Civil Rights Council
Proposed Modifications to Employment Regulations Regarding Leave, Reasonable Accommodations, and Transfers for Pregnancy, Childbirth, or Related Medical Conditions; and Bonding Leave

CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Div. 4.1. Civil Rights Department
Chapter 5. Civil Rights Council
Subchapter 2. Discrimination in Employment

TEXT

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Text proposed to be deleted for the 45-day comment period is displayed in ~~strikethrough~~ type and green highlight.

Article 6. Pregnancy, Childbirth, or Related Medical Conditions.

§ 11035. Definitions.

The following definitions apply only to this article:

~~(a) "Affected by pregnancy" means that because of pregnancy, childbirth, or a related medical condition, or "a condition related to pregnancy, childbirth, or a related medical condition," as set forth in Government Code section 12945, it is medically advisable for an employee to transfer or otherwise to be reasonably accommodated by her employer.~~

~~(b) "Because of pregnancy" means due to an employee's actual pregnancy, childbirth or a related medical condition.~~

(~~e~~a) "CFRA" means the Moore-Brown-Roberti Family Rights Act of 1993. (California Family Rights Act, Gov. Code §§ 12945.1 and 12945.2.) "CFRA leave" means family care or medical leave as those leaves are defined at section 11087.

~~(d) A "condition related to pregnancy, childbirth, or a related medical condition," as set forth in Government Code section 12945, means a physical or mental condition intrinsic to pregnancy or childbirth that includes, but is not limited to, lactation. Generally lactation without medical complications is not a disabling related medical condition requiring pregnancy disability leave,~~

~~although it may require transfer to a less strenuous or hazardous position or other reasonable accommodation.~~

(~~e~~b) A "covered entity" is any person (as defined in Government Code section 12925), labor organization, apprenticeship training program, training program leading to employment, employment agency, governing board of a school district, licensing board or other entity to which the provisions of Government Code sections 12940, 12943, 12944 or 12945 apply.

~~(f) A woman is "disabled by pregnancy" if, in the opinion of her health care provider, she is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons. An employee also may be considered to be disabled by pregnancy if, in the opinion of her health care provider, she is suffering from severe morning sickness or needs to take time off for: prenatal or postnatal care; bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; childbirth; loss or end of pregnancy; or recovery from childbirth, loss or end of pregnancy. The preceding list of conditions is intended to be non-exclusive and illustrative only. Nothing in this Article shall exclude a transgender individual who is disabled by pregnancy.~~

~~(g) An "eligible female employee" is an employee who qualifies for coverage under her employer's group health plan. An employee's pregnancy, childbirth, or related medical conditions are not lawful bases to make an employee ineligible for coverage. "Eligible female employee" includes a transgender employee who is disabled by pregnancy.~~

(~~h~~c) "Employer," as used in these regulations, except for section 11036, is any employer with five or more full or part time employees, who is an employer within the meaning of Government Code section 12926, and section 11008(d), of these regulations. "Employer" includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees.

(~~i~~d) "Employment in the same position" means employment in, or reinstatement to, the position that the employee held prior to reasonable accommodation, transfer, or ~~disability leave because of~~ pregnancy disability leave.

(~~j~~e) "Employment in a comparable position" means employment in a position that is virtually identical to the employee's position held prior to reasonable accommodation, transfer, or pregnancy disability leave in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. The position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from the employee's prior position and ordinarily has the same shift or the same or an equivalent work schedule.

(~~k~~f) “FMLA” means the federal Family and Medical Leave Act of 1993 and its implementing regulations. “FMLA leave” means family care or medical leave taken pursuant to FMLA.

(~~l~~g) “Four months” means the number of days the employee would normally work within four calendar months (one-third of a year equaling 17 ⅓ weeks), if the leave is taken continuously, following the date the pregnancy disability leave commences. If an employee's schedule varies from month to month, a monthly average of the hours worked over the four months prior to the beginning of the leave shall be used for calculating the employee's normal work month.

(~~m~~h) “Group health plan” means medical coverage provided by the employer for its employees, as defined, as of December 30, 2012, in the Internal Revenue Code.

(~~n~~i)(1) “Health care provider” means:

(~~1~~A) A medical or osteopathic doctor, physician, or surgeon, licensed in California, or in another state or country, ~~who directly treats or supervises the treatment of the applicant's or employee's pregnancy, childbirth, or a related medical condition, or “a condition related to pregnancy, childbirth, or a related medical condition,” as set forth in Government Code section 12945,~~ or

(~~2~~B) A ~~marriage and family~~ therapist, ~~or~~ acupuncturist, ~~licensed in California or in another state or country, or any other persons who meet the definition of “others capable of providing health care services” under FMLA and its implementing regulations, including~~ nurse, nurse practitioner~~s~~, nurse midwife~~ves~~, ~~licensed~~ midwife~~ves~~, doula, ~~clinical~~ psychologist~~s~~, psychiatrist, clinical social worker~~s~~, chiropractor~~s~~, physician assistants, industrial hygienists, mental health mental health professional, lactation consultant, physical therapist, occupational therapist, or vocational rehabilitation specialist licensed in California or in another state or country, ~~who directly treats or supervises the treatment of the applicant's or employee's pregnancy, childbirth or a related medical condition, or “a condition related to pregnancy, childbirth, or a related medical condition,” as set forth in Government Code section 12945,~~ or any other person who meets the definition of 'health care provider' under FMLA and its implementing regulations or who meets the definition of 'health care provider’ under the PWFA or its implementing regulations,” or

(~~3~~C) A health care provider from whom an employer or a group health plan's benefits manager will accept medical certification of the existence of a health condition to substantiate a claim for benefits.

(j) “Interactive process” means an informal, good faith interactive process between the covered entity and the employee seeking an accommodation for pregnancy, childbirth, or a related medical condition. This process should identify the adjustment or change at work that is needed, if not clear from the request. There are no rigid steps that must be followed.

(~~o~~k) “Intermittent leave” means leave taken in separate periods of time ~~because of pregnancy,~~ rather than for one continuous period of time, because of pregnancy, childbirth, or a related medical condition. Examples of intermittent leave include leave taken on an occasional basis for medical appointments, or leave taken several days at a time over a period of several months for purposes related to pregnancy, childbirth, or a related medical condition.

(~~p~~l) “Medical certification” means a written communication, as specified in section 11050~~(b)(6) and (b)(7)~~, from the employee's health care provider to the employer stating that the employee is disabled because of pregnancy, childbirth, or a related medical condition ~~or~~ and that it is medically advisable for the employee to be transferred to a less strenuous or hazardous position or duties, ~~or otherwise~~ to be reasonably accommodated, or take pregnancy disability leave.

~~(q) “Perceived pregnancy” means being regarded or treated by an employer or other covered entity as being pregnant or having a related medical condition.~~

(m) “Pregnancy, childbirth, or a related medical condition” or “actual pregnancy, childbirth, or a related medical condition” are used interchangeably. “Pregnancy” and “childbirth” refer to the pregnancy or childbirth of the specific employee in question and include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery). “Related medical conditions” are medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be, “related medical conditions”: termination of pregnancy, including via miscarriage, stillbirth, or abortion, and recovery from termination; recovery from childbirth; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; morning sickness; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections. This list is non-exhaustive.

(1) “Affected by pregnancy, childbirth, or a related medical condition” or “disabled by pregnancy, childbirth, or a related medical condition” means that because of pregnancy, childbirth, or a related medical condition, it is medically advisable for an employee to take pregnancy disability leave, transfer, or be reasonably accommodated by their employer.

(2) “Perceived pregnancy, childbirth, or related medical condition;” “perceived to be affected by pregnancy, childbirth, or a related medical condition;” or “perceived to be disabled by pregnancy, childbirth, or a related medical condition,” are interchangeable and mean being

regarded or treated by an employer or other covered entity as being pregnant, have given childbirth, or experiencing a related medical condition, or as being affected by pregnancy, childbirth, or a related medical condition.

(3) Nothing in this Article shall exclude a transgender individual who is actually or perceived to be pregnant, to have given childbirth, or to have a related medical condition.

(~~r~~n) "Pregnancy disability leave" is any leave, whether paid or unpaid, taken by an employee for any period(s) up to a total of four months during which ~~she is~~they are disabled by pregnancy, childbirth, or a related medical condition.

(o) "PWFA" means the federal Pregnant Workers Fairness Act (42 U.S.C. 2000gg) and its implementing regulations (29 C.F.R. § 1636.1, et seq.).

(p) "Qualified employee" means either:

(1) an employee who, with or without reasonable accommodation, can perform the essential functions of their position, or if the accommodation is leave, who is reasonably expected to be able to perform the essential functions, with or without an accommodation, at the end of the leave; or

(2) an employee who is unable to perform one or more essential functions if the inability to perform the essential function(s) can be reasonably accommodated through, for instance, the temporary suspension of the essential function(s) and the employee performing the remaining functions of the position, or the remaining functions plus other functions temporarily assigned by an employer; the employee performing the functions of a different job to which they are temporarily transferred; the employee participating in the employer's light or modified duty program; or other arrangements.

(~~s~~q) "Reasonable accommodation" of an employee affected by pregnancy, childbirth, or a related medical condition ~~is any change in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential functions of a job. Reasonable accommodation~~ may include, but is not limited to, an employer:

(1) making changes in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential functions of the job;

(2) temporarily suspending the performance of one or more essential functions;

(~~1~~3) modifying work practices or policies;

(~~2~~4) modifying work duties;

(~~3~~5) modifying work schedules to permit earlier or later hours, or to permit more frequent breaks (e.g., to use the restroom);

(~~4~~6) providing furniture (e.g., stools or chairs) or acquiring or modifying equipment or devices; ~~or~~

(~~5~~7) providing a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in the Labor Code~~.~~;

(8) providing telework, remote work, or a change of work site; or

(9) making adjustments to allow an employee to work without increased pain or increased risk to the employee's health or the health of the pregnancy.

(~~t~~r) "Reduced work schedule" means permitting an employee to work less than the usual number of hours per work week, or hours per work day.

