

Managing and Understanding Leaves

**California Association of School Business Officials
Annual Conference
March 30, 2022**

Presented by:

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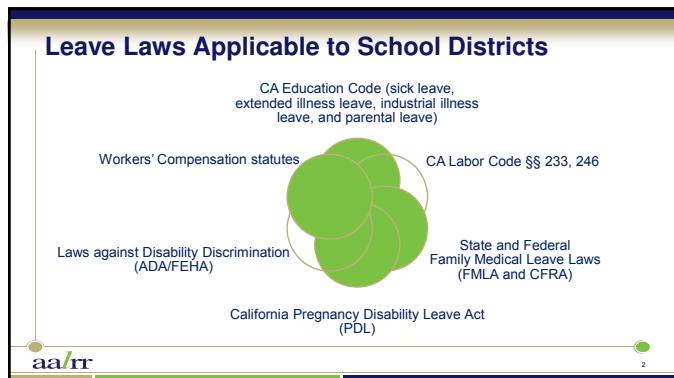


Agenda

- **Part 1: Family and Medical Leave**
(1:45pm - 2:45pm)
- **Part 2: Education Code issues; COVID leave issues**
(3pm – 4pm)

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Challenges for California School Employers

Education Code already VERY GENEROUS even without added FMLA/CFRA/PDL protections.

Leave rights may be expanded even further by Board Policy, past practice and collective bargaining provisions.

Certificated, academic, and classified employee leave rights are governed by parallel, and *almost* identical Ed. Code provisions.

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Reminder

- This presentation covers the statutes and regulations, which establish minimum levels of leave benefits.
- Districts and county offices have the authority to grant greater leave rights.
- Leaves are within the scope of bargaining. Changes in contract language or past practice require negotiation.

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Family and Medical Leave: A Practical Guide for Employers

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Overview of FMLA and CFRA	
<p>Family and Medical Leave Act of 1993 (FMLA)</p> <ul style="list-style-type: none">• 29 U.S.C. §2601, <i>et seq.</i>• U.S. Department of Labor• www.dol.gov/whd/fmla	<p>California Family Rights Act (CFRA)</p> <p>Gov't Code §12945.2</p> <p>California Department of Fair Employment and Housing</p> <p>www.dfeh.ca.gov/family-medical-pregnancy-leave</p>

Overview of FMLA and CFRA

Eligible employees are entitled to:

- 12 workweeks of unpaid leave in a defined 12-month period for qualifying reasons.
- Continuation of health insurance.
- Reinstatement.
- No discrimination or retaliation.
- Significant expansion of CFRA effective January 1, 2021, and January 1, 2022.

CFRA Expansion

Effective January 1, 2021:

- Eligible employees may now take leave to care for Grandparent, Grandchild, Sibling, and Child (of any age), or for a qualifying exigency relating to a family member's military deployment overseas.
- Public employees are eligible regardless of their employer's or work location's size.
- If both parents of a new child work for the same employer, each is entitled to 12 workweeks of childbonding leave.
- Employers may no longer deny reinstatement to certain highly compensated employees.



CFRA Expansion

Effective January 1, 2022:

- Revised definition of "parent" to include "parent-in-law" so eligible employees may now take leave to care for a parent-in-law with a serious health condition.

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Pregnancy Disability Leave Act

- Gov't Code §12945
- California Department of Fair Employment and Housing
- www.dfeh.ca.gov/family-medical-pregnancy-leave/
- 4 months of unpaid leave for disability due to pregnancy, childbirth, or related medical conditions.
- Continuation of health insurance on the same terms as if working.
- Reinstatement to same or equivalent position.
- Protection against discrimination and retaliation.

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Paid Parental Leave

- aka AB 2393
- Ed. Code §§44977.5, 45196.1, 87780.1, and 88196.1
- Up to 12 workweeks of leave in 12-month period to care for and bond with an employee's newborn child, or child newly placed for adoption or foster care.
- Employee may use up to 12 workweeks of current and accumulated sick leave.

