to active duty military service

### PDL Fast Facts

- **Covered Employers:** 5 or more employees
- **Eligible Employees:** All employees with pregnancy-related disabilities (no minimum duration or hours worked requirements)

# New Child Leave in CA: Job Protection

Full ABD Federal/CA Leave Chart Available [HERE](#)



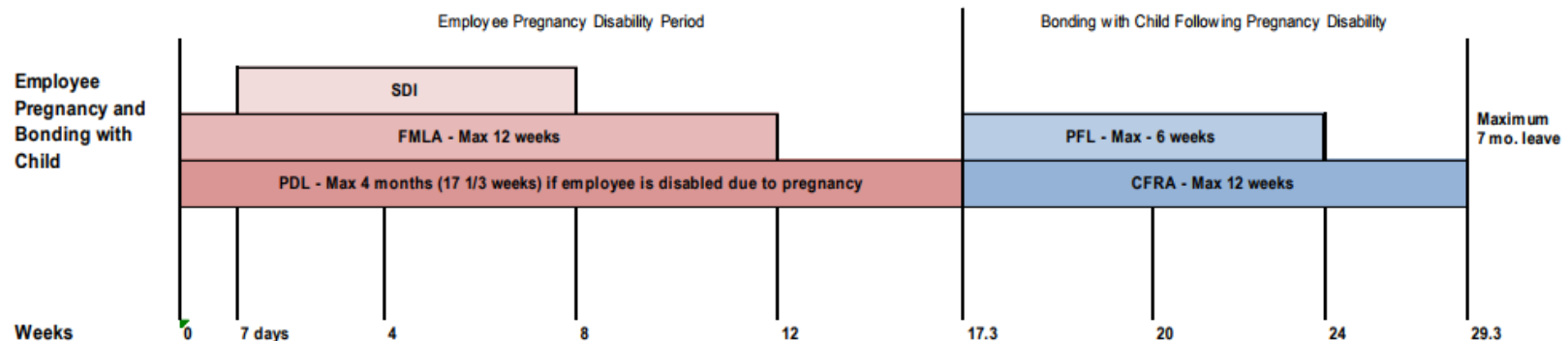
## Birthing Mother: Three Primary Job Protection Laws

- 1) **Pregnancy Disability Leave (PDL)**
- 2) Family and Medical Leave Act (FMLA)
- 3) California Family Rights Act (CFRA)

- **Before Delivery:** PDL is generally available four weeks before the due date
- **Standard Delivery:** PDL is available for up to **six weeks after childbirth**
  - Typical total before/after PDL period of 10 weeks (2½ months)
- **C-Section Delivery:** PDL is available for up to **eight weeks after childbirth**
  - Typical total before/after PDL period of 12 weeks (3 months)
- **Extended Disability:** PDL is available for up to **four months total** (17⅓ weeks) where the birth mother is determined disabled by a physician for a longer period after delivery

# New Child Leave in CA: Job Protection

Full ABD Federal/CA Leave Chart Available [HERE](#)



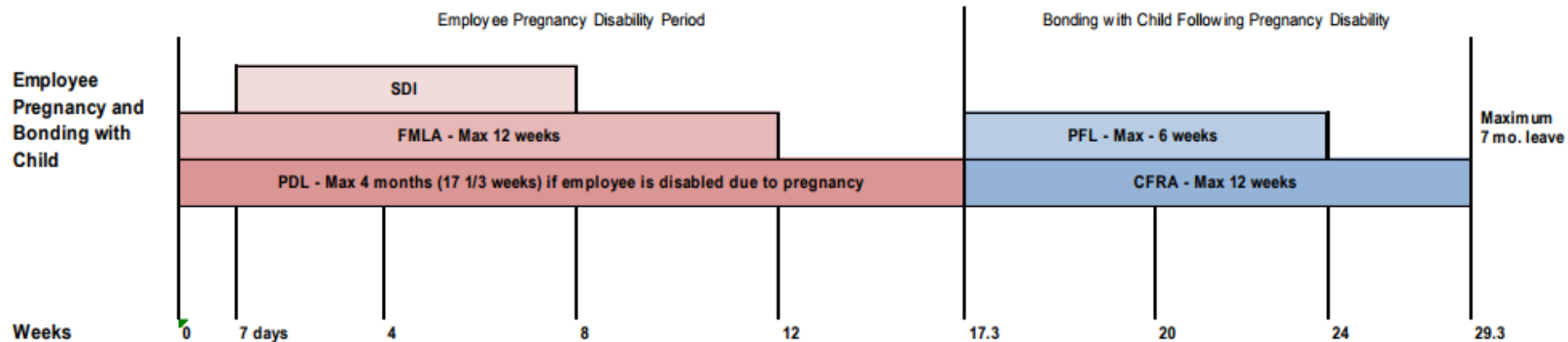
## Birth Mother: Three Primary Job Protection Laws

- 1) Pregnancy Disability Leave (PDL)
  - 2) Family and Medical Leave Act (FMLA)
  - 3) California Family Rights Act (CFRA)
- **Baby Bonding:** FMLA and CFRA both provide for up to 12 weeks of new child bonding
  - **PDL/CFRA Not-Concurrent:** CFRA does not run concurrently with PDL (FMLA does)
    - Means employee has another 12 weeks of CFRA job protection available after PDL period
  - **Most Common Result:** Employees will have job protected leave available for the full 10 or 12-week PDL period (including before birth) plus 12 weeks CFRA new child bonding
    - **Standard Delivery:** 5½ months of PDL & FMLA/CFRA before/after birth job-protected leave
    - **C-Section Delivery:** 6 months of PDL & FMLA/CFRA before/after birth job-protected leave