~~(u) A "related medical condition" is any medically recognized physical or mental condition related to pregnancy, childbirth or recovery from pregnancy or childbirth. This term includes, but is not limited to, lactation-related medical conditions such as mastitis,; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; loss or end of pregnancy; or recovery from loss or end of pregnancy.~~

(s) "Self-confirmation" means a simple statement where an employee confirms that they need, and that their health care provider has advised, a reasonable accommodation because of pregnancy, childbirth, or a related medical condition. A covered entity may not require that the statement be in a specific format, use specific words, or be on a specific form.

(~~v~~t) "Transfer" means reassigning temporarily an employee affected by pregnancy, childbirth, or a related medical condition to a less strenuous or hazardous position or to less strenuous or hazardous duties.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940, 12943, 12944, 12945, 12945.1 and 12945.2, Government Code; Family and Medical Leave Act, (FMLA) 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; Pregnant Workers Fairness Act (PWFA) 42 U.S.C. 2000gg and PWFA regulations, 29 C.F.R. § 1636.1, et seq.; Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. § 2000e; and J.E. Robinson v. Fair Employment & Housing Com. (1992) 2 Cal. 4th 226.

§ 11036. Prohibition against Harassment.

As set forth in Government Code sections 12926 and 12940, it is an unlawful employment practice for any employer with one or more employees or other covered entities to harass an

employee or applicant because of actual or perceived ~~pregnancy or perceived~~ pregnancy, childbirth, breastfeeding, or any related medical conditions.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940 and 12945, Government Code.

§ 11037. No Eligibility Requirements.

There is no eligibility requirement, such as minimum hours worked or length of service, before an employee affected or disabled by pregnancy, childbirth, or a related medical condition is eligible for reasonable accommodation, transfer, or pregnancy disability leave.

NOTE: Authority cited: Sections 12935(a), Government Code. Reference: Section 12945, Government Code.

§ 11038. Responsibilities of Covered Entities Other than Employers.

(a) Unless a permissible defense applies, discrimination because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~ by any covered entity other than employers constitutes discrimination because of sex under Government Code sections 12926, 12940, 12943 and 12944.

(b) It is unlawful for an employer or other covered entity to use an automated-decision system or selection criteria (including a qualification standard, employment test, or proxy) that discriminates against an applicant or employee or a class of applicants or employees on the basis of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~, subject to any available defense. Relevant to any such claim or available defense is evidence, or the lack of evidence, of anti-bias testing or similar proactive efforts to avoid unlawful discrimination, including the quality, efficacy, recency, and scope of such effort, the results of such testing or other effort, and the response to the results.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940, 12943, 12944 and 12945, Government Code.

§ 11039. Responsibilities of Employers.

(a) Employer Obligations

(1) Except as excused by a permissible defense, it is unlawful for any employer to:

(A) refuse to hire or employ an applicant because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(B) refuse to select an applicant or employee for a training program leading to employment or promotion because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(C) refuse to promote an employee because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(D) bar or to discharge an applicant or employee from employment or from a training program leading to employment or promotion because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(E) discriminate against an applicant or employee in terms, conditions or privileges of employment because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(F) harass an applicant or employee because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~, as set forth in section 11036;

(G) transfer an employee because of actual or perceived ~~affected by~~ pregnancy, childbirth, or a related medical condition, over ~~her~~ their objections to another position, except as provided in section 11041(c). Nothing in this section prevents an employer from transferring an employee for the employer's legitimate operational needs unrelated to the employee's actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~;

(H) require an employee to take a leave of absence because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~ when the employee has not requested leave;

(I) retaliate, discharge, or otherwise discriminate against an applicant or employee because ~~she has~~ they have opposed employment practices forbidden under the FEHA or because ~~she has~~ they have filed a complaint, testified, or assisted in any proceeding under the FEHA;

(J) use an automated-decision system or selection criteria (including a qualification standard, employment test, or proxy) that discriminates against an applicant or employee or a class of applicants or employees on the basis of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~, subject to any available defense. Relevant to any such claim or available defense is evidence, or the lack of evidence, of anti-bias testing or similar proactive efforts to avoid unlawful discrimination, including the quality, efficacy, recency, and scope of such effort, the results of such testing or other effort, and the response to the results; or

(K) otherwise discriminate against an applicant or employee because of actual or perceived pregnancy, childbirth, or a related medical condition ~~or perceived pregnancy~~ by any practice that is prohibited on the basis of sex.

(2) Except as excused by a permissible defense, it is unlawful for any employer to:

(A) refuse to provide employee benefits for pregnancy, childbirth, or a related medical condition as set forth at section 110445, if the employer provides such benefits for other temporary disabilities;

(B) refuse to maintain and to pay for coverage under a group health plan for an eligible employee who takes pregnancy disability leave, as set forth at section 110445(c), under the same terms and conditions that would have been provided if the employee had not taken leave;

(C) refuse to provide reasonable accommodation for an employee or applicant disabled or perceived to be disabled ~~affected~~ by pregnancy, childbirth, or a related medical condition, as set forth at section 11040;

(D) refuse to transfer an employee affected by or perceived to be affected by pregnancy, childbirth, or a related medical condition, as set forth at section 11041;

(E) refuse to grant an employee disabled by pregnancy, childbirth, or a related medical condition ~~a~~ pregnancy disability leave, as set forth at section 11042; or

(F) deny, interfere with, or restrain an employee's rights to reasonable accommodation, to transfer, or to take pregnancy disability leave under Government Code section 12945, including retaliating against the employee because ~~she has~~ they have exercised ~~her~~ their right to reasonable accommodation, to transfer, or to take pregnancy disability leave.

(b) Permissible defenses, as defined at section 11010, include a bona fide occupational qualification, business necessity or where the practice is otherwise required by law.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940 and 12945, Government Code; Pregnancy Discrimination Act of 1978 (P.L. 95-555, 42 U.S.C. § 2000e, § 701(k)), an amendment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.); and Cal. Federal Sav. and Loan Ass'n v. Guerra (1987) 479 U.S. 272.

§ 11040. Reasonable Accommodation Due to Pregnancy, Childbirth, or a Related Medical Condition.

(a) It is unlawful for an employer to deny a request for reasonable accommodation made by an employee affected by pregnancy, childbirth, or a related medical condition if:

(1) The employee's request is based on the advice of ~~her~~their health care provider that reasonable accommodation is medically advisable; and

(2) The requested accommodation is reasonable.

(A) Whether an accommodation is reasonable is a factual determination to be made on a case-by-case basis, taking into consideration such factors, including but not limited to, the employee's medical needs, the duration of the needed accommodation, ~~the employer's legally permissible past and current practices,~~ and other such factors, under the totality of the circumstances.

(B) The employee and employer shall engage in a good faith interactive process, as defined in section 11035(j), to identify and implement the employee's request for reasonable accommodation ~~as set forth in section 11050(a)~~.

(b) When a reasonable accommodation, such as a change of work duties or job restructuring, is granted, it shall not affect the employee's independent right to take up to four months for pregnancy disability leave. If the requested reasonable accommodation, however, involves a reduction in hours worked such as a reduced work schedule, or intermittent leave, the employer may consider this as a form of pregnancy disability leave and deduct the hours from the employee's four month leave entitlement.

~~(c) An employer may, but need not, require a medical certification substantiating the employee's need for reasonable accommodation, as set forth in sections 11049(a) and (b), and 11050(b),.~~

(c) Requests and Responses to Requests for Reasonable Accommodations.

(1) A request for an accommodation because of pregnancy, childbirth, or a related medical condition, may be made at any time.

(2) Employer Response to Reasonable Accommodation Request. An employer shall respond to a reasonable accommodation request related to pregnancy, childbirth, or a related medical condition as soon as practicable. Unnecessary delay in the employer's response or provision of reasonable accommodation may be considered a violation of this section, even if the covered entity eventually provides a reasonable accommodation. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:

(A) The reason for the delay;

(B) The length of the delay;

(C) The length of time that the accommodation is needed. If the accommodation is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the accommodation;

(D) How much the employee and the covered entity each contributed to the delay;

(E) Whether the covered entity was engaged in actions related to the reasonable accommodation request during the delay;

(F) Whether the covered entity offered the employee an interim reasonable accommodation during the interactive process or while waiting for the covered entity's response. For the purposes of this factor, the interim reasonable accommodation should be one that allows the employee to continue working. Leave will not be considered an interim reasonable accommodation supporting this factor, unless the employee selects or requests leave as an interim reasonable accommodation.

(G) Whether the accommodation was or would be simple or complex to provide. Delay in providing the following accommodations, or other accommodations similarly common and easy to provide, will likely constitute unnecessary delay:

(i) Allowing an employee to carry or keep water near and drink, as needed;

(ii) Allowing an employee to take additional restroom breaks, as needed;

(iii) Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and

(iv) Allowing an employee to take breaks to eat and drink, as needed.

(3) An employee disabled by pregnancy, childbirth, or a related medical condition is not required to accept an accommodation. However, if such employee rejects a reasonable accommodation or, in the alternative, a transfer that is necessary to enable the employee to perform an essential function(s) of the position held or desired or to apply for the position, or rejects the temporary suspension of an essential function(s), and, as a result of that rejection, cannot perform an essential function(s) of the position, or cannot apply, the employee will not be considered "qualified," as defined in section 11035(p).

(A) If an employee disabled by pregnancy, childbirth, or a related medical condition meets the definition of "qualified employee" under paragraph (p) of section 11035 of these regulations and needs one or more essential functions of the relevant position to be temporarily suspended, the covered entity must provide the accommodation if reasonable as described under paragraph (a)(2)(A) of this section.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926 and 12945, Government Code; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

§ 11041. Transfer.

(a) Transfer -- All Employers

(1) It is unlawful for an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions or duties for the duration of the disability, including disabilities or conditions resulting from on-the-job injuries, to fail to apply the policy, practice or collective bargaining agreement to transfer an employee who is disabled by pregnancy and who so requests.

(2) It is unlawful for an employer to deny the request of an employee affected by pregnancy to transfer provided that:

(A) The employee's request is based on the advice of ~~her~~their health care provider that a transfer is medically advisable; and

(B) Such transfer can be reasonably accommodated by the employer. To provide a transfer, an employer need not create additional employment that the employer would not otherwise have created, discharge another employee, violate the terms of a collective bargaining agreement, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job. An employer may accommodate a pregnant employee's transfer request by transferring another employee, but there is no obligation to do so.