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FMLA/CFRA: Eligibility

Eligibility:

- Employed for at least 12 months. (FMLA/CFRA)
- Employee has actually worked 1,250 hours in the 12 months immediately prior to the leave. (FMLA/CFRA)
- Employee works at a location with 50 or more employees within a 75-mile radius. (FMLA only)
- Has not exhausted 12 workweeks of leave within 12-month period. (FMLA/CFRA)

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FMLA/CFRA Eligibility: Employed 12 Months

- To be eligible, employee must have been employed by the employer for at least 12 months.
- Need not be consecutive.
- Include summer breaks where employed spring and fall.
- For day-to-day substitutes, one day in a week counts as one week, which accumulate to 52 weeks.
- Include all types of work for employer.
- Must go back at least seven years to determine 12 months.
- Includes employees who leave and are reemployed with a gap of less than 7 years.

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FMLA/CFBA Eligibility: 1,250 Hours Worked

Employee must have actually worked 1,250 hours in the 12 months immediately preceding the leave

- Excludes hours in paid status, such as holidays or paid leaves.
- Excludes unpaid leaves.
- Full-time instructors are presumed to work 1,250 hours each school year.
- Include hours worked in all assignments including extra time and overtime (counted as straight time).
- Paid and unpaid military leaves count as time worked.

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FMLA Eligibility: 50 Employees

- FMLA requires that the employee work at a location with at least 50 employees of same employer within a 75-mile radius.
- Persons are “employed” if they are on the payroll whether or not actually working.
- Excludes employees of another employer working at the same site.
- Effective 1/1/21, this rule no longer required for CFRA eligibility.

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FMLA/CFRA Eligibility: 12 Workweeks of Leave

- Eligible employees are entitled to 12 workweeks of leave in a defined 12-month period: calendar year, fiscal year, or rolling year.
- Must adopt/negotiate 12-month period definition.
- 12 workweeks of leave in 12 months for all reasons combined, not per reason.
- 26 workweeks of military caregiver leave commencing on the first day of leave.

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FMLA/CFRA Qualifying Reasons

- Serious health condition of the employee. (FMLA/CFRA)
- To care for a parent, spouse, registered domestic partner (CFRA only), or minor child or adult child with a disability and incapable of self-care, with a serious health condition. (FMLA/CFRA)
- To care for a grandparent, grandchild, sibling, parent-in-law, or child regardless of age, or disability or dependency status, with a serious health condition. (CFRA only)
- Birth of an employee's child or placement of a child with the employee for adoption or foster care. (FMLA/CFRA)

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FMLA/CFRA Qualifying Reasons

- Qualifying exigency arising out of the fact that a spouse, registered domestic partner (CFRA only), child, or parent of the employee is a covered servicemember being deployed overseas (FMLA/CFRA).
- Serious illness or injury sustained in the line of duty on duty by a military servicemember or veteran who is the spouse, child, parent, or next of kin of the employee (FMLA and maybe CFRA).

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FMLA/CFRA Qualifying Reasons: Definitions

Child with a serious health condition:

- FMLA — biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, minor or adult if child has an ADA-protected disability and is incapable of self-care.
- CFRA — biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, regardless of age, disability, or dependency status.
- *Child* serving in military: Biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, regardless of age.

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FMLA/CFRA Qualifying Conditions: Serious Health Condition (Non-Military)

Serious Health Condition:

- Condition requires inpatient or inpatient-type care; or
- Employee (or family member) is incapacitated for at least three consecutive calendar days and the condition requires continuing treatment (two or more times) by a health care provider or treatment on at least one occasion that leads to a regimen of continuing treatment under the supervision of the provider.

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FMLA/CFRA Qualifying Reasons: Serious Health Condition (Non-Military)

Includes:

- Chronic conditions: Asthma, Epilepsy, Diabetes

Excludes:

- CFRA excludes employee's disability caused by pregnancy, childbirth, and related medical conditions.

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FMLA/CFRA Qualifying Reason: Military Caregiver

- To care for the spouse, son/daughter, parent, or “next of kin” who is a covered servicemember/veteran who suffered a serious illness or injury in the line of duty on active duty.
- 26 workweeks per servicemember, per illness/injury, in a 12-month period commencing on the first date leave is taken.
- Includes 12 workweeks taken for any other qualifying reason.
- FMLA and possibly CFRA depending on the family member.

