

Paid Family Leave to Care for an Ill Loved One

What Health and Social Service Providers Need to Know to Support Family Caregivers

LEGAL AID AT WORK

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DCA Statewide Medical-Legal Partnership Network



Neighborhood Legal Services
of Los Angeles County



Legal Aid at Work

- Non-profit organization founded in 1916
- Educational tools; litigation; clinics & helplines; policy advocacy; direct representation
- Work & Family; Gender Equity & LGBTQ Rights; National Origin & Immigrants' Rights; Wage Protection; Unemployment Benefits; Racial Economic Justice; Disability Rights



Learning Objectives

1. Articulate the difference between Paid Family Leave benefits and Job-Protected Leave from Work.
2. Recognize situations in which family members may need leave from work and wage replacement benefits to care for patients.
3. Identify the role of the health care provider in certifying the need for Paid Family Leave and Job-Protected Leave for patients' unpaid family caregivers.
4. Initiate a conversation with family members caring for patients about leave benefits and refer them to appropriate organization or resources.

Agenda

Paid Family
Leave

Leave from
Work for
Caregiving

How
Providers
Can Support
Caregivers

Meet Lisa and Norma



Lisa is a drugstore clerk and needs to take time off work to care for her mom, Norma who has Alzheimer's. Lisa's mom can no longer live alone, and Lisa needs leave from work to care for her while they search for a residential care facility and arrange her mother's move. Lisa will need to be out of work full-time for eight weeks.

The following year, Norma needs to move to the memory floor of her residential care facility. Lisa wants to take a week off to help her mom move. Lisa also wants to be able to help Norma with weekly medical appointments.

Paid Family Leave

Provides **8 weeks** of partial wage replacement **per year** while **taking time away from work and losing income** to:

- **Care** for a **seriously ill family member**
- Bond with a newborn, adopted or foster child
- For needs arising from a military family member being deployed overseas

Replaces **60% of weekly income** for most workers and 70% for lowest income earners, up to a \$1620/week cap (2023) ***Beginning in 2025, benefit rate will increase to 90% of income for most workers**

Can take PFL intermittently (on reduced schedule), or all at once

Citizenship and immigration status do not affect eligibility



Taking time away from work and losing income?

- Must have earned income and paid into State Disability Insurance (noted as "CASDI" on most paystubs) about 5-18 months before your claim.
- Losing wages because caring for seriously ill family member



What Counts as Care?

Care means help with eating, self-care, medical needs, transportation, or emotional support.

Care also includes planning future care or providing relief for other caregivers.



What Counts as a Serious Health Condition?

A physical or mental condition, impairment, illness, or injury that involves:

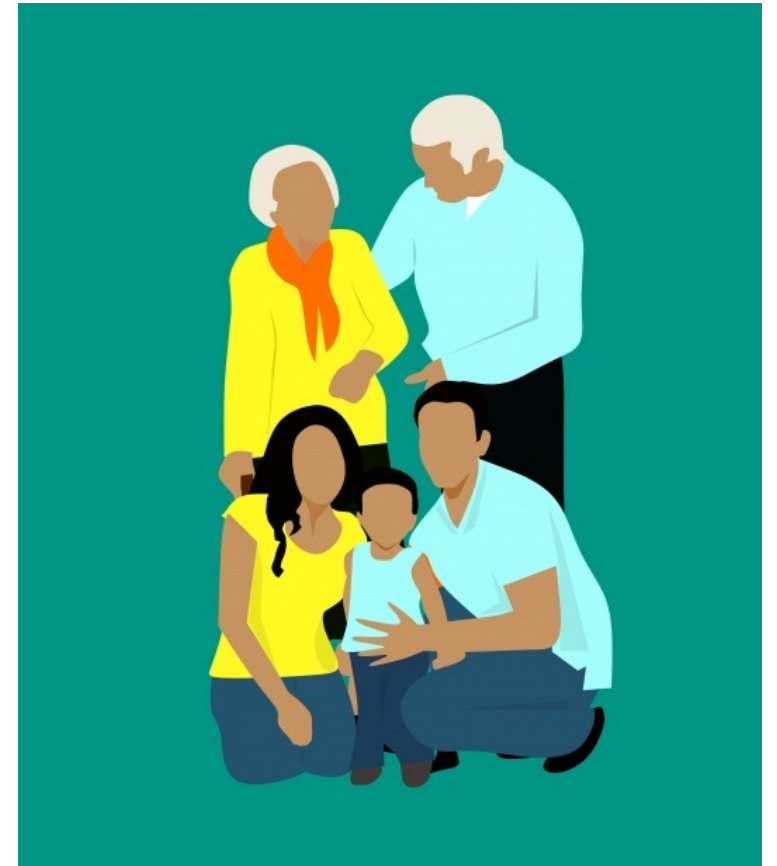
- continuing treatment by a health care provider, or
- inpatient care