~~(C) An employer may, but need not, require a medical certification substantiating the employee's need for transfer, as set forth in sections 11049(a) and (b), and 11050(b).~~

(b) Burden of Proof. The burden shall be on the employer to prove, by a preponderance of the evidence, that such transfer cannot be reasonably accommodated for one or more of the enumerated reasons listed in section 11041(a)(2).

(c) Transfer to Accommodate Intermittent Leave or a Reduced Work Schedule. If an employee's health care provider provides medical certification that an employee has a medical need to take intermittent leave or leave on a reduced work schedule because of pregnancy, childbirth, or a related medical condition, the employer may require the employee to transfer temporarily to an available alternative position that meets the needs of the employee. The employee must meet the qualifications of the alternative position. The alternative position must have the equivalent rate of pay and benefits, and must better accommodate the employee's leave requirements than ~~her~~their regular job, but does not have to have equivalent duties.

(d) Right to Reinstatement after Transfer. When the employee's health care provider certifies that there is no further medical advisability for the transfer, intermittent leave, or leave on a reduced work schedule, the employer must reinstate the employee to ~~her~~their same or comparable position in accordance with the requirements of section 11043~~3~~4.

(e) A request for a transfer because of pregnancy, childbirth, or a related medical condition, may be made at any time.

(f) Employer Response to Transfer Request.

(1) An employer shall respond to a request for transfer related to pregnancy, childbirth, or a related medical condition, as soon as practicable. Unnecessary delay in the employer's response or provision of transfer may constitute a violation of this section, even if the covered entity eventually provides the transfer. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:

(A) The reason for the delay;

(B) The length of the delay;

(C) The length of time that the transfer is needed. If the transfer is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the transfer;

(D) How much the employee and the covered entity each contributed to the delay;

(E) Whether the covered entity was engaged in actions related to the transfer request during the delay;

(F) Whether the covered entity offered the employee an interim reasonable accommodation while waiting for the covered entity's response to the transfer request. For the purposes of this factor, the interim reasonable accommodation should be one that allows the employee to continue working. Leave will not be considered an interim reasonable accommodation supporting this factor, unless the employee selects or requests leave as an interim reasonable accommodation.

(g) An employee disabled by pregnancy, childbirth, or a related medical condition is not required to accept a transfer. However, if such employee rejects a transfer, or in the alternative, a reasonable accommodation that is necessary to enable the employee to perform an essential function(s) of the position held or desired or to apply for the position, or rejects the temporary suspension of an essential function(s), and, as a result of that rejection, cannot perform an essential function(s) of the position, or cannot apply, the employee will not be considered "qualified," as defined in section 11035(p).

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

§ 11042. Pregnancy Disability Leave.

The following provisions apply to leave taken for disability because of pregnancy, childbirth, or a related medical condition.

(a) Four-Month Leave Requirement for all Employers. All employers must provide a leave of up to four months, as needed, for the period(s) of time an employee is actually disabled because of pregnancy, childbirth, or a related medical condition, even if an employer has a policy or practice that provides less than four months of leave for other similarly situated, temporarily disabled employees. Pregnancy disability leave does not need to be taken in one continuous period of time.

(1) Employees are eligible for up to four months of leave per pregnancy, not per year. A "four-month leave" means time off for the number of days or hours the employee would normally work within four calendar months (one-third of a year or 17 ⅓ weeks). For a full time employee who works 40 hours per week, "four months" means 693 hours of leave entitlement, based on 40 hours per week times 17 ⅓ weeks.

(2) For employees who work more or less than 40 hours per week, or who work on variable work schedules, the number of working days that constitutes four months is calculated on a pro rata or proportional basis.

(A) For example, for an employee who works 20 hours per week, "four months" means 346.5 hours of leave entitlement. For an employee who normally works 48 hours per week, "four months" means 832 hours of leave entitlement.

(B) Leave on an intermittent leave or a reduced work schedule.
An employer may account for increments of intermittent leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave, provided it is not greater than one hour. For example, if an employer accounts for sick leave in 30-minute increments and vacation time in one-hour increments, the employer must account for pregnancy disability leave in increments of 30 minutes or less. If an employer accounts for other forms of leave in two-hour increments, the employer must account for pregnancy disability leave in increments no greater than one hour.

(C) If a holiday falls within a week taken as pregnancy disability leave, the week is nevertheless counted as a week of pregnancy disability leave. If, however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation or an employer closing the plant for retooling), the days the employer's activities have ceased do not count against the employee's pregnancy disability leave entitlement.

(3) Although all pregnant employees are eligible for up to four months of leave, if that leave is taken in one period of time, taking intermittent or reduced work schedule throughout an employee's pregnancy will differentially affect the number of hours remaining that an employee

is entitled to take pregnancy disability leave leading up to and after childbirth, depending on the employee's regular work schedule.

(A) For example, a full-time employee, who normally works a 40-hour work week is entitled to 693 working hours of leave. If that employee takes 180 hours of intermittent leave throughout ~~her~~ their pregnancy, ~~she~~ they would still be entitled to take 513 hours, or approximately three months leading up to and after ~~her~~ their childbirth and related medical condition (if any).

(B) In contrast, a part-time employee who normally works 20 hours per week~~,~~ would be entitled to 346.5 hours of leave. If that employee takes intermittent leave of 180 hours throughout ~~her~~ their pregnancy, ~~she~~ they would be entitled to only 166.5 more hours of leave, approximately two months of leave, leading up to and after ~~her~~ their childbirth and related medical condition (if any).

(4) Minimum Duration. Leave may be taken intermittently or on a reduced work schedule when an employee is disabled because of pregnancy, childbirth, or a related medical condition, as determined by the health care provider of the employee. An employer may account for increments of intermittent leave using the shortest period of time that the employer's payroll system uses to account for other forms of leave, provided it is not greater than one hour, as set forth in section 11042(a)(2)(B).

(b) Employers with More Generous Leave Policies. If an employer has a more generous leave policy for similarly situated employees with other temporary disabilities than is required for pregnancy purposes under these regulations, the employer must provide the more generous leave to employees temporarily disabled by pregnancy, childbirth, or a related medical condition. If the employer's more generous leave policy exceeds four months, the employer's return policy after taking the leave would govern, not the return rights specified in these regulations.

~~(c) Denial of Leave is an Unlawful Employment Practice. It is an unlawful employment practice for an employer to refuse to grant pregnancy disability leave to an employee disabled by pregnancy.~~

~~(1) who has provided the employer with reasonable advance notice of the medical need for the leave, and~~

~~(2) whose health care provider has advised that the employee is disabled by pregnancy.~~

~~The employer may require medical certification of the medical advisability of the leave, as set forth in sections 11049(a) and (b), and 11050(b).~~

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; Cal. Federal Sav. and Loan Ass'n v. Guerra (1987) 479 U.S. 272.

§ 11043. Pregnancy Disability Leave Notice; Response to Requests.

(a) Reasonable Advance Notice.

(1) Reasonable Verbal or Written Notice. An employee shall provide reasonable timely oral or written notice sufficient to make the employer aware that the employee needs pregnancy disability leave and, where practicable, the anticipated timing and duration of the pregnancy disability leave. The verbal or written notice need not be in a specific format, use specific words, or be on a specific form to be effective.

(2) There is no specific length of notice required by this section. There is a rebuttable presumption that 30 days' notice or more constitutes "reasonable advance notice." However, a notice period of fewer than 30 days may also constitute "reasonable advance notice."

(3) When Reasonable Advance Notice Is Not Practicable. If reasonable advance notice is not practicable, because it is not known when the pregnancy disability leave will begin, or because of a change in circumstances, a medical emergency, or other good cause, notice must be given as soon as practicable.

(b) Employer Response to Requests for Pregnancy Disability Leave.

(1) An employer shall respond to a request for pregnancy disability leave as soon as practicable. An employer should attempt to respond to the leave request prior to the day the leave is due to begin. Once given, approval shall be deemed retroactive to the first day of leave. Unnecessary delay in the employer's response or provision of pregnancy disability leave may be considered a violation of section 11042(a) of these regulations, even if the covered entity eventually provides the leave. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:

(A) The reason for the delay;

(B) The length of the delay;

(C) The length of time that the leave is needed. If the leave is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the leave;

(D) How much the employee and the covered entity each contributed to the delay;

(E) Whether the covered entity was engaged in actions related to the leave request during the delay.

(c) Denial of Leave is an Unlawful Employment Practice.

(1) It is an unlawful employment practice for an employer to refuse to grant pregnancy disability leave to an employee disabled by pregnancy where the employee has:

(A) provided the employer with reasonable advance notice or notice as soon as practicable regarding need for the pregnancy disability leave; and

(B) provided or had their health care provider provide, upon the employer's request, medical certification, as defined in paragraph (l) of section 11035, advising that the employee is disabled by pregnancy and requires pregnancy disability leave from work (For additional details of the purpose and contents of medical certifications, as well as when employers may request them, can be found in section 11050 of these regulations).

(2) An employer shall not deny pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide reasonable advance notice of the need for the leave.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; ; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.; Cal. Federal Sav. and Loan Ass'n v. Guerra (1987) 479 U.S. 272.

§ 110443. Right to Reinstatement from Pregnancy Disability Leave.

The following rules apply to reinstatement from any leave or transfer taken for disability because of pregnancy, childbirth, or a related medical condition.

(a) Guarantee of Reinstatement. An employee who exercises ~~her~~ their right to take pregnancy disability leave is guaranteed a right to return to the same position, or, if the employer is excused by section 11043~~3~~4(c)(1), to a comparable position, and the employer shall provide the guarantee in writing upon request of the employee. It is an unlawful employment practice for any employer, after granting a requested pregnancy disability leave or transfer, to refuse to honor its guarantee of reinstatement unless the refusal is justified by the defenses below in subdivisions (c)(1) and (c)(2). If the employee takes intermittent leave or a reduced work schedule, only one written guarantee of reinstatement is required.

(b) Refusal to Reinstate

(1) Definite Date of Reinstatement. Where a definite date of reinstatement has been agreed upon at the beginning of the leave or transfer, a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that the leave or transfer was granted by the employer and that the employer failed to reinstate the employee to the same position or, where applicable, to a comparable position, by the date agreed upon, as specified below in subdivisions (c)(1) and (c)(2).

