

Abstract

The Family and Medical Leave Act (FMLA) is a federal law with specific manifestations at the state level. This white paper will cover key differences of the FMLA between federal regulations and those that apply specifically to the state of California.

Key Differences Between Federal and California Regulations

While both the federal and California regulations of the FMLA provide fair, job-protected, unpaid leave that is designed to benefit both the employer and employees, California elements expand on the baseline federal laws. California is one of four states to expand the definition of “family” to include a domestic partner. In addition to providing leave for family and medical reasons, California also expands the reasons to include:

- Pregnancy disability leave
- Military spouse leave
- Family sick leave (Kin Care)
- Leave for victims of domestic and sexual assault
- Organ and bone marrow donation leave

The expanded leaves are detailed below:

Pregnancy disability leave

- Applies to employers with 5 or more employees
- Eligible employees include females who have been disabled by pregnancy, childbirth, or a related medical condition
- Leave amount is defined as “a reasonable amount of time” (up to 4 months)
- For substitution of Paid Leave, the employee is entitled to use any accrued vacation leave
- The employer may require employees to give reasonable notice of their leave request and to provide the start date and estimated length of the leave

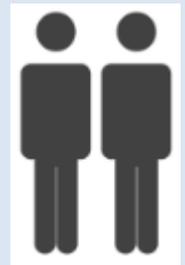
Military spouse leave

- Applies to employees with 25 or more employees
- Eligible employees include the spouse of a military member who works an average of 20 or more hours per week
- Leave amount is up to 10 days during the military member’s leave from deployment
- Unpaid leave for the spouse of the military member during a period of military conflict
- For substitution of paid leave, the employer can allow employees to take a leave that they otherwise are entitled to take
- Employers may not retaliate against an employee for taking leave
- Employees must provide notice of leave within 2 business days of receiving official notice of leave from deployment
- Employees must provide written documentation certifying that the military member will be taking leave from deployment during the time of the employee’s leave request



FMLA: California Elements

The State of California incorporates its own elements of the FMLA, designed to protect employers and employees.



Domestic Partners Recognition

California—along with Maine, Oregon, and Rhode Island—expand the definition of “family” to include domestic partners.



Expansion of Regulations

California expands the reasons for leave to include: pregnancy, military spouse, kin care, domestic/sexual assault, and organ/bone marrow donation.

Family sick leave (Kin Care)

- Applies to any employer that provides sick leave for employees
- Eligible employees include those who have accrued and available sick leave
- Leave amount is up to 6 months of the employee's accrued sick leave. Leave may be used to care for an ill child, parent, spouse or domestic partner of the employee.
- Does not provide a substitution of paid leave
- Employer may not threaten to discharge, demote, suspend, or discriminate against an employee for using sick leave to care for an ill child, parent, spouse, or domestic partner
- All conditions and restrictions placed by the employer upon the use of sick leave also apply to the use of sick leave to care for an employee's ill child, parent, spouse, or domestic partner

Leave for victims of domestic and sexual assault

- Applies to employees with 25 or more employees
- Eligible employees are those who are victims of domestic violence or sexual assault
- Leave amount is unspecified, but it does not extend the leave period under the FMLA
- Type of leave includes:
 - Seeking medical attention for injuries caused by domestic violence or sexual assault
 - Obtaining services from a domestic violence shelter, program, or rape crisis center
 - Obtaining psychological counsel related to an experience involving domestic violence or sexual assault
 - Participating in safety planning or taking other actions to increase safety from future instances of domestic violence or sexual assault, including temporary or permanent relocation
- Employees may use available vacation, compensatory, or personal leave time
- Employer may not discharge or discriminate against an employee for taking leave
- Employees must give reasonable advance notice of their intention to take time off, unless it is not feasible to do so
- When an unscheduled absence occurs, employers may not take action against employees as long as they provide certification within a reasonable amount of time. Certification can be in the form of medical documentation, a police report, or court order

Organ and bone marrow donation leave

- Applies to employees with 15 or more employees
- Eligible employees are organ or bone marrow donors who have been employed for at least 90 days immediately prior to leave
- Leave amounts detailed:
 - Organ donor – Not to exceed 30 business days within a 1-year period for the purpose of donating an organ to another person; employers may require employees to take up to 2 weeks of earned by unused sick leave, vacation, or paid time off
 - Bone marrow donor – Not to exceed 5 business days within a 1-year period for the purpose of donating bone marrow to another person; employers may require employees to take up to 5 days of earned by unused sick leave, vacation, or paid time off

- Employees who serve as an organ or bone marrow donor are eligible to receive paid leave
- To request leave, employees must provide written verification to their employer that they are an organ or bone marrow donor due to a medical necessity

NOVAtime's Business Solutions Comply with California FMLA

Located in Los Angeles County, NOVAtime is especially familiar with the specific elements of the FMLA as it applies to California. As such, NOVAtime's Professional Services team is able to provide workforce management solutions that comply with the FMLA while benefiting an employer's bottom line. Compliance with California's regulations can pose technical challenges, and NOVAtime is prepared to train and implement workforce management solutions as specific needs are uncovered for each unique business. With tens of thousands of implementations over the course of the past 16 years, NOVAtime has the experience to work with state and federal regulations while also offering the best cost-saving solutions for any organization.

Conclusion

While the FMLA is a federal law created for employees and their families, specific elements of the FMLA are expanded within California, and this poses a challenge to compliance and business operations. NOVAtime has the experience and expertise to implement services compliant to California while offering a cost-efficient and best-of-breed workforce management solution.

NOVAtime Technology, Inc. was established in 1999 and is headquartered in Diamond Bar, California. By applying the most innovative technology and providing best practice services, NOVAtime has become a leader in the Time and Attendance / Workforce Management industry. Over 10,000 organizations have benefitted from the use of NOVAtime solutions, and the world's best-managed companies continue to select NOVAtime as the preferred solution provider. For more information about NOVAtime, please visit www.novatime.com or call 1-877-486-6682.