Examples:

- Alzheimer's
- Cancer
- Chronic conditions such as epilepsy, asthma, or diabetes
- Recovery from surgery

Who Counts as Family under Paid Family Leave?

- Parents, including parents-in-law
- Spouses or registered domestic partners
- Children of any age
- Grandparents
- Grandchildren, and
- Siblings



*Multiple people can receive Paid Family Leave to care for the same family member (up to 3 people per 24-hour period).



How Do Caregivers Apply?

Apply through the Employment Development Department (EDD):

Online: <http://www.edd.ca.gov/> or by paper application

Can submit application up to **41 days** retroactively or later with good cause

Patient's health care provider will need to certify the claim (Part D)

If you don't have a SSN, request a paper application, leave SSN blank, and attach proof of wages



Meet Lisa and Norma

Paid Family Leave:

Lisa is **a drugstore clerk and needs to take time off work** to **care** for **her mom**, Norma who has **Alzheimer's**.

Does Lisa qualify for PFL?

Lisa is **taking time away from work and losing income**.

Lisa is **caring** for a **seriously ill family member**.

Leave From Work

The California Family Rights Act (CFRA) provides **12 weeks** of job-protected leave **per year** to:

- **Care** for a **family member** with a **serious health condition**
- Bond with a new child (including adoptive and foster children)
- For needs arising from a military family member being deployed overseas
- Care for your own serious health condition



Employers must:

- **Continue health benefits during leave.**
- **Return employee to same/comparable job after leave, without retaliation.**

Who Counts as Family under the California Family Rights Act?

- Parents, including parents-in-law
- Spouses or registered domestic partners
- Children of any age
- Grandparents
- Grandchildren
- Siblings, and
- (as of 2023) A chosen family member designated by the employee.

Leave from Work: Other Qualifications

To be eligible for job-protected leave under the CFRA:

- Must work for employer with **5+ employees**
- Must have worked **at least 1 year** on the job
- Must have worked **at least 1,250 hours** in the 12 months prior to taking leave (about 25 hours/week)



How Do Caregivers Request Job-Protected Leave?

- Tell employer (ideally in writing) that you need leave to care for a seriously ill family member under the California Family Rights Act.
 - Include anticipated dates of leave (may be taken intermittently/on reduced schedule)
 - Notify the employer 30 days in advance if leave is foreseeable or as soon as possible
- Employer may require a [medical certification](#) from health care provider (HCP) stating that patient has a serious health condition that warrants employee's care.
 - *HCP should not disclose patient's diagnosis to employer

CERTIFICATION OF HEALTH CARE PROVIDER

(California Family Rights Act (CFRA) or Family and Medical Leave Act (FMLA))

7. If the certification is for the care of the employee's family member, please answer the following:

Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?

Yes No

After review of the employee's signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

Yes No

8. Estimate the period of time care is needed or during which the employee's presence would be beneficial: _____

9. Please answer the following questions only if the employee is asking for intermittent leave or a reduced work schedule.

Intermittent Leave: Is it medically necessary for the employee to be off work on an intermittent basis due to the serious health condition of the employee or family member?

Yes No

If yes, please indicate the estimated frequency of the employee's need for intermittent leave due to the serious health condition, and the duration of such leaves (e.g. 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours or _____ day(s) per episode

Yes No

Reduced Schedule Leave: Is it medically necessary for the employee to work less than the employee's normal work schedule due to the serious health condition of the employee or family member?

