



## Pregnancy Disability Leave (PDL) & Baby 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 is 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 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 are eligible for an additional 6 weeks of FMLA protected leave, as outlined in their applicable Memoranda of Understanding (MOU) or County Policy, which extends the FMLA period to 18 workweeks. FMLA/CFRA provides Baby Bonding Leave for both parents. Baby Bonding Leave must be taken within one year of the child's birth, adoption or foster care placement. Baby 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, PDL runs concurrently with FMLA while the employee is disabled by pregnancy unless the employee's MOU or County Policy states otherwise. 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 and 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 the pregnant employee who needs 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 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 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 prevents 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, post-partum 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 to 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 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 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 if eligible, 18 weeks of Extended FMLA) in a 12-month period for bonding with a new born or a child placed with employee for adoption or foster care. Entitlement must be taken within one year of the child's birth, adoption or foster care placement. FMLA/CFRA would run concurrently.
- ▶ When both parents work for the County, Baby Bonding is limited to a combined total of 12 weeks, or 18 weeks of available FMLA/CFRA leave (employees represented by Deputy Sheriffs' Association Management Unit and Rank & File are exempt from this rule).
  - FMLA: This limitation applies to husband and wife
  - CFRA: This limitation applies to parents, regardless of whether they are married.
- ▶ Intermittent Baby 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 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 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. No medical certification is needed for Baby Bonding Leave.

Employee or Department	Form(s)/Notice(s) Needed	Response or Submittal Deadline
Employee needs PDL and/or Baby Bonding Leave	<a href="#">Request for Leave of Absence</a>	Employee submits form to department at least 30 days in advance 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/FMLA/CFRA and/or Baby Bonding Leave	<a href="#">Notice of Eligibility and Rights and Responsibilities</a>  <a href="#">Your Rights and Obligation as a Pregnant Employee Notice</a>	Department must give notice within 5 business days of the request for PDL/FMLA/CFRA and/or Baby Bonding  If the leave is for the employee's pregnancy, also provide the state PDL notice.
If employee is eligible for PFL/FMLA leave	<a href="#">Certification of Health Care Provider- Employee's or Family Member's Serious Health Condition</a>	Department provides form to employee and gives at least 15 calendar days to respond. (This form in not needed for Baby Bonding).
Department determines if employee qualifies for PDL and FMLA/CFRA	<a href="#">FMLA/CFRA/PDL Designation Notice</a>  <a href="#">Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave Notice</a>	Department determines if leave also qualifies for FMLA/CFRA and provides this form to the employee within 5 business days of determination. If more information is need, form can be used to conditionally grant leave pending receipt of additional information. This form can be used to deny FMLA/CFRA. State CFRA/PDL notice is also required to be provided to employee.
Respond to Baby Bonding Leave only request – Department determines if employee qualifies for FMLA/CFRA	<a href="#">FMLA/CFRA/PDL Designation Notice</a>	Department determines if employee qualifies for FMLA/CFRA and provides this form within 5 business days of determination. This form would also be used to deny the FMLA/CFRA leave request.
If Employee only qualifies for PDL and not FMLA/CFRA  Or  PDL accommodation(s) or transfer is needed	<a href="#">Certification of Health Care Provider for Pregnancy Disability, Leave Transfer and/or Reasonable Accommodation</a>	Employee provides form to their department from their health care provider with reasonable advance notice for the need for PDL or a reasonable accommodation (i.e., temporarily modify work duties, provide a stool or chair, or allow more frequent breaks) or a transfer to a less strenuous or hazardous position (where one is available) or duties if medically needed. Departments must respond as soon as possible but no later than 10 calendar days.
Designate PDL Only	<a href="#">PDL Only Employee Letter</a>	If the leave is related to PDL only and employee does not qualify for FMLA/CFRA provide this letter no later than 10 calendar days after receiving the request.
Employee is returning to work from PDL	<a href="#">Certificate of Health Care Provider for Employee to Return to Work</a>	Department gives to employee with the Designation Notice. Employee returns this form to their department prior to or on return to work date. This form is not needed for Baby Bonding.

## Use of Accruals and SDI/PFL

- ▶ PDL is an unpaid leave. Employees may only be required to use sick leave accruals while on PDL per state law. Afterwards, it is at the employee's discretion to use other available accruals while on PDL.
- ▶ PDL/SDI - if the employee is eligible for State Disability Insurance (SDI), they are required to enroll in SDI while on PDL and participate in the County's Integration or Buy Back program as outlined in the employees' MOU or County Policy. SDI is not a leave of absence but a partial wage replacement benefit administered by the state. (See the SDI/PFL Fact Sheet.)
- ▶ Baby Bonding – eligible employees are entitled to an unpaid leave of absence under FMLA/CFRA. Employees are required to use available vacation or other PTO accruals or use accruals as set forth in the employee's MOU or County Policy under "Leave Without Pay – Use of Accruals".
- ▶ Baby Bonding/Paid Family Leave (PFL) - if the employee participates in the State's SDI program, they would be eligible for PFL for 8 weeks (*increased from 6 weeks to 8 weeks on July 1, 2020*) during a 12-month period. PFL would be used in conjunction with FMLA/CFRA and is also not a leave of absence but a partial wage replacement benefit.
- ▶ Sick leave accruals may not be used for Baby 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 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 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 Bonding.
  - PDL - Maximum of 4 months in a 12-month period per pregnancy, beginning the date the leave begins.
  - During Baby Bonding the employee is covered up to 12 weeks (or if eligible, 18 weeks of Extended FMLA) when used in conjunction with FMLA/CFRA.
- ▶ Any changes to benefit plans during a PDL/Baby 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 Bonding leave. However, when an employee returns from 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 Bonding. However, PDL/Baby 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 their return to work date. (This form is not required for Baby Bonding Leave.)
- ▶ An employee's use of PDL and/or Baby Bonding leave cannot be counted against the employee.

### **Lactation Requirements – (See AB437 Employee Lactation Accommodation for the complete policy)**

Employees will need to fill out the [Lactation Accommodation Request](#) (AB437-Form) and submit it to their Departmental ADA Coordinator. Departments should respond to the employee's request within one (1) business day. 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. Additionally, departments must provide:

- A use of a room or location other than a bathroom and:
  - Be safe, clean and free of hazardous materials as defined;
  - Contain a place to sit and a surface to place a breast pump and personal items;
  - Have access to electricity or alternative devices, such as extension cords, needed to operate breast pumps.
- Access to a sink with running water and a refrigerator suitable for storing milk (or other cooling device) in close proximity to the employee's workplace.
- If a multipurpose room is used for lactation among other uses, the use of the room for lactation shall take precedence over the other uses, but only for the time being used for lactation purposes.

### **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 Bonding.
- ▶ For additional questions or clarification refer to the Leave of Absence Guide or correspond with your department's personnel administrator or the Leave & ACA Administrator at (925) 335-1741.