LACTATION ACCOMMODATIONS AND LEAVE LAWS

Julia Parish, Staff Attorney
Legal Aid at Work
OBJECTIVES

Legal Protections for Working Parents
• Existing protections for time off, pay and accommodations

Improve Policies and Practices
• Increase access and information for patients
• Inform and advance public policy to meet parents’ needs

LEGAL AID AT WORK
(FORMERLY LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER)

➢ Non-profit organization founded in 1916
➢ Work & Family program protects the employment rights of pregnant workers, new parents, and workers facing family medical crisis
➢ Legal advice and information through toll-free helplines and clinics, direct representation, policy advocacy, and public education and outreach
WORKPLACE RIGHTS OF PREGNANT WORKERS & NEW PARENTS

1. Job-protected Time Off
2. Discrimination Protection
3. Getting Paid While Off Work
4. Accommodations for Pregnancy and Breastfeeding

2 KEY RIGHTS

**JOB-PROTECTED TIME OFF WORK**
- Employee has the right to take the time off and return to the position after.
- Request from employer

**GETTING PAID WHILE OFF OF WORK**
- Employee can receive pay while off of work
- Request from Employment Development Department

*Two different processes with different requirements and benefits*
**CALIFORNIA PREGNANCY DISABILITY LEAVE (PDL)**

Up to **4 months job-protected**, unpaid leave, while disabled by pregnancy, childbirth, or related condition
- Applies to all employers with **5+ employees**
- Can be used for **prenatal care**
- Can be taken **intermittently**
- Continuation of health benefits

**Normal Pregnancy**: disability is **4 weeks** before due date and **6 to 8 weeks** after delivery.

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**CALIFORNIA STATE DISABILITY INSURANCE (SDI)**

- **Eligibility**: A worker who pays into the state disability insurance program (usually through paycheck deductions) and earns $300 in base period may be eligible to receive partial wage replacement while temporarily disabled by pregnancy, childbirth, or a related medical condition.

- **Benefits**: There is a **1-week waiting period**, and SDI replaces **70%** for low income workers and **60%** for higher income workers.
CALIFORNIA FAMILY RIGHTS ACT (CFRA)/ FAMILY MEDICAL LEAVE ACT (FMLA)

12 weeks of job-protected leave to:
- Bond with new child (including adoptive and foster children) within 12 months of child’s arrival
- Care for a family member (parent, spouse, domestic partner, and minor child) with a serious health condition
- Care for your own serious health condition

Eligibility
- 1 year on the job
- 50+ employees
- 1,250 hours in the prior year

*Time off under the CFRA does NOT run concurrently with PDL time, allowing eligible California employees 12 additional weeks of job-protected leave to bond with a child after they recover from pregnancy disability.

NEW PARENT LEAVE ACT

Effective January 1, 2018:
- Applies to employers with 20-49 employees
- Similar to CFRA/FMLA

Sponsored by First 5 California, Legal Aid at Work and California Employment Lawyers Association. Championed by the California Work and Family Coalition

Labeled a “job killer” and strongly opposed by the California Chamber of Commerce. Governor Brown vetoed a similar bill the previous year
PAID FAMILY LEAVE (PFL)

- **Eligibility:** Workers who pay into SDI
- **Benefits:** 6 weeks of partial wage replacement while bonding with a newborn, adopted, or foster child, if it is taken within 1 year of birth or placement of the child
  - 70% for low income workers and 60% for higher income workers
  - Both parents can take leave at the same (or different) time
  - Leave can be taken intermittently
  - 1-week waiting period eliminated in 2018
- **Lactation Impact:** PFL doubled the median duration of breastfeeding for all new parents who used it

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2 BIG CHANGES IN 2018

**JOB-PROTECTED TIME OFF WORK**

- Employees working for companies with more than 20 employees have the right to job-protected parental leave

**GETTING PAID WHILE OFF OF WORK**

- New parents will now get greater wage replacement and do not serve the unpaid waiting period
Many California residents are unaware of the PFL program

Low income workers, young people, minorities and people with the least education were less likely to know about PFL

According to the 2015 Field Poll Survey:

- 17.5% of respondents earning less than $20K/year knew about PFL, compared to 46.7% of respondents earning between $66K-$99K, and 55.1% of respondents earning $100K+
- Latinos had the lowest awareness level among racial and ethnic groups, with 23.2% awareness
- 19.2% of respondents with a high school degree or less knew about PFL, compared with 45.3% who have a post-graduate degree