# New Child Leave in CA:

## Partial Wage Replacement

Full ABD Federal/CA Leave Chart Available [HERE](#)



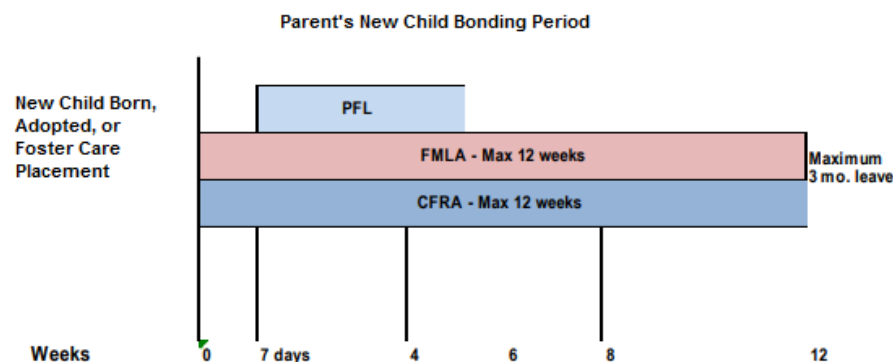
### Birthing Mother: Two Primary Partial Wage Replacement Laws

- 1) California State Disability Insurance (SDI)
  - 2) California Paid Family Leave (PFL)
- **PDL Pregnancy Disability Period:** SDI provides 55% of employee's earnings over 12-month base period (roughly 5 to 18 months before the disability claim begins)
    - 2017 maximum benefit amount is capped at \$1,173 per week (based on \$110,902 annual salary)
  - **Baby Bonding Period:** PFL paid at same rate as SDI for up to 6 weeks of baby bonding
    - No waiting period in transition from SDI to PFL
  - **Most Common Result:**
    - **Standard Delivery:** Typically up to 4 months of SDI and PFL partial wage replacement
    - **C-Section Delivery:** Typically up to 4½ months of SDI and PFL partial wage replacement

# New Child Leave in CA:

## Paternity & Non-Birthing Maternity

Full ABD Federal/CA Leave Chart Available [HERE](#)



### Paternity & Non-Birthing Maternity:

- **FMLA and CFRA Job Protection:** Employee will have up to 12 weeks (3 months) of job protection for new child bonding through concurrent FMLA/CFRA rights
- **PFL Partial Wage Replacement:** Provides 55% of employee's earnings over 12-month base period (roughly 5 to 18 months before the disability claim begins) for up to six weeks of new child bonding
  - 2017 maximum benefit amount is capped at \$1,173 per week (based on \$110,902 annual salary)
- **Most Common Result:**
  - **Paternity Leave:** New fathers can take protected bonding leave for up to 12 weeks (3 months)
  - **Non-Birthing Maternity Leave (Adoption, Foster Care, Surrogacy):** Same as paternity leave
  - **Partial Wage Replacement:** Non-birthing parents of a new child are eligible for up to 6 weeks of PFL for new child bonding—half of the period in which they enjoy job protection

# San Francisco Paid Parental Leave Ordinance (PPLO)

## Full Office Hours Webinar

- <http://www.theabdteam.com/abd-insights/presentations/>

## Effective Dates:

- January 1, 2017 for employers with 50+ employees regardless of location
- July 1, 2017 for employers with 35+ employees regardless of location
- January 1, 2018 for employers with 20+ employees regardless of location

## Covered Employees:

- Commenced employment at least 180 days prior to start of leave
- Performs at least at 8 hours of work per week in San Francisco
- At least 40% of total weekly hours for employer are in San Francisco
- Eligible for California Paid Family Leave (PFL) for new child bonding

## Payment Amount

- SF PPL pays 45% of average weekly wages (max \$960/week) in PFL new child bonding period
- PFL pays 55% of earnings with a maximum weekly benefit of \$1,173
- PPL payment will reduce to 40% or 30% in 2018 to adjust for higher PFL benefit

## Employer Notice Requirements & Recordkeeping

- Post PPLO poster in a conspicuous place and update employee handbook
- Provide PPL form to employees
- Retain records documenting PPL for a period of 3 years



# CA SDI/PFL Changes for 2018

In April 2016, Governor Jerry Brown signed AB 908 into law increasing the benefits paid under SDI and PFL beginning in 2018, and eliminating the PFL waiting period.

## Increased Benefits: 60% or 70% (Income Dependent)

### Specifics:

- Current SDI/PFL benefit is 55% wage replacement for all income levels
- New 2018 approach will depend on income level during the base period (prior four quarters):
- **Sixty Percent (60%):** Individuals who earned one-third or **more of the state's average quarterly wage**
- **Seventy Percent (70%):** Individuals who earned **less than one-third of the state's average quarterly wage**

## Elimination of Waiting Period: For PFL Only (Not SDI)

### Specifics:

- Currently there is a seven-day waiting period to receive benefits under both SDI and PFL programs
- The PFL waiting period is waived for new mothers transitioning from SDI to PFL
- **AB 908 eliminates the seven-day waiting period for PFL claims** (that aren't a transition from SDI)
- Seven-day waiting period will remain for SDI claims

# Content Disclaimer

## Health Benefits While on Leave

The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (e.g., the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).

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# Thank you!

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