



## **Legal Rights for Farmworkers During Pregnancy and Postpartum: A Guide for Community Health Workers and Other Advocates**

*This guide applies only in California. Legal rights will differ in other states. This document is for informational purposes only. For legal advice, speak with an attorney. Visit [pregnantatwork.org](http://pregnantatwork.org) for more information and resources.*

Health care providers, community health workers, and other advocates play a critical role in assisting workers in high-risk occupations to have healthy pregnancies. Agriculture is one of the most high-risk industries, with hazards including falls, heat exposure, heavy lifting, joint and ligament injuries, and exposure to dust and farm chemicals (which may include mold, bacteria, pesticides, and animal droppings). Studies have shown that prenatal pesticide exposure may increase the risk of negative health effects for the pregnancy and developing fetus.<sup>1</sup> Community health workers can support workers in getting changes they need to stay safe and comfortable at work (known as “accommodations”), paid leave, and information about their legal rights. Community health workers and other advocates should understand the basic legal rights of pregnant and postpartum farmworkers and incorporate discussions about workplace needs into their interactions with community members.

**This guide covers the 4 main categories of legal rights California farmworkers will need to navigate during and after pregnancy:**

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Each of the four rights covered in this guide includes practical steps community health workers and other advocates can take to assist patients in accessing the accommodations and paid leave they need to stay healthy and to continue supporting their families financially.

## 1. Time Off Work

When someone becomes pregnant, it can be both exciting and overwhelming. While many workers know that they'll need time off work, most do not know their legal rights or how to ask for time off. California has strong protections for pregnant and postpartum workers, but the system of laws is very complex and difficult to understand even for seasoned professionals in the law or maternal care.

***A helpful way to think about pregnancy-related leave is to think about leave rights as existing in two separate categories:***

 <b><i>Time off work with the right to return to the same job</i></b>	 <b><i>Pay while a worker is not working during and/or after pregnancy</i></b>
The laws providing “job-protected” time off work typically <u>do not</u> provide pay but <u>do</u> give workers the right to return to their same job.	The programs providing “paid leave” <u>do not</u> give workers a right to return to their same job but <u>do</u> provide some pay when they are not working.
Time off is typically requested from the employer.	Paid leave is typically applied for with the California Employment Development Department (EDD).

It is important to consider these two categories (job protection or pay) separately because they must be requested separately. An employee may have one, but not the other. Receiving job-protected time off work from an employer does not mean that the employee will be able to receive pay from the California Employment Development Department (EDD). Receiving paid leave from the EDD does not guarantee job-protected time off work. It is important to think about these two categories separately when figuring out someone's legal rights.

Section 1 of this guide shines some light on this confusing system by answering common questions about how workers may take time off work during and after pregnancy, as well as how they can receive pay while they are not working. For detailed guidance, contact the Dar a Luz *free* legal helpline by at 415-581-8888 or by email at [daraluz@worklifelaw.org](mailto:daraluz@worklifelaw.org). Please leave a voicemail with your name and phone number and a lawyer will return your call.

### ***a. Job protection and health insurance benefits during pregnancy***

Workers in California have a right to take time off work during pregnancy for several different reasons. This time off is normally “job-protected,” which means the employer must put the employee back in the same job when they return to work. Also, for a certain period of time, the employer must continue providing any health insurance benefits that it normally provides. Below is a brief explanation of the different kinds of job-protected time off.

#### ***Can a worker use their paid sick days during pregnancy?***

During pregnancy, a worker can use sick days for medical appointments or if they are not feeling well. Most workers in California have a right to take 5 paid sick days per year. A worker's paystub should state how much paid sick time is available to them.

To use paid sick days, workers should use their employer’s normal process for requesting time off. For example, the worker may talk to their supervisor or call the main office. Employers are **not** allowed to request a doctor’s note from a worker who needs to use their paid sick days.

