

California's New Paid Family Leave Law: Family Temporary Disability Insurance (FTDI)

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The following individuals contributed to this article: Nina Fendel, regional representative, California Faculty Association; Linda Gregory, associate director, AFSCME District Council 57; Joannie Chang, director of employment and labor projects, Asian Law Caucus; and Netsy Firestein, executive director, Labor Project for Working Families. This group is part of a larger planning committee that has presented workshops for public employees on California's new paid family leave law. For more information on contract language on FTDI, the next workshop on paid family leave, and other work and family issues, contact the Labor Project for Working Families, 510-642-5498, www.laborproject.org/.

BEGINNING JULY 1, 2004, most working Californians will become eligible to receive up to six weeks of partial pay each year if they need time off to bond with a new child (birth, adoption, or foster care) or care for a seriously ill family member (parent, child, spouse, or domestic partner). Any working Californian who contributes to the State Disability Insurance program qualifies for this new Family Temporary Disability Insurance (FTDI). Funded through the SDI system, workers who take leave will receive up to 55 percent of their wages, up to a maximum of \$728 (2004 rate). Only workers who pay into the system are eligible for paid leave.

Regulations are still to be finalized but California unions can bargain to both minimize the areas where the law falls short and enhance the law through contract language.

Bargaining on the Limitations

The following limitations of FTDI can be modified through bargaining:

- **Only workers who pay into the existing state disability Insurance (SDI) system are eligible.**
Many public employees are not part of the SDI system. Public employees may bargain to participate in the system and thus qualify for paid family leave.
- **The insurance program is 100 percent employee funded.**
Unions may bargain for language that places financial responsibility for all employee SDI contributions on the employer.
- **There is no job protection for workers of small businesses (under 50 employees).**

Using a variety of leave categories, unions have negotiated job protection for employees.

- **There is a one-week waiting period before workers can apply for paid leave.**

Unions can bargain for the employee's right to use accrued sick time, vacation, or paid leave during this period.

- **Employers can require workers to use up to two weeks vacation time before using SDI.**

Unions may bargain for the employee to have the option of choosing whether to use vacation or other leave time before utilizing the SDI fund.

Bargaining to Enhance the Law

The law provides a framework on which unions can build:

- **Notice of New Law**

Unions can bargain to require the employer to provide information on FTDI to all employees.

- **Employer Will Comply With the Law**

Including the law in bargaining contracts makes all violations of the law grievable.

- **Combining Other Benefits With SDI (Vacation, Sick Time)**

Unions have negotiated the option to use accrued sick and/or vacation time to supplement unpaid or partially paid leave.

- **Receiving Full Salary During Leave**

Unions can bargain for the employer to pay the difference between the SDI payment (approximately 55 percent of salary) and the employee's normal wage.

- **Continuation of Benefits**

Unions have negotiated for the continuation of some or all benefits during a leave of absence.

- **Maintaining Seniority**

Many unions have negotiated seniority protection for workers on any type of leave.

Entities Without SDI Coverage

For many Californians, the State Disability Insurance system pays about half of their wages for up to a year if they cannot work due to an illness or injury unrelated to their job.

SDI is entirely funded by employee contributions. When California enacted the groundbreaking paid family leave bill, it built coverage on SDI, a well-established system for delivering paid medical leave. Because of this, the availability of paid family leave is dependent on the employer's election to provide SDI coverage. Many public sector employers have opted to provide this coverage, but there are numerous entities that have not done so.

In those cases, employee organizations have the option of asking the employer to negotiate for the creation of an SDI program. Current collective bargaining statutes provide that public agencies and labor organizations representing public employees are obligated to bargain in good faith over wages, hours, and other terms and conditions of employment. Paid medical leave and paid leave to care for family members falls within the scope of representation under the state laws. So, during contract negotiations, unions can include among its bargaining proposals a request that the employer establish an SDI program and provide an avenue whereby employees can make contributions to the fund.

If there is a contract in place, initiating negotiations might depend on whether there is a zipper clause in the agreement indicating that the contract reflects the parties' agreement on all negotiable matters. However, it can be argued that the enactment of the new paid family leave law is a matter about which the parties could not have bargained and, framed in that way, may be the basis for reopening the agreement.

The employer's refusal to bargain about SDI coverage is an unfair practice under the state collective bargaining laws. Unfair practice charges are filed with the Public Employment Relations Board, a state agency that enforces these laws.

