



Healthcare Provider Toolkit

Assisting Patients with Requests for
Workplace Accommodations or Leaves of Absence

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ABOUT THIS TOOLKIT



The purpose of this toolkit is to assist healthcare providers in responding to patient requests for work-related medical documentation, including explanatory letters or certification forms required by employers or state agencies in order for employees to obtain reasonable accommodations, leaves of absence, and/or income replacement while on leave from work due to their own disability or serious health condition, the serious health condition of a family member, or the desire to bond with an infant or new child in the home.



THIS TOOLKIT CONTAINS:

- **best practices, sample letters and forms, and additional resources ...**
- **that will support patients' requests for reasonable accommodations, leaves of absences, and/or wage replacement benefits ...**
- **when needed due to disabilities, serious health conditions, and/or pregnancy-related conditions.**

If you have any questions regarding the information in this toolkit, or would like to request a training on the toolkit contents for you or your staff, please contact the Disability Rights Program's toll-free helpline at **877-350-5441**.

About Legal Aid at Work

Legal Aid at Work is a public interest legal organization that advocates to improve the working lives of disadvantaged people. We represent clients in cases covering a broad range of employment-related issues including discrimination on the bases of race, gender, age, disability, pregnancy, sexual orientation, gender identity, and national origin. Through community education, direct services, and litigation, our Disability Rights Program and Work and Family Program advocate on behalf of clients faced with discrimination because of disability, pregnancy, and familial caregiving responsibilities.

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FAQ: Supporting a patient's request for a disability-related reasonable accommodation at their workplace



What is a “disability”?

Under state and federal law, a “disability” is a physical or mental impairment that substantially limits (or, under California law, simply “limits”) one or more major life activities. As you’ll see in the sample letters to follow, “major life activities” vary widely, including everything from walking, to concentrating, to the functioning of various bodily systems.

The below is a non-exhaustive list of some conditions that may constitute disabilities:

Physical disabilities may include:	Mental disabilities may include:
<ul style="list-style-type: none">○ Diabetes○ Epilepsy○ Blindness○ HIV / AIDS○ Paralysis○ Cancer	<ul style="list-style-type: none">○ Depression○ Bipolar disorder○ Schizophrenia○ Panic, anxiety, stress disorders○ Post-traumatic stress disorder○ Obsessive compulsive disorder○ Traumatic brain injury

Is pregnancy a disability?

Many conditions related to pregnancy or child birth, such as gestational diabetes and postpartum depression, may also constitute disabilities for the purpose of workplace rights to reasonable accommodations and leaves of absence. There are also laws specific to pregnancy (such as California's Pregnancy Disability Leave Law) that directly address rights to reasonable accommodations and leaves of absence for workers who are pregnant or have given birth. There are also specific laws regarding the right to lactation accommodations in the workplace.

These specific laws are addressed in more detail in the sample letters and accompanying instructions on pages 18-20 of this toolkit. However, note that the general recommendations in this section are typically also relevant to workers who need accommodations or leaves of absence for reasons related to pregnancy or childbirth.



What is a “reasonable accommodation”?

A reasonable accommodation is a change made to a job or workplace that helps an employee or applicant perform the basic duties of a position or enjoy the same benefits and privileges of employment enjoyed by non-disabled employees (such as promotional opportunities, trainings, and social functions).

Reasonable accommodations should be individualized depending on the needs of the specific person and the limitations related to their disability. However, common reasonable accommodations can include, but are not limited to, the following:

- Changes to equipment, furniture, facilities
- Special equipment or devices
 - Assistive technology
 - Ergonomic equipment
- Policy changes
- Additional or specialized training
- Job coach
- Job restructuring
- Telework
- Reassigning marginal job duties
- Modified supervision
- Transfer to vacant position
- Time away from work
 - Medical appointments
 - To avoid hazard at work (e.g., harmful chemicals)
 - Appointments related to maintaining or repairing accessible equipment (e.g., motorized scooters)
- Extended leaves of absences
- Changes to work schedule
 - Later or earlier schedule
 - Part-time schedule
 - Regular/consistent/fixed schedule

What if I don’t know what sort of reasonable accommodation might be helpful?

First, talk to your patient – they may already have something in mind.

If they are unsure about what accommodation(s) they need at the workplace, consider recommending that they consult the Job Accommodation Network (“JAN”) by visiting **askjan.org** or by calling **(800) 526-7234**. JAN is a free resource provided by the Department of Labor’s Office of Disability Employment Policy. This website contains a wealth of information regarding a variety of disabilities and reasonable accommodation options. JAN consultants are available by phone for one-on-one discussions to help individuals determine what types of accommodations might work best for their needs and in their workplaces. JAN is a wonderful resource for you and your patients who need accommodations in the workplace.

Can a leave of absence be a reasonable accommodation?

YES. Leaves of absence are often helpful to allow individuals with disabilities time off from work to obtain treatment and/or recover from disability-related symptoms so that they are eventually able to return to the workplace.

Certain laws, such as the Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) entitle eligible employees to up to 12 weeks of job-protected leave to recover from their own serious health condition, attend to the serious health condition of a family member, or bond with a new baby or child in the home. (See pages 21-31 of this manual for further information.) And the Pregnancy Disability Leave Law (PDL) entitles a worker to up to four months of leave while disabled due to pregnancy- or child-birth related conditions. (See page 19 for a sample letter supporting a patient's request for PDL leave.)

However, even employees who are not qualified for, or who have used up all of their leave under, FMLA, CFRA, or PDL can request a leave of absence as a reasonable accommodation for their disability under state and federal disability laws including the Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA). (See page 10 for a sample letter supporting a patient's request for this accommodation.)

What medical information can an employer request when an employee asks for a reasonable accommodation?

Employers can request medical documentation confirming:

- that the person has a disability;
- that the disability limits the person's ability to perform certain "major life activities" and descriptions of which major life activities are limited;
- that the person needs a reasonable accommodation due to their disability-related limitations, and a description of the requested accommodation, if known.

To what information are employers not entitled?

Employers are not entitled to access to an employee's medical file / medical records. (**EXCEPTION:** Employers may require employees to provide documentation relating to COVID-19 testing or vaccination status, but must keep this information confidential.)

Employers are not entitled to an employee's specific diagnosis or intimate, personal details related to a patient's disability. (**EXCEPTION:** Employers may ask employees who are physically entering the workplace if they are experiencing COVID-19 symptoms or have been tested for COVID-19.)

