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2012 | 18

California pregnancy disability (PDL) amendments

The California Fair Employment and Housing Commission has adopted amendments to the current pregnancy disability leave (PDL) regulations that take effect December 30, 2012. The amendments were created in an effort to provide clarity for employees and employers seeking to understand their rights and responsibilities under the provisions that cover pregnancy, childbirth, and related medical conditions. Many of the updates were drafted to include provisions more in line with the federal Family and Medical Leave Act (FMLA) amendments and recent court decisions. The commission anticipates that, by providing greater clarity and examples within the regulations, litigation will decrease.

As you may know, PDL is a leave of absence requirement that entitles an employee disabled by pregnancy to up to four months of job-protected leave. Leave can be taken before or after birth for any period of time during which a woman is physically unable to work because of pregnancy or a pregnancy-related condition. Additionally, the leave requires that an employee be entitled to receive the same benefits as others similarly situated.

Even with the adoption of these amendments, many of the leave provisions remained unchanged or underwent minor renumbering or wordsmithing updates. Most of the amendments simply modified terms within the definitions section of the regulations.

Sedgwick is committed to ensuring that our clients are fully compliant with the new amendments by the effective date. Outlined here is a summary of the substantive changes that are applicable to the services we offer and the actions we are taking as a result of those changes:

- **Four months leave redefined:** A substantial amendment affecting leave administration was a change in the definition of how to calculate the leave time. “Four months leave” was previously defined as the number of days an employee would normally work within four months and allotted a full-time employee who worked 40 hours per week, or 88 working days. Now it is defined as 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 and 1/3 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 and 1/3 weeks.

We are updating our claims systems to calculate the leave allotment in accordance with the newly clarified definition. System changes are scheduled to be tested and live before December 30. In addition, PDL employee packets and letters are being updated to include any new language around the “four months” definition change.

- **Entitlement is per pregnancy:** Under the minimum duration provision, employees are eligible for up to four months of leave per pregnancy, not per year. Sedgwick best practices currently allow for four months of leave per pregnancy. While the provisions around entitlement were not clearly defined in the regulations, the intent was to provide coverage for each pregnancy.
- **When PDL definitions and FMLA definitions collide:** The definitions of “intermittent leave,” “intermittent leave usage,” “reduced leave schedule,” “medical certification,” and “employee laid off” were updated by the state commission to mirror the language found in the federal FMLA. As many of these terms were previously undefined or unclear, Sedgwick adopted FMLA best practices into our administration of PDL. Therefore, no updates are required as a result of these definition changes.
- **Disabled by pregnancy now includes examples:** The commission added a list of conditions for illustrative purposes to help guide employers when they review medical certifications. Some new examples include post-natal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, loss or end of pregnancy, and recovery from childbirth. The list is not intended to be exclusive.

Our disability and leave specialists and clinical teams are trained to review all potential conditions that could cause employees to be physically unable to work due to pregnancy or pregnancy-related conditions. Our internal training materials will be updated to include the new list of examples provided in the regulation.

Recommendations for employers

Many of the regulatory amendments may impact the way employers enforce their policies and evaluate reasonable accommodations. Sedgwick recommends that all clients with California-based employees review their disability and leave policies in light of the amendments and the substantive changes summarized above. As always, we suggest you review all regulatory changes with your benefits professionals and general counsel before implementing any policy changes.

For your reference, a copy of the amended regulations with edits indicated is available [here](#). If you have any questions about the amendments, please contact your Sedgwick client services representative.

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