(2) Change in Date of Reinstatement. If the reinstatement date differs from the employer's and the employee's original agreement or if no agreement was made, the employer shall reinstate the employee within two business days, or, when two business days is not feasible, reinstatement shall be made as soon as it is possible for the employer to expedite the employee's return, after the employee notifies the employer of ~~her~~ their readiness to return to the same, or, where applicable, a comparable position, as specified below in subdivisions (c)(1) and (c)(2).

(c) Permissible Defenses -- Employment Would Have Ceased

(1) Right to Reinstatement to the Same Position. An employee has no greater right to reinstatement to the same position or to other benefits and conditions of employment than those rights ~~she~~ they would have had if ~~she~~ they had been continuously at work during the pregnancy disability leave or transfer period. This is true even if the employer has given the employee a written guarantee of reinstatement. A refusal to reinstate the employee to ~~her~~ their same position or duties is justified if the employer proves, by a preponderance of the evidence, that the employee would not otherwise have been employed in ~~her~~ their same position at the time reinstatement is requested for legitimate business reasons unrelated to the employee taking pregnancy disability leave or transfer (such as a layoff pursuant to a plant closure).

(2) Right to Reinstatement to a Comparable Position. An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated. If the employer is excused from reinstating the employee to ~~her~~ their same position, or with the same duties, a refusal to reinstate the employee to a comparable position is justified if the employer proves, by a preponderance of the evidence, either of the following:

(A) The employer would not have offered a comparable position to the employee if ~~she~~ they would have been continuously at work during the pregnancy disability leave or transfer period.

(B) There is no comparable position available.

(i)~~1.~~ A position is available if there is a position open on the employee's scheduled date of reinstatement or within 60 calendar days for which the employee is qualified, or to which the employee is entitled by company policy, contract, or collective bargaining agreement.

(ii)~~2.~~ An employer has an affirmative duty to provide notice of available positions to the employee by means reasonably calculated to inform the employee of comparable positions during the requirement period. Examples include notification in person, by letter, telephone or email, or by links to postings on the company's Web site if there is a section for job openings.

(iii)~~3.~~ If a comparable position is not available on the employee's scheduled date of reinstatement, but the employee is later reinstated under the 60 calendar day period set forth in section 1104~~3~~4(c)(2)(B)~~1.~~(i), the period between the employee's scheduled date of

reinstatement and the date of ~~her~~ their actual reinstatement shall not be counted for purposes of any employee pay or benefit.

(3) If an employee is laid off during pregnancy disability leave or transfer for legitimate business reasons unrelated to ~~her~~ their leave or transfer, the employer's responsibility to continue the pregnancy disability leave or transfer, maintain benefits, and reinstate the employee ceases at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement, or otherwise.

(d) Right to Reinstatement to Job if Additional Leave Taken Following End of Pregnancy Disability Leave; Equal Treatment. If an employee disabled by pregnancy remains on some form of leave following the end of ~~her~~ their pregnancy disability leave (e.g., employer's disability leave plan, etc.), an employer shall grant the employee reinstatement rights that are the same as any other similarly situated employee who has taken a similar length disability leave under the employer's policy, practice or collective bargaining agreement. For example, if the employer has a policy that grants reinstatement to other employees who are temporarily disabled for up to six months, the employer must also grant reinstatement to an employee disabled by pregnancy for six months. An employer and employee also may agree to a later date of reinstatement.

(e) Right to Reinstatement to Job if CFRA Leave is Taken Following Pregnancy Disability Leave. At the expiration of pregnancy disability leave, if an employee takes a CFRA leave for reason of the birth of ~~her~~ their child, the employee's right to reinstatement to ~~her~~ their job is governed by CFRA and not section 11043~~3~~4(c)(1) and (c)(2). Under CFRA, an employer may reinstate an employee either to ~~her~~ their same or a comparable position.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; Cal. Federal Sav. and Loan Ass'n v. Guerra (1987) 479 U.S. 272.

§ 11045~~3~~4. Terms of Pregnancy Disability Leave.

(a) Paid Leave. An employer is not required to pay an employee during pregnancy disability leave unless the employer pays for other temporary disability leaves for similarly situated employees. An employee may be entitled to receive state disability insurance for a period of disability because of pregnancy, childbirth, or a related medical condition and may contact the California Employment Development Department for more information.

(b) Accrued Time Off

(1) Sick Leave. An employer may require an employee to use, or an employee may elect to use, any accrued sick leave during the otherwise unpaid portion of ~~her~~ their pregnancy disability leave.

(2) Vacation Time and Other Accrued Time Off. An employee may elect, at ~~her~~ their option, to use any vacation time or other accrued personal time off (including undifferentiated paid time off (PTO)) for which the employee is eligible.

(c) Continuation of Group Health Coverage

(1) An employer shall maintain and pay for group health coverage for an eligible ~~female~~ employee who takes pregnancy disability leave for the duration of the leave, not to exceed four months over the course of a 12-month period per pregnancy, beginning on the date the pregnancy disability leave begins, at the same level and under the same conditions that coverage would have been provided if the employee had not taken pregnancy disability leave.

(A) An employer may maintain and pay for coverage for a group health plan for longer than four months.

(B) If the employer is a state agency, the collective bargaining agreement shall govern the continued receipt by an eligible ~~female~~ employee of health care coverage under the employer's group health plan.

(2) The time that an employer maintains and pays for group health coverage during pregnancy disability leave shall not be used to meet an employer's obligation to pay for 12 weeks of group health coverage during leave taken under CFRA. This shall be true even where an employer designates pregnancy disability leave as family and medical leave under FMLA. The entitlements to employer-paid group health coverage during pregnancy disability leave and during CFRA are two separate and distinct entitlements.

(3) An employer may recover from the employee the premium paid while the employee was on pregnancy disability leave if both of the following conditions occur:

(A) The employee fails to return at the end of ~~her~~ their pregnancy disability leave.

(B) The employee's failure to return from leave is for a reason other than one of the following:

(i)~~1.~~ Taking CFRA leave, unless the employee chooses not to return to work following the CFRA leave.

(ii)~~2.~~ The continuation, recurrence or onset of a health condition that entitles the employee to pregnancy disability leave, unless the employee chooses not to return to work following the leave.

(iii)~~3.~~ Non-pregnancy-related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave.

(iv)~~4.~~ Any other circumstance beyond the control of the employee, including, but not limited to, circumstances where the employer is responsible for the employee's failure to return (e.g., the employer does not return the employee to ~~her~~ their same position or reinstate the employee to a comparable position), or circumstances where the employee must care for herself or a family member (e.g., the employee gives birth to a child with a serious health condition).

(d) Other Benefits and Seniority Accrual. During ~~her~~ their pregnancy disability leave, the employee shall accrue seniority and participate in employee benefit plans, including, but not limited to, life, short-term and long-term disability or accident insurance, pension and retirement plans, stock options and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to any other unpaid disability leave granted by the employer for any reason other than a pregnancy disability.

(1) If the employer's policy allows seniority to accrue when employees are on paid leave, such as paid sick or vacation leave, and/or unpaid leave, then seniority will accrue during any part of a paid and/or unpaid pregnancy disability leave.

(2) The employee returning from pregnancy disability leave shall return with no less seniority than the employee had when the leave commenced.

(e) Employee Status. The employee shall retain employee status during the period of the pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825; Pregnancy Discrimination Act of 1978 (P.L. 95-555, 42 U.S.C. § 2000e, § 701(k)), an amendment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.).

§ 11046~~5~~. Relationship between Pregnancy Leave and FMLA Leave.

(a) A Pregnancy Leave May Also Be a FMLA Leave. If the employer is a covered employer and the employee is eligible for leave under the federal Family Care and Medical Leave Act (FMLA), the employer may be able to count the employee's pregnancy disability leave under this article, up to a maximum of 12 weeks, against ~~her~~ their FMLA leave entitlement.

(b) FMLA Coverage. For more information on rights and obligations under FMLA, consult the FMLA regulations regarding family care and medical leave.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq.; and FMLA regulations, 29 C.F.R. § 825.

§ 110476. Relationship between CFRA and Pregnancy Leaves.

(a) Separate and Distinct Entitlements. The right to take a pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take leave under the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2.

(b) Serious Health Condition -- Pregnancy, Childbirth, or a Related Medical Condition. An employee's own disability due to pregnancy, childbirth, or a related medical conditions is not a serious health condition under CFRA.

(c) CFRA Leave after Pregnancy Disability Leave. At the end of the employee's period(s) of pregnancy disability, or at the end of four months of pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of her their child, if the child has been born by this date.

(1) There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave for the birth of her their child. There is also no requirement that the employee no longer be disabled by her their pregnancy before taking CFRA leave for the birth of her their child.

(2) Where an employee has utilized four months of pregnancy disability leave prior to the birth of her their child, and her their health care provider determines that a continuation of the leave is medically necessary, an employer may, as a reasonable accommodation, allow the employee to utilize CFRA leave prior to the birth of her their child. No employer shall, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled under CFRA.

(d) Maximum Entitlement. The maximum statutory leave entitlement for California employees while they are disabled by pregnancy and/or bonding with a new child, provided they qualify for CFRA leave, for both pregnancy disability leave and CFRA leave for reason of the birth of the child and/or the employee's own serious health condition is the working days in 29 ⅓ workweeks. This assumes that the employee is disabled by pregnancy for four months (the working days in 17 ⅓ weeks) and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of her their child. Notwithstanding this subsection, an employee may be eligible for additional leave pursuant to other state and federal laws, including the Pregnant Workers Fairness Act and other provisions of FEHA.

(e) PDL and CFRA leave do not overlap.

Example: Employee begins pregnancy disability leave 4 weeks before their due date. They recover from childbirth 6 weeks after the birth. At this point, Employee is no longer disabled due to pregnancy, childbirth, or a related medical condition, so their pregnancy disability leave

is concluded. Employee now begins her 12 weeks of bonding leave under CFRA. In total, Employee has taken 22 weeks of leave: 10 weeks of pregnancy disability leave followed by 12 weeks of bonding leave.

(f) If employee exhausts PDL leave, employee may use CFRA leave.