Employers are not permitted to call the employee's healthcare provider and discuss their condition (but can call to verify paperwork).



What if I am asked to complete reasonable accommodation paperwork, including my assessment of whether the employee can perform “essential functions”?

Sometimes employers create their own “reasonable accommodation packets,” or similarly named forms to be completed by an employee’s healthcare provider. Employers will either send such forms directly to the healthcare provider or will give them to an employee to share with their provider.

When responding to such forms, remember the following best practices:

MAINTAIN PRIVACY.

Remember that an employer is not entitled to detailed information regarding an employee’s disability, diagnosis, or medical condition. If the forms request such information, consider responding by stating that the employee has a “disability” that limits particular essential functions (examples of which you can list) and for which they need a reasonable accommodation.

Relatedly, make an effort to only provide information that is relevant to the requested accommodation. For example, if an employee is requesting a modified work schedule to attend weekly medical appointments, it is most likely unnecessary to provide information on whether that employee is able to lift a certain amount of weight. The employer is only entitled to a narrow universe of information related to the request at issue.

BE CAREFUL BEFORE DOCUMENTING A PATIENT’S INABILITY TO PERFORM AN “ESSENTIAL FUNCTION” OF THEIR JOB.

Often, these forms will request that you state whether an employee can perform various “essential functions” of their job. When a healthcare provider states that an employee cannot perform an essential function, this can have serious consequences for that individual’s job, sometimes including forced leave or even termination. Instead of stating that an employee “cannot perform” a function, consider whether it is possible to state that they could perform the task with an accommodation. (Even if the form doesn’t provide a space for that option, you can always write it in).

COLLABORATE WITH PATIENT.

Work with your patient in completing the paperwork. Don’t assume which work tasks or functions they can and cannot perform; instead, talk with them about what their medical limitations are and, given those, whether they think there may be other ways for them to perform certain tasks (i.e., reasonable accommodations that will allow them to perform the essential functions of the job). As mentioned above, it may be possible to state that an employee can perform certain functions with a reasonable accommodation, rather than stating that they are unable to perform that function at all. If you and/or your patient are not sure whether accommodations exist that could help them to perform certain functions, consider recommending that they obtain more information from the Job Accommodation Network at askjan.org or by calling (800) 526-7234.



CONSIDER SUPPLEMENTING EMPLOYER'S FORM WITH YOUR OWN LETTER.

Even where an employer requests that an employee's healthcare provider complete a specific set of forms, that doesn't mean that you can't or shouldn't still send in an accommodation request letter, such as one of the example letters included in this toolkit. Often, these letters can helpfully supplement the employer's forms by providing more specific information clarifying the relevant details of the employee's disability(ies), limitations, and possible accommodations.

If my patient is applying for and / or receiving workers' compensation, can I still provide documentation supporting a reasonable accommodation request?

YES. Often, a worker's compensation injury can lead to a disability that is protected under state and federal disability antidiscrimination laws. Therefore, a patient who is applying for or receiving worker's compensation may also need a reasonable accommodation. You can and should provide documentation supporting an accommodation request in such situations, just as you would for a patient who was not applying for or receiving workers' compensation.

Other questions?

If you or your patient have specific questions regarding their rights to leaves of absence or reasonable accommodations, feel free to call or recommend that your patient call one of the following legal help lines staffed by Legal Aid at Work:

- **Disability Rights Helpline: (877) 350-5441**
(for questions about all types of disability-related employment rights and accommodations)
- **Work and Family Helpline: (800) 880-8047**
(for questions about workplace rights of pregnant workers, new parents, and family caregivers)



SAMPLE LETTERS

Reasonable Accommodation for a Disability (Leave of Absence)

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function of system].

As a result of [Name]'s **disability, they are temporarily unable to work. They need a leave of absence for treatment and recovery. This leave** [began on/is scheduled to begin on [date]].

I anticipate that [Name] **will be able to return to work on** [date] (**NOTE:** *You should always include an estimated return- to-work date in letters supporting an employee's request for a leave of absence. The law does not require employers to provide indefinite leaves of absence, so a letter without a return-to- work date could lead to an employer's decision to refuse a requested accommodation. This return-to-work date can be updated or extended later, if necessary.*).

[Signature]

WHEN TO USE:

A leave of absence from work may be an appropriate reasonable accommodation for a number of different disabilities. A leave of absence may allow time for an employee to obtain treatment and/or recover from various disability-related symptoms. A leave of absence may vary in duration depending on the disability and the needs of the individual.



IMPORTANT:

If your patient needs leave from work due to a disability or serious health condition, consider asking them whether they have requested job-protected leave under the California Family Rights Act (CFRA) or Family and Medical Leave Act (FMLA). It is often helpful to request this leave first (if available) and then request an extension of leave as a reasonable accommodation if necessary.

For more information on CFRA and FMLA leave, including how you can help certify a patient for this leave, see pages 21-31.

Reasonable Accommodation for a Disability (Modified or Part-time Schedule)



WHEN TO USE:

Modified or part-time schedules may be appropriate in situations where an employee is returning to work following a leave for treatment or recovery. Employees often benefit from part-time “transitions” back into their work schedule following such leaves of absence. Modified schedules may also be appropriate where an individual’s disability or related treatment causes fatigue, which makes long hours difficult, or if an employee is groggy during certain times of the day. Finally, individuals with certain disabilities, such as seizure disorders or diabetes, may benefit from consistent schedules.

[Date]

To Whom It May Concern:

I am the treating [job title or description] for [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function or system].

[Name] **is requesting a** [modified / part-time / consistent] **schedule as a reasonable accommodation. In particular, (see following examples):**

- Due to disability-related fatigue, [Name] is requesting a part-time schedule of [#] hours per week for the next [#] months.
- Due to treatment-related symptoms that affect [Name] in the morning, they are requesting that their start-time be changed from [time] to [time].
- Because of their disability, I have advised [Name] to avoid night and swing shifts; they are therefore requesting reassignment to a regular day-time schedule.
- In order to attend regular medical appointments, [Name] is requesting a shift in hours allowing them to attend a regular medical appointment every [day] at [time].

[Signature]



Reasonable Accommodation for a Disability (Policy Change or Exception)

[Date]

To Whom It May Concern:

I am the treating [job title or description] for [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function or system].

