



THE COUNTY OF LOS ANGELES
DEPARTMENT OF HUMAN RESOURCES

FAMILY LEAVE POLICY GUIDELINES



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Department of Human Resources
County of Los Angeles

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THE COUNTY OF LOS ANGELES

Board of Supervisors



Hilda Solis
First District



Mark Ridley-Thomas
Second District



Sheila Kuehl
Third District



Janice Hahn
Fourth District



Kathryn Barger
Fifth District

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FAMILY AND MEDICAL LEAVE SUMMARY

The Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA) and the Pregnancy Disability Leave Law (PDL) provide a means for employees to balance their work and family responsibilities by taking unpaid leave for qualifying reasons. These leave laws are intended to promote the stability and economic security of families as well as the County's interest in preserving the integrity of families.

INTRODUCTION

The information contained in this edition is based on the Federal Family and Medical Leave Act (FMLA) regulations issued by the Department of Labor (DOL) and the California Family Rights Act (CFRA) and California Pregnancy Disability Leave Law (PDL) regulations issued by the California Department of Fair Employment and Housing (DFEH).

It is important that employees, supervisors and managers alike understand that there is a shared responsibility to comply with the regulations set forth under FMLA, CFRA and PDL. The County can be subject to complaints, fines and private lawsuits for failure to comply with these regulations. Employees are expected to adhere to attendance policies in addition to the guidelines set forth in the leave laws. If employees have any questions regarding FMLA, CFRA or PDL, the employee should contact the employee's Departmental Human Resources Office. The County Departmental Human Resources Offices should contact the Countywide FMLA Coordinator at the Department of Human Resources.

MANUAL OVERVIEW

Throughout the manual you will see the following signs and symbols.



A stop sign indicates additional information or clarification regarding the topic.



A key indicates that the information is a *key concept* in understanding family and medical leave administration.

EXAMPLE

Examples of the family and medical leave laws are highlighted in blue and give illustrations of the guidelines.

EMPLOYEE LEAVE OVERVIEW

There are four family and medical leave laws that affect Los Angeles County employees. These laws are:

- The Federal Family and Medical Leave Act (FMLA)
- The National Defense Authorization Act (NDAA)
- The California [Moore-Brown-Roberti] Family Rights Act (CFRA)
- The California Pregnancy Disability Leave Law (PDL)

The California Workers' Compensation Regulations, the Americans with Disabilities Act (ADA), Fair Employment and Housing Act (FEHA) and Domestic Partner Rights and Responsibilities Act (DPRRA) are the four laws that have the greatest interaction with family and medical leave. Departments must always be cognizant of other State laws or the County Code provisions that may provide employees with a greater benefit.

FMLA and CFRA entitle eligible employees up to 12 workweeks of job protected leave in a 12-month period for any of the following reasons:

- employee's own serious health condition
- serious health condition of an employee's child, spouse or parent
- adoption or foster care placement of a child with the employee

FMLA also entitles eligible employees up to 12 workweeks of leave in a 12-month period for the following reasons:

- prenatal care
- birth or care of the employee's newborn child

FMLA for Armed Forces Members and Caregivers (NDAA)

- 26 workweeks of leave for the spouse, child, parent or next of kin of an Armed Forces member to recover from illness or injury or for a veteran to recover from an injury sustained within the last five (5) years
- 12 workweeks for any "qualifying exigency" arising from a spouse, child or parent's call to active duty

CFRA also entitles eligible employees up to 12 workweeks of leave in a 12-month period for the following reasons:

- employee's domestic partner's serious health condition

NOTE: The employer must **always** adhere to the applicable law that provides the greatest benefit to the employee. In the event of a conflict between a provision in this manual and applicable laws, the law shall govern.

Pregnancy Disability Leave (PDL)

Pregnancy Disability Leave (PDL) provides a female employee with a maximum of four months of leave if the woman is disabled due to pregnancy or any prenatal or childbirth related medical condition. It also allows a pregnant female employee to transfer to an alternative position with equivalent pay and benefits or request reasonable accommodations in her current job, provided that it is recommended by a health care provider and the employer has the means to fulfill the employee's request.

Effective January 1, 2012, the County is required to maintain group health coverage for up to four months for employees on PDL, as required by the California Pregnancy Disability Act.

Effective July 1, 2015, the County is required to maintain group health coverage for up to 12 weeks after an employee's pregnancy disability in the event the employee uses CFRA leave to bond with her newborn child.

SECTION 1: DEFINITIONS OF COMMONLY USED FMLA/CFRA TERMS

“Son or Daughter” - a biological, adopted or foster child, stepchild, a legal ward or a child of a person standing *“in loco parentis”*. The child must be under 18 years of age. If the child is 18 or over, he or she must be incapable of self-care due to a mental or physical disability as defined by the Americans with Disabilities Act.