Example: Employee experiences pregnancy-related complications and exhausts all four months of pregnancy disability leave before giving birth. Employee has a high risk pregnancy and is placed on bed rest, at which time they begin using their pregnancy disability leave. After four months of pregnancy disability leave, employee is still pregnant and on bed rest. Employee is permitted to use their CFRA leave to continue to recover from their pregnancy and childbirth or related medical condition. Employee gives birth four weeks later. Accordingly, Employee has taken all four months of pregnancy disability leave during their pregnancy, and four weeks of CFRA leave during their pregnancy. Employee is entitled to the remaining eight weeks of CFRA to recover from childbirth and a related medical condition (if any) and/or for bonding.

NOTE: Authority cited: Sections 12935(a), 12945.2(j), Government Code. Reference: Sections 12945, 12945.1 and 12945.2, Government Code.

§ 110487. Relationship between Pregnancy Disability Leave and Leave of Absence as Reasonable Accommodation for Physical or Mental Disability -- Separate and Distinct Rights.

(a) The right to take pregnancy disability leave under Government Code section 12945 and these regulations is separate and distinct from the right to take a leave of absence as a form of reasonable accommodation under Government Code section 12940. At the end or depletion of an employee's pregnancy disability leave, an employee who has a physical or mental disability (which may or may not be due to pregnancy, childbirth, or a related medical conditions) may be entitled to reasonable accommodation under Government Code section 12940. Entitlement to leave under section 12940 must be determined on a case-by case basis, using the standards provided in the disability discrimination provisions in article 9~~)~~ of these regulations, and is not diminished by the employee's exercise of ~~her~~ their right to pregnancy disability leave.

(b) If Employee exhausts PDL and CFRA, but still has a mental or physical disability as defined in Government Code sections 12926(j) and (m), Employee may request a reasonable accommodation for extended leave due to a disability, as described in Government Code section 12940. Example: After childbirth, Employee experiences post-partum depression, a medical condition, because of which they use all 4 months of leave available under PDL. They use the 12 weeks of CFRA leave to continue their recovery. At the end of those 12 weeks, the employee is still unable to work because of post-partum depression. At that point, the employee could request that their employer extend their leave as a reasonable accommodation under the federal Pregnant Workers Fairness Act and/or for their disability under the disability provisions of FEHA (separate and distinct from the pregnancy disability provisions under FEHA).

NOTE: Authority cited: Sections 12935(a), Government Code. Reference: Sections 12926, 12940 and 12945, Government Code; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

§ 11049. Employer Notice to Employees of Rights and Obligations for Reasonable Accommodation, to Transfer, and to Take Pregnancy Disability Leave.

(a) Employers to Provide Reasonable Advance Notice Advising Employees Affected by Pregnancy, Childbirth, or a Related Medical Condition of Their FEHA Rights and Obligations. An employer shall give its employees reasonable advance notice of employees' FEHA rights and obligations regarding pregnancy, childbirth, or related medical conditions as set forth ~~at~~ in this section ~~11049(e)~~ and as contained in the Notice as set forth in section 11051~~(a)~~, or its equivalent.

(b) Content of Employer's Reasonable Advance Notice. An employer shall provide its employees with information about:

(1) an employee's right to request reasonable accommodation, transfer, or pregnancy disability leave;

(2) employees' notice obligations, as set forth in section ~~11050~~11043, to provide ~~adequate~~ reasonable advance notice to the employer of the need for ~~reasonable accommodation, transfer or~~ pregnancy disability leave; and

(3) the employer's requirement, if any, for the employee to provide medical certification to establish the medical advisability for reasonable accommodation, transfer, or pregnancy disability leave, as set forth in section 11050(b).

(c) Consequences of Employer Notice Requirement

(1) If the employer follows the requirements in section 11049(d), such compliance shall constitute reasonable advance notice to the employee of the employer's notice obligations.

(2) Failure of the employer to provide reasonable advance notice shall preclude the employer from taking any adverse action against the employee, including denying reasonable accommodation, transfer or pregnancy disability leave, for failing to furnish the employer with adequate advance notice of a need for reasonable accommodation, transfer, or pregnancy disability leave.

(d) Distribution of Notices

(1) Employers shall post and keep posted the appropriate notice on its premises, in conspicuous places where employees are employed. The notice shall explain the Act's provisions and provide information about how to contact the Civil Rights Department to file a complaint and learn

more about rights and obligations under the Act. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it is posted electronically in a conspicuous place or places where employees would tend to view it in the workplace.

(2) An employer is also required to give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of ~~her~~ their pregnancy or sooner if the employee inquires about reasonable accommodation, transfer, or pregnancy disability leaves.

(3) If the employer publishes an employee handbook that describes other kinds of reasonable accommodation, transfers or temporary disability leaves available to its employees, that employer shall include a description of reasonable accommodation, transfer, and pregnancy disability leave in the next edition of its handbook that it publishes following adoption of these regulations. In the alternative, the employer may distribute to its employees a copy of its Notice at least annually. Distribution may be by electronic mail.

(4) Non-English Speaking Workforce. Any FEHA-covered employer whose work force at any facility or establishment is comprised of 10 percent or more persons whose spoken language is not English shall translate the notice into every language that is spoken by at least 10 percent of the workforce. In addition, any FEHA-covered employer shall make a reasonable effort to give either verbal or written notice in the appropriate language to any employee who the employer knows is not proficient in English, and for whom written notice previously has not been given in ~~her~~ their primary language, of ~~her~~ their rights to pregnancy disability leave, reasonable accommodation, and transfer, once the employer knows the employee is pregnant.

(e) Notice. An employer may provide a leave policy that is more generous than that required by FEHA if that more generous policy is provided to all similarly-situated, disabled employees. An employer may develop its own notice or it may choose to use the text provided in section 11051, unless it does not accurately reflect its own policy.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825.

~~**§ 11050. Employee Requests for Reasonable Accommodation, Transfer or Pregnancy Disability Leave: Advance Notice; Medical Certification; Employer Response.**~~

~~The following rules apply to any request for reasonable accommodation, transfer, or disability leave because of pregnancy.~~

~~(a) Adequate Advance Notice~~

~~(1) Verbal or Written Notice. An employee shall provide timely oral or written notice sufficient to make the employer aware that the employee needs reasonable accommodation, transfer, or~~

~~pregnancy disability leave, and, where practicable, the anticipated timing and duration of the reasonable accommodation, transfer or pregnancy disability leave. (11043(a)(1)~~

~~(2) 30 Days Advance Notice. An employee must provide the employer at least 30 days advance notice before the start of reasonable accommodation, transfer, or pregnancy disability leave if the need for the reasonable accommodation, transfer, or leave is foreseeable. The employee shall consult with the employer and make a reasonable effort to schedule any planned appointment or medical treatment to minimize disruption to the employer's operations, subject to the health care provider's approval.~~

~~(3) When 30 Days Is Not Practicable. If 30 days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances, a medical emergency, or other good cause, notice must be given as soon as practicable.~~

~~(4) Prohibition against Denial of Reasonable Accommodation, Transfer, or Leave in Emergency or Unforeseeable Circumstances. An employer shall not deny reasonable accommodation, transfer, or pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide adequate advance notice of the need for the reasonable accommodation, transfer, or leave.~~

~~(5) Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request. The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave request as soon as practicable, and, in any event no later than 10 calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.~~

~~(6) Consequences for Employee Who Fails to Give Employer Adequate Advance Notice of Need for Reasonable Accommodation or Transfer. If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the employer may delay the reasonable accommodation or transfer until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. However, under no circumstances may the employer delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her co-workers.~~

~~(7) Direct notice to the employer from the employee rather than from a third party regarding the employee's need for reasonable accommodation, transfer, or pregnancy disability leave is preferred, but not required. The content of any notice must meet the requirements of this section and the employer may require medical certification.~~

~~(b) Medical Certification. As a condition of granting reasonable accommodation, transfer, or pregnancy disability leave, the employer may require written medical certification. The~~

~~employer must notify the employee of the need to provide medical certification; the deadline for providing certification; what constitutes sufficient medical certification; and the consequences for failing to provide medical certification.~~

~~(1) An employer must notify the employee of the medical certification requirement each time a certification is required and provide the employee with any employer-required medical certification form for the employee's health care provider to complete. An employer may use the form provided at section 11050(e), or may develop its own form. Notice to the employee of the need for medical certification may be oral if the employee is already out on pregnancy disability leave because the need for the leave was unforeseeable. The employer shall thereafter mail or send via electronic mail or by facsimile a copy of the medical certification form to the employee or to her health care provider, whomever the employee designates.~~

~~(2) When the leave is foreseeable and at least 30 days' notice has been provided, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the requested certification to the employer within the time frame requested by the employer (which must be at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.~~

~~(3) When the employer requires medical certification, the employer shall request that an employee furnish medical certification from a health care provider at the time the employee gives notice of the need for reasonable accommodation, transfer or leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the reasonable accommodation, transfer, or leave or its duration.~~

~~(4) At the time the employer requests medical certification, the employer shall also advise the employee of the anticipated consequences of an employee's failure to provide adequate medical certification. The employer shall also advise the employee whenever the employer finds a medical certification inadequate or incomplete, and provide the employee a reasonable opportunity to cure any deficiency.~~

~~(5) If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the medical certification requirements of these regulations, and the employee or employer elects to substitute sick, vacation, personal or family leave for unpaid pregnancy disability leave, only the employer's less stringent leave certification requirements may be imposed.~~

~~(6) The medical certification indicating the medical advisability of reasonable accommodation or a transfer is sufficient if it contains:~~

~~(A) A description of the requested reasonable accommodation or transfer;~~

~~(B) A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy; and~~

~~(C) The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer.~~

~~(7) The medical certification indicating disability necessitating a leave is sufficient if it contains:~~

~~(A) A statement that the employee needs to take pregnancy disability leave because she is disabled by pregnancy, childbirth or a related medical condition;~~

~~(B) The date on which the employee became disabled because of pregnancy and the estimated duration of the leave.~~

~~(8) If the certification satisfies the requirements of section 11050(b), the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations. Upon expiration of the time period that the health care provider originally estimated the employee would need reasonable accommodation, transfer, or leave, the employer may require the employee to obtain recertification if additional time is requested.~~

~~(9) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received.~~

~~(c) Failure to Provide Medical Certification~~

~~(1) In the case of a foreseeable need for reasonable accommodation, transfer, or pregnancy disability leave, an employer may delay granting the reasonable accommodation, transfer or leave to an employee who fails to provide timely certification after the employer has requested the employee to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.~~

~~(2) When the need for reasonable accommodation, transfer or leave is not foreseeable, or in the case of recertification, an employee shall provide certification (or recertification) within the time frame requested by the employer (which must be at least 15 days after the employer's request) or as soon as reasonably possible under the circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may delay the employee's continuation of the reasonable accommodation, transfer or pregnancy disability leave.~~

~~(d) Release to Return to Work. As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require the employee to obtain a release to return-to-work from her health care provider stating that she is able to resume her original job or duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.~~

§ 11050. Medical Certification for Reasonable Accommodation, Transfer or Pregnancy Disability Leave

(a) The following rules related to medical certifications apply to any request for reasonable accommodation, transfer, or disability leave because of pregnancy, childbirth, or a related medical condition.