As a result of [Name]'s **disability, they need** (*see following examples*):

- The ability to telecommute *[note: consider discussing with your patient whether they believe their job could be performed remotely before recommending that they request this accommodation. Also, an employer may be more willing to allow telecommuting part-time or on a trial basis, so consider discussing with your patient whether / how they might want to limit this request]*.
- The ability to take more breaks every [e.g., two hours] to [mitigate disability-related fatigue or other symptoms].
- The ability to sit for at least [time duration / frequency].
- The ability to bring [bottle of water / snack] into the work area in order to mitigate disability-related symptoms by maintaining [consistent hydration / blood sugar level].

[Signature]

WHEN TO USE:

Symptoms or limitations relating to a disability may require exceptions or modifications to company policies. For instance, a salesperson may be prohibited by their employer from taking a bottle of water onto the sales floor. However, if that employee needs access to hydration due to diabetes or another disability, an exception to that policy could constitute a reasonable accommodation. Alternatively, an employee may ask for the ability to telecommute as an accommodation for a disability, despite an employer's policy that generally disallows working from home.

Reasonable Accommodation for a Disability

(Ability to Bring Assistive Animal to Work)



WHEN TO USE:

The ability to bring an assistive animal to work can accommodate various physical, psychiatric, and cognitive disabilities. Assistive animals can include both service animals and emotional support animals. Service animals are specially trained to perform tasks that mitigate someone's disability (e.g., guide someone with a vision disability, alert someone with a hearing disability, pick up dropped items or open doors for someone with a mobility disability, interrupt self-harming behavior for someone with a psychiatric disability, alert someone with epilepsy to an oncoming seizure, etc.). Emotional support animals don't necessarily have to be task trained; their presence alone may provide emotional support for an individual with a disability by, for example, alleviating symptoms of anxiety or depression.

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function or system].

As a reasonable accommodation for their disability, [Name] **needs the ability to bring their assistive animal to work.** [Name]'s **assistive animal mitigates** their disability **by** *[check with patient regarding how much detail they are willing to disclose, but consider explaining what tasks the animal is trained to perform, what major life activities it assists with, whether the animal's presence alleviates particular symptoms, etc.]*.

[Signature]



Reasonable Accommodation for a Disability (Change in Supervisory Methods)

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function or system].

As a reasonable accommodation, [Name] needs a change in the way in which they are supervised. Particularly, (see following examples):

- Due to their disability-related difficulties with organization and time management, [Name] needs the ability to meet with their supervisor once a month to review assigned tasks and deadlines.
- Due to their disability-related learning difficulties, [Name] needs for their supervisor to send an email after meetings summarizing instructions.
- [Name]'s disability-related anxiety is exacerbated when their supervisor speaks quickly and/or loudly in front of coworkers. As a reasonable accommodation, [Name] needs for their supervisor to counsel them privately in an office and slow down during counseling sessions, allowing [Name] time to take notes.

[Signature]

WHEN TO USE:

Although an employee is not entitled to a different supervisor as an accommodation, requesting a change in the way an employee is supervised is a recognized reasonable accommodation. A change in supervisory methods may be an appropriate accommodation, for instance, where due to a learning disability, such as ADHD, an employee needs a supervisor to provide instructions or feedback in a different way (e.g., through a written to-do list). A change in supervisory methods might also be helpful where the current manner in which an employee is supervised exacerbates that employee's symptoms relating to anxiety or depression.

Reasonable Accommodation for a Disability

(Job Restructuring or Reassignment of Non-Essential Tasks)



WHEN TO USE:

Although employers are not required to remove essential functions of a job as a reasonable accommodation, the reassignment of more minor functions can be a type of reasonable accommodation.

FOR EXAMPLE, a grocery clerk's job may occasionally involve heavy lifting. If this lifting is not a main component of their job, and their disability limits them from such lifting, the occasional lifting of heavy items onto the counter may be reassigned to another employee as a reasonable accommodation. Before recommending the removal of a task as a reasonable accommodation, ask your patient how often they perform the task and how central that task is to their job. If your patient is not certain whether a particular function is "essential," consider referring that employee to the Job Accommodation Network to further discuss. (See p. 6 of Toolkit for further information about the Job Accommodation Network.)

This letter can also be used to recommend restructuring of certain tasks (e.g., that the order of tasks be rearranged to accommodate an employee's disability).

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of major bodily function or system].

As a result of [Name's] **disability, [Name] needs a reasonable accommodation. Specifically,** *(see following examples):*

- Because [Name] is hard-of-hearing, they have difficulty understanding strangers on the phone. I recommend that [Name] be excused from answering the phone, which I do not understand to be a core function of their job. I understand that [Name] is willing to take on different tasks as needed in exchange for reassignment of tasks involving answering the phone.
- [Name] is often fatigued in the afternoon, and I recommend that they perform their more physical tasks (unpacking boxes) in the morning and sedentary tasks (such as data entry) in the afternoon.

[Signature]



Reasonable Accommodation for a Disability (Ergonomic or other Accommodating Equipment)

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially limits their major life activities, including**

[fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function of system].

As a result of [Name]'s disability, **I recommend that they be provided** *[although your patient may know the particular type of equipment they need, examples include but are not limited to the following: a captioned telephone, video phone, visible doorbell, text pager, text-to-screen software (e.g., JAWS), voice recognition software (e.g., Dragon Naturally Speaking), ergonomic chair, ergonomic keyboard, tracking ball, telephone headset, airfilter, space heater, automatic door opener].*

[Signature]

WHEN TO USE:

Employers may have the obligation to provide particular equipment as a reasonable accommodation for an employee's disability, such as ergonomic equipment, assistive technology, and/or other physical accommodations that assist an employee in performing their job or in enjoying the same benefits and privileges of employment enjoyed by coworkers. However, employers are not required to provide equipment that an employee would use both on and off the job (e.g., a mobility scooter or crutches).

Reasonable Accommodation for a Disability (Reassignment to Vacant Position))



WHEN TO USE:

Reassignment to another vacant position is generally a “last resort” accommodation. If possible, it’s always best to determine whether an employee can be accommodated in their current job. This is because an employer does not have an obligation to create a new position for an employee as a reasonable accommodation - only to reassign them to another position if the position is vacant and if the employee is qualified.

