San Francisco Examiner

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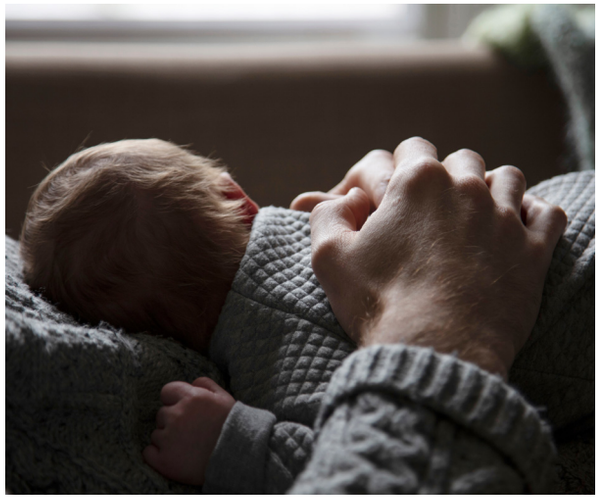
California Paternity Leave: Fathers need bonding time with their children

By Christopher Dolan and Mari Bandoma Callado



This week's question comes from James who asks:

My partner and I are waiting for the arrival of our baby at the end of June. We are adopting her and cannot wait to become parents. I will be asking for some time off from work to bond with our baby and would like to know more about my rights as an adoptive father. How much time off can I take? Am I entitled to paid leave? Do I get to keep my health benefits? In the three years I have worked for my company, I noticed that not many men I work with take time off to bond with their newborns. I am worried about being retaliated against for requesting paternity leave. I work for a small tech company with 15 employees in Oakland, California. Thank you, and I hope you have a great Father's Day!

Hi James,

Thank you for your question. Congratulations and a Happy Father's Day to you, too. It is unfortunate there is still a stigma against taking paternity leave. Let's start with paternity law here in California.

Time Off to Bond with Newborn, Newly Adopted, or Foster Child

The California Family Rights Act (CFRA) requires California employers with five or more employees nationwide to provide employees who worked at least 1,250 hours in one year just up to 12 weeks of unpaid, job-protected leave to bond with a newborn, newly adopted, or foster child within the first year of birth or placement in the home. Employees do not have to take this leave all at once as time off from work can be taken intermittently.

Employees must provide "reasonable notice" of their intent to take baby bonding or family leave. We recommend providing notice in writing and including the dates you plan to begin your leave, the anticipated duration of that leave, and a brief explanation of why you are taking that leave (e.g., to bond with adopted baby). How much notice is required depends, but it would be prudent to notify your employer at least 30 days in advance of your plans to take time off.

Benefits and Payment During Paternity Leave

If you have health benefits through your employer, they will continue while on CFRA leave. Note that you may have to pay for your portion of your premiums.

Unfortunately, your employer is not required pay you while you are on leave (unless your employer pays employees on CFRA leave), but here are a couple of ways you can receive payment during paternity leave.

State benefits: California offers Paid Family Leave (PFL) which provides up to 60% or 70% of weekly wages, depending on income, for a maximum of 8 weeks to bond with your newborn, adopted child, or foster child within the first year. To be eligible for this partial wage replacement, you must have paid into State Disability Insurance during the base period. Most paystubs note this payment as "CASDI". To learn about eligibility and apply for paid family leave, go to edd.ca.gov.

Paid Sick Leave: California's paid sick time law gives employees time that employees can use to recover from physical/mental illness or injury; to seek medical diagnosis, treatment, or preventative care as well as to take care of a family member who is ill or needs medical diagnosis, treatment, or preventative care; or to address needs that may arise if the worker is a victim of domestic violence, a sexual offense, or stalking.

Therefore, you may also use your paid sick days if your baby gets sick or you want to take your child to medical appointments. Your employer may not require you to use sick leave; however, you and your employer can mutually agree that you may use sick

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leave. Note that some California cities have their own sick time laws which may provide additional rights.

Accrued Paid Time Off: Your employer may require you to use vacation time unless you receive PFL from EDD to bond with a new child.