If yes, please indicate the part-time or reduced work schedule the employee needs: _____ hour(s) per day; _____ days per week, from _____ through _____



Meet Lisa and Norma

California Family Rights Act:

Lisa is **a drugstore clerk and needs to take time off work** to **care** for **her mom**, Norma who has **Alzheimer's**.

Does Lisa qualify for CFRA?

Lisa is **caring** for a **seriously ill family member**.

--How long has Lisa worked at the drugstore? (1 yr+)

--How many hours per week does she work? (1250+ /yr (about 25hrs/wk))

--How many employees does the drugstore have? (5+)

How Paid Family Leave and CFRA Fit Together: Job-protection and wage replacement for continuous leave

Paid Family Leave



8 weeks of 60% or 70% wages

**starting in 2025, up to 90% of income*



12 weeks to provide care for a seriously ill family member

California Family Rights Act

Meet Lisa and Norma



Lisa is a drugstore clerk and needs to take time off work to care for her mom, Norma who has Alzheimer's. Lisa's mom can no longer live alone, and Lisa needs **leave from work to care for her while they search for a residential care facility and arrange her mother's move**. Lisa will need to be out of work full-time for eight weeks.

The following year, Norma needs to move to the memory floor of her residential care facility. Lisa wants to take a **week off to help her mom move**. Lisa also wants to be able to help Norma with **weekly medical appointments**.

What does Lisa need to do to keep her job safe and get paid? **What is the role of the health care provider?**

Lisa should tell her employer that she needs leave to care for her seriously ill mom. **Her employer may ask for a certification from her mother's health care provider.**

Lisa should apply for Paid Family Leave online at <http://www.edd.ca.gov/> or by requesting a paper application. **Lisa's mom's health care provider will need to certify her claim to the EDD.**





Steps for Health Care Providers

1. Provider/social worker **asks family caregiver if they are concerned about/want information about pay and leave** from work to care for the patient and offers the caregiver a handout on paid family and medical leave.
2. Upon request (30 days before the leave if possible), **provider completes certification for CFRA leave for caregiver's employer**, stating that the patient has a serious health condition and requires the caregiver's care.
3. Upon request, when the leave begins, **provider completes certification for Paid Family Leave for the EDD**, documenting the same. Diagnosis will be required, but the certification will not be given to the employer.
4. **Refer caregiver to Legal Aid at Work's** free helpline for questions/concerns about paid family and medical leave.


Resources

Tips for Providers Certifying for Paid Family Leave

Tips for Health Care Providers Certifying California Paid Family Leave Claims and Job-Protected Leave for Family Caregivers

Most workers in California have the right to Paid Family Leave benefits and job-protected leave to care for their seriously ill family members. Health care providers play an important role in certifying family caregivers' need for leave from work to care for their patients' serious health conditions. This tip sheet answers frequently asked questions from providers about how to complete medical certifications for Paid Family Leave (PFL) benefits and job-protected leave under the California Family Rights Act (CFRA).



Providers complete two medical certifications: one for Paid Family Leave, and one for job-protected leave.

CFRA: 12 weeks per year of job-protected leave. Eligible if worked 1,250 hours in year prior, worked at least 1 year for same employer, employer has 5+ employees.

PFL: 8 weeks per year of partial wage replacement benefits. Eligible if contributed through paycheck deductions.

Overview

1. Paid Family Leave (PFL) provides up to 8 weeks of partial pay per year to eligible workers in California to care for a seriously ill family member. PFL does not protect a worker's job or ensure that they can return to their job after their caregiving leave; however, separate laws may provide job protection. (See below.)

Can I use PFL to care for a family member overseas or out of state?

YES



4:57

CA Paid Family Leave to Care for an Ill Loved One

Short Know-Your-Rights Video on PFL

(in English, Spanish, Cantonese, and Mandarin)

Intermittent Paid Family Leave Guide & FAQs

How to Apply for Intermittent Paid Family Leave to Care for an Ill Family Member in California

LEGAL AID AT WORK

Most workers in California are eligible for 8 weeks of benefits each year while they take time away from work.