However, in the event that no other accommodations are possible in an employee’s current position, reassignment to another vacant position can be a reasonable accommodation. It is helpful if an employee knows of and can suggest such vacancies in the request - however, it is best not to limit an employee to particular positions in case other positions might be available options for transfer.

[Date]

To Whom It May Concern:

I am the treating [job title or description] **for** [Name].

[Name] **has a medical condition that substantially- limits their major life activities, including** [fill in relevant major life activities, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, or the operation of a major bodily function or system].

As a result of [Name]’s **disability, they are unable to perform their current position and are requesting a transfer to another vacant position for which they are qualified, such as** [describe vacancies]. **If reassignment to one of these vacancies is not possible, [Name] would request assistance in locating other appropriate vacancies that do not require the performance of** [description of task(s) employee is unable to perform].

[Signature]



Pregnancy- or Childbirth-Related Accommodation (Other than Leave of Absence) Under California Law

[Date]

To whom it may concern:

I am the [treating physician, nurse practitioner, nurse midwife, licensed midwife, clinical psychologist, clinical social worker, licensed marriage or family therapist, licensed acupuncturist, physician assistant, chiropractor, social worker, or health care professional] **for** [Name].

[Name] **has a condition related to** [pregnancy or childbirth]. *[Note: This can be any physical or mental condition that is intrinsic to pregnancy or childbirth, including, but not limited to, lactation. You do NOT need to reveal a diagnosis or details of the condition, but you do need to state that the patient has a condition related to pregnancy or childbirth.]*

As a result of [Name]'s **condition, it is medically advisable that they receive the following accommodation:** *[Describe requested accommodation here.]*

This accommodation became medically advisable on [Date]. **At this time, I anticipate that** [Name] **will need this accommodation for** [duration of accommodation].

[Signature]

WHEN TO USE:

California employers may not force pregnant workers into a leave of absence in a situation where the worker wishes to continue to work into their pregnancy and would be able to do so with a reasonable workplace accommodation.

An employer can require a letter from a healthcare provider describing the particular accommodation needed by the pregnant worker. Such accommodations can include, but are not limited to, avoiding lifting over a certain number of pounds, avoiding climbing ladders, avoiding exposure to toxic fumes, permission to drink water or snack during their shift, a larger uniform, a modified work schedule, more frequent bathroom breaks, a stool or chair to sit on, additional break time and a private space to express breast milk, or a temporary transfer to a less strenuous or hazardous position.



IMPORTANT: It may be beneficial to start with advising a small accommodation and then increasing it as necessary, so that the employer cannot claim that the patient is not able to perform their essential duties.

Pregnancy- or Childbirth-Related Leave of Absence under California Law



WHEN TO USE:

In California, employers with at least five employees must abide by California's Pregnancy Disability Leave Law. Under this law, employees are entitled to up to four months of leave to attend to disabilities related to pregnancy or childbirth. For uncomplicated pregnancies, the typical Pregnancy Disability Leave begins up to four weeks before birth, and lasts six weeks post-delivery (for vaginal births) or eight weeks post-delivery (for births by cesarean section). However, pregnancy or post-birth complications may require a longer period of Pregnancy Disability Leave.

The amount of Pregnancy Disability Leave needed by a patient may also depend on the effect that their pregnancy- or child-birth-related disability has on their ability to perform their particular job. It is important to discuss with your patient whether they need a longer leave of absence based on their experiences of how their pregnancy and/or post-birth disabilities impact their ability to maintain their health while working.



IMPORTANT: Where a patient desires to work far into their pregnancy or soon after childbirth but has concerns about whether their pregnancy- or childbirth-related disabilities will allow them to do so, it is often appropriate to discuss and consider possible workplace accommodations that could allow your patient to continue to work instead of immediately going or remaining out on Pregnancy Disability Leave. If you and your patient believe that such an accommodation is necessary and appropriate, refer to the Sample Letter: Pregnancy- or Childbirth-Related Accommodation Under California Law, on the previous page of this toolkit.

Also, a person who remains disabled for more than four months because of pregnancy or childbirth may qualify as having a disability under general state and federal disability laws. In such cases, refer to the information in this toolkit pertaining to general disabilities.

[Date]

To whom it may concern:

I am the [treating physician, nurse practitioner, nurse midwife, licensed midwife, clinical psychologist, clinical social worker, licensed marriage or family therapist, licensed acupuncturist, physician assistant, chiropractor, social worker, or health care professional] **for** [Name].

[Name] **needs to take pregnancy disability leave because they are disabled by pregnancy, childbirth or a related medical condition.**

[Note: You do NOT need to reveal a diagnosis or details of the disability, but you do need to state that the patient has a pregnancy- or childbirth-related disability.]

[Name] **became disabled by pregnancy, childbirth or a related medical condition on** [Date]. **At this time, I anticipate that they will need to remain on leave for** [estimated duration of disability leave].

[Signature]



Pregnancy- or Childbirth-Related Lactation Accommodation under Federal and California Law

[Date]

To whom it may concern:

I am the [treating physician, nurse practitioner, nurse midwife, licensed midwife, clinical psychologist, clinical social worker, licensed marriage or family therapist, licensed acupuncturist, physician assistant, chiropractor, social worker, or health care professional] **for** [Name].

[Name] is nursing their child and requires lactation accommodation in their workplace. Both federal and state laws require employers to provide reasonable break time for an employee to express breast milk for their nursing child. The employer must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. 29 U.S.C. § 207(r); Cal. Labor Code §§ 1030-1033; 2 Cal. Code Regs. §§ 11035(s)(5), 11040.

This lactation accommodation became medically advisable on [Date]. At this time, I anticipate that [Name] will need this accommodation for [duration of accommodation].

[Signature]

WHEN TO USE:

Both state and federal law require employers to provide lactation accommodations at the workplace, allowing workers break time as well as clean, private spaces to express breast milk. San Francisco employers must provide additional accommodations, including a clean space, free from toxic chemicals; a chair; a surface; and access to running water and refrigeration.

Where an employee is experiencing difficulty obtaining these important accommodations from their employer, a letter from a healthcare provider emphasizing these rights and requirements may be helpful.

FAQ: Completing Health Care Certification Forms for Leaves of Absence (FMLA / CFRA) and Wage Replacement Benefits (SDI / PFL)



What is FMLA / CFRA leave?