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FMLA/CFRA Qualifying Reasons: Qualifying Exigency

- For specific reasons related to a call to active duty or foreign deployment by the employee's parent, spouse, registered domestic partner (CFRA only), child who is a "covered servicemember," which requires foreign deployment.
- Exigencies — short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, non-health care provider counseling, post-deployment activities, and other activities related to deployment agreed upon by the employer and employee.

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FMLA/ CFRA: Documentation

- Certification of Health Care Provider (DFEH) — For ill employee or family member.
- Certification of Leave Taken to Care for Covered Servicemember or Veteran (FMLA Only).
- Certification of Qualifying Exigency (FMLA/CFRA)
- Documentation of family relationship.

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FMLA/CFRA: Responding to Requests

- Provide Notice of Eligibility within 5 business days of request
- Must provide all information included with Notice of Eligibility and Rights and Responsibilities and Designation Notice
- U.S. Department of Labor sample forms:
<https://www.dol.gov/agencies/whd/fmla/forms>

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FMLA/CFRA: Calculating Leave

- Eligible employee entitled to 12 workweeks of leave in 12-month period.
- Can be taken in partial day or week increments.
- Do not count full week closures.
- When taken continuously, weeks with holidays still count as full weeks.

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FMLA/CFRA: Interaction with Paid Leaves

- Paid leave can be “substituted for” (run concurrently with) unpaid FMLA and CFRA leave.
- If employee is absent for reason that qualifies as FMLA and/or CFRA, employer **must** designate the leave as FMLA/CFRA.
- Regular rules for use of paid leaves still apply.
- Employer or employee **may require** use of paid leaves where the absence is for a reason covered by the paid leave.
- Cannot require use of sick leave except for employee’s own illness — Paid parental leave exception.

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Pregnancy & Child Bonding Leave

Pregnancy Disability Leave Act:

- Grants an employee up to four months (17-1/3 weeks) of unpaid leave with benefits while the employee is disabled by pregnancy, childbirth, and related medical conditions.

Family and Medical Leave Act:

- Covers disabilities caused by pregnancy and childbirth, and child-bonding.
- **California Family Rights Act:**
- Does not include an employee's pregnancy or childbirth-related disability as qualifying reason for leave.
- Includes family member's pregnancy-related disability.

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Pregnancy & Child Bonding Leave

- Paid Parental Leave (AB 2393):

- » Set forth in Education Code §§54977.5 (certified), 45196.1 (K-12 county office classified), 87780.1 (academic), and 88196.1 (community college classified).
- The laws apply to all certificated, academic, and classified employees, including management, supervisory, and confidential employees.
- The four statutes set forth the same rules except for the rate of pay once full-paid sick leave is exhausted.
- Paid "parental leave" defined as leave taken for birth of a child of the employee or the placement of a child with the employee for adoption or foster care.
- All certificated, academic, and classified employees are entitled to use up to 12 workweeks of current and accumulated sick leave for parental leave.
- Employees do not have to be FMLA or CFRA eligible to use sick leave for paid parental leave.

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Pregnancy & Child Bonding Leave

Paid Parental Leave (AB 2393) (continued)

- **If an employee does not have 12 workweeks of sick leave** but wants to take 12 workweeks of child-bonding/parental leave, he or she may receive substitute differential or 50% pay (depending on which model the district or county office has adopted for extended illness leave) for the remainder of the 12 workweeks of parental leave **if:**
 - The employee exhausts all current and accumulated sick leave; **and**
 - The employee is eligible for CFRA leave except **the employee is not required to have worked 1,250 hours in the 12 months prior to the leave.**
 - Regardless of which extended illness leave model the district or county office has adopted, **the employee is entitled to at least 50% pay for paid parental leave**

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FMLA/CFRA: Employee Rights While on Leave

- Continuation of Health Benefits
- Paid Family Leave
- Leave taken cannot be used as the basis for adverse employment action.
- Impact on Layoffs and Discipline

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FMLA/CFRA: Return from Leave

Reinstatement to same or equivalent position:

- Same salary and hours.
- Same opportunity for overtime or extra pay.
- Same or substantially similar duties and responsibilities, which require the same level of skill, effort, and responsibility.
- Same or geographically approximate worksite.
- Same shift or the same or equivalent work schedule.
- Same working conditions, including privileges, perquisites and status.

