



Leaves Laws that Impact Educators

Family Leave Requirements for California

Educators in need of time off to care for themselves or family members with a serious medical condition have two different laws under which they can take time off: the federal **Family and Medical Leave Act (FMLA)** (29 USC 2601-2654, 29 CFR 825.100-825.127) and the **California Family Rights Act (CFRA)** (CA Gov. Code 12945.2, 2 CCR s. 11087-11097). Let's compare the two laws side by side:

Employee Eligibility Rules:	FMLA (Federal)	CFRA (California)
Number of employees	50 employees within a 75-mile radius	At least 5 employees
Length of time with employer	At least 12 months	At least 12 months
Hours worked in last 12 months	At least 1250*	At least 1250*
Amount of leave	12 work weeks in 12-month period = 60 workdays for 5 day/week employees	12 work weeks in 12-month period = 60 workdays for 5 day/week employees
Covers Pregnancy Disability	No	Yes, with no eligibility period
Covers Domestic Partners	No	Yes

*Work spent outside of the contract day grading papers, developing curriculum, etc. count towards the necessary 1250 hours in the last 12 months. Ed Code 87489(e)(1) credits 3.35 hours for each hour of lecture or classroom time for community college faculty. This ratio in ed code can be leveraged to calculate hours for part-time educators to meet the 1250 hour threshold.

Allowable Leaves:	FMLA (Federal)	CFRA (California)
Birth, adoption, or placement of a foster child (must be completed within the first 12 months of birth or placement of child)	Yes. If both parents work for the same District, the District may aggregate (combine) their 12-week leave.	Yes. If both parents work for the same District, the District CANNOT aggregate (combine) their 12-week leave. Requires a minimum duration of two weeks. Employee can request a leave of less than two weeks on two separate occasions.
Employee's serious medical condition*	Yes	Yes
Eligible Family members	Spouse, child, or parent	Spouse, child, parent, domestic partner, grandparent, grandchildren, siblings, designated person
Serious medical condition* for "loco parentis"***	Yes	Yes

*serious medical conditions are ≥ 3 days in duration or chronic that require medical appointments of more than 2x/year.

**loco parentis is defined as someone with the day-to-day responsibilities to care for and financially support a child (or an adult) incapable of self-care due to mental or physical disability. For an employee, their loco parentis when they were a child are FMLA/CFRA eligible. A biological or legal relationship is not necessary.

Substitution of Paid Leave:	FMLA (Federal)	CFRA (California)
Employer may require/employee may elect to use accrued sick leave for their own serious health condition*	Yes	Yes
Employer may require employee to use sick leave for the birth, adoption or foster care of a child**	Same rules for any sick time use apply	Same rules for any sick time use apply

**check your contract and/or District policy for more information. This is a mandatory subject of bargaining and Associations can negotiate benefits beyond what the law allows, as laws are floors, not ceilings on benefits.*

Benefits of Leave	FMLA (Federal)	CFRA (California)
Employers must continue to pay for medical coverage for an employee on leave	Yes	Yes
Employer can recover premiums if employee fails to return from leave*	Yes	Yes
Guaranteed time off	Yes	Yes
Job protection; return to substantively similar position	Yes	Yes
Paid time off	No	No
Use time intermittently, reduced schedule, or as a block	Yes, with a max of 1-hour increments for intermittent leave	Yes, with a max of 1-hour increments for intermittent leave
Reduced schedule for bonding leave	Requires employer agreement	Requires employer agreement
Use for Pregnancy Disability Leave	Yes	No

**if the employee's failure to return is NOT due to the continuation, recurrence or onset of serious health condition or other circumstances beyond the control of the employee.*

Military Duty Injury Coverage: Both FMLA and CFRA allows up to 26 weeks of leave to care for a spouse, child, or parent who becomes ill or injured in the line of duty while on active military duty. (FMLA also allows this 26 week leave for injured family member that is your next of kin; e.g. closest living relative.)

Military Leave (Qualifying Exigency): both FMLA and CFRA includes 12 weeks of "qualifying exigency" related to active duty, such as short notice deployment, military and related activities, childcare/school/financial arrangements, etc.