The California Family Rights Act (CFRA) and Federal Family and Medical Leave Act (FMLA) provide eligible employees up to 12 weeks of unpaid, job-protected leave from work to care for their own serious health condition or that of a family member, or to bond with a new baby, foster, or adoptive child within the first year of that child's time in the home. Although no medical certificate is needed for the purpose of acquiring bonding leave, an employee must obtain a medical certification from their own healthcare provider if taking leave for their own health condition, or from their family member's health care provider if taking leave to care for that individual.

Although the FMLA and CFRA are similar, the CFRA is broader and more protective (unfortunately, it is not available to federal employees):

- **ELIGIBILITY:** Leave under both laws is only available to employees who have worked for their employer for at least one year and who have worked at least 1250 hours in the year immediately preceding their leave request. However, whereas the FMLA also restricts eligibility to employees of employers that have 50+ employees within a 75-mile radius of their worksite, CFRA leave is available to employees whose employer employs just 5+ employees nationwide (as of January 1, 2021).
- **DEFINITION OF "FAMILY":** Whereas the FMLA allows employees to use leave to care for the serious health conditions of an employee's spouses, parents, and children as family members for whom leave can be taken, the CFRA also allows leave to be taken to care for domestic partners, siblings, grandparents, and grandchildren.

A sample FMLA/CFRA certification form is included on pages 28-31 of this toolkit. Generally, the form will request the following information:

<ul style="list-style-type: none">• Employee's name• Date medical condition or need for treatment began• Expected duration of medical leave or need for treatment	
If the certification is for the employee's own health condition: <ul style="list-style-type: none">• Whether condition prevents employee from working at all, or from performing any essential functions of their job• Whether condition may require intermittent leave or reduced schedule (e.g., may be appropriate where the condition is episodic, such as migraines or asthma, or where the condition causes fatigue which makes a reduced work schedule appropriate); AND if so, the estimated number of doctor's appointments or length of medical treatment needed by the employee	If the certification is for the employee's family member's health condition: <ul style="list-style-type: none">• Patient's (family member's) name• Whether that individual needs assistance that warrants participation of the employee (this can include a wide range of assistance, from assisting with medical, hygienic, or nutritional needs; providing transportation; ensuring safety; arranging third-party care; and/or providing psychological comfort)



What is a “serious health condition”?

For purposes of leave under the FMLA / CFRA, a “serious health condition” can mean any of the following (more in-depth definitions can be found in the sample form on pages 28-31):

- Inpatient care in a hospital, hospice, or residential medical care facility
- Incapacity for at least three days plus either:
 - Treatment two or more times by a healthcare provider OR
 - Treatment one time by a healthcare provider which results in a regimen of continuing treatment under a healthcare provider’s supervision
- Pregnancy or pregnancy-related conditions (NOTE: this only counts as a “serious health condition” under the FMLA, which means that pregnant employees can reserve their CFRA and New Parent Leave time for baby bonding.)
- Chronic condition which requires periodic visits for treatment by a healthcare provider, continues over an extended period of time, AND may cause episodic rather than long-term incapacity (*e.g., asthma, diabetes, epilepsy*)
- Permanent or long-term condition for which treatment may not be effective, but for which an individual is under the continuing supervision of a healthcare provider (*e.g., severe stroke, Alzheimer’s, end-stage terminal illness*)
- Multiple treatments for restorative surgery after an injury or for a condition that would likely result in incapacity for at least three days without medical intervention (*e.g., cancer, severe arthritis, kidney disease*).

What should I not include in an FMLA/CFRA certification?

It is neither necessary nor recommended to include a patient’s diagnosis in an FMLA/CFRA certification form. In California, because of strict state privacy laws, a patient’s diagnosis should not be revealed on this certification and inclusion of this information unnecessarily reveals personal intimate medical details to a patient’s employer. FMLA/CFRA certification forms should not request this information in California, but if they do, the employer must accept the certification even if that question is left blank.

(NOTE: If the certification form you receive requests a diagnosis, consider explaining to the patient your understanding that this information is not required.)



What is State Disability Insurance, and how do I complete a Physician / Practitioner's Certificate for a Claim for Disability Insurance?

The Employment Development Department (EDD), which is the state agency responsible for distributing income replacement under the State Disability Insurance Program, requires a Health Care Certification Form in order to provide these benefits to an employee who is on leave from work due to their own serious health condition.

State Disability Insurance is an entirely employee-funded state benefit that provides up to 52 weeks of partial wage replacement while an employee is unable to work due to non-workplace disabilities or injuries, including pregnancy.

At the time of publication of this toolkit, a sample Physician / Practitioner's Certificate for a Claim for Disability Insurance Benefits can be found at www.edd.ca.gov/pdf_pub_ctr/de2501.pdf. The portion of the form containing the Physician Certificate begins on page 5 of the linked form.



SDI CERTIFICATES REQUEST THE FOLLOWING INFORMATION:

PATIENT DETAILS	<ul style="list-style-type: none">• Name, SSN, medical file number, date of birth <p>NOTE: Undocumented workers are eligible for and entitled to SDI benefits. For purposes of certifying benefit eligibility for such individuals, the social security number of the individual can be left blank if necessary (this may need to be done using a paper form, rather than online).</p>
PHYSICIAN DETAILS	<ul style="list-style-type: none">• Name, address, specialty, licensing information
DATES ON WHICH...	<ul style="list-style-type: none">• Patient came into your care• You released or plan to release patient to return to their regular/customary employment (NOTE: If planned release date unknown, you should still provide your best estimate.)• Patient was hospitalized and released from hospitalization• Patient had or is scheduled for surgical procedure
CERTIFICATION that patient has become disabled from performing their relevant or customary work, and date at which that occurred	<p>NOTE: For purposes of SDI, “disability” has a different meaning than it has under state or federal disability law or in other contexts. It simply means that, due to a health condition, injury, or accident, an individual is not able to perform their customary or regular work. Even if an individual is not completely disabled from working – that is, they might be able to perform an office job, but they currently are employed as a laborer – they still qualify for SDI as long as they are unable to perform their usual job.</p>
DETAILS of DIAGNOSIS and TREATMENT	<ul style="list-style-type: none">• ICD diagnosis and procedure codes, description of diagnosis or detailed statement of symptoms, descriptions of treatment (including type of surgery, if applicable)• Including whether condition was work-related <p>NOTE: Unlike FMLA/CFRA certifications, which go directly —to the employer and do not require disclosure of a diagnosis, EDD SDI certifications do require a disclosure of diagnosis (or, if none, a description of symptoms) and treatment details.</p>



If a patient is applying for SDI because they are disabled from working due to pregnancy or pregnancy-related conditions, you must also provide the additional information in the certification, including the below:

- Estimated delivery date or the date pregnancy ended
- Whether the delivery was a vaginal or cesarean section

NOTE: The type of delivery is relevant. In an otherwise normal pregnancy, pregnant individuals are generally entitled to four weeks of SDI prior to delivery, and six weeks after if the delivery is vaginal, or eight weeks if the delivery was via cesarean— section.