Effectively allows for 6 weeks of fully paid leave to bond with a new child (newborn, adoptive, or foster)

Requires San Francisco employers with at least 20 employees to supplement a SF employee’s state Paid Family Leave (PFL) benefits

Berkeley is considering a similar ordinance

Initial data shows increase in men taking leave
HOW IT ALL FITS TOGETHER:
JOB-PROTECTION AND WAGE REPLACEMENT FOR A “NORMAL” PREGNANCY

FMLA/CFRA/NPLA Eligible Parent Who Gives Birth

- State Disability Insurance: 1-week waiting period, then 9 Weeks of partial pay
- Pregnancy Disability Leave/Family Medical Leave Act

- Paid Family Leave: 6 Weeks of partial pay
- California Family Rights Act/New Parent Leave Act

- BIRTH: 4 Weeks Prior to Birth
- 6 Weeks to Recover

 HOW IT ALL FITS TOGETHER:
JOB-PROTECTION AND WAGE REPLACEMENT FOR PARTNERS

FMLA/CFRA/NPLA Eligible Partner

- Paid Family Leave: 6 Weeks of Partial Pay
- 12 Weeks to Bond

- BIRTH
- Family Medical Leave Act/California Family Rights Act/New Parent Leave Act
HOW IT ALL FITS TOGETHER: JOB-PROTECTION AND WAGE REPLACEMENT

Workers NOT Eligible for FMLA/CFRA/NPLA:

- **SDI**
  - 4 Weeks Prior to Birth
  - 6 Weeks to Recover

- **PFL**
  - 6 Weeks to Bond

Job Protection: PDL (4 months (if ≥ 5 employees))

Ask Employer

LACTATION LAWS

<table>
<thead>
<tr>
<th>Law</th>
<th>Jurisdiction</th>
<th>Key Protections</th>
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| Fair Labor Standards Act §7(r)           | Federal (national)                | • Reasonable break time for an employee to express breast milk for one year after child’s birth  
                                          |                                                  | • A place, other than a bathroom, with privacy from co-workers and the public |
| Cal. Labor Code §1030-33                  | California                        | • Reasonable amount of break time  
                                          |                                                  | • Reasonable effort to provide employee with a private room for lactation, other than a toilet stall, close to employee’s work area |
| Lactation in the Workplace Ordinance     | San Francisco, effective January 2018 (passed in summer 2017) | • The lactation location must be clean, safe, have a place to sit/place a breast pump, access to electricity, and be close to a sink and a refrigerator  
                                          |                                                  | • Employers must create and disseminate a written lactation accommodation policy and keep records of employee requests for accommodation  
                                          |                                                  | • Requires tenant improvements in certain buildings to include lactation rooms |
WORKPLACE LACTATION LAWS – WHAT ARE THE EXCEPTIONS?

<table>
<thead>
<tr>
<th>Law</th>
<th>Jurisdiction</th>
<th>Application</th>
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<tbody>
<tr>
<td>Fair Labor Standards Act §7(r)</td>
<td>Federal (national)</td>
<td>• For employers with fewer than 50 employees, “undue hardship” – significant difficulty or expense</td>
</tr>
<tr>
<td>Cal. Labor Code §1030-33</td>
<td>California</td>
<td>• Reasonable effort</td>
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<td></td>
<td></td>
<td>• For break time “seriously disrupt” operations</td>
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<tr>
<td></td>
<td></td>
<td>• No specific upper age limit</td>
</tr>
<tr>
<td>Pregnancy-Related Accommodations, Sex Discrimination and Harassment</td>
<td>California</td>
<td>• Applies to all employers with at least 5 employees</td>
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<td></td>
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<td>• Lactation is a pregnancy-related condition</td>
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<td></td>
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<td>• Lactation is a sex-based characteristic</td>
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<td>• For harassment, all employers with 1 employee</td>
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CASE STUDY: LISA

Lisa has a four month old baby. She is preparing to go back to work and wants to pump. She works at a busy restaurant without a staff breakroom. There is a storage closet with cleaning supplies and a small office the manager uses to keep files.

1. What are Lisa’s rights regarding time and space to pump?
2. Where can Lisa take her lactation breaks?
   a. Are they paid breaks?
3. Lisa’s boss told her they can’t provide her space because it’s an undue burden. What do you tell Lisa?
4. What other practical advice or tips do you have for Lisa?
Minority and low-income California residents are less likely to breastfeed.