***If a worker has used up their sick days, how can they take more time off during pregnancy?***

The **Pregnancy Disability Leave** law requires employers with **5 or more employees** to provide **up to 4 months** of unpaid leave when an employee is “disabled” by pregnancy, childbirth, or related conditions. If the worker receives health insurance from their employer, the employer is required to continue their coverage while the worker is on leave. The leave is “job-protected,” which means the employer must give the worker back the same job with the same pay when they return to work. To access Pregnancy Disability Leave, the worker’s doctor, midwife, or other healthcare provider must write a letter saying that the worker needs leave. Pregnancy Disability Leave can be used for many reasons:

- Appointments for pregnancy or childbirth
- Avoiding exposure to pesticides
- Avoiding work that is too physically hard or dangerous during pregnancy (such as work that requires heavy lifting, frequently bending over, or that may cause slips or falls)
- Bed rest
- Loss or end of pregnancy
- Giving birth and recovering
- Other pregnancy-related conditions (for example, morning sickness, back pain, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression)

***At what point in pregnancy can someone take Pregnancy Disability Leave?***

Typically, people take Pregnancy Disability Leave 4 weeks before their due date. However, leave can be taken at any point in pregnancy. For example, a health care provider may put a farmworker out on leave during the first trimester in order to avoid exposure to harmful pesticides. **It is important to keep in mind that taking time off during pregnancy may reduce the amount of time off that is available after the baby is born.**

If the worker needs longer than 4 months off, they may be able to take additional time if they are eligible for California family and medical leave, or if they have a pregnancy-related “disability” like gestational diabetes, high blood pressure, or other conditions (see more information below).

***How does someone request Pregnancy Disability Leave?***

Workers interested in taking time off work during pregnancy should speak with their doctor, midwife, or other health care provider. The employee can request leave by giving their employer a medical note recommending that the employee be given time off. Workers may wish to provide the note directly to their employers’ main office, if possible. It is recommended that workers keep a copy (or picture) of the note in case the employer says they did not receive it.

Health care providers can make sure they provide the necessary information by using our free ACOG-recommended guidelines on writing work notes, including a sample note:

<https://www.pregnantatwork.org/wp-content/uploads/california-work-note-guidelines-1.pdf>



**IMPORTANT TIP:** While out on Pregnancy Disability Leave, workers may apply for State Disability Insurance to receive partial income replacement (paid leave). See Section 1b to learn more.

### ***Is there another kind of leave available if a worker runs out of Pregnancy Disability Leave?***

**California family and medical leave** is another form of job-protected leave (time off with the right to return to the same job) that is available when an employee needs time off for their own health. If an employee has used all 4 months of Pregnancy Disability Leave and their health care provider thinks it is medically necessary to continue their time off, they may request additional time off under a law called the California Family Rights Act (CFRA). This time is sometimes called “CFRA leave.”

Employers with **5 or more employees** are required to provide **12 weeks** of unpaid leave per year with the right to return to the same job and continued health insurance benefits *if*:

- the employee has worked at that employer for a total of **12+ months** at any time in the past,<sup>2</sup> *and*
- the employee has worked **at least 1,250 hours** during the 12-month period before the leave is scheduled to begin, *and*
- their healthcare provider says that they need to take leave, *and*
- they have not already used up their annual 12 weeks of CFRA leave for another purpose.

### ***How do Pregnancy Disability Leave and California family and medical leave work together?***

Both forms of leave are available at separate times. Workers using all the job-protected leave time available to them will typically use their 4 months (17 1/3 weeks) of Pregnancy Disability Leave (PDL) first and then use their 12 weeks of California Family Rights Act (CFRA) leave (if they are eligible), for a total of 29 1/3 weeks of job-protected leave. During the entire 29 1/3 weeks, the employer must continue to provide any health insurance benefits it normally provides and must put the employee back in the same job with the same pay when they return to work.