- If the patient has not yet delivered, number of days you estimate the patient will be disabled postpartum depending on delivery type
- If the pregnancy or delivery is abnormal, state the complications causing continued disability

NOTE: A number of pregnancy-related or postpartum conditions may result in a person being disabled from working for longer than the standard period SDI is typically granted for normal pregnancies (four weeks before birth, and six to eight weeks after depending on type of delivery). Such conditions may include high-risk pregnancies requiring multiple months of bed rest, postpartum depression, etc.

In determining the appropriateness of certifying a pregnant person for a longer period of SDI than is typical, you should also discuss with the patient their job, including their tasks and working environment. First, determine whether your patient needs a workplace accommodation for their pregnancy or pregnancy-related condition (e.g., *to avoid heavy lifting or be transferred to an environment where they are not around certain chemicals*). For more information on pregnancy related accommodations and sample pregnancy accommodation certification letters, see pages 18-19.

However, if an employer denies a pregnant employee's request for an accommodation and it is necessary for that employee to take a leave of absence for a longer period of time in order to avoid tasks or environments that would put their health at risk, it may be appropriate to certify them for a longer period of SDI-qualifying disability leave.

Always discuss these various options with your patient to determine their feelings and preferences regarding the helpfulness and appropriateness of a workplace accommodation as opposed to a longer period of leave to protect their health during and following their pregnancy. And remember that you have the ability to certify a pregnant patient for a longer period of disability than the standard four weeks pre-birth and six-to-eight weeks' post-birth, depending on their individual circumstances.



What is Paid Family Leave, and what information am I expected to provide in a Physician / Practitioner's Certificate for a Claim for Paid Family Leave?

The Employment Development Department (EDD), which is the state agency responsible for distributing income replacement under the Paid Family Leave Program, requires a Health Care Certification Form in order to provide these benefits to an employee who is on leave from work because they need time off to bond with a new child or care for a family member with a serious health condition.

Paid Family Leave is an entirely employee-funded state benefit that provides up to eight weeks of partial wage replacement while someone is on leave from work to care for a seriously ill close family member or to bond with a newborn, adopted or foster child. This leave may be taken intermittently or all at once.

An employee who is seeking time off to care for a family member must have that family member's physician complete the PFL Benefit Certificate, verifying details about that family member's health condition and need for care. No PFL Benefit Certificate is necessary for bonding claims.

At the time of publication of this toolkit, a sample Physician / Practitioner's Certificate for a Claim for Paid Family Leave Benefits can be found at www.edd.ca.gov/pdf_pub_ctr/de2501f-sample.pdf. The portion of the form containing the Physician Certificate begins on page 4 of the linked form.



PFL CERTIFICATES REQUEST THE FOLLOWING INFORMATION:

PATIENT DETAILS	<ul style="list-style-type: none">• Name, SSN, medical file number, date of birth <p>NOTE: Undocumented workers are eligible for and entitled to PFL benefits. For purposes of certifying benefit eligibility for such individuals, the social security number of the individual can be left blank if necessary.</p>
PHYSICIAN DETAILS	<ul style="list-style-type: none">• Name, address, specialty, licensing information
DATES ON WHICH...	<ul style="list-style-type: none">• Medical condition began• Care was first needed• Recovery is expected• Care will no longer be needed
DETAILS of DIAGNOSIS and TREATMENT	<ul style="list-style-type: none">• ICD diagnosis and procedure codes, description of diagnosis or detailed statement of symptoms, descriptions of treatment
DETAILS OF CAREGIVING NEEDS	<ul style="list-style-type: none">• Does your patient require care by the claimant?• How many hours per day will the patient require care by the claimant?

Why am I being asked to provide both a FMLA / CFRA certification as well as an EDD Certificate for a Claim for Disability Insurance Benefits or Paid Family Leave?

Physician Certificates for State Disability Insurance (SDI) and Paid Family Leave (PFL) are separate and distinct from FMLA / CFRA Certifications. FMLA / CFRA Certifications go directly to an employer and are necessary to ensure that an individual is able to secure job-protected time off from work, so that their job is protected for them while they are on leave.

The Physician Certificates for SDI and PFL are for the purpose of ensuring that an individual is able to secure partial income replacement from the State while they are on leave from work. These certificates do not go to a patient's employer, but instead to the EDD, who then determines whether the individual is eligible to receive wage replacement during their time off for their own disability or that of a family member, or to bond with a new child.



SAMPLE CERTIFICATION FORM:

Leave under the Family and Medical Leave Act and/or California Family Rights Act

1. Employee's Name: _____
2. Patient's Name (If other than employee): _____
3. Date medical condition or need for treatment commenced [**NOTE:** THE HEALTHCARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT CONSENT OF THE PATIENT]:

4. Probable duration of medical leave or need for treatment: _____
5. The attached sheet describes what is meant by a "serious health condition" under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the patient's condition qualify under any of the categories described? If so, please check the appropriate category:
(1) (2) (3) (4) (5) (6)
6. If the certification is for the serious health condition of the employee, please answer the following:
YES, NO
☐ ☐ Is the employee able to perform work of any kind? (*If "No," skip next question.*)
☐ ☐ Is the employee unable to perform any one or more of the essential functions of the employee's position? (*Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.*)
7. If the certification is for the care of the employee's family member, please answer the following:
YES, NO
☐ ☐ Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?
☐ ☐ After review of the employee's signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)



8. Estimate the period of time care is needed or during which the employee's presence would be beneficial: _____

9. Please answer the following question only if the employee is asking for intermittent leave or a reduced work schedule.