ON A NATIONAL LEVEL, LOWER INCOME IS CORRELATED WITH LESS BREASTFEEDING

Additionally, parents who use Women, Infants, and Children (WIC) services experience much lower breastfeeding rates.
ACCOMMODATION INCREASES BREASTFEEDING RATES AMONGST WORKING PARENTS

Parents with private space breastfeed for ~1.36 months longer than those with no break time or private space*

<table>
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<tr>
<th>Accommodation</th>
<th>Increased Likelihood</th>
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<tbody>
<tr>
<td>½ as likely</td>
<td>Parents who participated in WIC during pregnancy were one-half as likely to have access to private space compared with those who did not participate in WIC</td>
</tr>
<tr>
<td>2.3x</td>
<td>At six months, employed parents who receive breastfeeding accommodations are 2.3 times as likely to exclusively breastfeed compared to those who do not have adequate accommodations</td>
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<tr>
<td>1.5x</td>
<td>At six months, employed parents who receive breastfeeding accommodations are 1.5 times as likely to exclusively breastfeed with each passing month compared to those who do not have adequate accommodations</td>
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CASE STUDY: LISA

Lisa is having trouble getting the lactation breaks she needs. The manager is often on the phone in her office when Lisa needs to pump and makes comments about the frequency and length of Lisa’s breaks. In addition, no one is available to cover her tables during her breaks.

1. What advise do you have for Lisa?
2. What if the problems persist?
LACTATION ACCOMMODATIONS

- California and federal law require:
  - reasonable break time and
  - private space, not a bathroom
- Breastfeeding harassment, discrimination and retaliation are illegal

CASE STUDY: LISA

Lisa has gotten the time and space she needs to pump, but now her co-worker is constantly making comments about her. He remarks about the size of her breasts and offers to ‘help’, asks her for milk for his coffee after she pumps, and comments about how often she takes breaks while rolling his eyes. Lisa is not sure if her manager overhears these comments, but she is often nearby. Moreover, her manager has cut her hours, saying that she is no longer a productive employee.

1. What advise do you have for Lisa?
2. What if the problems persist?
NEW LAWS IN 2018

- Increased wage replacement rate for SDI and PFL.
- Job protection for 12 weeks of bonding for new parents who work for employers with at least 20 employees
- San Francisco lactation and paid leave protections
Healthy Mothers Workplace Coalition

Healthy Mothers Workplace Awards Program

- Employer self-assessment in three categories: pregnancy and parental leave; lactation accommodations; and work life balance.
- Annual Award Ceremony:
  - Incentivize employers to move up a level each year
  - Policymakers, government officials, employers, advocates, and families discuss workplace policies and health outcomes.
  - Highlight recent improvements to policies and strategies
- Educate employers about their obligations under existing laws and offer sample policies and resources for employers

Healthcare

- Families regularly seek prenatal and pediatric care – virtually every family goes to multiple visits
- Healthcare providers are a trusted source
- Opportunity to intervene at appropriate moment in time with information
- Healthcare providers need support and expertise
- Screening questions and materials in each exam room, waiting area

Trilingual Postcards

Comprehensive Factsheets
Making Changes…

Advocate for innovative public policies to support working parents, including healthcare partners and parents

Educate legislators, employers, parents, healthcare providers

WHAT’S NEXT?

• Ideas?
• Implementation
  • How can we remove barriers?
  • Distribute information and resources?
  • Webinar series with CPSP, EDD and California Work and Family Coalition
• Legislation
  • Proposed statewide lactation bill modeled on San Francisco’s legislation
STAY INVOLVED

- PLEASE complete survey & share your story
- Get additional resources at Legal Aid at Work’s exhibit table
- Sign up for Breastfeeding Action Network: http://californiabreastfeeding.org/coalition-information/breastfeeding-action-network/

QUESTIONS?

Legal Aid at Work
(Formerly Legal Aid Society – Employment Law Center)
www.legalaidatwork.org

Work & Family Helpline
(800) 880-8047

Free legal advice and information in multiple languages.
Thank you to the State Bar of California’s Labor and Employment Law Section for its support.

To enroll in the CA State Bar Labor and Employment Law Section, click here: https://secure.calbar.ca.gov/join/join.aspx

For MCLE credit, please email Julia: jparish@legalaidatwork.org