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Leaves for Public Education Employees

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Full-Paid Sick Leave – K-12/County Office

Certificated Employees (Ed. Code § 44978)	→	<ul style="list-style-type: none">Full-time employees earn 10 days per yearPart-time employees earn proportionally less
Classified Employees (Ed. Code § 45191)	→	<ul style="list-style-type: none">Full-time 12-month employees earn 12 days of sick leave per yearPart-time employees, or those who work less than 12 months, earn proportionally less

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Full-Paid Sick Leave – Community College

Academic Employees (Ed. Code § 87781)	→	<ul style="list-style-type: none">Full-time employees earn 10 days per yearPart-time employees earn proportionally less
Classified Employees (Ed. Code § 88191)	→	<ul style="list-style-type: none">Full-time 12-month employees earn 12 days of sick leave per yearPart-time employees, or those who work less than 12 months, earn proportionally less

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Full-Paid Sick Leave

Unused sick leave is never lost and accumulates from year to year.

Employees may not cash out when leaving employment.

Entire annual entitlement can be used immediately (before actually earned), except for new classified employees.

Extended Illness Leave

Two different types of extended illness leave available for each group of employees (certificated, academic, and classified):

1. Substitute Differential (default) (Ed Code §§ 44977, 45196, 87780, 88196)
2. 50% Rule (if alternative is adopted by District or COE) (Ed Code §§ 44983, 45196, 87786, 88196)
3. Some districts negotiate a hybrid — sub differential or 50% whichever is greater

May be used day-by-day for illness once full-paid sick leave exhausted (*CTA v. Parlier USD* (1984) 157 Cal. App. 3d 174)

<h2>Extended Illness Leave (Sub Differential) – K-12/County Office</h2>	
<p>Certified Employees (Ed. Code § 44977)</p>	<ul style="list-style-type: none">Entitled to the difference between regular salary and the amount paid to a sub or would have been paid to a subReduced pay and five-month clock begin after exhaustion of all current and accumulated sick leaveLimited to one 5-month period per illness/accident (see § 44977(a); <i>Veguez v. Gov. Bd. of Long Beach USD</i> (2005) 127 Cal. App. 4th 406)
<p>Classified Employees (Ed. Code § 45196)</p>	<ul style="list-style-type: none">Entitled to the difference between regular salary and the amount paid a sub <u>only</u> if a sub is hired into absent employee's position5-month clock runs concurrently with sick leave, vacation, and other paid leaves and sub difference pay available after full-paid leave is exhaustedNo per-illness limit

Extended Illness Leave (50% Rule) – K-12/County Office

Certificated Employees
(Ed. Code § 44983)

- Entitled to 50% of salary for 5 months per year
- 5-month clock begins after the current year's entitlement of sick leave and runs concurrently with accumulated sick leave; 50% pay commences after sick leave exhausted
- No per-illness limit

Classified Employees
(Ed. Code § 45196)

- Entitled to 50% of salary for 100 days per year
- Credited with 100 days each year
- 100-day clock runs concurrently with sick leave but exclusive of other paid leaves (such as vacation)
- No per-illness limit

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Extended Illness Leave (Sub Differential) – Community College

Academic Employees
(Ed. Code § 87780)

- Entitled to the difference between regular salary and the amount paid to a sub or would have been paid to a sub
- 5-month clock begins after exhaustion of current sick leave
- Reduced pay begins after exhaustion of sick leave

Classified Employees
(Ed. Code § 88196)

- Entitled to the difference between regular salary and the amount paid a sub only if a sub is hired into absent employee's position
- 5-month clock runs concurrently with sick leave, vacation, and other paid leaves and sub difference pay available after full-paid leaves are exhausted

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Extended Illness Leave (50% Rule) – Community College

Academic Employees
(Ed. Code § 87786)

- Entitled to 50% of salary for 5 months per year
- 5-month clock begins after the current year's entitlement of sick leave and runs concurrently with accumulated sick leave; 50% pay commences after sick leave exhausted

Classified Employees
(Ed. Code § 88196 CC CC)

