



# Benefit Trends



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## NEW CALIFORNIA LAWS: SB 299 Pregnancy Disability Leave (Effective January 1, 2012)

### LEGISLATIVE BRIEF

December 27, 2011

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If you have employees in California, you probably already know about this new law. This bulletin addresses specific questions we have received.

#### Background

**SB 299** requires employers to maintain and pay their regular share of group health benefits for up to **four months** in a 12-month period, for employees who are disabled due to pregnancy, childbirth or a related medical condition.

**Prior law** only required employers to continue to pay this for **12 weeks** (while an employee was out on FMLA leave, but not also during Pregnancy Disability Leave (PDL), which is four weeks longer than the FMLA leave period)

#### Changes Due to the New Law

**4-month maximum, not 7:** For employers who are subject to FMLA, PDL generally (maybe always) runs concurrent with FMLA. So, SB 299 only requires an employer to **continue to pay** its regular share of benefits for an additional month (for 4 months *rather than* only 12 weeks). It does **NOT** require an employer to now pay for benefits for 7 months (12 weeks plus 4 months).

- An employer still must *allow* up to 7 months of leave for FMLA & PDL and still must continue benefits for up to 7 months, but the obligation to *pay for* benefits is only for up to four months (while an employee is disabled due to pregnancy, childbirth or related medical condition).

**What the employer must pay for:** Whatever tier of coverage an employee had just prior to going on PDL is the tier of coverage that the employer must continue to pay its regular share of while the employee is out on PDL.

- E.g., If an employee had family coverage just prior to going on PDL leave, the employer must continue to pay its regular share of family coverage.

- The employer’s obligation for benefits continuation is only for the duration of time that the employee is disabled due to pregnancy, childbirth recovery or related medical condition. For example, if the employee’s health care provider states that the employee is disabled due to pregnancy and childbirth recovery for a period of 10 weeks, the employer’s obligation is to continue the benefits (as if the employee were actively employed) is only for the 10 week period.
- For employers subject to FMLA, the employee could request FMLA/CFRA “baby bonding” leave following the PDL. Using the example above, benefits would be continued as if the employee were activity employed for an additional 2 weeks (10 weeks of PDL/FMLA running concurrently and the remaining 2 weeks of FMLA).

The timeline would look like this:

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14
<b>PDL/FMLA</b> Benefits continuation as if actively employed														
<b>FMLA/CFRA</b> Benefits continuation as if actively employed														
<b>CFRA (CA Employers)</b> Benefits continuation per company policy (may be via COBRA)														

**What Employers and Employees Will be Most Affected by These Changes:**

1. **Small Employers:** Small employers who were not subject to FMLA probably are subject to PDL, because **PDL applies to employers with at least five employees** in California. So, small employers will now have to continue to provide and pay their regular share of benefits for up to four months for employees who are out on PDL. This is a big change for them, since they previously were not subject to the FMLA requirement to pay for benefits for 12 weeks.
2. **Part-time employees and those employed by the employer for less than 1 year:** PDL applies to both part-time and full-time employees, regardless of how long they have worked for the employer. In contrast, employees are not eligible for **FMLA** leave unless they have worked for the employer for at least one year and have worked at least 1,250 hours for the employer in the past 12 months. So, under prior law employees who were eligible for PDL but not for FMLA leave would not have received any employer contribution toward their benefits while they were out on PDL. As of January 1, 2012 they will receive the employer’s regular contribution toward health benefits for up to 4 months while they are out on PDL.

**Action Items for Employers:** Employers should review the following items to see if they need to be amended:

- Employee handbooks,
- Summary Plan Descriptions (SPDs)
- Plan Documents
- Employer’s Leave Policy
- Notices provided at time of leave.

In some cases, existing language might not have been so specific that an amendment is needed, but employers may want to send a memo to employees stating what the new requirements are, and noting that this amends the Handbook, SPD, Plan Document and Leave Policy. Notices provided at time of leave probably need to be amended to specifically state the new time period.

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