- Care for a seriously ill family member
- Bond with a new child, or
- Address needs related to a family member's overseas military deployment.

You can take your PFL benefits all at once or intermittently. *Intermittently means you take your leave in smaller chunks. For example, if you are caring for a loved one with chemotherapy treatments, you can take intermittent leave by taking Fridays off. Another way to take intermittent leave is to take one day per week to follow-up physical therapy appointments.

This guide gives step-by-step instructions for how you can apply for leave to care for a seriously ill family member in California. Paid Family Leave (PFL) is available to most workers, but many workers are eligible for job-protected leave under the more information about Paid Family Leave and job-protected leave in our general FAQ resource on PFL for Caregivers.

FAQs about Paid Family Leave to Care for a Seriously Ill Family Member

California's Paid Family Leave program provides most workers with 8 weeks of wage replacement benefits each year when they need time away from work to care for a seriously ill loved one. This fact sheet answers frequently asked questions about Paid Family Leave for family caregivers.

LEGAL AID AT WORK

1 What is Paid Family Leave?

Paid Family Leave (PFL) is a program administered by the Employment Development Department that provides up to eight weeks of partial wage replacement per year while you take time off work to:

- Care for a seriously ill family member,
- Bond with a new child, or
- Address needs related to a family member's overseas military deployment.

Paid Family Leave replaces:

60% of average weekly income for most workers

70% for the lowest income earners up to a cap of \$1,620/week (2023)

*Beginning in 2025, this will increase to 90% of income for most workers.

2 Am I eligible for Paid Family Leave?

To be eligible for Paid Family Leave, you must:

- Have paid into State Disability Insurance (noted as "CASDI" on most paystubs) within the past 5-18 months
- Experience a loss in wages due to your need to take time away from work for one of the reasons listed above

Citizenship and immigration status do not affect eligibility, although undocumented workers should take some different steps to apply.

3 Who counts as a family member?

You can receive PFL to care for a seriously ill parent, parent-in-law, child, grandparent, grandchild, sibling, spouse, or registered domestic partner.

See [Undocumented Workers' Rights to Disability Insurance and Family Leave](#)

4 What counts as a serious health condition?

Serious health condition includes a physical or mental condition, impairment, illness, or injury that involves continuing treatment by a health care provider, or inpatient care. Some examples are Alzheimer's, cancer, chronic conditions such as epilepsy, asthma, or diabetes, or recovery from surgery.

I'm a caregiver

in CALIFORNIA

see other side for I have cancer

caregiving + MY JOB

THESE LAWS MAY HELP:

JOB PROTECTION
Need time off from your job?

WAGE REPLACEMENT
Need income while you aren't working?

ACCOMMODATIONS AND EQUALITY
Need accommodations? Facing discrimination?