YES, NO

☐ ☐ Is it medically necessary for the employee to be off work on an intermittent basis? or to work less than the employee's normal work schedule in order to deal with the serious health condition of the employee or family member?

☐ ☐ If the answer to 9 is yes, please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment, either by the health care practitioner or another provider of health services, upon referral from the healthcare provider:

ITEM 10 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.
*TO BE PROVIDED TO THE HEALTHCARE PROVIDER UNDER SEPARATE COVER.

10. When family care leave is needed to care for a seriously-ill family member, the employee shall state the care they will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced work schedule:

11. Signature of healthcare provider: _____

Date: _____

12. Signature of employee: _____

Date: _____

A **“Serious Health Condition”** means an illness, injury, impairment or physical or mental condition that involves one of the following:

1. HOSPITAL CARE: Inpatient care (*i.e., an overnight stay*) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. ABSENCE PLUS TREATMENT: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (1) Treatment two or more times by a healthcare provider, by a nurse or physician’s assistant under direct supervision of a healthcare provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider; OR
- (2) Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the healthcare provider.

3. PREGNANCY: [NOTE: An employee’s own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA] Any period of incapacity due to pregnancy, or for prenatal care.

4. CHRONIC CONDITIONS REQUIRING TREATMENT:

A chronic condition which:

- (1) Requires periodic visits for treatment by a healthcare provider, or by a nurse or physician’s assistant under direct supervision of a healthcare provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity (*e.g., asthma, diabetes, epilepsy, etc.*).



5. PERMANENT/LONG-TERM CONDITIONS REQUIRING SUPERVISION:

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. MULTIPLE TREATMENTS (NON-CHRONIC CONDITIONS): Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of or on referral by, a healthcare provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy, or kidney disease (dialysis).

Note: Authority cited: Section 12935(a), Government Code. Reference:

Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. §825.



ADDITIONAL RESOURCES

for Healthcare Providers and Patients

LEGAL AID AT WORK HELPLINES

These helplines are available to both healthcare providers and patients who have additional questions regarding the information provided herein or other questions about their or their patient's particular workplace situation or rights. Assistance is available in all languages.

If you are interested in receiving a training regarding these protections and your role in helping your patients to secure them, please leave a message at either of these helplines and someone will return your call shortly.

- **Disability Rights Helpline: (877) 350-5441**
- **Work and Family Helpline: (800) 880-8047**

INFORMATION ON APPROPRIATE ACCOMMODATIONS

When you or your patient is uncertain about what type of accommodation could help them to perform their job, consider consulting with or referring your patient to the **Job Accommodations Network**.

- askjan.org
- (800) 526-7234

INFORMATION ON APPLYING FOR WAGE REPLACEMENT BENEFITS

State Disability Insurance (Employment Development Department) provides up to 52 weeks of partial wage replacement for individuals who are on a leave of absence because of their own disability, including disabilities related to pregnancy or child-birth; see pages 23-25 of this toolkit for further information. Specific questions regarding these benefits can be directed to the EDD using the contact information below.

- edd.ca.gov/Disability/Disability_Insurance.htm
- English: (800) 480-3287
- Spanish: (866) 658-8846

Paid Family Leave Insurance (Employment Development Department): provides 8 weeks of partial wage replacement for individuals who are on leave to care for a family member with a serious health condition and/or to bond with a new baby; see pages 26-27 of this toolkit for further information. Specific questions regarding these benefits can be directed to the EDD using the contact information below.

- edd.ca.gov/Disability/Paid_Family_Leave.htm
- English: (877) 238-4373
- Spanish: (877) 379-3819
- Armenian: (866) 627-1567
- Punjabi: (866) 627-1568
- Cantonese: (866) 692-5595
- Vietnamese: (866) 692-5596
- Tagalog: (866) 627-1569



San Francisco Paid Parental Leave Ordinance: supplemental wage replacement benefits for individuals employed in San Francisco who are taking leave to bond with a new child. For more information on Paid Parental Leave, visit the San Francisco Office of Labor Standards Enforcement's website or call their Paid Parental Leave information number below.

- sfgov.org/olse/paid-parental-leave-ordinance
- (415) 554-4190

California Paid Sick Leave: most California workers are entitled to paid sick days. Employers can cap use of these days to 3 days (24 hours) per year. Local laws may entitle workers to additional paid sick time.

- sfgov.org/olse/paid-parental-leave-ordinance
- (415) 554-4190

ENFORCEMENT AGENCIES

Equal Employment Opportunity Commission: investigates violations of federal employment antidiscrimination laws, including the Americans with Disabilities Act's prohibition against discriminating against or failing to reasonably accommodate employees or applicants with disabilities; complainants must file a complaint within 300 days from the date of discrimination.

- www.eeoc.gov
- (800) 669-4000

California Department of Fair Employment and Housing: investigates violations of state employment antidiscrimination laws, including the Fair Employment and Housing Act's prohibition against discriminating against or failing to reasonably accommodate employees or applicants with disabilities AND the California Family Rights Act, which requires that certain employers provide job-protected leave to care for one's own health condition and/or to bond with a new child. This agency also investigates retaliation based on an employee's request for accommodations or use of leave under the FEHA or CFRA; complainants must file a complaint within one year from the date of violation.

- www.dfeh.ca.gov
- (800) 884-1684

California Division of Labor Standards Enforcement (DLSE) (*colloquially referred to as the "Labor Commissioner"*): investigates violations of the state's Labor Code, which regulates wages and other benefits (including sick pay) to which employees are entitled. The DLSE also enforces the anti-retaliation provisions of the Labor Code, which prohibit employers from taking adverse actions against (such as terminating or demoting) employees for asserting their rights under the Labor Code.

- www.dir.ca.gov/dlse
- (844) 522-6734



FAQ:

COVID-19 Addendum:

Supporting Patients during the Pandemic

What wage replacement benefits or job protections are available to my patient during the pandemic?

In addition to the job protection rights set forth under the ADA, FEHA, FMLA, and CFRA and the wage replacement programs including SDI and PFL, and California Paid Sick Days, your patient may also be eligible for COVID-19 Supplemental Paid Sick Leave.