Other Important Leaves

Sick Leave (K-12 Ed Code 44978) (Community College Ed Code 87781)
10 days per year for full-time certificated employees (prorated for part-timers)
Accumulates from year to year, never expires and there is no limit on sick bank
Credit for leave of absence need not be accrued prior to taking the leave by the employee
Leave may be used at any time during the school year
Sick leave is transferrable between Districts (Ed Code 44979), between County Offices (Ed Code 44980) and Community Colleges via a "Benefits Express Form"
You can apply your sick leave to your pension via the "Benefits Express Form"

Differential Pay (K-12 Ed Code 44977) (Community College Ed Code 87780)

Up to 5 months (100 workdays) of differential pay due to illness or injury AFTER exhausting all annual and accumulated sick leave

Only one leave per year, per illness or incident, regardless of number of incidents; can be spread between school years; intermittent use is not guaranteed

Default pay is regular salary MINUS the amount paid to a sub OR the amount a sub would have been paid; UNLESS the District adopts a rule providing employee must be paid 50% or more of regular pay after exhausting all sick leave, per Ed Code 44983

When sick leave and differential pay is exhausted and the employee is not medically able to resume duties, the employee is placed on a reemployment list for a position they are credentialed and qualified for: 24 months for probation employees and 39 months for permanent, per Ed Code 44978.1

Industrial Accident and Injury Leave (K-12 Ed Code 44984) (Community College Ed Code 87787)

Employees whose workers' compensation claims are approved are entitled to at least 60 workdays of full salary, in addition to accrued sick days

If illness/injury goes between school years, the 60 days is the total per illness/injury. However, if the district doesn't have limits on this leave, it can be unlimited

After leave is exhausted, the employee is entitled to extended leave under Ed Code sections 44977, 44978, and 44983

Pregnancy Disability Leave (PDL) (CA Gov't Code §12945, 2 CCR §11035-11051)

Employers with 5 or more employees must provide up to four months leave for pregnancy, childbirth (6 weeks for vaginal birth, 8 weeks for C-Section) or related conditions

No requirement on length of employment or hours worked

Must use accrued leave during pregnancy disability leave

Runs concurrently with FMLA, but not CFRA (which doesn't recognize pregnancy as a disability). Employee is eligible for additional 12 weeks of baby bonding leave after PDL has expired through CFRA

Covers reasonable accommodation such as modified duties or frequent bathroom breaks

District must continue paying their portion of health insurance

While on PDL, employee is eligible for Differential Pay under Ed Code 44977 (K-12) and 87780 (Community Colleges)

Differential Pay for Child Bonding Leave (K-12 Ed Code 44977.5) (Community College Ed Code 87780.1)

Up to 12 weeks of parental leave under FMLA/CFRA for the birth or placement of a child in connection with adoption or foster care of the child (runs concurrent with CFRA)

Must use all available and accumulated sick leave, then differential pay of no less than 50% of employee's regular salary (depending on whether the district follows Ed Code 44977 or 44983)

Parental leave is limited to 12 weeks in any 12-month period which may span different school years.

Unlike FMLA/CFRA, part-time employees are eligible and there is no 1250 hours worked rule

Kin Care (Expanded Sick Leave) (CA Labor Code 233)

Employees are allowed to use at least ½ annual accrued sick leave to care for a sick child, parent, spouse or domestic partner (remaining sick leave may be restricted for employee's own illness)

If the leave qualifies for FMLA or CRFA protection, paid leave runs concurrently and does not extend the maximum period of FMLA or CFRA leave

Family School Partnership Act (School Visitation Leave) (CA Labor Code 230.8)

Employers with 25 or more employees at the same location are entitled to take up to 40 hours of leave each year, but not more than 8 hours per month for school related activities

Children in K-12 or a licensed day care are covered

Employees must give reasonable notice and use their existing vacation or personal time for pay or may take the leave as unpaid time off

Employers may require proof of participation in school related activities

If both parents work for the same District, only the first parent to request time off may be approved

Can be used for childcare or school emergency, such as an illness, a behavior problem, or closure

Lactation Accommodation Laws (CA Labor Code 1030-33)

Employed mothers have a right to reasonable break time to express milk; if employees need more time, employers must allow it unless it would “seriously disrupt” operations, but it may be unpaid

Restricting a mother to pump only during lunch breaks is not “reasonable” under the law

Employers must provide private lactation space, free from intrusion (not a bathroom stall), in close proximity to the employee’s work area; this may be the employee’s normal work area if the space meets the lactation requirements

Fair Employment and Housing Act and the Equal Employment Opportunities Act

The Fair Employment and Housing Act (FEHA) is a broad, antidiscrimination law that protects Californians and, in many ways, is similar to the Equal Employment Opportunities Act (EEOA), but there are important differences. FEHA is enforced by California’s Civil Rights Department (formerly the Department of Fair Employment and Housing) and the EEOA is enforced by the Equal Employment Opportunities Commission (EEOC).