HOW THIS MIGHT WORK

Law	Because they provide for:	Here's what to do:
<p>CFRA (child, parent, parent-in-law, spouse, domestic partner, sibling, grandparent, grandchild)</p> <p>CALIFORNIA FAMILY RIGHTS ACT</p> <ul style="list-style-type: none"> • 1+ year of service • 1250+ hrs of work in previous year • 5+ employees nationwide 	<ul style="list-style-type: none"> • Job-protected, unpaid leave for a max. of 12 weeks to care for a seriously ill family member • Continuation of health benefits 	<p>Request from your employer</p>
<p>PFL (child, parent, spouse, domestic partner, sibling, grandparent, grandchild)</p> <p>CA PAID FAMILY LEAVE</p> <ul style="list-style-type: none"> • Caring for a seriously ill family member • Paid into SDI fund during base period 	<ul style="list-style-type: none"> • Up to 60% or 70% of weekly wages, depending on income, for a max. of 8 weeks (can be taken intermittently) 	<p>Apply at www.EDD.ca.gov</p>
<p>PSD (child, parent, spouse, domestic partner, sibling, grandparent, grandchild, designated person*)</p> <p>CA PAID SICK DAYS</p> <ul style="list-style-type: none"> • Worked at least 90 days • Ill, caring for ill family member, or medical appointments 	<ul style="list-style-type: none"> • Accrue 1 hour for every 30 hours worked up to a max. of 6 days per year • Employer may cap use at 3 days per year • Protection from retaliation 	<p><small>*only in San Francisco</small></p> <p>Request from your employer</p> <p>Go to dlse.ca.gov</p>
<p>UI</p> <p>UNEMPLOYMENT INSURANCE</p> <ul style="list-style-type: none"> • Able to work but unemployed or working less through no fault of your own (laid off/fired, leave not granted, etc.) 	<ul style="list-style-type: none"> • Up to \$450 per week for a max. of 26 weeks, after 1-week waiting period 	<p>Apply at www.EDD.ca.gov</p>
<p>SF FFWO (child, parent over 65, seriously ill family member)</p> <p>SF FAMILY FRIENDLY WORKPLACE ORDINANCE</p> <ul style="list-style-type: none"> • Work in San Francisco 8+ hours per week • Worked at least 6 months • 20+ employees 	<ul style="list-style-type: none"> • Right to flexible or predictable work arrangements or accommodations to help with family caregiving unless causes undue hardship to employer • Protection from discrimination, harassment, and retaliation 	<p>Request from your employer (See sample letters at www.legalaidatwork.org)</p> <p>Go to sfgov.org/olse/ffwo</p>

Marta needs 12 weeks off to care for her mom while she recovers from surgery. After that, Marta needs a flexible schedule to help with follow-up care.

QUESTIONS ?
Call 877-350-5461
legalaidatwork.org
disability@legalaidatwork.org

LEGAL AID AT WORK

Legal Aid at Work cannot ensure this information is current or be responsible for any use to which it is put. Created with support from the Mount Zion Health Fund & the Skadden Foundation. Updated as of 2022.

Undocumented Workers' Guide to Paid Family Leave

1. Request a Paper Application
2. Complete and Submit the Application leaving the SSN field blank; also attach a letter and proof of wages
3. Follow up with the EDD (they may call you)
4. Receive your benefits

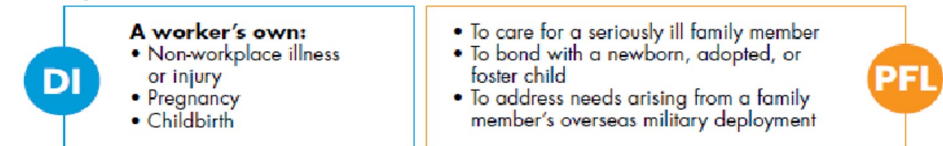
Overview of Undocumented Workers' Guide to Applying for California Disability Insurance and Paid Family Leave

See accompanying full guide for more detailed information. Current as of April 2021.

California Disability Insurance (DI) and Paid Family Leave (PFL) provide partial pay to eligible workers who need time off work. You can apply for these benefits through the Employment Development Department (EDD). These benefits are available regardless of immigration status.