### ***What if a worker runs out of both Pregnancy Disability Leave (PDL) and California family and medical leave (CFRA leave)?***

If a worker needs more time off, additional job-protected leave may be available (for example, as a “reasonable accommodation” under California’s Fair Employment and Housing Act or “FEHA”). Again, it is important to keep in mind that taking leave during pregnancy can reduce the amount of job-protected leave that is available after the baby is born. Talk with the worker about whether being able to return to the same job is important to them. For help understanding individual leave rights and options, contact the Dar a Luz free legal helpline at 415-581-8888 or [daraluz@worklifelaw.org](mailto:daraluz@worklifelaw.org). Leave a message and a lawyer will call you back.

### ***b. Pay when off work during pregnancy***

Workers may be able to access pay when they are not working due to pregnancy, even if they do not have a right to return to their job. California’s **State Disability Insurance (SDI)** program provides workers **up to 70% of their regular weekly wages** (base pay, not including overtime) for up to 52 weeks while they are not working (or working fewer hours) due to a “disability,” including when they are not able to

work because of pregnancy. Farmworkers pay for this program through automatic paycheck deductions. Undocumented workers are eligible to apply.

To receive State Disability Insurance benefits, a pregnant person must:

- Not be working (or be working fewer hours) for at least 8 days due to “disability” (see definition below),
- Be under the care of a doctor who can fill out paperwork saying that it is not recommended that the pregnant person do their regular work,
- Have earned at least \$300 during the 18 months before their leave begins, *and*
- Have had State Disability Insurance deductions taken from their earnings. The paystub may say something like “Disability” or “CASDI.” Agricultural companies are required to make this deduction for all employees. Contact the Dar a Luz free legal helpline for more info.

### ***When is a worker considered “disabled” for State Disability Insurance (SDI)?***

A worker is considered “disabled” and eligible for State Disability Insurance if the worker’s doctor recommends that they do not do *their* normal work. This is a low standard, and doctors should talk with their patients about their job duties to determine if leave is recommended. A person who shouldn’t do their normal job is considered “disabled” for State Disability Insurance even if it would be possible for them to do some other kind of work.

Workers are “disabled” for State Disability Insurance if their normal job duties put their health or the baby’s health at risk. According to the California agency that runs the State Disability Insurance program (the EDD), a doctor may put a worker on leave to avoid lifting, continuous standing, regular chemical exposure, or other risks. **This means a farmworker is disabled and eligible for State Disability Insurance if their doctor recommends leave so they do not have to work around agricultural pesticides to avoid health risks during pregnancy.**

### ***When can a health care provider verify a pregnant patient’s State Disability Insurance application?***

Health care providers can put their patients on leave and verify their application for State Disability Insurance by completing the EDD’s “Physician/Practitioner’s Certificate” at any point in pregnancy.<sup>3</sup>

### ***How long can a worker receive State Disability Insurance?***

The State Disability Insurance program provides benefits for up to 52 weeks so long as the doctor continues to recommend leave.

For a 2-page guide on farmworker eligibility for State Disability Insurance, visit:

<https://pregnantatwork.org/guidance-medical-provider-agriculture/>. Many doctors do not know when they are allowed to put pregnant farmworkers on State Disability Insurance. We recommend that pregnant farmworkers give this guide to their doctor if they want to request State Disability Insurance because of pesticides or other health risks.

### ***How can workers apply for State Disability Insurance?***

Workers can apply for California State Disability Insurance with the EDD online (visit:

[https://edd.ca.gov/Disability/SDI\\_Online.htm](https://edd.ca.gov/Disability/SDI_Online.htm)) or by mail with a paper application. It is faster to apply

online, but it is recommended that undocumented workers apply by mail, which does not require providing a social security number.