(1) As a condition of granting reasonable accommodation, transfer, or pregnancy disability leave, the employer may, but is not required to, require written medical certification confirming the medical advisability of an employee's need for accommodation, transfer, or pregnancy disability leave because they are affected by pregnancy, childbirth, or a related medical condition. An employer may request written medical certification only when it is reasonable under the circumstances, as set forth in this section.

(2) An employer must notify the employee of the need to provide medical certification; the deadline for providing certification; what constitutes sufficient medical certification; and the possibility that the response to requests for pregnancy disability leave, reasonable accommodation, and/or transfer may be delayed if the employee fails to timely provide medical certification.

(A) An employer must notify the employee of the medical certification requirement each time a certification is required.

(B) If the certification satisfies the requirements of this section, the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations.

(3) The employer shall advise the employee whenever the employer finds a medical certification inadequate or incomplete, and provide the employee a reasonable opportunity to cure any deficiency.

(4) Upon expiration of the time period that the health care provider originally estimated the employee would need reasonable accommodation, transfer, or pregnancy disability leave, the employer may require the employee to obtain recertification if additional time is requested.

(5) An employer may not require that the health care provider providing medical certification be the same provider treating the condition at issue.

(6) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received.

(7) Release to Return to Work. As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require the employee to obtain a release to return-to-work from their health care provider stating that they are able to resume their original job or duties with or without reasonable accommodations only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

(8) For an employer to require medical certification where not reasonable, or to require additional information where sufficient information and/or documentation has been provided, may constitute prohibited retaliation and interference under this section.

(b) Medical Certification Requirements Specific to Pregnancy Disability Leave Requests.

(1) The medical certification indicating that an employee needs pregnancy disability leave because they are disabled by pregnancy, childbirth, or a related medical condition is sufficient if it contains:

(A) A statement that the employee needs to take pregnancy disability leave because they are disabled by pregnancy, childbirth or a related medical condition;

(B) The date on which the employee became disabled because of pregnancy, childbirth, or a related medical condition and the estimated duration of the leave.

(c) Medical Certification Requirements Specific to Requests for Reasonable Accommodations.

(1) The medical certification indicating the medical advisability of reasonable accommodation related to pregnancy, childbirth, or a related medical condition is sufficient if it contains:

(A) A description of the requested reasonable accommodation;

(B) A statement confirming the medical advisability of the reasonable accommodation because of pregnancy, childbirth, or a related medical condition; and

(C) The date on which the need for the reasonable accommodation became or will become medically advisable and the estimated duration of the reasonable accommodation.

(2)(A) An employer may, but need not, require a medical certification substantiating the employee's need for reasonable accommodation only when it is reasonable under the circumstances to determine whether the employee needs a reasonable accommodation due to pregnancy, childbirth, or a related medical condition.

(B) The following situations are examples of when it is not reasonable under the circumstances to seek medical certification substantiating the employee's need for reasonable accommodation:

(i) when the need for the reasonable accommodation is obvious;

(ii) when the employer already has sufficient information to substantiate the employee's limitation and need for reasonable accommodation;

(iii) when the employee requests one of the accommodations set forth in section 11040(c)(2)(G)(i)-(iv); for these particular accommodations, an employer may only ask for a self-confirmation from the requesting employee;

(iv) when the request for reasonable accommodation is related to a time/and or place to pump at work or nurse at work, if the child is in close proximity of the workplace; or

(v) when the requested accommodations are available to other employees, who do not have a condition related to pregnancy or childbirth, and those employees are not required to provide medical certification.

(3) Withholding reasonable accommodation based on an employee's failure to provide information in a medical certification beyond what is described in this section shall be considered a failure to provide reasonable accommodation.

(4) If the request for supporting documentation was not reasonable under the circumstances for the covered entity to determine whether to grant the reasonable accommodation, a covered entity cannot defend the denial of a reasonable accommodation based on the lack of documentation provided by the employee.

(d) Medical Certification Requirements Specific to Transfer Requests.

(1) The medical certification indicating the medical advisability of a transfer because of pregnancy, childbirth, or a related medical condition is sufficient if it contains:

(A) A description of the requested transfer;

(B) A statement confirming the medical advisability of the transfer because of pregnancy, childbirth, or a related medical condition; and

(C) The date on which the need for transfer became or will become medically advisable and the estimated duration of the transfer.

(2) An employer may, but need not, require a medical certification substantiating the employee's need for transfer only when it is reasonable under the circumstances to determine whether the employee needs a transfer due to pregnancy, childbirth, or a related medical condition.

(3) Withholding a transfer based on an employee's failure to provide information in a medical certification beyond what is described in this section shall be considered a failure to provide transfer.

(4) If the request for supporting documentation was not reasonable under the circumstances for the covered entity to determine whether to grant a transfer, a covered entity cannot defend the denial of the transfer based on the lack of documentation provided by the employee.

(e) Medical Certification Form. Employers requiring written medical certification from their employees who request a reasonable accommodation, transfer, or pregnancy disability leave because of pregnancy, childbirth, or a related medical condition may develop their own form~~,~~ or utilize one provided by the employee's health care provider, as long as neither form requests information beyond what is requested in the template form below, or use the template form provided below.

CIVIL RIGHTS COUNCIL

CERTIFICATION OF HEALTH CARE PROVIDER FOR PREGNANCY DISABILITY LEAVE,

TRANSFER AND/OR

REASONABLE ACCOMMODATION

Employee's Name:

Please certify that, because of this patient's pregnancy, childbirth, or a related medical condition (including, but not limited to, recovery from pregnancy, childbirth, loss or end of pregnancy, or post-partum depression), this patient needs (check all appropriate category boxes):

Time off for medical appointments.

Specify when and for what duration:

A disability leave. [Because of a patient's pregnancy, childbirth or a related medical condition, they~~she~~ cannot perform one or more of the essential functions of their~~her~~ job or cannot perform any of these functions without undue risk to themselves~~herself~~, to their~~her~~ pregnancy's successful completion, or to other persons.]

Beginning (Estimate):

Ending (Estimate):

Intermittent leave. Specify medically advisable intermittent leave schedule:

Beginning (Estimate):

Ending (Estimate):

Reduced work schedule. [Specify medically advisable reduced work schedule.]

Beginning (Estimate):

Ending (Estimate):

Transfer to a less strenuous or hazardous position or to be assigned to less strenuous or hazardous duties [specify what would be a medically advisable position/duties].

Beginning (Estimate):

Ending (Estimate):

Reasonable accommodation(s). [Specify medically advisable needed accommodation(s). These could include, but are not limited to, modifying lifting requirements, or providing more frequent breaks, or providing a stool or chair.]

Beginning (Estimate):

Ending (Estimate):

Name, license number and medical/health care specialty [printed] of health care provider.

Signature of health care provider:

Date:

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq., and FMLA regulations, 29 C.F.R. § 825; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

§ 11051. Employer Notice.

YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE

If you are pregnant, ~~have a related medical condition, or~~ are recovering from childbirth, or have a related medical condition, PLEASE READ THIS NOTICE.

• California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition ~~(referred to below as "because of pregnancy")~~. California law also prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.

• Your employer has an obligation to:

o reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);

o transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and

o provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17 ⅓ weeks) and return you to your same job when you are no longer disabled by your pregnancy, childbirth, or a related medical condition or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from non-leave related employment actions, such as a layoff.

o once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position.

o provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in the Labor Code.

Pregnancy Disability Leave – Rights and Obligations

~~• You have an obligation to:~~

~~• For pregnancy disability leave:~~

o PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy, childbirth, or a related medical condition. Your health care provider determines how much time you will need.

o ~~Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position if you request a written guarantee.~~ Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.

o PDL may ~~include,~~be used for many conditions, including, but ~~is~~ not limited to, ~~additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest,~~ severe morning sickness, gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.

o PDL may be used for various types of leave from work, including, but not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, and to otherwise care for one's own pregnancy- or childbirth-related disability.

o PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.

o Your leave will be paid or unpaid depending on your employer's policy for other medical leaves. You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.

o At your discretion, you can use any vacation or other paid time off during your PDL.

o Your employer may require or you may choose to use any available sick leave during your PDL.

o Your employer is required to continue your group health coverage during your PDL at the same level and under the same conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.

o Taking PDL may impact certain of your benefits and your seniority date; please contact your employer for details.

o If possible, you must provide ~~at least 30 days'~~ reasonable advance notice of your need for pregnancy disability leave for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. ~~Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you~~

~~comply with this notice policy.~~ If you fail to provide timely notice of your need for pregnancy disability leave, the delayed notice may delay the response to your request for leave.

~~Notice Obligations as an Employee.~~

~~• Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans. Sufficient notice means 30 days advance notice if the need for the reasonable accommodation, transfer, or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.~~

• Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, your employer may require you to supply a written medical certification from your health care provider, as soon as is practicable, of the medical need for your reasonable accommodation, transfer or PDL. ~~If the need is an emergency or unforeseeable, you must provide this certification within the time frame your employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification~~. You may use the medical certification form provided by your employer or the documentation provided by your health care provider. ~~See your employer for a copy of a medical certification form to give to your health care provider to complete.~~ If you fail to provide timely medical certification confirming of your need for pregnancy disability leave, a reasonable accommodation, or a transfer, the response to your request may be delayed.

