



## Pregnancy Disability Leave (PDL) & Baby/Child Bonding Fact Sheet

**Pregnancy Disability Leave (PDL)** - is a state law and available to employees, regardless of time of employment with the County, who becomes disabled due to pregnancy, childbirth, or related medical conditions. PDL is an unpaid, job protected leave that provides *up to* 4 months of leave for a pregnant employee who is *certified by their health care provider*. (The 4 months are defined as 17.3 weeks or 693 hours, which equals one-third of a calendar year based on a 40-hour workweek.) The 4 months may be taken all at once during the last few weeks before and after delivery as well as time off throughout pregnancy for morning sickness, prenatal visits, or any other childbirth related medical condition.

**Baby/Child Bonding** – if an employee is eligible (see below) for Family and Medical Leave Act (FMLA) and/or California Family Rights Act (CFRA), the employee may take up to 12 weeks of unpaid, job protected leave to bond with a newborn, or child placed with employee for adoption or foster care. Some County employees may be eligible to extend their leave for an additional 6 workweeks of County FMLA Extension (CFMLA+) with the same FMLA protections for a total of 18 workweeks of protected leave time pursuant to their MOU or County Policy (see FMLA/CFRA Fact Sheet for additional information). This protected time provides Baby/Child Bonding Leave for both parents. Baby/Child Bonding Leave must be taken within one year of the child's birth, adoption, or foster care placement. Baby/Child Bonding Leave for adoption or foster care is not limited to infants.

**Interaction Between PDL & Baby Bonding** – FMLA covers both pregnancy and Baby Bonding; therefore, FMLA runs concurrently with PDL while the employee is disabled by pregnancy. PDL and CFRA leave cannot run concurrently since CFRA leave does NOT cover pregnancy. CFRA would run consecutively with PDL and starts when PDL ends and Baby Bonding begins. FMLA/CFRA will run concurrently for Baby Bonding. However, an employee may only be eligible for PDL and not FMLA or CFRA.

### PDL Eligibility

- ▶ Unlike FMLA/CFRA, PDL has no length-of-service requirement before an employee disabled by pregnancy, childbirth or related medical condition is entitled to the leave. Newly hired employees are immediately eligible for PDL.
- ▶ PDL is per pregnancy, not per year. Miscarriages and pregnancy terminations would be eligible for PDL.
- ▶ PDL is available to pregnant employees who need time off for disability related to pregnancy, before and after the birth of the child.
- ▶ PDL does not provide any time off for bonding time after the birth or placement of a child in foster care or adoption, however, employees may be eligible for FMLA/CFRA for Baby/Child Bonding Leave.

### PDL Leave Entitlement and Qualifying Reasons

- ▶ PDL entitles employees *up to* a maximum of 17 1/3 weeks (693 hours based on a 40-hour workweek) per pregnancy, if they are disabled because of pregnancy, childbirth, or other related medical condition.
  - If an employee works less than 40 hours per week, leave is calculated on a pro rata or proportional basis.
  - If an employee's schedule alternates from month to month, the monthly average of the hours worked over the four-month period prior to the beginning of the leave must be used to determine the employee's normal work month.
  - Thus, the total amount of leave available will be based on a one-third year measurement of an employee's normal work schedule.

- ▶ Pregnancy disabilities are physical or mental conditions related to pregnancy or childbirth that prevent an employee from performing essential duties of their job or cause undue risk to the pregnancy’s successful completion. This may include severe morning sickness, bed rest, pregnancy-induced hypertension, postpartum depression, loss or end of pregnancy, prenatal or postnatal care, gestational diabetes, preeclampsia, childbirth, and recovery from childbirth.
- ▶ PDL is not for an automatic period of time, but for the period of time that the employee is disabled by pregnancy. The employee’s *health care provider determines how much time is needed*.
- ▶ PDL does not need to be taken all at once but can be taken on an as-needed basis as required by the employee’s health care provider, including intermittent leave or a reduced work schedule, all of which counts against the four-month entitlement of leave.
- ▶ If an employee can still perform their essential job functions with a reasonable accommodation, the employee cannot be forced to go on leave before they & their health care provider requests it.
- ▶ Transgender employees who have pregnancy disabilities are entitled to all the same right and accommodations afforded any other employee with pregnancy-related conditions.