An employer may be reluctant to establish an SDI program if it believes coverage is not desired by all employees. The law mandates that if an SDI system is put in place, all employees in a bargaining unit must contribute to it. It is not something that can be opted into on an individual basis. In that case, the best course might be to negotiate an agreement with the employer that it will be bound by an election of employees in a bargaining unit. Having such an election is a way to inform employees of the costs and benefits associated with SDI coverage.

SIDE-BY-SIDE COMPARISON OF S.B. 1661 AND EXISTING FAMILY AND

LAWS THAT PROVIDE JOB-PROTECTED LEAVE

	Family and Medical Leave Act, 29 USC Secs. 2601 et seq.	California Family Rights Act, Gov. Code Sec. 12945.2	Pregnancy Disability Leave Law, Gov. Code Sec. 12945(b)(2)	Family Sick Leave, Labor Code Sec. 233
BENEFITS	Right to take job-protected, unpaid leave	Right to take job-protected, unpaid leave	Right to take job-protected, unpaid leave	Right to use at least 50% of annual accrued and available sick leave to attend to illness of child, parent, spouse, or domestic partner
ELIGIBILITY REQUIREMENTS	Employees with: one year of service; 1,250 hours worked in year preceding leave; and employer of 50+ within 75 mile radius	Employees with: one year of service; 1,250 hours worked in year preceding leave; and employer of 50+ within 75 mile radius	Employees with employer of 5+	
PURPOSE OF LEAVE	Baby bonding - to care for employee's newborn child, or for a child placed with employee for adoption or foster care. Family care - to care for employee's child, parent, or spouse who has serious health condition. Medical leave - due to employee's own serious health condition, including Pregnancy/Related Disability - pregnancy, childbirth, or medical condition.	Baby bonding - to care for employee's newborn child, or for child placed with employee for adoption or foster care. Family care - to care for employee's child, parent, or spouse who has serious health condition. Medical leave - due to employee's own serious health condition, <u>may</u> exclude Pregnancy/Related Disability	Pregnancy/Related Disability - pregnancy, childbirth, or related medical condition.	Family care - to care for employee's child, parent, spouse, or domestic partner Need NOT be serious health condition
MAXIMUM DURATION OF LEAVE/ BENEFITS	12 weeks	12 weeks	Four months	At least 50% of annual accrued and available sick leave
JOB PROTECTION DURING LEAVE?	Yes	Yes	Yes	Yes
HEALTH BENEFIT GUARANTEED DURING LEAVE?	Yes	Yes	No	Not addressed by statute

LAWS THAT PROVIDE INCOME REPLACEMENT DURING LEAVE	
California State Unemployment & Disability Insurance Code	California Family Temporary Disability Insurance (S.B. 1661)
Right to receive SDI (temporary disability) benefits = 55% of employee's weekly earnings, up to maximum of \$490/week in 2002 \$602/week in 2003 \$728/week in 2004 \$840/week in 2005	Right to receive FTDI (family temporary disability insurance) benefits = 55% of employee's weekly earnings, up to maximum of \$728/week in 2004 \$840/week in 2005
Employees who pay into SDI fund and: have earned sufficient wages during the disability base period; are unable to work because of employee's own serious health condition; have worked in covered employment; suffered wage loss during period benefits are claimed; serve a 7-day waiting period NOT state and legislative employees, but A.B. 2149 allows state employees to opt in through collective bargaining	Employees who pay into SDI fund and: have earned sufficient wages during disability base period; are unable to work because needed to care for family member with serious health condition or to bond with new child; have worked in covered employment; suffered wage loss during period benefits are claimed; serve 7-day waiting period; employer can require employee to use up to two weeks earned, but unused vacation prior to receiving benefits, which can also be applied to waiting period; must provide that no other family member is able and available to provide the care
Medical leave - due to employee's own serious health condition, <u>including</u> Pregnancy/ Related Disability - pregnancy, childbirth, or related medical condition.	Baby bonding - to care for employee's newborn child, or to care for child placed with an employee for adoption or foster care. Family care - to care for employee's child, parent, domestic partner, or spouse who has serious health condition.
52 weeks	6 weeks
Not addressed by statute	Not addressed by statute
No	No

ILLNESS/INJURY AND FAMILY LEAVE CHECKLIST

By Linda Gregory, American Federation of State, County and Municipal Employees, and Nina Fendel, California Faculty Association (NEA/CTA/SEIU/CSEA/AAUP) in conjunction with the Labor Project for Working Families

Completing the attached checklist may help a union determine whether the employees it represents would benefit from entering the State Disability Insurance system. The checklist examines both issues related to employees' own extended illnesses, pregnancies, and childbirth-related disabilities, as well as the new benefits provided through SDI under S.B. 1661. This new law provides paid leave to care for an employee's child, parent, spouse, or domestic partner with a serious health condition, and paid time off to care for a newborn, newly adopted, or foster child who is joining the family.