~~• PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.~~

Additional Rights under California Family Rights Act (CFRA) Leave

• You also may be entitled to additional rights under the California Family Rights Act of 1993 (CFRA) if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave. This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition (not related to pregnancy) or that of your ~~child, parent or spouse.~~ child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person. These 12 weeks of leave may also be used because of a qualifying military exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances. For further information on the availability CFRA leave, please review your employer's Notice regarding the availability of CFRA leave.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact your employer, visit the Civil Rights Department's web-site at https://calcivilrights.ca.gov, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Civil Rights Department's web-site at https://calcivilrights.ca.gov.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq., and FMLA regulations, 29 C.F.R. § 825; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

Article 11. California Family Rights Act

§ 11087. Definitions.

The following definitions apply only to this article. The definitions in the federal regulations that became effective March 8, 2013 interpreting the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. § 2601 et seq.) shall also apply to this article, to the extent that they are not inconsistent with the following definitions:

(a) "Certification" means a written communication from the health care provider of the child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person, or employee with a serious health condition to the employer of the employee requesting a family care leave to care for an aforementioned family member of the employee, or a medical leave for the employee's own serious health condition.

(1) For family care leave for the employee's family member, this certification need not identify the serious health condition involved, but shall contain the information identified in Government Code section 12945.2.

(A) the date, if known, on which the serious health condition commenced,

(B) the probable duration of the condition,

(C) an estimate of the amount of time which the health care provider believes the employee needs to care for the family member, and

(D) a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the family member. ~~1.~~ "Warrants the participation of the employee," within the meaning of Government Code section 12945.2, includes, but is not limited to, providing psychological comfort and arranging third party care for the family member, as well as directly providing, or participating in, the medical care.

(2) For medical leave for the employee's own serious health condition, this certification need not, but may, at the employee's option, identify the serious health condition involved. Any certification shall contain the information identified in Government Code section 12945.2, as is demonstrated in section 11097 of these regulations. For purposes of the certification “unable to perform the function of the employee's position” means that an employee is unable to perform any one or more of the essential functions of the employee's position. The certification shall contain:

(A) The date, if known, on which the serious health condition commenced,

(B) The probable duration of the condition, and

(C) A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of the employee's position.

(b) “CFRA” means the Moore-Brown-Roberti California Family Rights Act of 1993. (California Family Rights Act, Gov. Code, §§ 12945.1-12945.2.) “CFRA leave” means family care or medical leave taken pursuant to CFRA.

(c) “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, a child of an employee or the employee's domestic partner, or a person to whom the employee stands in loco parentis.

(1) “In loco parentis” means in the place of a parent; instead of a parent; charged with a parent's rights, duties, and responsibilities. It does not require a biological or legal relationship.

(d) “Covered employer” means any person or individual, including successors in interest of a covered employer, engaged in any business or enterprise in California who directly employs five or more persons within any state of the United States, the District of Columbia or any territory or possession of the United States to perform services for a wage or salary. It also includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. There is no requirement that the five employees work at the same location or work full-time. “Employer” as used in these regulations means “covered employer.”

(1) “Directly employs” means that the employer maintains an aggregate of at least five part- or full-time employees to perform services for a wage or salary for any part of the day on which the unlawful conduct occurred or on a “regular basis” as that term is defined in subdivision 11008(d)(1)(A). Employees on paid or unpaid leave, including CFRA leave, leave of absence, disciplinary suspension, or other leave, are counted.

(2) “Perform services for a wage or salary” excludes independent contractors as defined in the Labor Code, but includes persons who are compensated in whole or in part by commission.

(3) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under CFRA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality based on the economic realities of the situation. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(A) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(B) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or

(C) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(e) “Designated Person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave.

(f) “Domestic partner” means a member of a domestic partnership, as that term is defined in Family Code section 297.

(g) “Eligible employee” means either of the following:

(1) A full- or part-time employee in California who has been employed for a total of at least 12 months (52 weeks) with the employer at any time prior to the commencement of a CFRA leave, and who has actually worked (within the meaning of the California Labor Code and Industrial Welfare Commission Wage Orders) for the employer at least 1,250 hours during the 12-month period immediately prior to the date the CFRA leave is to commence.

(A) Once the employee meets these two eligibility criteria and takes a leave for a qualifying event, the employee does not have to requalify, in terms of the numbers of hours worked, in order to take additional leave for the same qualifying event during the employee's 12-month leave period.

(B) Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12

months, except for a break in service caused by a military service obligation or written agreement to the contrary. Nothing in this section prevents an employer from considering employment prior to a continuous break in service of more than seven years so long as the employer does so uniformly, with respect to all employees with similar breaks in service.

(C) For an employee who takes a pregnancy disability leave, and who then wants to take CFRA leave for reason of the birth of the employee's child immediately after the employee's pregnancy disability leave, the 12-month period during which the employee must have worked 1,250 hours is that period immediately preceding the employee's first day of pregnancy disability leave, not the first day of the subsequent CFRA leave for reason of the birth of the employee's child.

(2) An employee employed by an air carrier as a flight deck or cabin crew member who has been employed for 12 or more months with the employer, has worked or been paid for 60 percent of the applicable monthly guarantee or the equivalent annualized over the preceding 12-month period, and has worked or been paid for at least 504 hours during the preceding 12-month period. For purposes of this subdivision, “applicable monthly guarantee” means the minimum number of hours for which the employer has agreed to schedule such employees for any given month, unless the employee is on reserve status. For those employees on reserve status, the “applicable monthly guarantee” is the number of hours for which the employer has agreed to pay employees who are on reserve status for any given month pursuant to a collective bargaining agreement, or employer policy if no collective bargaining agreement exists

(3) For purposes of determining an employee's eligibility for CFRA leave under either subdivision (1) or (2), the following terms also apply:

(A) Once the employee meets their eligibility criteria and gives notice of the need for a leave, the employer may not deny the leave, cut short the leave, or deny any subsequent leave taken for the same qualifying event during the employee's 12-month leave period, even if the number of employees falls below five employees for purposes of CFRA. In such cases, however, the employee would not be eligible for any subsequent leave requested for a different qualifying event.

(B) If an employee is not eligible for CFRA leave at the start of a leave because the employee has not met the 12-month length of service requirement, the employee may nonetheless meet this requirement while on leave, because leave to which the employee is otherwise entitled counts toward length of service (although not for the 1,250 hour requirement). The employer should designate the portion of the leave in which the employee has met the 12-month requirement as CFRA leave. For example, if an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g. workers' compensation, group health plan benefits, etc.), the week counts as a week of employment

(h) “Employment in the same position” means employment in, or reinstatement to, the original position the employee held prior to taking a CFRA leave

(i) “Employment in a comparable position” means employment in a position that is virtually identical to the employee's original position in terms of pay, benefits, and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from where the employee was previously employed. It ordinarily means the same shift or the same or an equivalent work schedule. It has the same meaning as the term “equivalent position” in FMLA and its implementing regulations

(j) “Family care leave” means either:

(1) Leave of up to a total of 12 workweeks in a 12-month period for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(2) Leave of up to a total of 12 workweeks in a 12-month period to care for an employee's child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person (sometimes referred to as “family members” in these regulations) who has a serious health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(3) Leave of up to a total of 12 workweeks in a 12-month period because of a “qualifying exigency,” as that term is defined in Unemployment Code section 3302.2, related to covered active duty or a call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States

(k) “Family member” means an employee's child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person.

(l) “FMLA” means the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., and its implementing regulations, 29 C.F.R. Part 825 that became effective March 8, 2013. “FMLA leave” means family care or medical leave taken pursuant to FMLA.

(m) “Grandchild” means the child of an employee's child.

(n) “Grandparent” means a parent of the employee's parent.

(o) “Health care provider” means either:

(1) an individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or

(2) any other person who meets the definition of others "capable of providing health care services," as set forth in FMLA and its implementing regulations.

(p) "Medical leave" means leave of up to a total of 12 workweeks in a 12-month period because of an employee's own serious health condition that makes the employee unable to work at all or unable to perform any one or more of the essential functions of the position of that employee. The term "essential functions" is defined in Government Code section 12926. "Medical leave" does not include leave taken for an employee's pregnancy disability, as defined in (r) below, except as specified below in section 11093(c)(1).

(q) "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child.

(r) "Parent-in-law" means the parent of a spouse or domestic partner.

(s) "Pregnancy disability leave" means a leave taken for disability on account of pregnancy, childbirth, or a related medical condition, pursuant to Government Code section 12945 and defined in section 11035(~~f~~n) of the regulations.

(t) "PWFA" means the federal Pregnant Workers Fairness Act (42 U.S.C. 2000gg) and its implementing regulations (29 C.F.R. § 1636.1, et seq.).

(~~t~~u) "Reason of the birth of a child," within the meaning of Government Code section 12945.2 and these regulations includes, but is not limited to, bonding with a child after birth.

(~~u~~v) "Reinstatement" means the return of an employee to the position that the employee held prior to CFRA leave, or a comparable position, and is synonymous with "restoration" within the meaning of FMLA and its implementing regulations.

(~~v~~w) "Serious health condition" means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a family member of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse.

(1) “Inpatient care” means a stay in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity. A person is considered an “inpatient” when a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

(2) “Incapacity” means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

(3) “Continuing treatment” means ongoing medical treatment or supervision by a health care provider, as detailed in section 11097 of these regulations.

(~~w~~x) “Sibling” means a person related to the employee by blood, adoption, or by having a common legal or biological parent.

(~~x~~y) “Spouse” means a partner in marriage as defined in Family Code section 300 or a registered domestic partner, within the meaning of Family Code sections 297 through 297.5. As used in this article and the Family Code, “spouse” includes same-sex partners in marriage.

(~~y~~z) “Twelve workweeks” means the equivalent of 12 of the employee's normally scheduled workweeks. (See also section 11090(c).)

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12945.2, Government Code; *J.E. Robinson v. FEHC* (1992) 2 Cal.4th 226 [5 Cal.Rptr.2d 782]; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 and 2611; ~~and~~ 29 C.F.R. § 825; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

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§ 11090. Computation of Time Periods: Twelve Workweeks; Minimum Duration.

(a) CFRA leave does not need to be taken in one continuous period of time. It cannot exceed more than 12 workweeks total for any purpose in a 12-month period.