Workers must already be on leave when they submit their application. It is not possible to apply early. State Disability Insurance applications must be submitted before 49 days after the leave begins. Because the application process can be complicated, it is important to apply as soon as possible. The State Disability Insurance program has a 7-day waiting period, which means that workers will not receive any benefits for the first 7 days of their leave.<sup>4</sup>

For a 2-page guide on State Disability Insurance for health care providers serving farmworkers, please visit: <https://pregnantatwork.org/guidance-medical-provider-agriculture/>

### ***How can undocumented workers apply for State Disability Insurance?***

Undocumented workers have the same State Disability Insurance paycheck deductions and are eligible for the same State Disability Insurance benefits as other workers. However undocumented workers should apply by mail (not online) because the paper application does not require the use of a social security number. For a step-by-step guide on applying for State Disability Insurance for undocumented workers, visit: <https://legalaidatwork.org/wp-content/uploads/2021/05/LWDA-Undocumented-Workers-Guide-SDI-PFL-English.pdf>.

### ***Can an employer deny a State Disability Insurance claim?***

No, it is not up to the employer. The California Employment Development Department (EDD) runs the State Disability Insurance program. It receives the claims, decides who is eligible, and pays out the benefits.

### ***c. Job-protection and health insurance benefits after childbirth***

Most workers in California have a right to take time off work and receive paid leave benefits after childbirth while they recover physically and/or bond with their new baby. Whether their time off is “job-protected” (time off with the right to return to the same job with the same pay) depends on how much leave time the worker used during pregnancy.

### ***What options does a worker have for time off work to physically recover after childbirth?***

The kind of job-protected leave a worker can have and how much will be available depends on what leave the worker used during pregnancy. The same **Pregnancy Disability Leave** (PDL) that is available during pregnancy (Section 1a above) is also available to recover physically from childbirth, but any time taken during pregnancy will reduce the amount available after birth.

Employers with **5 or more employees** are required to provide **Pregnancy Disability Leave for up to 4 months** when an employee is “disabled” by pregnancy, childbirth, or related conditions, which includes the time when an employee is physically recovering from childbirth. After the leave is over, the employer must put the employee back in the same job with the same pay. The employer must continue providing normal health benefits during the entire time off.

### ***How much Pregnancy Disability Leave Is Available After Birth?***

If the worker did not use the entire 4 months of Pregnancy Disability Leave during pregnancy, they will be able to use it to recover from childbirth. Typically, doctors in California say a patient needs 6 weeks off work to physically recover from a vaginal delivery and 8 weeks to physically recover from a cesarean-section. People who have medical complications or postpartum depression may need longer.

### ***How does someone request Pregnancy Disability Leave?***

The employee can request leave by giving their employer a medical note recommending that the employee be given time off following childbirth. Workers may wish to provide the note directly to their employers' main office, if possible. It is recommended that workers keep a copy (or picture) of the note in case the employer says they did not receive it.



**IMPORTANT TIP:** While out on Pregnancy Disability Leave, workers may apply for State Disability Insurance to receive partial income replacement (paid leave). See Section 1b to learn more.

### ***What if an employee needs additional leave to recover from childbirth?***

If a worker uses up all 4 months of Pregnancy Disability Leave (PDL), they may be able to use **California family and medical leave** (sometimes called "CFRA leave"), which provides up to 12 months of unpaid leave per year for pregnancy, childbirth, and to bond with a new baby. (See "Time Off to Bond with a New Baby" section below about how to use CFRA leave).

Employees that use up all their Pregnancy Disability Leave and California family and medical leave sometimes have a right to take additional leave if needed for a disability related to pregnancy or childbirth, like postpartum depression. However, this additional leave is not available in many cases. It is important to talk with workers about whether being able to return to the same job is important to them. If a worker does not return when their job-protected leave runs out, their employer may fire them. For individualized guidance on leave options, contact the Dar a Luz free legal helpline at 415-581-8888 or [daraluz@worklifelaw.org](mailto:daraluz@worklifelaw.org). Leave a message with your phone number, and a lawyer will call you back.

### ***What if someone experiences a miscarriage, stillbirth, or pregnancy loss?***

Someone in this situation has a right to take time off work as recommended by their healthcare provider under the same laws discussed above.