Retaliation/Returning to Work

California laws protect employees from retaliation. Retaliation occurs when an employer takes an "adverse action" against an employee because s/he has exercised a "protected legal right" such as requesting parental leave. An adverse action is any act by an employer that negatively and significantly affects the terms and conditions of one's employment such as termination, demotion, suspension, reduction in pay or hours, and any other action that would discourage a reasonable person from pursuing their rights. It is unlawful for an employer to violate an employee's family leave rights and retaliate against an employee who takes time off to bond with their baby.

When you return to work after parental leave, your employer must return you to the same or comparable position you had before the leave. If you notice any changes to your job title, duties, reduction of pay or hours, hear any offensive comments about taking time off, consult with an attorney to help protect your rights.

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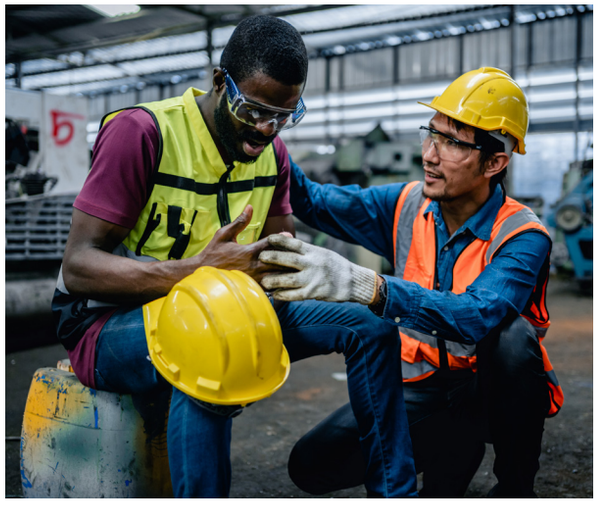
Can employers be sued for workplace injuries?

By Christopher Dolan and Aimee Kirby



This week's question comes from Victoria, who asks:

My son, who is 24 years old, recently took a job at a manufacturing facility. They have a cleaning crew at night to make sure everything is clean for the next day. My son befriended one of the young female workers of the cleaning crew, as he sees her every day. While his friend was working, she suffered an amputation of her pinky finger on her left hand. My son told me that the company routinely leaves the equipment on so that their workers can start working the minute they hit the yard and don't have to lose time starting everything up again. My son feels terrible for his friend. and wants to know if she can sue his company despite the worker's compensation that his friend might get from her cleaning job.

Hi Victoria,

I am sorry your son's recent work experience. Workplace safety is generally, on a state level in California, overseen and regulated by Cal-Osha. Cal-Osha most likely inspected the yard after this severe accident. Cal-Osha probably sent an inspector out to determine if any workplace safety violations contributed to the incident, loss of her finger. Cal-Osha will then give the company a chance to respond to any proposed violation and issue a citation if they don't find the explanation voids the citation. An easy way to think of a Cal-Osha violation is to compare it to a ticket issued by the police for violating a safety vehicle code section. These tickets can range thousands of dollars if the violation is serious.

That company's Workers Compensation policy will cover your son's friend as an employee of the cleaning crew. Workers Compensation Insurance covers injuries on the job and is considered no-fault insurance. No-fault insurance would mean insurance that covers medical expenses and loss of earnings, past and future, even if your son's friend was responsible for her injury.

If I understand what you son is asking, it is if, on top of the Worker's Compensation benefits, anyone at his company can be responsible for their negligent actions regarding leaving on the equipment to save time.

The question seems straightforward, but the law behind it is very complex. In the Seabright vs. US Airways case, the Supreme Court held that contractors that subcontract for work could delegate all duties to maintain a safe work environment of their facility to the subcontractor. Seabright clarified issues that conflicted with the various appellate courts in California regarding this issue. While it doesn't make much sense that your son's employer could delegate safety concerns to the cleaning crew that they knew existed and they created, that is essentially the holding in Seabright. The court's rationale in Seabright was that the subcontractor was in the best place to take measures in their work to make the condition safe. What is remarkable is that often the subcontractor can't force the contractor to do something. Still, the court indicated that they must not take the job, if the subcontractor can't make the job site safe and that if an injury happens, the subcontractor always has the Workers Compensation policy of their employer to fall back on.