Timelines for Filing a Complaint Under FEHA	Timelines for Filing a Complaint with the EEOC
Up to three years from the date of the discrimination	180 days from the date of discrimination, extended 300 days if there is a state, or local agency prohibits discrimination on the basis of alleged in the EEOC claim
	For age discrimination claims, there must be a state law prohibiting age discrimination

Under both FEHA and EEOA, before you file a claim in civil court, you must first exhaust your administrative remedies, e.g., you cannot sue an employer before you have filed a claim with the DFEH or EEOC. A “Right to Sue” letter will be issued by either agency after the completion of its investigative process and is the prerequisite to filing a claim in civil court. Usually, the best course of action is to immediately request a “Right to Sue Letter” due to the long investigative period at these agencies, which have limited resources to investigate.

Based on an agreement between the agencies, claims filed with one agency are concurrently filed with the other agency. Once you have been issued a “Right to Sue Letter”, the EEOC allows you 90 days from receipt to file a

claim in civil court. The Civil Rights Department allows one year to file in civil court after receipt of the “Right to Sue Letter.”

Discrimination and/or Harassment Prohibited on the Following Basis:

Fair Employment and Housing Act (CA):	Equal Employment Opportunities Act (Federal):
Race, color religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, age, pregnancy, denial of medical and family care leave, pregnancy disability leave, or retaliation based on any of these protected categories	Race, color, national origin, age, mental or physical disability, sex, and religion; does not protect against sexual orientation discrimination and/or harassment

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life and ensures people with disabilities (physical or mental medical conditions that limits major life activities) have the equal rights and opportunities.

The ADA allows employees with disabilities to request “reasonable accommodations” to help them do their job. ADA can be complex and confusing and if an employee needs ADA assistance, contact your Primary Contact Staff (PCS) at CTA to ask for help or a GLS referral.

Americans With Disabilities Act (ADA) Points To Keep In Mind:
Both the ADA and FEHA require employers to engage in a timely, good faith interactive process to accommodate an employee’s disability
Employers must provide “reasonable” accommodations (which may cost money)

Three ways an employer is triggered to start a timely, good faith interactive process:
Employee requests an accommodation (regardless of the words used)
The employer’s perception of a disability impacting the employee’s work (e.g. performance changes, attendance problems/changes, rumors with an impact on work performance)
The employer’s knowledge of work restrictions/functional limitations impacting work (usually accompanied with medical note listing work restrictions)

Do’s for Interactive Meetings	Don’ts for Interactive Meetings
	Don’t ask what condition an employee has, treatment they are receiving, prognosis, or medications they take
What medical restrictions does the employee have (back up with medical note), such as “must sit down as necessary” (the accommodation should be jointly determined during the interactive meeting)	Don’t have the medical professional determine the accommodation, such as placing a chair in a classroom for an employee to sit as needed
Understand the essential functions of the job that must be met for an accommodation to be met (e.g., teaching physical education requires the ability to articulate physical movements, not actually model the movement themselves)	Don’t think how the job has always been completed (e.g., the physical education requires running with students) but how the essential functions of the position can be done with accommodations

How Leaves Interact With Each Other

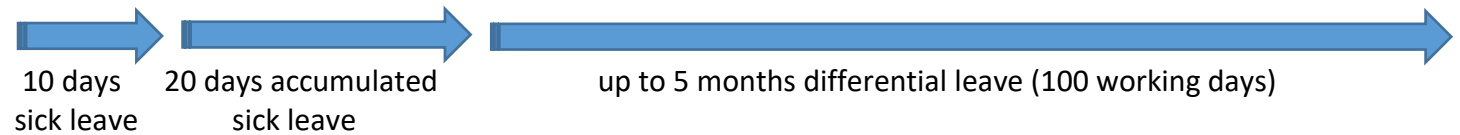
Example 1: Illness and Extended Illness Leave

10 days of current year sick leave

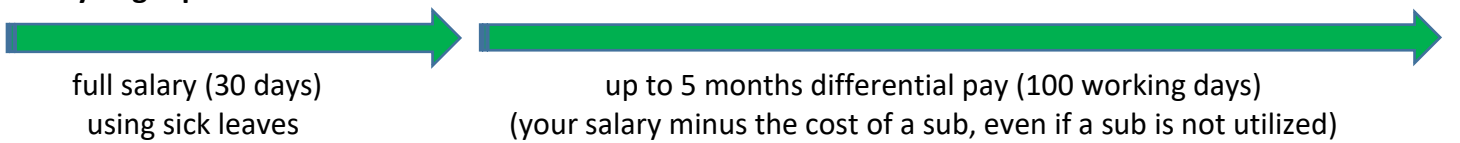
20 days of accumulated sick leave

Differential Pay Leave Ed Code 44977 (K-12) or 87780 (Community College)

