

Ogletree Deakins

FEDERAL and CALIFORNIA LEAVE LAWS

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
FMLA Family Medical Leave Act	<ul style="list-style-type: none"> • Birth/adoption/foster care • Family members with “Serious Health Condition” • EE’s “Serious Health Condition” • EE’s disability because of pregnancy 	<ul style="list-style-type: none"> • 50 EEs w/i 75 miles • Employed 12 months • 1,250 hours in previous 12 months 	<ul style="list-style-type: none"> • 12 weeks • Per “leave year” as elected by employer • Unpaid unless company benefits available. 	<ul style="list-style-type: none"> • Notice/designation of leave • Maintain Health Insurance for 12 weeks • Return EE to same or equivalent position
CFRA California Family Rights Act	<ul style="list-style-type: none"> • Birth/adoption/foster care • Family members with “Serious Health Condition” (except pregnancy) • EE’s “Serious Health Condition” 	<ul style="list-style-type: none"> • 50 EEs w/i 75 miles • Employed 12 months • 1,250 hours in previous 12 months • California only 	<ul style="list-style-type: none"> • 12 weeks • Per “leave year” as elected by employer • Unpaid unless company benefits available. 	<ul style="list-style-type: none"> • Notice/designation of leave • Maintain Health Insurance for 12 weeks • Return EE to same or equivalent position
PDL California Pregnancy Disability Law	<ul style="list-style-type: none"> • EE’s Disability because of pregnancy or childbirth. • Also includes morning sickness and prenatal care. • Does not include leave to care for newborn. 	<ul style="list-style-type: none"> • Companies with 5 or more EEs • California only 	<ul style="list-style-type: none"> • 17 1/3 weeks (4 months) • Unpaid unless company benefits available. • Separate entitlement, if qualified, to 12 week CFRA leave for baby bonding (PDL does not “count” as CFRA leave). 	<ul style="list-style-type: none"> • Pay ER share of health insurance premium. • Accommodate at work. • Return EE to same position <u>unless</u> legitimate business reasons prevent reinstatement, or, preservation of the employee’s job compromises business safety or efficiency. A <i>comparable</i> position is sufficient.

Abbreviation Key: ER = employer; EE = employee.

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<p>ADA Americans with Disabilities Act</p>	<ul style="list-style-type: none"> Physical or mental disability Condition that limits a major life activity “Qualified individual” with a disability who can perform the essential duties of a job w/ or w/o reasonable accommodation 	<ul style="list-style-type: none"> 15 or more EEs No waiting period. 	<ul style="list-style-type: none"> Case by case basis “Reasonable accommodation” analysis for availability and length Other accommodation options may eliminate need for leave. Undue hardship defense. Part-time leave available. Unpaid unless company benefits available. 	<ul style="list-style-type: none"> Return EE to same position (usually) Engage in interactive process to determine whether a reasonable accommodation exists Maintain Health Insurance for same period of time as other disabled employees
<p>FEHA Fair Employment & Housing Act Gov’t Code §12940</p>	<ul style="list-style-type: none"> Physical or mental disability Condition makes a major life activity more difficult (expansive compared to federal law). EE with a disability who can perform the essential job duties of a job w/ or w/o reasonable accommodation 	<ul style="list-style-type: none"> 5 or more EEs if physical disability is an issue 15 or more EEs if mental disability is an issue California only No waiting period. 	<ul style="list-style-type: none"> Case by case basis “Reasonable accommodation” analysis for availability and length Other accommodation options may eliminate need for leave. Undue hardship defense. Part-time leave available. Unpaid unless company benefits available. 	<ul style="list-style-type: none"> Return EE to same position (usually) Engage in interactive process to determine whether a reasonable accommodation exists Maintain Health Insurance for same period of time as other disabled employees