The "Privette Doctrine" has governed the extent of liability that general contractors and property owners have for worksite injuries suffered by a subcontractor's employees. In Privette v. Superior Court (1993) 5 Cal.4th 689, the California Supreme Court held that "Generally, when employees of independent contractors are injured in the workplace, they cannot sue the party that hired the contractor to do the work."

There are some exceptions to the Privette doctrine that was discussed in the Seabright case. One exception is if the subcontractor is, really, an employee of the contractor. Another exception is if the company your son works for maintained control of the premises and deliberately acted to increase the dangers to his friend. Lastly, an exception exists if there was a mandatory duty imposed on the company that the Privette Doctrine cannot eliminate.

Lastly, a theory called Federal Preemption is an even more complicated part of this analysis. It stands for the concept that if there is a law in conflict with any federal law, that federal law will always win over state law. Because of all the twists and turns in this particular law, your son's friend should speak to an experienced attorney on these issues to see if she can sue your son's employer for their separate negligence.

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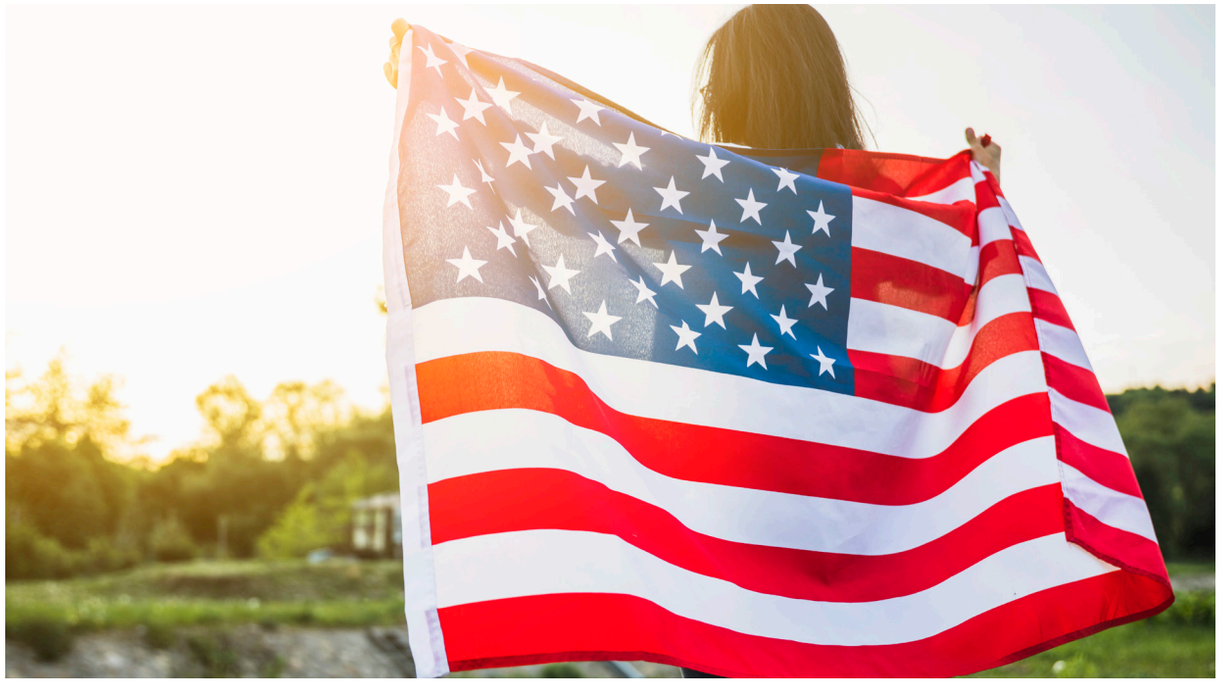
Do I Have to Use My Vacation or Sick Time to Vote?