“Spouse” – two people legally married as recognized under California law. California does not recognize common law marriages **except** when such marriages are contracted in a state that does recognize common law marriages and the specific marriage is recognized as a legal marriage in that state. Spouses, including those in same-sex marriages, will receive benefits under FMLA and CFRA.

“Parent” - the biological parent or an individual who stands or stood *“in loco parentis”* to an employee when the employee was a child. Parent does not include mother-in-law or father-in-law.

“In Loco Parentis” – means to stand in place of a parent. Persons *in loco parentis* are those who are or were responsible for the day-to-day care of and financial support for the child. There does not have to be a biological relationship between the individual and the child but there must be a true “child-parent” relationship. Documentation may be required to confirm relationship.¹

“Domestic Partner” under the County Code is defined as two adults who have chosen to share each other’s lives in a committed relationship pursuant to the provisions of Chapter 6.20.080 (L) of the Los Angeles County Code or Section 297 of the California Family Code and:

- have a common residence
- both are at least 18 years of age (or have a court order granting permission to establish a domestic partnership)
- neither of whom are married or a party to another domestic partnership
- to qualify for leave to care for a domestic partner, the employee and the domestic partner have signed a “Declaration of Domestic Partnership” and registered with the Los Angeles County Registrar-Recorder/County Clerk or the California Secretary of State

“Next of Kin” – the nearest blood relative of an Armed Forces member to the individual needing care other than a spouse, parent, son or daughter and in the following order (1) a blood relative whom the covered service member has

¹ Reasonable documentation may include but is not limited to, employee statement, a child’s birth certificate, a court document, etc.

designated in writing as next of kin for FMLA purposes (2) blood relatives who have been granted legal custody of covered service member (3) brothers and sisters (4) grandparents (5) aunts and uncles and (6) first cousins.

“Health Care Provider”:

- Doctor of medicine or osteopathy authorized to practice medicine or surgery by the state where he or she practices
- Podiatrist
- Dentist
- Clinical Psychologist
- Optometrist
- Chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist)
- Nurse Practitioner and Nurse Midwife
- Clinical Social Worker
- Physician’s Assistant
- Health care provider recognized under the County sponsored or County approved union sponsored health plans.
- Christian Science Practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts
- A health care provider who practices in another country, who is authorized to practice in that country and, who is practicing in accordance with the law as defined by the country

“Serious Health Condition” - an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from), or any subsequent treatment in connection with such inpatient care

or

- Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from) of more than three full calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

Treatment two or more times by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider.

or

- Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.



Treatment includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations and must be in person.

- Any period of incapacity due to pregnancy or for prenatal care.
- Any period of incapacity or treatment for and during such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits (at least two times during the leave year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider

and

- Continues over an extended period of time (including recurring episodes of a single underlying condition)

and

- May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).



Continuing treatment includes prescription medications, therapy, special equipment, etc. Self-treatment such as taking over the counter medicine (aspirin, antihistamines, salves, etc.) bed rest, drinking fluids, etc. does **not** constitute continuing treatment.

- 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 health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

- Any period of absence to receive multiple treatments (including any period of recovery from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of 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).



Restorative dental or plastic surgeries after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness, allergies, etc. may be serious health conditions, but only if all the conditions of this section are met.

Absences attributable to incapacity which qualify for FMLA where the employee or qualifying family member does not receive treatment from a health care provider, or may not last more than three days, are covered by FMLA. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.



A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is **not**, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

Ordinarily, the following are **not** considered serious health conditions **unless** inpatient hospital care is required or complications develop:

- Cosmetic treatments (such as surgery for acne)
- Plastic surgery (except as noted above)
- Common colds and flu
- Ear aches
- Upset stomach
- Minor ulcers
- Headaches (other than migraines)
- Routine dental or orthodontia

“Unable to Perform the Functions of the Position” means that the health care provider has certified that the employee cannot work at all or cannot perform any one of the essential functions of the position within the meaning of the Americans with Disabilities Act. Intermittent leave for a medical treatment

constitutes inability to perform one or more of the essential functions of one's job during the period of absence.

"Physical or Mental Disability" means a physical or mental impairment as defined under the Americans with Disabilities Act (ADA) that substantially limits one or more of the major life activities of the individual. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform one or more essential functions of one's job during the period of absence.