(b) If the leave is common to both CFRA and FMLA, this 12-month period will run concurrently with the 12-month period under FMLA. An employer may choose any of the methods (the calendar year, any fixed 12-month “leave year,” the 12-month period measured forward from the date any employee’s first CFRA leave begins, or a “rolling” 12-month period measured backward from the date an employee uses any CFRA leave) allowed in the FMLA regulations that became effective March 8, 2013, 29 C.F.R. Part 825, section 825.200, subdivision (b), for determining the 12-month period in which the 12 weeks of CFRA leave entitlement occurs. The employer must, however, apply the chosen method consistently and uniformly to all employees in California and notify employees requesting CFRA leave of its chosen method. If an employer fails to select one of the above methods for measuring the 12-month period, the method that provides the most beneficial outcome for the employee will be used. An employer wishing to

change to another method is required to give at least 60 days' notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstance may a new method be implemented in order to avoid the Act's leave requirements.

(c) "Twelve workweeks" as that term is defined in section 11087(sz), means the equivalent of 12 of the employee's normally scheduled workweeks. For eligible employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days that constitutes 12 workweeks is calculated on a pro rata or proportional basis. If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of CFRA leave), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) shall be used for calculating the employee's leave entitlement.

(1) For example, for a full-time employee who works five eight-hour days per week, 12 workweeks means 60 working and/or paid eight-hour days of leave entitlement. For an employee who works half time, 12 workweeks may mean 30 eight-hour days or 60 four-hour days, or 12 workweeks of whatever is the employee's normal half-time work schedule. For an employee who normally works six eight-hour days, 12 workweeks means 72 working and/or paid eight-hour days of leave entitlement.

(2) If an employee takes leave on an intermittent or reduced work schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which the employee is entitled. For example, if an employee needs physical therapy that requires an absence from work of two hours a week, only those two hours may be charged against the employee's CFRA leave entitlement. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

(3) If a holiday falls within a week taken as CFRA leave, the week is nevertheless counted as a week of CFRA leave. If, however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation or an employer closing the plant for retooling), the days the employer's activities have ceased do not count against the employee's CFRA entitlement. Similarly, if an employee uses CFRA leave in increments of less than one week, the fact that a holiday may occur within a week in which an employee partially takes leave does not count against the employee's CFRA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

(4) If an employee normally would be required to work overtime, but is unable to do so because of a CFRA-qualifying reason that limits the employee's ability to work overtime, the hours that

the employee would have been required to work may be counted against the employee's CFRA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee normally would be required to work 48 hours in a particular week, but due to a serious health condition the employee works 40 hours that week, the employee would utilize eight hours of CFRA-protected leave out of the 48-hour workweek. Voluntary overtime hours that an employee does not work due to a serious health condition shall not be counted against the employee's CFRA leave entitlement.

(5) If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than CFRA, and prior to the employee notice of need for CFRA leave), the hours worked under the new schedule are to be used for making this calculation.

(d) Minimum duration for CFRA leaves taken intermittently or on a reduced leave schedule for the birth, adoption, or foster care placement of a child: CFRA leave taken for reason of the birth, adoption, or foster care placement of a child of the employee does not have to be taken in one continuous period of time. Any leave(s) taken shall be concluded within one year of the birth or placement of the child with the employee in connection with the adoption or foster care of the child by the employee. ~~The basic minimum duration of the leave shall be two weeks. However, an employer shall grant a request for a CFRA leave of less than two weeks' duration on any two occasions and may grant requests for additional occasions of leave lasting less than two weeks.~~

(e) Minimum duration for CFRA leaves taken intermittently or on a reduced leave schedule for the serious health condition of an employee's family member or for the serious health condition of the employee: Where CFRA leave is taken for a serious health condition of the employee's family member or of the employee, leave may be taken intermittently or on a reduced work schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, intermittent or reduced work schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition, even if the employee does not receive treatment by a health care provider. An employer must limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave provided it is not greater than one hour.

(1) If an employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on planned medical treatment for the employee or a family member, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily to an available alternative position. This alternative position must have the equivalent rate of pay and benefits, the employee must be qualified for the position, and it must better accommodate recurring periods of leave than the employee's regular job. It need not have equivalent duties, although an employer may not transfer the employee to an alternative position to discourage the employee from taking leave or to otherwise work a hardship on the employee. Transfer to an alternative position may include altering an existing job to accommodate better the employee's need for intermittent leave or a reduced work

schedule and must comply with any applicable collective bargaining agreement or employer leave policy, the FEHA, and any other applicable state or federal law.

(2) CFRA leave, including intermittent leave and/or reduced work schedules, is available to instructional employees of educational establishments and institutions under the same conditions as apply to all other eligible employees.

(3) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed "clean room" during a certain period of time, the entire period that the employee is forced to be absent is designated as CFRA leave and counts against the employee's CFRA entitlement. However, an employee shall be permitted to return to work if the employee is able to perform other aspects of the work that are not physically impossible, such as administrative duties, and thereby shorten the time designated as CFRA leave.

(4) Employers may reduce exempt employees' pay for CFRA intermittent leave or a reduced work schedule, provided the reduction is not inconsistent with any applicable collective bargaining agreement or employer leave policy, the FEHA, and any other applicable state or federal law.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12945.2, Government Code; DLSE Opinion Letter 03.12.2002; DLSE Opinion Letter 04.08.2002; Stats. 1993, ch. 827 (AB 1460), § 2; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, 2611 and 2612; and 29 C.F.R. § 825.

§ 11093. Relationship between CFRA Leave and Pregnancy Disability Leave; ~~Relationship between~~ CFRA Leave and Non-Pregnancy Related Disability Leave; and CFRA Leave and Leave as a PWFA Accommodation.

(a) Separate and Distinct Entitlements.

The right to take a CFRA leave under Government Code section 12945.2 is separate and distinct from the right to take a pregnancy disability leave under Government Code section 12945 and section 11035 et seq. of the regulations; the right to take leave as a reasonable accommodation under the PWFA; and the right to take leave as a reasonable accommodation for a disability under section 12940 of the Government Code.

(b) Serious Health Condition -- Pregnancy.

An employee's own disability due to pregnancy, childbirth or a related medical condition is not included as a serious health condition under CFRA. Any period of incapacity or treatment due to pregnancy, including prenatal care, is included as a serious health condition under FMLA.

(c) CFRA Leave ~~and~~ Leave as a PWFA Accommodation, and Leave as a Reasonable Accommodation for a Disability after Pregnancy Disability Leave.

(1) At the end of the employee's period(s) of pregnancy disability, or at the end of four months of pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of the employee's child, if the child has been born by this date. There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave. There is also no requirement that the employee no longer be disabled by the employee's pregnancy, childbirth or a related medical condition before taking CFRA leave for reason of the birth of the employee's child.

(~~1~~2) Where an employee has utilized four months of pregnancy disability leave prior to the birth of the employee's child, and the employee's health care provider determines that a continuation of the leave is medically necessary, an employer may, but is not required to, allow an eligible employee to utilize CFRA leave prior to the birth of the employee's child. No employer shall, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled, but this does not excuse the employer's other obligations under the FEHA, such as the obligation to provide reasonable accommodation under the disability provisions, where applicable.

(3) Where an employee remains disabled by pregnancy after using four months of pregnancy disability leave and, if available, their 12 weeks of CFRA leave, they may request leave as a reasonable accommodation under the PWFA or as a reasonable accommodation under the disability provisions of FEHA set forth in Government Code section 12940 (assuming their condition qualifies as a "disability" as defined in Government Code sections 12926(j) and (m)). The employer may be required to grant a reasonable accommodation under PWFA or section 12940 for extended leave regardless of whether the employee qualifies for CFRA leave, has exhausted their CFRA leave, or has been denied the ability to use their CFRA leave while still disabled by pregnancy.

(d) Maximum Entitlement.

The maximum possible combined leave entitlement for both pregnancy disability leave (under FMLA and Government Code section 12945) and CFRA leave for reason of the birth of the child (under this article) is four months and 12 workweeks. This assumes that the employee is disabled by pregnancy, childbirth or a related medical condition for four months and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of the employee's child. This maximum entitlement does not include leave provided as a reasonable accommodation for a physical or mental disability under the FEHA.

(e) Disability Leave.

(1) The right to take ~~a~~ CFRA leave under Government Code section 12945.2 is separate and distinct from the following:

(A) the right to take ~~a~~ pregnancy disability leave under Government Code section ~~11064~~ 11035 et seq. of the regulations; and

(B) the right to take an extended leave of absence as a reasonable accommodation under the PWFA.

(2) If an employee has a serious health condition that also constitutes a disability as defined ~~by~~in Government Code section 12926 and cannot return to work at the conclusion of the employee's CFRA leave, the employer has an obligation to engage that employee in an interactive process to determine whether an extension of that leave would constitute a reasonable accommodation under the FEHA.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12945 and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 and 2651; and 29 C.F.R. § 825; PWFA, 42 U.S.C. 2000gg, and PWFA regulations, 29 C.F.R. § 1636, et seq.

§ 11095. Notice of CFRA Rights and Obligations.

(a) Employers to Post Notice.

Every employer covered by the CFRA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Civil Rights Department. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. If the employer publishes an employee handbook that describes other kinds of personal or disability leaves available to its employees, the employer shall include a description of CFRA leave in the next edition of its handbook it publishes following adoption of these regulations. The employer may include both pregnancy disability leave and CFRA leave requirements in a single notice.

(b) Employers to Give Notice.

Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.

(c) Non-English Speaking Workforce.

Any employer whose workforce at any facility or establishment contains 10 percent or more of persons who speak a language other than English as their spoken language shall translate the notice into every language that is spoken by at least 10 percent of the workforce.

(d) Text of Notice.

The text below contains only the minimum requirements of the California Family Rights Act of 1993 and of the employer's obligation to provide pregnancy disability leave. Nothing in this notice requirement prohibits an employer from providing a leave policy that is more generous than that required by CFRA and providing its own notice of its own policy. Covered employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.

FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, and if we employ five or more employees, you may have a right to a family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, domestic partner, or designated person, or because of a qualifying military exigency. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement - for pregnancy disability it is to the same position and for CFRA it is to the same or a comparable position - at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days' advance notice for foreseeable leave ~~events~~ (such as ~~the expected birth of a child or~~ a planned medical treatment for yourself or of a family member). For pregnancy-related leave, you must provide reasonable advance notice. For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your family member who has a serious health condition, before

allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, ~~the basic minimum duration of the leave is two weeks, and~~ you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.

NOTE: Authority cited: Section 12935, Government Code. Reference: Sections 12940, 12945 and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.