How time off works:



How you get paid*:



**check your contract for possible catastrophic leave; disability payments possible if you have coverage*

Example 2: FMLA and/or CFRA Leave

FMLA/CFRA leave running concurrently with paid leaves

10 days of current year sick leave

20 days of accumulated sick leave

Differential Pay Leave

How time off works:



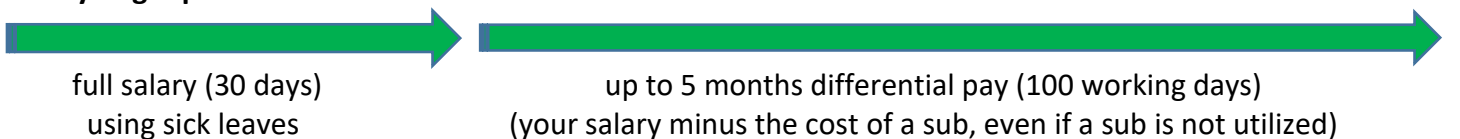
Which leave you can take to guarantee time off:



FMLA/CFRA (12 weeks) (Employers can run FMLA and CFRA concurrently)

(FMLA/CFRA guarantees time off, but not pay; payment is through sick leave or differential pay)

How you get paid*:



**check your contract for possible catastrophic leave; disability payments possible if you have coverage*

Example 3: Pregnancy Disability Leave and Child Bonding Leave

Assuming 6 weeks of Pregnancy Disability Leave

FMLA leave running concurrently with paid leaves

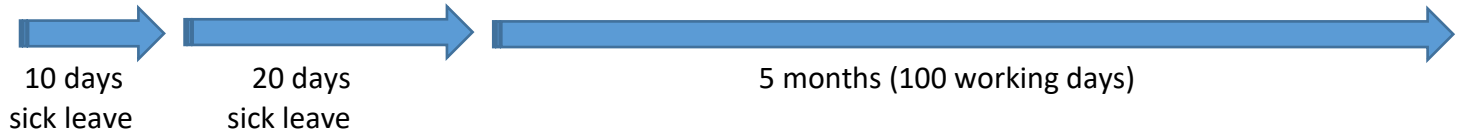
CFRA child-bonding and Ed Code 44977.5 (K-12) or 87780.1 (Community College)

10 days of current year sick leave

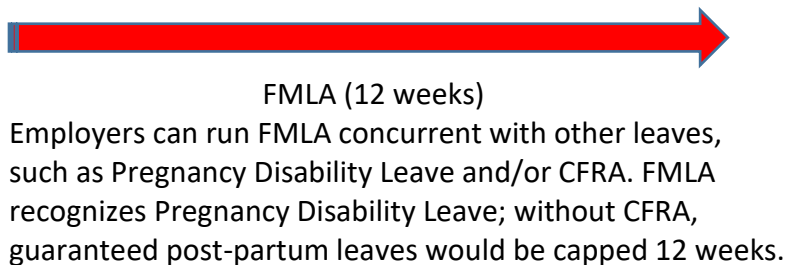
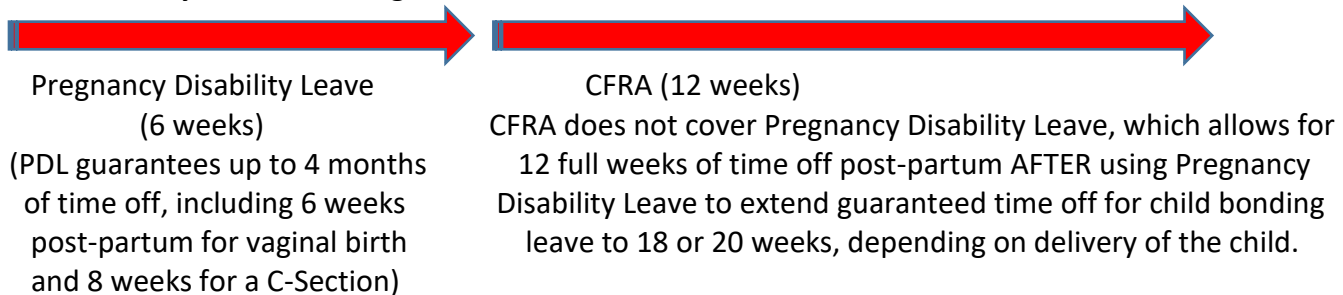
20 days of accumulated sick leave