"Disability", as defined under the California Fair Employment and Housing Act (FEHA) Section 12926 (B) (i), is a disability that "limits" a major life activity (as opposed to *substantially limits*) and shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

"Qualifying Exigency" is used to refer to a number of broad categories for which employees can use FMLA under the National Defense Authorization Act (NDAA) **only**. Qualifying reasons include the following:

1. Short-notice deployment – to address any issues that arise due to a covered military member being notified on an impending call or order to active duty seven or less calendar days prior to the date of deployment.
2. Military events and related activities – to attend any official ceremony, program or event sponsored by the military and to attend family support and assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to the active duty or call to active duty status of a covered military member.
3. Childcare and school activities – to arrange childcare or attend certain school activities for a child of the covered military member, who is either under age 18, or age 18 or older and incapable of self-care. This leave may be taken to arrange for alternative child care, to provide urgent, immediate, non-routine childcare, to enroll the child in a new school or day care facility, or to attend meetings with staff at a school or a day care facility (e.g. disciplinary meetings, parent-teacher conferences, meetings with school counselors).
4. Financial and legal arrangements – to make or update financial or legal arrangements to address the covered military members absence while on active duty or call to active duty status, such as preparing and executing financial and health care powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility

Reporting System, obtaining military identification cards, or preparing or updating a will or living trust. The leave can also be used for acting as the military member's representative for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for the 90 days after the termination of the covered military member's active duty status.

5. Counseling – to attend counseling provided by someone other than a health care provider for one-self, for the covered military member, or for the child of the covered military member who is either under the age of 18 or age 18 or older and incapable of self-care, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
6. Rest and recuperation – to spend time with a covered military member who is on short-term temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to fifteen days of leave for each instance of rest and recuperation.
7. Post-deployment activities – to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty and to address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.
8. Additional activities – to address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and the employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
9. Care of the military member's parent - to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meeting with staff at a care facility, such as meeting with hospice or social service providers.

"Needed to Care for a Family Member" means to provide physical or psychological care to a family member. It includes situations where the family member is unable to care for his or her own basic needs such as medical, hygienic, nutritional, safety, etc. It also includes making arrangements for changes in care, such as transfer to a nursing home or transportation to and from the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to the child, spouse or parent that is

receiving inpatient or home care. Intermittent leave may be taken when the condition of the child, spouse or parent is intermittent or where care is otherwise available but the employee is temporarily filling the position, or where care responsibilities are shared with others.

“Workweek” means the employee’s normal workweek prior to the start of the FMLA and/or CFRA leave.

Calculating a Workweek When an Employee’s Work Hours Fluctuate

A workweek cannot always be calculated based on a 40 hour workweek for the purpose of intermittent leave. For example, an employee who normally works 56 hours a week will have 672 hours (56 hours X 12 weeks) in his or her 12-workweek period while an employee who works a 25 hour week will have 300 hours (25 hours X 12 weeks) in his or her 12 workweek period.

Employees on a 9/80 or 4/40 work schedule calculate their workweek as if they were on a 5/40 schedule since 80 hours are worked every two weeks.



Management will assign employees on a 9/80 or 4/40 schedule to a 5/40 schedule while they are out on continuous FMLA and/or CFRA leave. Employees on intermittent FMLA and/or CFRA leave that is not regularly scheduled may have their schedule changed in accordance with departmental policy.

If a part-time employee’s schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee’s normal workweek.

Week	Hours Worked	Total Hours
1-4	30	120
5-10	20	120
11-12	25	50

Total Hours Worked		290
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Add the total hours worked together and divide by 12. In this case, 290 hours divided by 12 gives an average work week of 24.16 hours.

SECTION 2: ELIGIBLE EMPLOYEES

An employee's eligibility is determined from the date the FMLA and/or CFRA leave is scheduled to begin, not the date of notice. An employee can request FMLA and/or CFRA leave before meeting the eligibility requirement as long as eligibility is met by the first day of leave.

Under FMLA and CFRA an eligible employee is one who meets the following criteria:

- Has completed an aggregate of 12 months of County service, which need not be consecutive
- and
- Has worked at least 1,250 hours during the 12-month period immediately preceding the first day of leave.

12 Months of County Service Requirement

If an employee is in a paid status for any part of a week, including any period of paid (full-pay, sick leave, annual leave, Workers' Compensation, Short Term Disability (STD), etc.) or unpaid leave that week is counted as a week of service.

Temporary, recurrent and part-time employees are all eligible if the "length of service" and the "hours worked" requirements are met. No employee is excluded due to his or her employment status with the County.