Additionally, beginning in January 2024, employers with **5 or more employees** are required to provide **5 days of unpaid time off** following a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction (a "reproductive loss"). To qualify, a worker must have worked for their employer for at least 30 days. This time off can be taken within 3 months of the reproductive loss, with up to 20 days available per year if a worker experiences multiple losses. This "reproductive loss leave" may be used by *both* expectant parents. Employers are **not** allowed to request a doctor's note from a worker who needs to use their reproductive loss leave.

## **Time Off to Bond with a New Baby**

### ***What options does a worker have if they want to take time off work to bond with their new baby?***

Typically, workers will use **California family and medical leave** to bond with their new baby. California's Family and Medical Leave law (called the "California Family Rights Act" or "CFRA") requires employers with **5 or more employees** to provide **12 weeks** of unpaid leave per year, with the right to return to the same job and continued health benefits, *if*:

- the employee has worked at that employer for a total of **12+ months** at any time in the past,<sup>5</sup> *and*
- the employee has worked **at least 1,250 hours** during the 12-month period before the leave is scheduled to begin, *and*
- the employee had a new child (through birth, adoption, or foster placement) in the last year, *and*
- the employee has not already used up their annual 12 weeks of CFRA leave during pregnancy or for another reason.

### ***How do Pregnancy Disability Leave and California family and medical leave work together?***

Both forms of leave are available at separate times. Pregnancy Disability Leave is used for physical recovery from childbirth. Family and Medical Leave can be used for physical recovery, but also can be used for bonding with a baby. (It is available to non-birth parents of all genders.) For someone who did not use up all of their leave during pregnancy, and is eligible for both types of leave, they will have 6 weeks (vaginal delivery) or 8 weeks (c-section) of Pregnancy Disability Leave available, plus an additional 12 weeks of Family and Medical Leave available, for a total of 18-20 weeks of leave following the birth of the baby. During this time, the employer must continue to provide any health insurance benefits it normally provides and must put the employee back in the same job with the same pay when they return to work.

### ***What if a worker does not have any, or enough, job-protected leave for bonding?***

If a worker does not meet the eligibility requirements for California family and medical leave or has already used up their entire 12 weeks, they may ask their employer for permission to take additional time off, but they will not have a right to continued health benefits or to be returned to the same job. For individualized guidance on leave options, contact the *Dar a Luz free* legal helpline at 415-581-8888 or [daraluz@worklifelaw.org](mailto:daraluz@worklifelaw.org). Leave a message with your phone number, and a lawyer will call you back.



**IMPORTANT TIP:** *Even if a worker does not have a right to return to their same job, they can still be eligible for income replacement (paid leave) while they are taking time off to bond with their baby. See below for more information on paid leave benefits while bonding.*

### ***Can a spouse/partner also take job-protected time off work to bond with the new baby?***

Non-birth parents of any gender, including **fathers**, can *also* request California family and medical leave (“CFRA” leave) from their employers to bond with their new child in the first year after the child is born or adopted. See section above on California family and medical leave to learn about eligibility.

#### ***d. Pay when off work after childbirth***

##### ***How can a worker get paid while they are off work to physically recover from childbirth?***

The **State Disability Insurance** program provides workers **up to 70% of their regular weekly wages** (base pay, not including overtime) while they are not working due to a “disability,”<sup>6</sup> including for recovery from childbirth. A worker is considered “disabled” and eligible for State Disability Insurance if the worker’s doctor recommends that they do not do their normal work. This is the same benefit described in Section 1b, above, that workers can receive when they are unable to do their normal work because of pregnancy. Workers who received State Disability Insurance during pregnancy can continue receiving benefits after birth. Typically, workers receive State Disability Insurance for 6 weeks following a vaginal birth and 8 weeks following a c-section, but a doctor can verify the worker’s State Disability Insurance eligibility for more weeks if the worker needs more time to recover or has a condition like postpartum depression that prevents them from working. To learn more about how to apply for State Disability Insurance, see Section 1b, above.