If coverage under SDI does not appear to be a good bargain for a union's employee workforce, this checklist may help identify changes that can be made to existing benefits and contracts to provide some form of paid time off for family leave. Finally, if the employees are already covered by SDI, the answers to this checklist could help to identify better ways to utilize SDI's benefits and suggest additional changes to a contract that can help create a more family friendly workplace.

Check your collective bargaining agreement and employment policies to find the answers to these questions

A. Employees' Own Extended Illness or Injury

1. Sick Leave

- _____ How many days/hours do employees earn per year?
- _____ Is unused sick leave carried over into the next year?
- _____ What is the limit on sick leave accumulation?
- _____ What happens to unused sick leave?

2. Extended Sick Leave and Long-Term Disability Programs

_____ If your employer is not currently participating in the State Disability Insurance system, is there some other system in place (other than regular sick leave) to compensate employees who are unable to work for an extended period of time due to non-industrial disabilities? These programs and benefits may be covered by the contract or exist outside the contract, but the employer should have written details available on any plan. Types of programs include:

_____ Extended sick leave

- _____ What are the benefits?
- _____ What is the waiting period before benefits start?
- _____ Must all regular sick leave be exhausted before benefits can be paid?

_____ Catastrophic leave or a sick leave bank (employees donate time to supplement sick leave for those who need it and have used theirs up)

- _____ Is receipt of these benefits automatic for those with qualifying conditions, or must a person be individually designated by donors to receive benefits?
- _____ Is there a limit on use of these benefits?
- _____ Is there a limit on how much time an employee can donate?

_____ Long-term disability insurance

- _____ Is the program voluntary or mandatory?
- _____ Who pays the premiums - the employer or the employee?
- _____ If the employee pays, how much are the premiums?
- _____ What are the benefits and how long do they last?
- _____ What is the waiting period before benefits may be received?
- _____ Must the employee use up all sick leave before benefits start?
- _____ Can this benefit be integrated* with sick leave?

*In an integrated system, an employee can utilize disability insurance benefits, and then supplement that with sick leave up to the level of the worker's full salary. If the system is not integrated, disability insurance benefits normally will not begin until the employee has exhausted all accrued sick leave.

B. Care for Family Members

- _____ State law provides that employees can use at least 1/2 annually earned sick leave to care for family members who are ill. Does your contract expand this right to allow more sick leave to be used for family illness purposes?
- _____ Does the contract or policy provide for paid leave for family illness, apart from sick leave?
- _____ Does the contract or policy provide a definition of family that is more extensive than that found in most statutes (which cover only spouse, children, parents, and domestic partners)?
- _____ Does your contract or employment policy allow *extended* sick leave or catastrophic leave to be used for family leave purposes? If so, are there limits?

C. Bonding With New Child (Newborn, Adopted, and Foster Children)

- _____ Does the contract or policy provide for paid parental leave (for the birth or adoption of a child or the placement of a foster child), apart from the disability benefits covered by sick leave?
- _____ How long is this leave?
- _____ What is the rate of pay?
- _____ How soon after the birth, adoption, or placement of the child must the leave be taken?
- _____ Is the leave available to all parents (mothers, fathers, domestic partners, foster parents)?
- _____ Apart from accrued vacation, compensatory, or holiday time, is there any other paid time under your contract or employment policy that covers the non-disability (bonding) portion of maternity or paternity leave?

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TEN QUICK FACTS ABOUT FTDI

1. California is the first state in the country to create a comprehensive paid family leave program. Current state and federal law guarantees 12 weeks of unpaid leave for those working for employers with at least 50 employees. The new law guarantees that six of those weeks will be paid.
2. Workers can use the leave to care for a new child or seriously ill family member.
3. Workers who already pay into the existing SDI system will be eligible for paid family leave.
4. For these employees, payments begin January 1, 2004. Benefits begin July 1, 2004.
5. The insurance program is 100 percent employee-funded.
6. The benefit will replace up to 55 percent of wages, up to \$728 a week in 2004. The maximum benefit will increase each year in accordance with increases in the state's average weekly wage.
7. There is a one-week waiting period before workers can apply for paid family live.
8. Employers can require a worker to use two weeks' vacation time before receiving paid family leave.
9. Employers with fewer than 50 employees are not required to hold a job for a worker who goes on leave. Collective bargaining agreements may offer different protections.
10. New mothers eligible for preganancy-related SDI also will be eligible for paid family leave.