- Entitled to 50% of salary for 100 days per year
- Credited with 100 days each year
- 100-day clock runs concurrently with sick leave but exclusive of other paid leaves (such as vacation)

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Industrial Accident and Illness Leave

**Certificated/Academic
Employees
(Ed. Code § 44984,
§ 87787)**

- Entitled to 60 days per fiscal year for same illness or accident (if regulation adopted limiting it to 60 – otherwise unlimited)
- Used prior to sick leave and extended illness leave
- Pay is integrated with temporary disability payments, so employee gets no more than 100% of salary
- Same amount and timing as with certificated/academic

Classified Employees (Ed. Code § 45192, § 88192)

- Same amount and timing as with certificated/academic employees
- District can require specified minimum service time (up to 3 years) before eligibility
- Pay is integrated with temporary disability payments, so employee gets no more than 100% of salary

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Industrial Accident and Illness Leave

During industrial accident/illness leave, the employee receives no more than regular pay for 60 work days.

Any workers' compensation benefits paid to the employee during the 60 days are deducted from the industrial leave pay.

When industrial leave is exhausted, the employee may use current and accumulated sick leave, vacation, and comp time, to the extent the employee is not compensated through WC benefits. If the employee receives full pay leave, the employee must endorse benefit payments to the district.

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Industrial Accident and Illness Leave Classified Employees

When all leave is exhausted, the employee goes on a 39-month reemployment list.

An employee on the 39-month list who is medically released for return to duty and fails to accept an appropriate assignment *shall be dismissed*. (Distinct from other types of 39-month reemployment rights.)

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Labor Code §233

- Employees may use not less than the amount of sick leave that would be accrued in 6 months, up to one-half annual accrual of full-paid sick leave.
- To care for specified family members who are ill or who have preventive care medical appointments — parent, parent-in-law, spouse, registered domestic partner, child (regardless of age and dependency status, and including those for whom the employee acts *in loco parentis*), grandparent, grandchild, and sibling.
- Counts against FMLA/CFRA entitlement if illness is a serious health condition and family member is covered by FMLA (all covered by CFRA).
- Employee's sole discretion whether to use.
- Not clear if in addition to Personal Necessity Leave.

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AB 1522: Paid Sick Leave

Labor Code §§ 245-249

- Typically applies to employees who are not covered by the CBA (e.g., seasonal coaches, substitutes).
- Minimum of 3 days or 24 hours of paid sick leave.
- Accrual starts from first day of employment.
- May accrue or front-load each year.
- Employers may limit use until the 90th day of employment.

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Calculating Leaves

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Calculating Leaves

- Certificated, academic, and classified employee leaves are counted differently.
- Some leaves renew each school year, others do not.
- Check contract language and past practice.
- Human resources and payroll offices should consult to ensure consistency and accuracy in leave counts.

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Calculating Leaves Example – Certificated Sub Difference Pay

Illness and Extended Illness Leave:

- **Substitute Differential Pay Leave (§ 44977)**
10 days of current year sick leave
20 days of accumulated sick leave
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The timeline diagram consists of three horizontal bars. The first bar is labeled "10 days" and "current year sick leave". The second bar is labeled "20 days" and "accumulated sick leave". The third bar is labeled "5 months" and "sub differential pay". The bars are positioned side-by-side, indicating the duration of each component of the leave package.

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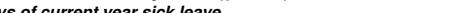
Calculating Leaves Example – Classified Sub Difference Pay

- Illness and Extended Illness Leave:

- **Substitute Differential Pay Leave (§ 45196, §88196)**
10 days of current year sick leave
20 days of accumulated sick leave
-  10 days — 20 days
-  5 months
-  full pay (30 days) — sub differential pay (approx. 3 1/2 months)

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Calculating Leaves Example – Academic Sub Difference Pay

- **Illness and Extended Illness Leave:**
- **Substitute Differential Pay Leave (§ 87780)**
10 days of current year sick leave
20 days of accumulated sick leave =
- 

The diagram illustrates the timeline for the Substitute Differential Pay Leave. It features a horizontal line with a break in the middle. On the left, there is a bracket above the line labeled "10 days" and a bracket below the line labeled "20 days". To the right of this break, the line continues with a bracket below it labeled "5 months".
- 

The diagram illustrates the timeline for the Substitute Differential Pay Leave. It features a horizontal line with a break in the middle. On the left, there is a bracket above the line labeled "full pay (30 days)" and a bracket below the line labeled "sub differential pay (approx. 3 1/2 months)".

