



Pandemic Leave Options

The following laws may provide job-protected leave for pregnant, postpartum, and breastfeeding patients. Some also provide pay and/or continuation of health benefits. **For help navigating which laws apply in a particular situation, contact the Center for WorkLife Law’s free COVID-19 legal helpline. Call 415-851-3308 or email COVID19Helpline@worklifelaw.org.**

Families First Coronavirus Response Act (FFCRA): Provides 80 hours of *paid* or *partially-paid* leave to covered employees who need it for one of several enumerated reasons, including to stay home based on the advice of a medical care provider. Pregnant patients advised to stay home—who work for a public employer or a private employer with fewer than 500 employees and who are not employed as healthcare providers or emergency responders—are likely eligible for 80 hours of pay with job protection and continued health benefits.

Additionally, the FFCRA provides certain covered employees up to an additional 10 weeks of job-protected, partially-paid leave with continuation of health benefits for parents who need time off work to provide childcare when their normal childcare/school is closed, remote, or unavailable because of the pandemic. For patients with other children at home, this may provide a viable paid leave option. **Be aware** that taking childcare leave under this program typically exhausts a patient’s available FMLA leave bank, which may be needed postpartum for childbirth recovery and baby care. However additional leave may be available for childbirth and bonding under state law.

As of October 2020, the FFCRA leave options are available only until December 31, 2020, although new protections may pass in the future.

For more information on the availability of FFCRA leave, including eligibility requirements, and fillable forms for requesting leave, visit <https://worklifelaw.org/covid19/helpline-resources/>.

Family and Medical Leave Act (FMLA): Provides up to 12 weeks of job-protected *unpaid* leave, with continuation of health insurance benefits, for a pregnant employee when their health care provider certifies that the patient should not work under their job conditions. Strict eligibility requirements exclude many women of childbearing age from coverage. Be aware that in most cases, when the 12 weeks is used up during pregnancy, the employee may have no time left to take job-protected leave postpartum for childbirth recovery and baby bonding. Also note this leave runs concurrently with *paid* FFCRA childcare leave described immediately above; no more than 12 weeks total is available during a 12-month period (some state-level family and medical leave laws may provide additional time though).

State-level pandemic emergency leave laws: States and localities across the country have passed laws intended to fill in the coverage gaps left by FFCRA (above). Typically these laws apply to large employers excluded by the federal FFCRA and/or to healthcare providers who may be ineligible for FFCRA. They provide paid leave for a range of qualifying reasons and may pertain to specific industries, employer sizes, etc. Search the internet for “covid-19 paid leave

law” and “coronavirus paid leave law” along with the name of the city, county, and state where your patients work to identify protections.

Paid sick days and employer-provided paid time off: Many states, counties, and cities around the country require employers to provide a limited number of paid sick days. Although short in duration, these days can provide some additional needed income. Search the internet for “paid sick time law” with the name of the city, county, and/or state where your patient works to identify protections.

State-level pregnancy accommodation laws: The same laws that give a right to reasonable accommodations for pregnancy may give a right to take unpaid leave as a form of reasonable accommodation, so long as leave can be provided without undue difficulty or expense to the employer. Typically, an employee taking leave as a reasonable accommodation does not have a right to receive continued health insurance or compensation, unless other employees are being provided continued benefits during extended leaves taken for reasons other than pregnancy. See main text and Appendix A for more on reasonable accommodation rights.

Pandemic Unemployment Assistance (PUA): The same state agencies that administer unemployment insurance have been charged with providing a new federal income-replacement program for people out of work (and in some cases, people earning less than normal) due to COVID-19. PUA provides benefits to people who are not eligible for regular unemployment insurance, including employees and independent contractors who have been advised by a health care provider to self-quarantine due to concerns about health risks the individual might face if they were to become infected with the novel coronavirus. Pregnant patients who are unable to do their jobs based on such advice should be eligible. In some states, claimants must apply for regular unemployment insurance, receive a denial, and then apply for PUA. Encourage patients to apply early and expect delays. Employees not authorized to work in the United States are ineligible.

Short-term/temporary disability insurance: A small handful of states operate programs providing income replacement benefits for pregnant employees who are out of work on the advice of a health care provider. Whether states are providing benefits to those out of work to avoid exposure to COVID-19 is currently in flux. Consult a legal expert. Additionally, some employers provide private short-term disability insurance programs, which are legally required to cover pregnancy and related conditions.