### **Baby/Child Bonding**

- ▶ If eligible, employees may take unpaid Baby Bonding Leave under FMLA/CFRA. Baby Bonding Leave begins when PDL ends and is taken in addition to PDL. Eligibility requires an employee to have 12 months of service with the County and to have worked 1,250 hours in the 12 months immediately preceding the start of FMLA/CFRA (see FMLA/CFRA Fact Sheet).
- ▶ An employee may be eligible for PDL but not FMLA or CFRA. Time off on PDL counts towards the 12-month requirement for FMLA/CFRA but not the 1,250 hour requirement. Therefore, an employee may become eligible for Baby Bonding while out on PDL if the hour requirement was previously fulfilled.
- ▶ Both parents are entitled to take up to 12 weeks of available FMLA/CFRA (or 18 weeks if eligible for CFMLA+) in a 12-month period for bonding with a newborn or a child placed with an employee for adoption or foster care. Entitlement must be taken within one year of the child’s birth, adoption, or foster care placement. FMLA/CFMLA+ and CFRA would run concurrently.
- ▶ For FMLA/CFMLA+ only, when both parents work for the County, Baby/Child Bonding is limited to a combined total of 12 weeks, (or 18 weeks if eligible for CFMLA+) of available leave (employees represented by Deputy Sheriffs’ Association Management Unit and Rank & File are exempt from this rule).
  - FMLA: Per Federal Regulations “this limitation applies to husband and wife”.
  - This rule does not apply if employees are also eligible for CFRA
- ▶ Intermittent Baby/Child Bonding
  - FMLA: Bonding with a newborn, an adopted child or one placed with the employee for foster care can be intermittent or on a reduced leave schedule only if the department agrees.
  - CFRA: Bonding leave of less than two weeks’ duration must be granted on any two occasions. Leave must be taken in at least two week increments or more. However, departments may grant leave of less than two weeks on more than two occasions.

### **Process for Requesting PDL & Baby/Child Bonding**

The correct forms to use and submittal deadline will depend on the type of leave the employee is requesting. The department cannot deny PDL, Baby/Child Bonding Leave, or reasonable accommodation or transfer if the need is an emergency or is otherwise unforeseeable. A medical certification is required for PDL and if dates change from the original certification, the employee is required to submit a new medical certification reflecting the new dates. Medical certification is NOT needed for:

- Baby/Child Bonding Leave.
- Any of the four “Predictable Assessments” from the Pregnant Workers Fairness Act’s (PWFA) or.
- If it’s a known limitation & the need for reasonable accommodation is obvious.

Event	Form(s)/Notice(s)	Response or Submittal Deadline
Employee needs PDL and/or Baby/Child Bonding Leave	<a href="#">Request for Leave of Absence</a>	Employee submits form to department at least <b>30 days in advance</b> for foreseeable leave or as soon as need for leave becomes known and is practicable if not foreseeable
Department becomes aware of request for PDL and/or Baby/Child Bonding Leave	<a href="#">Notice of Eligibility and Rights and Responsibilities</a>  <a href="#">Your Rights and obligations as a Pregnant Employee</a>	Departments must give notice <b>within 5 business days</b> of the request for PDL and/or Baby/Child bonding.  If the leave is for employee's pregnancy, they are also provided the state mandated PDL notice.
If employee is eligible for PDL or PDL/FMLA  Or  PDL accommodation or transfer is needed. <b>No documentation is needed for one of the 4 "Predictable Assessments" or known limitation &amp; need for reasonable accommodation is obvious.</b>	<a href="#">Certification of Health Care Provider for Pregnancy Disability, Leave Transfer and/or Reasonable Accommodation</a>	For all PDL cases, departments provide to the employee even if employee also qualifies for FMLA and gives them at least <b>15 calendar days</b> to respond. (This form is not needed for baby bonding.) Given with Notice of Eligibility.  The employee's health care provider can also use the form to state the need for a reasonable accommodation or a transfer to a less strenuous or hazardous position (where one is available) or duties if medically needed. <b>Accommodation &amp; transfer requests should be handled expeditiously.</b>
Approval & Designating employees for PDL or PDL/FMLA for pregnancy or FMLA/CFRA for baby/child bonding.	<a href="#">FMLA/CFRA/PDL Designation Notice</a>  <a href="#">Employee Letter -PDL Only</a>  <a href="#">Family Care and Medical Leave and Pregnancy Disability Leave Notice (given if employee qualifies for FMLA/CFRA &amp; PDL)</a>	If an employee qualifies for PDL and FMLA/CFRA, this form is provided to the employee <b>within 5 business days</b> of determination. If more information is needed, this form can be used to conditionally grant leave pending receipt of additional information. This form can also be given to deny the FMLA/CFRA leave request.  Given to employee when they only qualify for PDL and Departments must respond to a PDL only request as soon as possible but <b>no later than 10 calendar days</b>  For all employees eligible for PDL and FMLA/CFRA departments must provide the state mandated FMLA/CFRA/PDL notice.
Employee is returning to work from PDL	<a href="#">Certificate of Health Care Provider for Employee to Return to Work</a>	The department gives to employee with the <a href="#">Designation Notice</a> . The employee returns this form to their Leave Personnel prior to or on their return-to-work date. (Not needed for Baby Bonding.)