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Calculating Leaves Example – Certificated/Academic 50% Pay

- **Illness and Extended Illness Leave:**
- **50% Pay Leave (§§44983, 87780)**
10 days of current year sick leave
20 days of accumulated sick leave =
- 

The diagram illustrates the total leave period. It starts with a horizontal line segment labeled "10 days" with vertical tick marks at each end. This is followed by a longer horizontal line segment labeled "20 days" with vertical tick marks at each end. The total length of the line is labeled "5 months" with vertical tick marks at each end.
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The diagram illustrates the pay structure. It starts with a horizontal line segment labeled "full pay (30 days)" with vertical tick marks at each end. This is followed by a shorter horizontal line segment labeled "50% pay (approx. 3 1/2 months)" with vertical tick marks at each end. The total length of the line is labeled "5 months" with vertical tick marks at each end.

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Calculating Leaves Example – Classified 50% Pay

- **Illness and Extended Illness Leave:**
- **50% Pay Leave (§ 45196, §88196)**
10 days of current year sick leave
20 days of accumulated sick leave
-  10 days || 20 days
-  30 days || vacation/holidays || 70 days
-  full pay (30 days) || full pay || 50% pay (70 days) = || 50 days

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Calculating Leaves Example – Certificated with Worker's Compensation and Sub Difference Pay

Worker's Compensation Leave

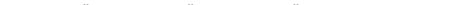
- **FMLA/CFRA leave running concurrently with paid leaves**
Substitute Differential Pay Leave (§ 44977)
10 days of current year sick leave
20 days of accumulated sick leave
60 days Industrial Accident Leave (§ 44984)
2/3 Pay Temporary Disability Payments

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Calculating Leaves Example – Certificated with Worker's Compensation and Sub Difference Pay

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Calculating Leaves Example – Classified with Worker's Compensation and Sub Difference Pay

Worker's Compensation Leave

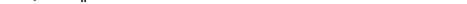
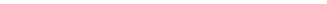
- **FMLA/CFRA leave running concurrently with paid leaves**
Substitute Differential Pay Leave (§§ 45196, 88196)
10 days of current year sick leave
20 days of accumulated sick leave
60 days Industrial Accident Leave (§§ 45192, 88192)
2/3 Pay Temporary Disability Payments

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Calculating Leaves Example – Classified with Worker's Compensation and Sub Difference Pay

(continued)

-  60 days
-  10 (30) days  20 (60) days
-  5 months
-  FMLA/CFRA (12 workweeks)
-  full salary (90 days)  sub. diff. pay/2/3 temp. disab. (3 1/2 mos)

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Calculating Leaves Example – Classified with Worker's Compensation and 50% Pay

Worker's Compensation Leave

- **FMLA/CFRA leave running concurrently with paid leaves**
50% Pay Leave (§§ 45196, 88196)
10 days of current year sick leave
20 days of accumulated sick leave
60 days Industrial Accident Leave (§§ 45192, 88192)
2/3 Pay Temporary Disability Payments

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Calculating Leaves Example – Classified with Worker's Compensation and 50% Pay

(continued)

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Calculating Leaves Example – Pregnancy and Paid Parental Leave

Pregnancy Disability Leave and Child Bonding Leave

- (Assume 8 weeks of pregnancy disability and 12 workweeks of child bonding.)
FMLA leave concurrently with paid leaves
CFRA child-bonding and Education Code §§ 44977.5, 45196.1, 87780.1, 88196.1 parental leave
Pregnancy Disability Leave
Substitute Differential Pay Leave (§§ 44977, 45196, 87780, 88196)
10 days of current year sick leave
20 days of accumulated sick leave

(Continued)

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Calculating Leaves Example – Pregnancy and Paid Parental Leave

- Pregnancy Disability Leave and Child Bonding Leave continued:
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Exhaustion of Leaves

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Reasonable Accommodation

- Prior to terminating an employee for exhaustion of leaves, employer must consider whether employee has a disability protected by state and/or federal law.
- If the employee has a disability the employer must engage in the interactive process to determine whether employee can be reasonably accommodated.
- Additional leave, paid and unpaid, can be a reasonable accommodation under law.