##### ***How can a worker get paid while they are off work to bond with their new baby?***

Workers may apply for **Paid Family Leave** while they are taking time off work to bond with their new baby. California’s Paid Family Leave program<sup>7</sup> is a worker-funded<sup>8</sup> program that provides workers with **up to 70% of their regular weekly wages** (base pay, not including overtime) for **8 weeks** while they are bonding during the first year of the baby’s life.<sup>9</sup> Farmworkers in California pay for this program through automatic paycheck deductions. Undocumented workers are eligible to apply. Non-birth parents of all genders, including fathers, are eligible for these benefits when they take time off work to bond with a new child (through birth, adoption, or foster placement).

To receive Paid Family Leave for baby bonding,<sup>10</sup> a person must:

- Have welcomed their new child into the family in the past 12 months, *and*
- Have lost wages (for example, be working less hours or be on leave), *and*
- Have paid into the program through payroll deductions. The paystub may say something like “Disability” or “CASDI.” Agricultural companies are required to make this deduction for all employees. Contact the Dar a Luz free legal helpline for more info.

##### ***When can a person receive Paid Family Leave?***

After a person has recovered from childbirth (typically 6 weeks after vaginal delivery, 8 weeks after c-section), they can begin receiving Paid Family Leave to bond with their baby.

Non-birth parents of any gender, including **fathers**, can apply for Paid Family Leave at any time when they are off work to care for their new child in the first year after the child is born or adopted.

##### ***How can someone apply for Paid Family Leave?***

If a parent received State Disability Insurance during pregnancy and/or during recovery from childbirth, the EDD will automatically send the Paid Family Leave application with the last State Disability Insurance payment. If a worker did not receive State Disability Insurance, they can still apply for Paid Family Leave with the EDD online (visit: [https://edd.ca.gov/Disability/SDI\\_Online.htm](https://edd.ca.gov/Disability/SDI_Online.htm)) or by mail with a paper application.

Workers cannot apply for Paid Family Leave early - they must already be on leave when they submit their application. Paid Family Leave applications must be submitted within 41 days of when the bonding leave begins.

### ***How can undocumented workers apply for Paid Family Leave?***

Undocumented workers have the same State Disability Insurance paycheck deductions and are eligible for the same State Disability Insurance and Paid Family Leave benefits as other workers. However undocumented workers should apply by mail (not online) because the paper application does not require the use of a social security number. For a step-by-step guide on applying for Paid Family Leave for undocumented workers, visit: <https://legalaidatwork.org/wp-content/uploads/2021/05/LWDA-Undocumented-Workers-Guide-SDI-PFL-English.pdf>.

### ***Can a spouse/partner also apply for Paid Family Leave?***

All parents are able to receive this benefit. Non-birth parents can apply for Paid Family Leave once the child is born *and* their bonding leave has begun.

Remember, the Paid Family Leave program does not provide job protection. Non-birth parents should review their eligibility for job-protected bonding leave under California’s family and medical leave law (“CFRA” leave) in Section 1c.

### ***Does a worker have to claim all 8 weeks of Paid Family Leave benefits at once?***

No. Workers can break up their benefits into different weeks. However, Paid Family Leave for baby bonding is available only in the 12-month period following the child’s birth, adoption, or foster placement. If concerned with job protection, workers should review their eligibility for job-protected bonding leave under the California Family Rights Act (CFRA) and their employer’s policies for breaking up their leave usage.

## **2. Changes at Work (“Accommodations”) for Safety or Comfort**

Employers with **5 or more employees** are required to provide employees with “**reasonable accommodations**” (changes at work) for pregnancy, childbirth, lactation, and related conditions.

### ***What is a reasonable accommodation?***

A reasonable accommodation is a **change to how, when, or where a worker’s job is performed** that will enable them to do their work safely and comfortably.

There are many kinds of changes a worker can request. For example:

- longer breaks
- permission to move more slowly
- access to more water or time to eat
- work closer to the ponchadora or to shade
- changing to another job that is physically easier (for example, doesn't require frequent bending or lifting) such as working as a ponchadora or assembling boxes
- and other things needed because of pregnancy

### ***How can a worker request changes at work?***

Employees may request changes at work by providing their employer with a note from a doctor, midwife, or other health care provider recommending the changes. Workers should discuss their need for accommodations with their health care provider.