COVID-19 Supplemental Paid Sick Leave (COVID-19 SPSL):

- Provides two weeks of paid sick leave when an employee is unable to work (or telework) due to any of the following:
 - They are subject to a quarantine or isolation order due to COVID-19.
 - They were advised by a healthcare provider to quarantine due to concerns related to COVID-19.
 - They are attending an appointment to receive a COVID-19 vaccine.
 - They are recovering from symptoms of a COVID-19 vaccine.
 - They are experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - They are caring for a family member who has COVID-19, or who has been advised to self-quarantine.
 - They are caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
- Retroactive to January 1, 2021 (so employees can request SPSL for leave they have already taken because of one or more of the events listed above) and expires on September 30, 2021
- Can be taken in addition to California Paid Sick Days and any paid sick leave an employee took in 2020
- Does NOT require a health care provider's note
- Available to individuals who work for an employer with more than 25 employees
- Employers may not retaliate against an employee for requesting or using SPSL
 - An employee can file a retaliation complaint with the **Division of Labor Standards Enforcement** (<https://www.dir.ca.gov/dlse/dlseRetaliation.html>)



Is COVID-19 a “disability” under state and federal disability laws?

Having common cold or seasonal flu symptoms is not typically considered a disability. However, complications from COVID-19, such as pneumonia, may qualify as disabilities if they limit an individual's ability to perform one or more major life activities. Impairments experienced by COVID-19 “long-haulers,” such as continued respiratory difficulties, likely also constitute disabilities under state and federal law. Further, vulnerability to COVID-19, such as an immunodeficiency, or underlying conditions that heighten the risk of COVID-19 complications, may also constitute disabilities for which your patient may need workplace accommodations.

Is COVID-19 a “serious health condition” under the CFRA/FMLA?

COVID-19 can constitute a serious health condition under the CFRA or FMLA in situations where it results in the patient receiving in-patient care or continuing treatment from a health care provider, OR when it results in more serious complications, like pneumonia.

Might my patient be entitled to reasonable accommodations for anxiety or depression relating to the pandemic?

Employees with mental health disabilities – such as anxiety disorder, obsessive-compulsive disorder, bipolar disorder, post-traumatic stress disorder, and others – may experience more difficulty coping with stresses related to COVID-19, including those associated with returning to the workplace. Such employees may be entitled to reasonable accommodations under the ADA, potentially including measures such as additional unpaid leave, permission to work from home, different / additional PPE or other safety measures being implemented in their work place, or schedule adjustments that enable an employee to meet with a mental health counselor.

Might my patient be entitled to job-protected leave or other reasonable accommodations that will decrease their risk of COVID-19 infection if an underlying condition places them at greater risk of virus-related complications?

Most underlying health conditions that place individuals at greater risks of COVID complications typically constitute both serious health conditions under the CFRA and FMLA and disabilities under state and federal law (e.g., chronic lung diseases, diabetes, Down syndrome, or certain heart conditions). Accordingly, a patient with such a condition may be entitled to a leave of absence under the CFRA or FMLA, and/or a disability-related accommodation, such as an extended leave, the ability to work remotely, or different / additional PPE or other safety measures being implemented in their work place.

IMPORTANT NOTE: When completing a healthcare certification for State Disability Insurance on behalf of a patient at high risk for COVID-19 complications, the “diagnosis” should be the patient's underlying condition that puts them at risk – not the risk of infection itself.



Are certain reasonable accommodations particularly useful or needed during the COVID-19 pandemic?

As is the case for all disabilities, there is no definitive list of appropriate reasonable accommodations for individuals who have disabilities related to or exacerbated by the COVID-19 pandemic. You and your patient should discuss in what way their disability limits their ability to perform major life activities, how that limitation can be addressed in the workplace, and what reasonable accommodations might be a helpful and appropriate to address or mitigate that limitation.

However, while not an exhaustive list, certain reasonable accommodations are likely to be useful to workers during the pandemic.

- **Leave of absence or ability to telework – especially helpful for:**
 - Individuals with underlying conditions which place them at higher risk for life-threatening complications, should they contract COVID-19
 - Individuals with underlying conditions/disabilities which make them more susceptible to contracting COVID-19
 - Individuals with mental health disabilities that are exacerbated by fear, anxiety, or depression related to the COVID-19 pandemic
 - Individuals who have been diagnosed with COVID-19, experienced related complications, and need time away from work to recover or obtain treatment for those complications
- **Modification of duties or reassignment of non-essential tasks – especially helpful for:**
 - Individuals who are re-entering work after a lengthy leave of absence – a temporarily reduced work schedule is often helpful to facilitate their transition back to work
 - Individuals who, due to immunodeficiency, underlying health conditions, or a mental health disability, may need a job modification or temporary reassignment in order to reduce their interaction with the public and/or coworkers
- **Personal protective equipment (including additional or different PPE than that available to other employees) – especially helpful for:**
 - Individuals who, due to immunodeficiency, underlying health conditions, or a mental health disability, may benefit from additional or different PPE than that generally available to other employees
 - Individuals who, because of their disability, are unable to wear the PPE provided by their employer may require an alternate type of PPE



Might my patient be entitled to a reasonable accommodation that will decrease their risk of COVID-19 infection if their age places them at greater risk of virus-related complications?

Because it is not considered a “disability” under state or federal law, age by itself does not qualify an employee for a reasonable accommodation. However, if an older patient also has underlying health conditions that may make them more susceptible to COVID-related complications, they may be entitled to a reasonable accommodation for the purpose of protecting themselves against infection.

If a patient needs a leave of absence in order to avoid the risk of a COVID-infection, or due to a mental health disability worsened by that risk, how long should I recommend that they remain on leave?

As noted previously, employers are not required to grant reasonable accommodation requests for “indefinite leave.” Accordingly, medical documentation stating that a patient should be on leave “for the duration of the pandemic,” when its end-date is uncertain, will likely be rejected by the employer.

In such cases, use your best estimate for when the patient will be able to return to work. You can consider factors such as the availability of the vaccine or other circumstances that may reduce your patient’s risk of COVID complications or the pandemic-related exacerbation of their mental health disability.

If the return-to-work date you set forth in the accommodation letter needs to be extended, you can provide a new date in an updated letter.

If my patient has been on a leave of absence for reasons related to COVID-19, may their employer require medical documentation releasing them to return to work?

Yes. Such inquiries are permitted, either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the standards for disability-related inquiries of employees. However, the EEOC has recognized that, as a practical matter, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