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Placement on Reemployment List upon Exhaustion of All Leaves

**Certificated
Employees
(Ed. Code § 44072.1)**

- Permanent – 39 months, probationary – 24 months of reemployment rights
- Automatic right to be reemployed in a position for which they are credentialed and qualified — no vacancy required.
- 39 months: Industrial – probationary or permanent
39 months: Non-industrial – permanent only
- Entitled to be reemployed in a vacant position in the class of the previous assignment
- Must be advised of the right to request additional leave, but no obligation to grant the request

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Placement on Reemployment List upon Exhaustion of All Leaves

Academic Employees

- No medical 39-month reemployment list in Education Code
- 39 months: Industrial – probationary or permanent
39 months: Non-industrial – permanent only
- Entitled to be reemployed in a vacant position in the class of the previous assignment
- Right to request additional leave, but no obligation to grant the request

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Before Placing Employees on the Reemployment List, Consider Leave Rights under Other Laws, Contracts	
<p>Family and Medical Leave Statutes</p> <ul style="list-style-type: none">• Family and Medical Leave Act (FMLA)• California Family Rights Act (CFRA)• Pregnancy Disability Leave Act (PDL)	
<p>Disability Discrimination / Accommodation Statutes</p> <ul style="list-style-type: none">• Americans With Disabilities Act (ADA)• Fair Employment and Housing Act (FEHA)	

COVID-19 Leave Requirements

SB 114 Qualifying Reasons

Employee is unable to work **or telework** due to:

1. The employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of CDPH, CDC, or local health officer. If the covered employee is subject to more than one of these, apply quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is attending an appointment for themselves or a specified family member to receive a vaccine or a vaccine booster for protection against COVID-19.
 - “Family member” = child (including biological, adopted, or foster child, stepchild, legal ward, and “*in loco parentis*,” regardless of age/dependency status); parent (including adoptive, or foster parent; stepparent, or legal guardian, in-laws, and “*in loco parentis*”); spouse; registered domestic partner; grandparent; grandchild; sibling [Lab. Code 245.5]
4. The employee is experiencing symptoms or caring for a specified family member experiencing symptoms related to a COVID-19 vaccine or booster.

SB 114 Qualifying Reasons (continued)

Employee is unable to work **or telework** due to:

5. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. The employee is caring for a specified family member, who is subject to an order or guidelines (reason #1) or who has been advised to self-quarantine (reason #2).
7. The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID **on the premises**.
- "child" defined in Labor Code 245.5 – includes "*in loco parentis*" (similar to CFRA)

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Senate Bill 114 (continued)

- Full-time covered employees shall be entitled to 40 hours of paid leave (pro-rated for part-time or intermittent workers) for the listed reasons.
 - When leave is taken for symptoms due to vaccination, an employer may limit the total supplemental sick leave to 3 days or 24 hours, unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms related to the vaccine/booster. The 3-day or 24-hour limitation includes the time used to obtain the vaccine/booster.
- Full-time covered employees may be entitled to an additional 40 hour of paid leave (pro-rated for part-time) if the employee, or a family member for whom the employee is providing care, tests positive for COVID-19. The employer is not obligated to provide this additional SFSL for an employee who refuses to provide documentation of the test results.
- Employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate. Employee must be allowed to "top off" if other leave available.

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Senate Bill 114 (continued)

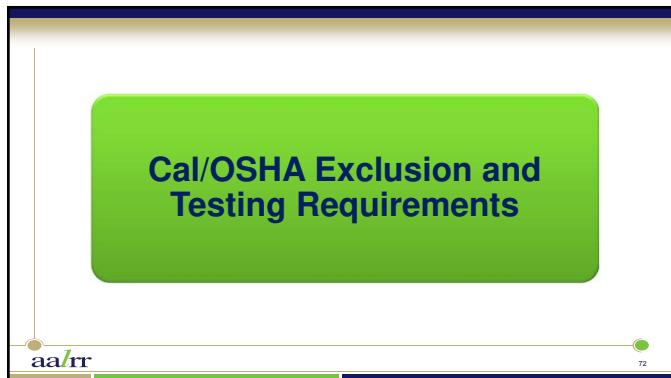
- Leave is in addition to other available paid and unpaid leaves.
- Law is retroactive to January 1, 2022, and expires September 30, 2022.
- Employer must grant leave immediately after verbal or written request and cannot condition leave on medical verification.