The County is considered **one** employer for purposes of leave entitlement. Therefore, eligibility must be determined by counting all County service. Length of service and hours worked within all departments must be combined for the purpose of determining eligibility. The County does not need to count the time an employee worked for the County prior to a continuous break in service of seven years or more unless the break was for National Guard or Reserve military service obligation or a written agreement stating the County's intention to rehire the employee after the break.

An employee may be on non-FMLA and/or non-CFRA leave at the time he or she meets the FMLA and/or CFRA eligibility requirements. Once the employee meets the eligibility requirements, any portion of the leave taken for an FMLA and/or CFRA qualifying reason must be designated FMLA and/or CFRA leave.

EXAMPLE

Jennifer requested FMLA and/or CFRA to begin on March 15. Jennifer will have over 1,250 total hours worked on March 15 and she will meet the one year of County service requirement on March 20. Jennifer will be eligible for FMLA and/or CFRA leave effective March 20.

1,250 Hours of Work Requirement

FMLA and CFRA define “hours worked” as hours actually worked, which includes overtime.² Hours shown on the payroll for non-worked leave such as sick leave, vacation, etc. are **not** hours worked.

Fair Labor and Standards Act (FLSA) exempt employees are presumed to have met the 1,250 hours of service unless otherwise indicated by accurate records of the employee’s actual hours worked. For non-FLSA exempt employees, if the department has failed to maintain an accurate record of hours worked, the department has the burden of showing that the employee has not worked the requisite hours. In the event the department is unable to meet this burden, the employee is deemed to have met this requirement.

No one may intentionally limit or manipulate an employee’s work schedule to deny the employee’s eligibility for FMLA and/or CFRA. For example, part-time employees cannot have hours reduced to prevent them from being eligible for FMLA and/or CFRA leave. However, hours may be reduced for a bona fide business reason such as downsizing, restructuring or reduction in work load.

If the employee gives notice of the need for FMLA leave prior to meeting the “hours worked” test, the employer must either confirm the employee’s eligibility based upon a projection that the employee will be eligible on the date leave would commence or must advise the employee when the eligibility requirement is met.