Differential Pay Leave Ed Code 44977 (K-12) or 87780 (Community College)

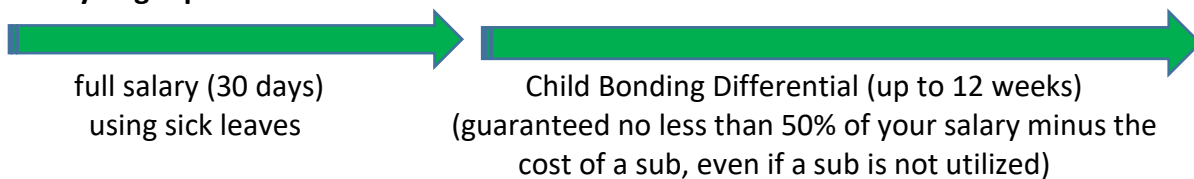
How time off works:



Which leave you can take to guarantee time off:



How you get paid*:



**check your contract for possible catastrophic leave; disability payments possible if you have coverage*

Example 4: Workers Compensation Leave

FMLA/CFRA leave running concurrently with paid leaves

10 days of current year sick leave

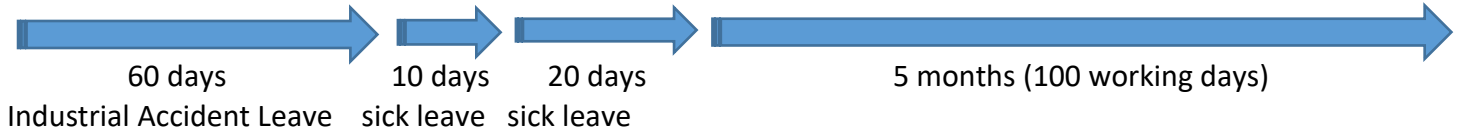
20 days of accumulated sick leave

Differential Pay Leave Ed Code 44977 (K-12) or 87780 (Community College)

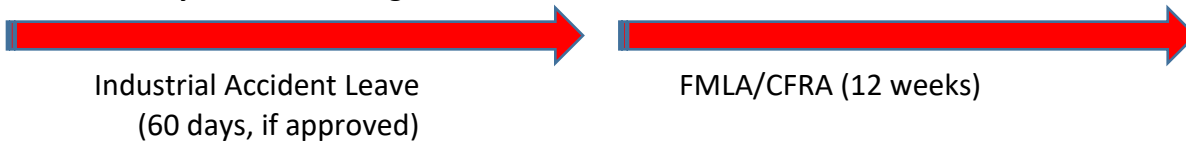
60 days Industrial Accident Leave Ed Code 44984 (K-12) or 87787 (Community College)

2/3 disability payment

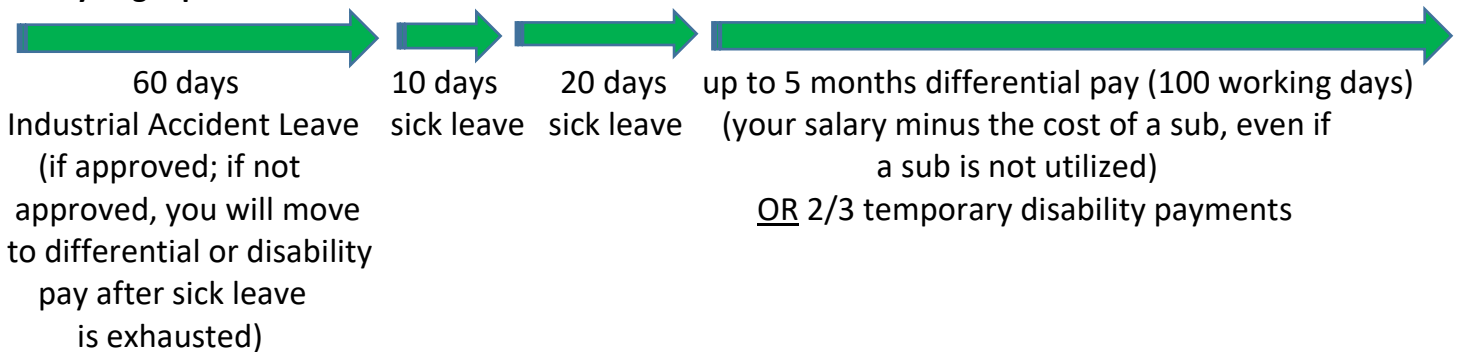
How time off works:



Which leave you can take to guarantee time off:



How you get paid*:



**check your contract for possible catastrophic leave; disability payments possible if you have coverage*