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
KIN CARE LAW Labor Code §233	<ul style="list-style-type: none"> Family members (includes grandparents, grandchildren and siblings) or domestic partners with an illness, preventative care, or domestic violence issue. 	<ul style="list-style-type: none"> All Employers California only 	<ul style="list-style-type: none"> Up to 1/2 accrued sick leave or PTO; max 6 months of accrual 	<ul style="list-style-type: none"> Paid leave benefits Apply consistent with sick leave policy, if offered Return EE to same or equivalent position
WORKERS COMPENSATION LAW	<ul style="list-style-type: none"> Employee must have sustained an injury arising out of employment and during the course of employment. 	<ul style="list-style-type: none"> All Employers 	<ul style="list-style-type: none"> Until Permanent & Stationery Exceptions relating to business necessity. 	<ul style="list-style-type: none"> Refrain from termination for time unable to work unless demonstrate business necessity (potential Labor Code §132a and Serious & willful claims) Explore any modified or alternative work Maintain Health Insurance for same period of time as other disabled employees
JURY DUTY Labor Code §230(a)	<ul style="list-style-type: none"> Required by law to serve on jury (receipt of a jury summons). 	<ul style="list-style-type: none"> All Employers California only 	<ul style="list-style-type: none"> Time to complete jury service 	<ul style="list-style-type: none"> Cannot reduce weekly wages of exempt EE as long as EE works any part of the workweek EE must give advance notice

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
WITNESS DUTY Labor Code §230(b)	<ul style="list-style-type: none"> • EE required to appear in court as witness, in compliance with a subpoena or court order 	<ul style="list-style-type: none"> • All Employers • California only 	<ul style="list-style-type: none"> • Time to appear in court 	<ul style="list-style-type: none"> • ER may not discharge, retaliate or discriminate against EE
CRIME VICTIM Labor Code §230.2	<ul style="list-style-type: none"> • EE who is victim of a crime • EE who is an immediate family member of a victim, registered domestic partner of a victim or the child of a registered domestic partner of a victim 	<ul style="list-style-type: none"> • 25 or more EEs • California only 	<ul style="list-style-type: none"> • Time to attend judicial proceedings • Employee may use vacation, personal leave or compensatory time 	<ul style="list-style-type: none"> • EE must give ER copy of notice of scheduled proceeding • ER must keep records confidential • Unscheduled leave requires documentation of proceeding • ER may not discharge, retaliate or discriminate against EE
DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING VICTIM Labor Code §§230 & 230.1	<ul style="list-style-type: none"> • For medical attention; • To obtain services from a program; • To participate in a safety course; or • To ensure welfare of victim or his/her child 	<ul style="list-style-type: none"> • 25 or more EEs • California only 	<ul style="list-style-type: none"> • Time to obtain relief • Employee may use vacation, personal leave or compensatory time 	<ul style="list-style-type: none"> • EE must give advance notice • ER must maintain confidentiality • Unscheduled leave requires certification • ER may not discharge, retaliate or discriminate against EE • Reasonable accommodations (safety measures)

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
MILITARY LEAVE (USERRA)	<ul style="list-style-type: none"> • Past or present member of the uniformed services; • Have applied for membership in the uniform services; or • Are obligated to serve in the uniformed services 	<ul style="list-style-type: none"> • All Employers 	<ul style="list-style-type: none"> • EE protected for a cumulative total of 5 years while providing service 	<ul style="list-style-type: none"> • ER may not deny initial employment • EE has right to reemployment if satisfies requirements • ER may not discharge, retaliate, deny promotion or deny a benefit based on EE military status • ER must provide continual health care coverage
MILITARY LEAVE (SSCRA)	<ul style="list-style-type: none"> • EE entering or called to active duty • Includes training or education 	<ul style="list-style-type: none"> • All Employers 	<ul style="list-style-type: none"> • No maximum period of protected leave 	<ul style="list-style-type: none"> • EE has 90 days after service to apply for reemployment • After reemployment ER may not discharge for 1 year without good cause • ER rehire to similar position
MILITARY SPOUSE LEAVE (California)	<ul style="list-style-type: none"> • Spouse is married to member of U.S. Armed Forces, Reserves, or National Guard • Member of military is on leave from a “qualified deployment” as defined in the statute. 	<ul style="list-style-type: none"> • EE works at least 20 hours per week • California employers • 25 or more EEs 	<ul style="list-style-type: none"> • 10 days, unpaid unless the employee elects to substitute paid leave such as vacation or PTO. 	<ul style="list-style-type: none"> • EE to provide at least 2 days advance notice from the date he/she received “official notice” of military member’s leave from deployment.