By Christopher B. Dolan and Emile A. Davis

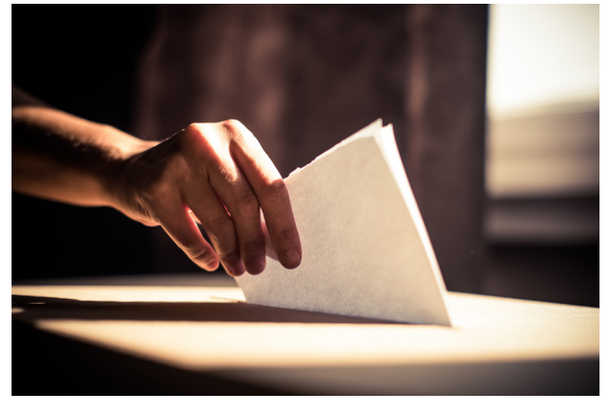


Laird E. in Alameda asks: "I work in construction, and I am often at the worksite for 10 – 12 hours each day and often don't get off work until after 7:00 p.m. I am afraid that this will not give me time to vote on election day. I don't feel comfortable mailing my ballot. I want my vote counted right there on election day. Can I use sick time to go to the polls on election day?"

Dear Laird: Thank you for this very important question which affects many workers. I completely understand that you would prefer to place your ballot in person rather than mailing it. I have good news. The law allows workers to take time off from their position in order to vote and doing so does not require the use of accrued sick leave.

California Elections Code § 14000 provides employees with the right to take reasonable time off to vote, without loss of pay, if a voter does not have sufficient time outside of working hours to vote in a statewide election. Specifically, the Elections Code states that, "the voter may, without loss of pay, take off enough working time that, when added to the voting time available outside of working hours, will enable the voter to vote. No more than two hours of the time taken off for voting shall be without loss of pay," and that, "time off for voting shall be only at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed." Furthermore, if a worker knows, or believes, on the third working day prior to the election, that time off will be necessary to be able to vote on election day, this code states that, "the employee shall give the employer at least two working days' notice that time off for voting is desired..."

For you, if it appears that you will be at the jobsite for 12 hours on election day, and will not be off work until 7:00, as you suggested, that may not give you the opportunity to get to the polls to vote.

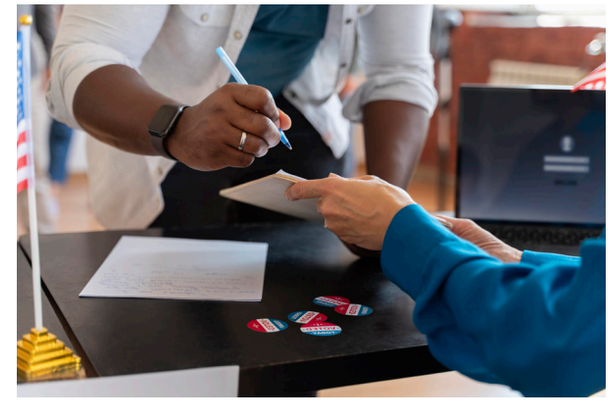


You should notify your employer, in writing, three days prior to election day, that you will need to take time off to vote. You can work out with your employer whether it makes more sense to go to the polls when they open and then come in to work, or to leave early with enough time to get to your polling place.

Employers also need to be aware that for at least 10 days before every statewide election, every employer must keep posted a notice setting forth the provisions of California Elections Code § 14000 so that employees like you are aware of their rights. The notice must be placed conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work.

Another important aspect of this code is that it would likely be unlawful for an employer to retaliate against you, or any person who made use of these provisions of the Elections Code to vote. We would argue that an employer who terminates an

employee for exercising their right to vote would have engaged in, "wrongful termination in violation of public policy," a cause of action in a lawsuit available when someone is terminated in violation of a fundamental public policy. A wrongful termination cause of action provides for recovery of economic damages such as lost wages and benefits, non-economic losses such as anxiety, stress, emotional distress, fear and humiliation and, if the denial was the decision of an officer, director or, "managing agent," of the employer, even punitive damages. Importantly, since you



work in construction, a field with many Union employees, any collective bargaining agreement provision, which seeks to waive an employee's right to pay for time taken off to vote, has been held by the courts to be against public policy, contrary to express provision of law and invalid.

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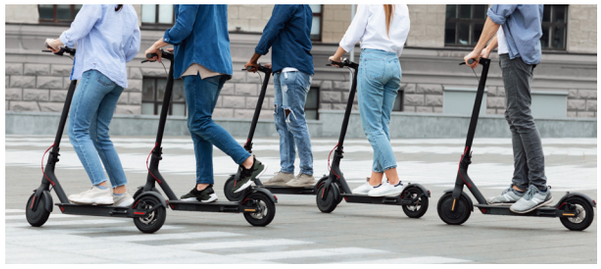
What are the Rules and Regulations for Electric Scooters?