(New Labor Code §§ 248.6 and 248.7)

For more information: <https://www.aalrr.com/newsroom-alerts-3899>

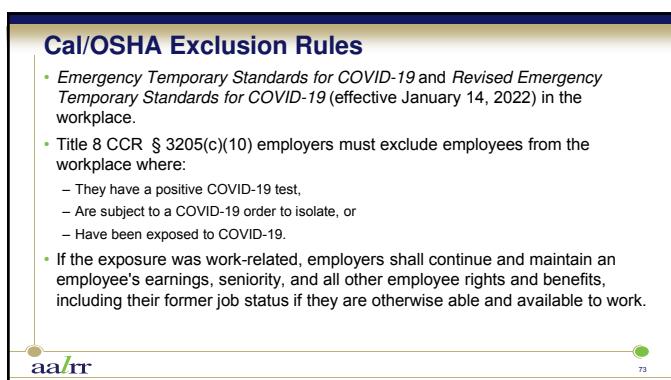
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Cal/OSHA Exclusion and Testing Requirements

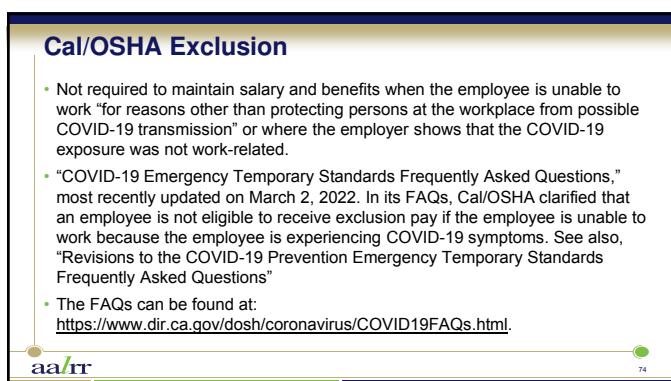
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Cal/OSHA Exclusion Rules

- Emergency Temporary Standards for COVID-19 and Revised Emergency Temporary Standards for COVID-19 (effective January 14, 2022) in the workplace.
- Title 8 CCR § 3205(c)(10) employers must exclude employees from the workplace where:
 - They have a positive COVID-19 test,
 - Are subject to a COVID-19 order to isolate, or
 - Have been exposed to COVID-19.
- If the exposure was work-related, employers shall continue and maintain an employee's earnings, seniority, and all other employee rights and benefits, including their former job status if they are otherwise able and available to work.

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Cal/OSHA Exclusion

- Not required to maintain salary and benefits when the employee is unable to work "for reasons other than protecting persons at the workplace from possible COVID-19 transmission" or where the employer shows that the COVID-19 exposure was not work-related.
- "COVID-19 Emergency Temporary Standards Frequently Asked Questions" most recently updated on March 2, 2022. In its FAQs, Cal/OSHA clarified that an employee is not eligible to receive exclusion pay if the employee is unable to work because the employee is experiencing COVID-19 symptoms. See also, "Revisions to the COVID-19 Prevention Emergency Temporary Standards Frequently Asked Questions"
- The FAQs can be found at:
<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>.

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Question & Answer Session

Thank You

For questions or comments, please contact:

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Aaron O'Donnell represents California community college districts, universities, and school districts in education and employment-related matters. He provides experienced advice and counsel to clients in all aspects of education and employment law, including compliance with Title IX and related federal and state laws, employee evaluation and discipline, employment discrimination and wrongful termination, labor relations, reductions in force, student discipline, disability accommodation, Brown Act compliance, conflicts of interest, First Amendment and other constitutional rights of students and employees, whistleblower protection, and investigations of employee misconduct. He represents education clients in grievance arbitrations, administrative hearings, and civil litigation in state and federal court.

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