Health care providers may wish to use our free ACOG-recommended guidelines on writing work-notes, including a sample note: <https://www.pregnantatwork.org/wp-content/uploads/california-work-note-guidelines-1.pdf>

Community health workers and farmworkers may wish to review our practical guidance for discussing your pregnancy with your employer: <https://pregnantatwork.org/wp-content/uploads/Talking-About-Your-Bump-California-Factsheet-Espanol.pdf>

## **3. Break Time, Space, and Other Accommodations for Breastfeeding**

Workers have the right to **reasonable break time** and a **private non-bathroom space** at work to express breast milk for up to 12 months following childbirth.

### ***How much break time is “reasonable”?***

Workers can take however much time they need to pump milk. Their needs will vary depending on many factors, including their baby's feeding schedule, their individual body's response to the pump, and more. Typically, a worker will need to pump three times for 15-20 minutes per session during an 8-hour workday. They will need additional time to get to the pumping space, set up the pump, clean-up, store the milk, and return to the work area.

### ***Is the break time paid?***

Employers are not required to pay employees for break time that goes beyond the required paid breaks under the law. Therefore, time used to pump outside of regular break time is typically not paid.

However, if an employer provides other workers with paid breaks for other reasons (such as water breaks), they may need to pay the nursing worker for pumping breaks too.

### ***What is required of the space?***

The pumping space should be private, clean, safe, free of hazardous materials, and close to the work area. It cannot be a bathroom. Additionally, the space must have access to electricity and have a place for the worker to sit and place their breast pump. The employer should also provide access to a sink with clean running water and a refrigerator or cooler where the breastmilk can be stored.

Pumping spaces can be creative so long as they meet the requirements of the law. For example, employers may set up portable tents or pods for pumping or may allow for pumping in a farm vehicle that has been equipped with privacy shades.

### ***What if a worker needs other workplace supports while nursing?***

Employers with **5 or more employees** must also provide workers who are nursing with **changes to how, when, or where they do their job**, called “**reasonable accommodations for lactation**” when requested with the advice of a health care provider.

For example, workers may ask for:

- Protection from toxic chemicals and pesticides
- Allowing your baby to be brought to the field for nursing
- Access to more water or time to eat
- Temporarily changing job duties or location
- Other things you need because you are breastfeeding

### ***How can someone request lactation accommodations?***

Workers may request reasonable break time and private space by speaking directly to their employer. If possible, it is recommended to speak to the main office, because they may be more familiar with the legal requirements. An employee does *not* have to provide a doctor’s note to request reasonable break time and private space for pumping breast milk. It is recommended that the employee speak with their employer about this *before* returning to work, if possible, so they can develop a plan in advance.

For all other kinds of “reasonable accommodations for lactation” workers must give their employer a note from a health care provider recommending the requested changes (like avoiding toxic chemicals or temporarily changing job duties). Workers should discuss their need for lactation accommodations with their health care provider.

Health care providers may wish to use our free guidelines on writing lactation accommodation work-notes, including a sample note: <https://www.pregnantatwork.org/wp-content/uploads/Breastfeeding-Workplace-Guide-for-Healthcare-providers.pdf>

Community health workers and farmworkers may wish to review our practical guide on how to discuss your breastfeeding needs with your employer: <https://pregnantatwork.org/wp-content/uploads/Talking-About-Your-Pump-California-Factsheet-Espanol.pdf>

## **4. Protection from Discrimination, Retaliation, or Harassment**

It is illegal for employers to treat a worker poorly (such as firing, punishing, or harassing them) because the worker is pregnant, has been pregnant, is breastfeeding, or because they requested or received accommodations (including break time and space for pumping) or time off work. If a worker is concerned that they are being treated unfairly, they should take notes on what has occurred (for their own record) and contact the Dar a Luz free legal helpline to learn about their options.