By Christopher B. Dolan and Cioffi Remmer



Dom in San Francisco asks:

Electric Scooter are everywhere. I see them on the street. I see them on the sidewalk. I see them on bike lanes. Some people ride alone, and others ride in pairs. Some people wear helmets while others don't even bother. It all seems dangerous and arbitrary to me. What are the rules and regulations for electric scooters? Whatever they are. I have a feeling people are not following them.

Dear Dom: Thank you for your question. With the popularity of alternative transportation, residents of San Francisco and other metropolitan areas are taking to bicycles, electric bicycles (e-bikes), and even faster growth - electric scooters (e-scooters) as their preferred mode of transportation. California has not been slow with recognizing the trend and implementing regulations to protect the public by passing legislation identifying the responsibilities of e-scooter riders and operators.

When e-scooters first hit the scene, riders, pedestrians, and motorists were confused about whether these speedy two-wheel people-movers were to be treated like bicycles or motorcycles in terms of roadway restrictions and rider safety. For example, before introducing e-scooters on city streets, California Vehicle Code section 21200-21213 concerned operation of bicycles. These sections regulated issues such as physical characteristics of bicycles, e.g., height of handlebar), safety attributes, e.g., brake requirements, lamp requirements, location of operation, e.g., bike lanes, roadway, etc., and operator safety apparel, e.g., helmets for riders under 18 years old.

The main issues that riders, motorists, and pedestrians alike want to know are:

1) Are e-scooters are allowed to ride on sidewalks (which may pose a safety risk to pedestrians)?

2) Are they restricted to bike lanes? Can they ride in the traffic lanes? and

3) Are helmets required?

These are all similar issues that have been previously decided by the legislature in regulating bicycles.

For bicycles, it has been well established in California that individual cities or counties control rules regarding riding bicycles on sidewalks, pursuant to CVC 21206. For example, in San Francisco, the city made it illegal to ride a bicycle on the sidewalk if you are over the age of 13. (San Francisco Transportation Code Sec. 7.2.12). The City of Los Angeles only prohibits bike-riding on a sidewalk "in a willful or wanton disregard for the safety of persons or property." (Los Angeles Municipal Code section 56.15).

Cyclists may ride in the traffic lanes, and must obey the traffic laws; however, they must use the bicycle lane if they are moving at less than the normal speed of traffic in the same direction, according to section 21208 of the Vehicle Code. As for helmets, Vehicle Code section 21202 requires a helmet for any bicycle rider under the age of 18.

Instead of dropping e-scooters into these multiple vehicle code sections along with bicycles, the legislature has specified and codified rules relating to e-scooters in a separate Vehicle Code section 21235. According to the Vehicle Code, e-scooters may not be operated on the sidewalk except as is necessary to enter or leave adjacent property. As we can see, the legislators did not leave this decision up to the different counties, cities, or municipalities.

The code becomes tricky when regulating the speed e-scooters may operate, and which types of highways or roadways e-scooters may be operated. E-scooters are limited to a maximum speed of 15mph, no matter what type of highway it is ridden on, pursuant to Vehicle Code sections 21235(b) and 22411. Regarding traffic lanes and bike lanes, e-scooters are permitted to be ridden in bike lanes and traffic lanes on roadways with a speed limit of up to 25 mile per hour. The legislator leaves it up to local authorities to authorize the operation of an e-scooter on Class II or Class IV bikeways on highways with a speed limit of up to 35 miles per hour. This means that in no circumstances are e-scooters allowed to be operated on highways with a speed limit above 35 miles per hour.

As for helmets, riders under the age of 18 years old must wear a helmet. Moreover, unlike bicycles, riders must have a valid driver's license or instruction permit to operate an e-scooter. Undoubtedly, riders should familiarize themselves with California Vehicle Code and their local laws regarding riding e-scooters. Moreover, even though it may not be required by law if you are an adult, riders should always practice good safety and utilize a helmet.

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