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
<p>FMLA Family Military Leave</p>	<ul style="list-style-type: none"> Employee has spouse, son, daughter, parent or “next of kin” who is a servicemember or veteran. Servicemember includes any branch of armed forces. Servicemember receiving medical treatment for serious illness or injury from line of duty, or family member time off to deal with “qualified exigency.” Veterans: treatment within five years of service. 	<ul style="list-style-type: none"> 50 EEs w/i 75 miles Employed 12 months 1,250 hours in previous 12 months Same as for “regular” FMLA 	<ul style="list-style-type: none"> 26 weeks per year relating to injury or illness of servicemember. 12 weeks for “qualified exigency” (basically, activities related to deployment). Cumulative with “regular” FMLA leave, for a combined maximum of 26 weeks in a year. 	<ul style="list-style-type: none"> Maintain Health Insurance for 26 weeks Return EE to same or equivalent position
<p>SCHOOL ACTIVITY Labor Code §§ 230.7 & 230.8</p>	<ul style="list-style-type: none"> EE is parent, grandparent or guardian of children in licensed day care, kindergarten or grades 1 to 12 EE takes time to participate in school activities, school emergency, or enrolling child. Also: LC 230.7 provides leave for EE required to attend school pursuant to a suspension per Ed. Code 48900.1. 	<ul style="list-style-type: none"> 25 or more EEs California only 	<ul style="list-style-type: none"> 40 hours a year, no more than 8 hours each month 	<ul style="list-style-type: none"> EE must give advance notice EE shall utilize vacation, personal leave or time without pay ER can require documentation of participation in school activity ER may not discharge, retaliate or discriminate against EE

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
<p>VOTING Cal. Elec. Code §14000</p>	<ul style="list-style-type: none"> • State-wide election • Voter doesn't have sufficient time outside of work to vote 	<ul style="list-style-type: none"> • All Employers • California only 	<ul style="list-style-type: none"> • Enough working time to vote, when combined with available time off shift • 2 hours maximum of paid time off 	<ul style="list-style-type: none"> • Time off shall be at the beginning or end of working shift • EE must give two days notice if knows time is needed three days prior to election
<p>LITERARY EDUCATION Labor Code §§1040-1044</p>	<ul style="list-style-type: none"> • EE reveals a problem of illiteracy and requests ER assistance in enrolling in an adult literacy education program 	<ul style="list-style-type: none"> • 25 or more EEs • California only 	<ul style="list-style-type: none"> • Reasonable time 	<ul style="list-style-type: none"> • ER must accommodate EE and assist in adult literacy program unless it creates undue hardship • ER must maintain confidentiality • ER not required to provide time off with pay for program • ER can't terminate if EE satisfactorily performs work
<p>CIVIL AIR PATROL Labor Code §1500</p>	<ul style="list-style-type: none"> • Emergency call to duty by California Wing of the Civil Air Patrol 	<ul style="list-style-type: none"> • Volunteer members of California Wing of the Civil Air Patrol • Employed for at least 90 days • 15 or more EEs 	<ul style="list-style-type: none"> • Three days of leave per event, and a total of 10 days per calendar year. 	<ul style="list-style-type: none"> • EE gives as much notice as possible • ER may require certification • Reinstatement to same or equivalent position