**Use of Accruals & State Disability Insurance (SDI)/Long Term Disability (LTD)/Paid Family Leave (PFL) – Always Refer to Employee’s MOU or County Policy for use of accruals while on PDL.**

- ▶ PDL is an unpaid leave. Employees may choose to use sick (if not eligible for SDI), vacation, or PTO accruals during PDL leave.
- ▶ PDL & SDI - Employees eligible for SDI, are required to enroll in SDI while on PDL and participate in the County’s Integration Program. SDI is **NOT** a leave of absence, but a partial wage replacement benefit administered by the State. (See the SDI/PFL Fact Sheet.)
- ▶ PDL & LTD - Employees eligible for LTD may be required to use accruals during the 60-day waiting period.
- ▶ Baby/Child Bonding – eligible employees are entitled to an unpaid leave of absence under FMLA/CFRA. The employee may choose to use available vacation or other PTO accruals
- ▶ Baby/Child Bonding & PFL – Employees may be eligible for 8 weeks of PFL during a 12-month period. PFL would be used in conjunction with FMLA/CFRA and is **NOT** a leave of absence but a partial wage replacement benefit.
- ▶ Sick leave accruals may not be used for Baby/Child Bonding unless the employee’s MOU or County Policy states this is permissible.

- ▶ The use of accruals does not extend the leave time the employee is entitled to for PDL, Baby/Child Bonding, FMLA, or CFRA; accruals are used concurrently with unpaid leave laws unless otherwise stated in the MOUs or County Policy.

### **Job Restoration and Health Benefits During PDL and Baby/Child Bonding**

- ▶ If the employee is covered by the County’s health benefits plans before leave, coverage continues for the duration of leave as if still at work and employee continues to pay their share of premium.
- ▶ Group health coverage under PDL is a separate entitlement from the FMLA/CFRA entitlement for Baby/Child Bonding.
  - PDL - Maximum of 4 months in a 12-month period per pregnancy, beginning the date the leave begins.
  - During Baby/Child Bonding the employee is covered up to 12 weeks (or 18 weeks if eligible for CFMLA+) when used in conjunction with FMLA/CFRA.
- ▶ Any changes to benefit plans during a PDL/Baby/Child Bonding leave must be offered to employees on leave.
- ▶ An employee may choose not to retain group health plan coverage or coverage may lapse during PDL/Baby/Child Bonding leave. However, when an employee returns from protected leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.
- ▶ Employees must be returned to the same job, or in certain instances, to a comparable job (same tasks, skills, benefits and pay) with no loss of seniority when the employee is no longer disabled by pregnancy or returning from Baby/Child Bonding. However, PDL/Baby/Child Bonding does not protect the employee from non-leave related employment actions such as layoffs.
- ▶ Employees on PDL must submit a [Certification of Health Care Provider for Employee to Return to Work](#) form to their department’s personnel administrator prior to or on their return-to-work date. (This form is not required for Baby/Child Bonding Leave.)
- ▶ An employee’s use of PDL and/or Baby/Child Bonding leave cannot be counted against the employee.

### **Lactation – See AB437, *Employee Lactation Accommodation, for the County’s complete policy.***

To ensure lactation accommodations are in place, employees should submit a Lactation Accommodation Request form (AB437-form) to their Departmental ADA Coordinator. Departments are required to provide employees who need to express milk with a space in close proximity to the employee’s work area that is shielded from view and free from intrusion while the employee is lactating. If the employee’s break or lunch break does not run concurrently with the time needed to express milk, or additional time is necessary, the lactation accommodation will be extended, and employees will not be required to utilize leave accruals.

The Pregnant Employee Fairness Act (PWFA) expands this accommodation to include an employee who is pumping ***or*** nursing.

- Accommodation for pumping or nursing applies to onsite ***and*** remote employees.
- If the employee and their child are “in close proximity” of the workplace, they shall be allowed the same amount of time to nurse as the employee might spend pumping.
- “In close proximity” should be considered at home with the employee or somewhere within walking distance (i.e. workplace is next door to the child’s daycare.)

### **Enforcement**

- ▶ **Always** check the MOUs or County Policy for additional entitlements above state and federal laws.
- ▶ It is unlawful for the County, department, or supervisor to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by PDL or Baby/Child Bonding.
- ▶ For additional questions or clarification correspond with your department’s leave personnel or the Leave Program Manager at (925) 655-2141.