### Questions? Contact:

*Dar a Luz: Legal Rights for Farmworkers in Pregnancy and Postpartum*



415-581-8888



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<sup>1</sup>See Rural Health Information Hub, *Rural Agricultural Health and Safety*, <https://www.ruralhealthinfo.org/topics/agricultural-health-and-safety>; Freinkel S. *Warning Signs: How Pesticides Harm the Young Brain*, The Nation, March 2014, <https://www.thenation.com/article/archive/warning-signs-how-pesticides-harm-young-brain/>; Eskenazi B, Harley K, Bradman A, Weltzien E, Jewell NP, Barr DB, et al. *Association of in utero organophosphate pesticide exposure and fetal growth and length of gestation in an agricultural population*. Environ Health Perspect. 2004;112: 1116–1124; Young JG, Eskenazi B, Gladstone EA, Bradman A, Pedersen L, Johnson C, et al. *Association between in utero organophosphate pesticide exposure and abnormal reflexes in neonates*. Neurotoxicology. 2005;26: 199–209; Eskenazi B, Marks AR, Bradman A, Harley K, Barr DB, Johnson C, et al. *Organophosphate pesticide exposure and neurodevelopment in young Mexican-American children*. Environ Health Perspect. 2007;115: 792–798; Marks AR, Harley K, Bradman A, Kogut K, Barr DB, Johnson C, et al. *Organophosphate pesticide exposure and attention in young Mexican-American children: the CHAMACOS study*. Environ Health Perspect. 2010;118: 1768–1774; Bouchard MF, Chevrier J, Harley KG, Kogut K, Vedar M, Calderon N, et al. *Prenatal exposure to organophosphate pesticides and IQ in 7-year-old children*. Environ Health Perspect. 2011;119: 1189–1195; Raanan R, Harley KG, Balmes JR, Bradman A, Lipsett M, Eskenazi B. *Early-life exposure to organophosphate pesticides and pediatric respiratory symptoms in the CHAMACOS cohort*. Environ Health Perspect. 2015;123: 179–185; see also ACOG Committee Opinion 575.

<sup>2</sup> However, if a worker returns to an employer after not working there for a continuous 7-year period, that employer is not required to count the months the worker previously worked towards the 12 months required for CFRA leave. 2 CCR § 11087 (f).

<sup>3</sup> Typically, pregnant workers stop working and apply for State Disability Insurance 4 weeks before their estimated due date. However, while this timeline is normal practice for most jobs, it is not the law and does not appropriate for certain jobs that are physically demanding or hazardous, such as agricultural work.

<sup>4</sup> Workers may be able to use sick leave, vacation pay, or other paid time off for pay during that 7-day period.

<sup>5</sup> However, if a worker returns to an employer after not working there for a continuous 7-year period, that employer is not required to count the months the worker previously worked towards the 12 months required for CFRA leave. 2 CCR § 11087 (f).

<sup>6</sup> State Disability Insurance benefits are available for up to 52 weeks. Farmworkers in California pay for this program through automatic paycheck deductions. Undocumented workers are eligible to apply.

<sup>7</sup> The Paid Family Leave program is administered by the California Employment Development Department (EDD).

<sup>8</sup> Both State Disability Insurance and the Paid Family Leave program are paid out of the State Disability Insurance fund. So, if a worker contributed to the State Disability Insurance fund through payroll deductions, they also paid into Paid Family Leave.

<sup>9</sup> Paid Family Leave may also be used for income replacement while taking time off work to care for a worker's own serious illness or to care for a close family member (child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner) with a serious illness.

<sup>10</sup> Paid Family Leave is also available for a worker's own serious illness, to provide care for a seriously ill family member, and to participate in a qualifying event resulting from a family member's military deployment to a foreign country. [https://edd.ca.gov/en/disability/Am\\_I\\_Eligible\\_for\\_PFL\\_Benefits/](https://edd.ca.gov/en/disability/Am_I_Eligible_for_PFL_Benefits/)