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LAW	QUALIFYING EVENTS	COVERED EMPLOYEES	LEAVE ENTITLEMENT	OBLIGATIONS
<p>CALIFORNIA PAID SICK LEAVE</p> <p>(New 2015) Labor Code 245 et seq.</p>	<ul style="list-style-type: none"> • Law effective July 1, 2015. • Employee for at least 30 days within the state of California. • Accrual begins on day one of employment. • Entitled start using accrued leave time upon completion of 90 days of employment. • Employer may substitute a PTO benefit that is equal to or greater than legal mandate. • Employee must provide reasonable advance notice of the need to use the paid sick leave. • Notice as soon as practicable if unforeseeable. 	<ul style="list-style-type: none"> • Employers of any size. • Full time and part time employees. • Temporary and permanent employees. • Exempt and non-exempt employees. • Exclude: Certain unionized employees subject to collective bargaining agreements, in-home supportive services employees; airline flight and cabin crews. 	<ul style="list-style-type: none"> • (1) One hour of paid sick leave for every 30 hours worked, or per-pay period if given at least 24 hours by 120th day; or (2) lump sum 24 hours per year. • Leave can be used for employee’s own health condition, or a family member’s condition (includes parents, children (any age) spouses and registered domestic partners, grandparents and grandchildren, and sibling). • Victims of sexual assault, stalking, domestic violence. • Includes preventative care. • Minimum use increment cannot exceed 2 hours. • Employer may cap use at 24 hours per year. • Employer may cap accrual at 48 hours per year. 	<ul style="list-style-type: none"> • Post notice of legal rights in workplace. • Distribute Labor Code 2810.5 notice to all employees, designating type of sick pay benefits. • Specify amount of paid sick time available for use on paystub or other document for each pay period. • Allow use upon verbal request for qualifying reason. • Sick pay need not be cashed out upon termination (unless it is PTO). • Employers may not discriminate or retaliate against employees who exercise their rights. • May not require employees to find a substitute. • Paid out at “regular rate” of pay for workweek, or a 90 day average. Exempt employees paid at rate otherwise specified for PTO.

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VOLUNTEER EMERGENCY PERSONNEL Labor Code §§230.3 & 230.4	<ul style="list-style-type: none"> • EE is volunteer firefighter, reserve peace officer or emergency rescue personnel • To provide emergency services (e.g., EMS) 	<ul style="list-style-type: none"> • 50 or more EEs • California only 	<ul style="list-style-type: none"> • Time to perform emergency duty not to exceed 14 days per calendar year 	<ul style="list-style-type: none"> • ER may not discharge, demote, suspend or discriminate against EE
ALCOHOL / DRUG REHAB Labor Code §§1025-1028	<ul style="list-style-type: none"> • EE wishes to voluntarily enter alcohol or drug rehabilitation program 	<ul style="list-style-type: none"> • 25 or more EEs • California only 	<ul style="list-style-type: none"> • Time to complete program 	<ul style="list-style-type: none"> • ER shall reasonably accommodate EE, provided it doesn't impose undue hardship on ER • ER must maintain confidentiality • ER not required to provide time off with pay
ORGAN DONOR LEAVE Labor Code §§1508-12	<ul style="list-style-type: none"> • Leave taken to donate organ or bone marrow. 	<ul style="list-style-type: none"> • 15 or more EEs • California only 	<ul style="list-style-type: none"> • Paid leave up to 30 business days/year for organ, 5 business days for bone marrow. • Can be taken in increments. • ER may require use of PTO, max 2 weeks for organ, 5 days for bone marrow 	<ul style="list-style-type: none"> • EE to provide doctor's note. • Health care maintained. • Reinstatement to same job, no break in service. • No discrimination, retaliation. • No concurrent FMLA/CFRA.

Questions about leaves of absences?

Chris Olmsted is a shareholder with Ogletree Deakins, with extensive experience with employee leaves of absence and other employment law issues. Please contact him by calling (858) 652-3111 or emailing him at christopher.olmsted@ogletreedeakins.com.

The information presented herein is intended as a brief overview of the law and is not intended to substitute as legal advice. Any questions or concerns regarding any statute or case law should be addressed to a licensed attorney.