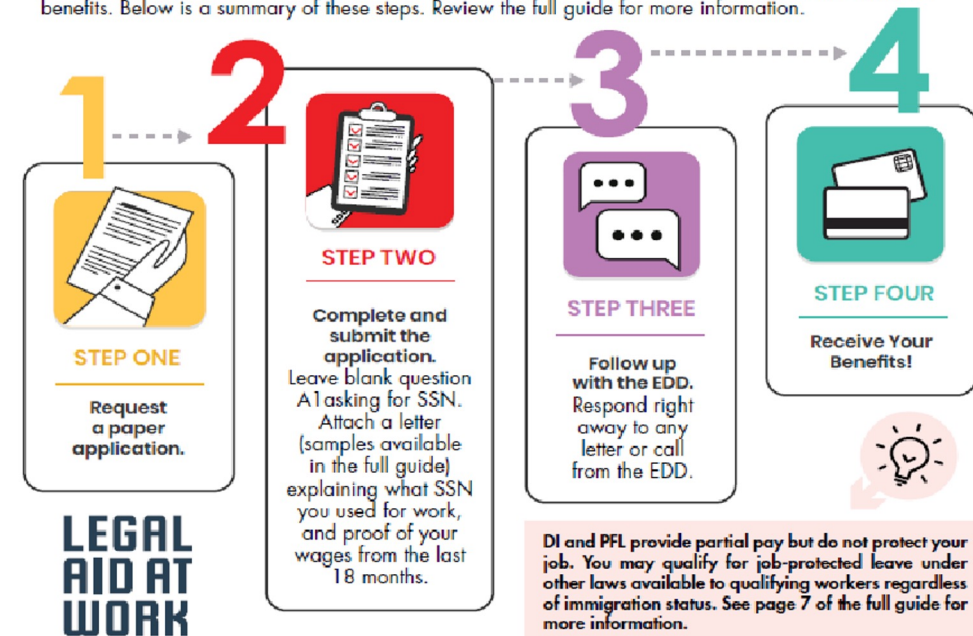
For what reasons can a worker receive DI and PFL benefits?

DI and PFL provide partial wage replacement while workers are taking time off to care for themselves or a family member:



What if I do not have a Social Security number?

Because the DI and PFL applications ask for a Social Security number (SSN), this overview and accompanying guide provide recommended steps that undocumented workers can follow to apply for benefits. Below is a summary of these steps. Review the full guide for more information.



Misclassified Workers' Guide to PFL

Employees who have been misclassified as independent contractors may still be eligible for Paid Family Leave!

- Read through the questions to determine if you have been misclassified.
- Follow guidance on what to do next and/or apply.

Have I been misclassified?

In California, a worker is not an independent contractor just because they or the business they are working for says so. Instead, under California Labor Code § 2775, a hiring entity must meet a three-part test, called the "ABC" test, to classify a worker as an independent contractor for DI or PFL purposes. If your employer has incorrectly categorized you as an independent contractor, you may still be eligible for DI or PFL benefits, even though you have not paid into the program. **If any of the following are true, you may be eligible to receive DI and PFL benefits:**

A You are under the control and direction of the hiring entity in connection with the performance of the work, either according to the terms of the contract for work or in reality.

EXAMPLES:

- You are required to show up to work at a certain time or according to a specific schedule.
- You are hired for a carpentry job, but your employer provides all the wood, hammers, saw, nails, hard-hats, etc.
- You are supervised while working and disciplined for failure to meet or comply with employer policies.
- You are required to complete your assigned tasks in a specific order.

B You are performing work that is within the usual course of the hiring entity's business.

EXAMPLES:

- You were hired by a company that provides delivery services to drive a delivery truck.
- You were hired by a construction company that specializes in renovations, including painting, to work on a crew of painters for an apartment complex renovation project.
- You were hired by an online home care company to perform in-home healthcare services.

C You are not typically engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

EXAMPLES:

- You have not established a small business that provides housekeeping services that are the same or similar to the housekeeping you perform for the hotel that hired you.
- You do not perform janitorial services for several different companies, including the hiring entity, and you do not have a website or hand out business cards advertising your janitorial services.

If the description under A, B, or C describes your employment situation, go to pages 3-4 for directions on how you can access DI and PFL as a misclassified worker. If none of the above applies to you and your employment situation, and you believe that you have been properly classified as an independent contractor, go to page 5 for information on how you can access DI or PFL benefits in the future.

How to Claim Continuing Medical Education (CME) Credit?

Please scan the QR code on this slide to claim credit.

- Use your phone camera to scan the QR code and tap the notification to open the link associated with the CME portal.
- Enter your first name, last name, profession, and claim **1 CE credit** for the webinar.



Questions?

Legal Aid at Work (www.legalaidatwork.org/wf) offers fact sheets, guides, technical assistance, and confidential advice in multiple languages statewide:

- Questions/concerns about Paid Family Leave, how to apply, denial of claims, etc.
- Questions/concerns about job-protected leave rights, including denial of leave or retaliation/discrimination by an employer

Work & Family Helpline: (800) 880-8047