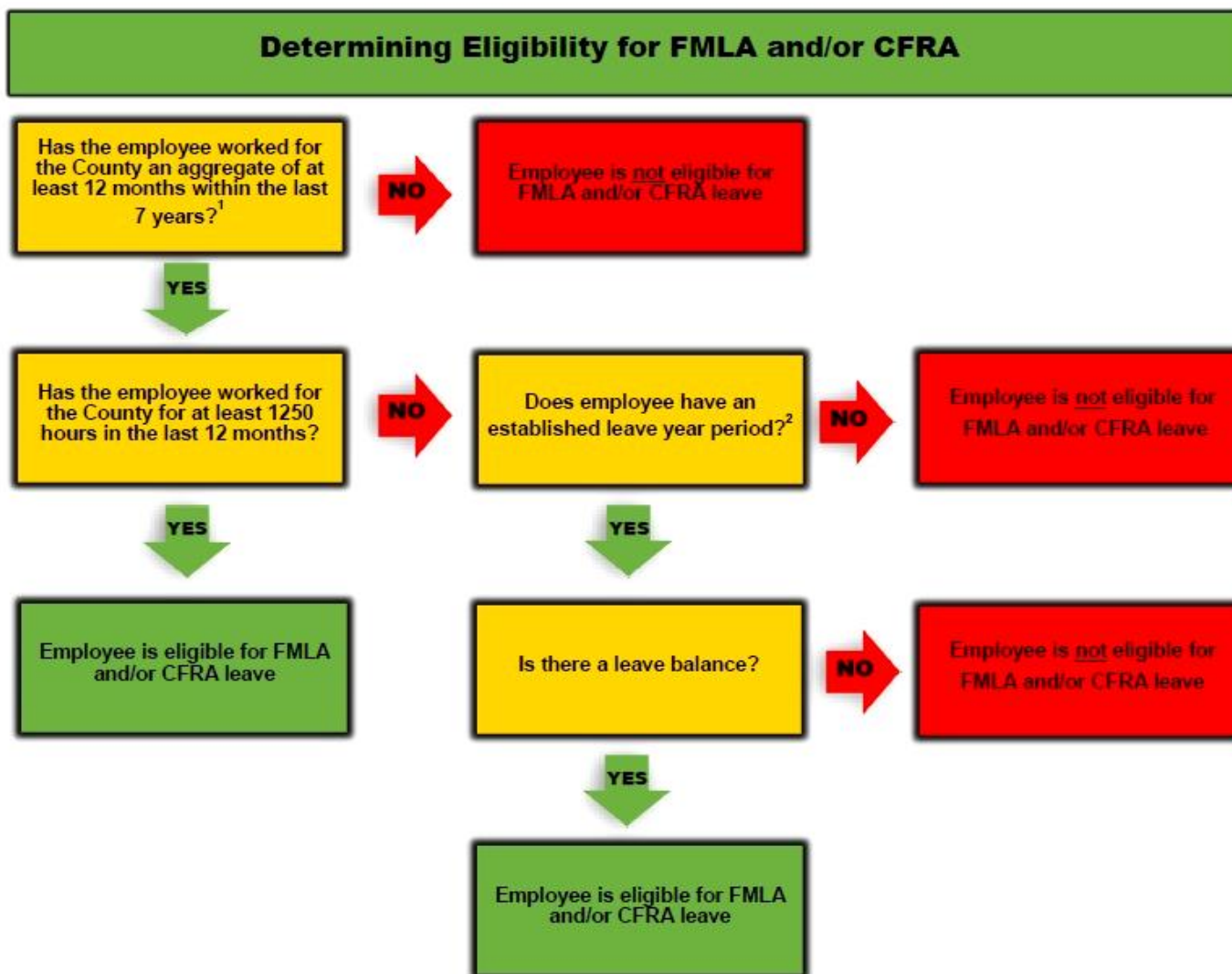
EXAMPLE

On October 1, Nicole requests FMLA and/or CFRA leave to begin on November 1. Nicole has a total of 1,200 hours worked on October 1. She will have 1,250 hours by November 1, and therefore, is eligible for FMLA leave starting November 1.

² The definition of hours worked is from the Fair Labor Standards Act (FLSA) and can be found at www.dol.gov

1,250 Hours of Work Requirement for Military Personnel

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires that returning veterans receive all benefits of employment that they would have obtained had they been continuously employed with the County, which includes FMLA. Accordingly, a returning service member will be entitled to FMLA leave if the hours that he or she would have worked during the period of military leave would have entitled the employee to FMLA leave. Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the County should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave had the veteran not been on military leave.



¹An employee may meet the years of service requirement or hours worked requirement while on a leave of absence. FMLA and/or CFRA may be designated for the remainder of the leave once the employee becomes eligible and satisfies the requirements for FMLA and/or CFRA leave

²If the employee has met the eligibility requirements during the initial leave year period, then the remaining balance of FMLA and/or CFRA should be released for the new leave request. In the case of a female employee who takes a Pregnancy Disability Leave, she must meet the eligibility requirements for CFRA as of the first day of PDL to begin her CFRA baby bonding leave.

SECTION 3: QUALIFYING REASONS FOR FMLA AND CFRA LEAVE

An employee may qualify for FMLA, CFRA or both depending on their qualifying reason. Once an employee meets the FMLA and/or CFRA eligibility requirement, leave can be taken for any of the following reasons:

<u>Qualifying Reason</u>	FMLA	CFRA
An employee's own serious health condition	✓	✓
Care of a newborn child (baby bonding)	✓	✓
The serious health condition of a child, spouse, or parent	✓	✓
Newly adopted child or a foster care placement. ³	✓	✓
Pregnancy or prenatal care (e.g. morning sickness, doctor visits due to pregnancy, etc.) ⁴	✓	
Birth of a child	✓	
Care of a Domestic Partner ⁵		✓
Care of a child of a Domestic Partner	✓	✓
An employee's spouse, child, parent or next of kin of an Armed Forces Member recovering from serious illness or injury	✓	
Any qualifying exigency due to a spouse, child or parent's call to active duty in the Armed Forces	✓	

NOTE: A licensed agency is not required for adoption. For foster care, placement must be a result of a court decision and not an informal arrangement to care for another person's child.



FMLA and CFRA leave applies equally to males and females. Both parents are equally entitled to FMLA and CFRA leave for adoption, foster care, or for the care of a newborn child.

Substance Abuse

Substance Abuse is a qualifying reason if it meets the definition of a serious health condition. FMLA and/or CFRA leave may **only** be granted for an employee receiving treatment for substance abuse by a health care provider or when referred to a health care services provider. However, management may take appropriate action against an employee for substance abuse provided the action results from a violation of an established departmental policy. The department policy must have been communicated and equally applied to all applicable employees on a nondiscriminatory basis. For example, if a department has an established policy of terminating employees for substance

³ FMLA/CFRA leave may be taken to attend counseling sessions, appear in court, meet with an attorney, etcetera, in relation to adoption or foster care.

⁴ In California, disability due to pregnancy is covered under California Pregnancy Disability Leave (PDL).

⁵ The State of California recognizes "domestic partnership" but the federal government does not.

abuse at work, the employee presently requesting or taking family leave may be terminated if they are found to be in violation of the policy.

An employee may also take leave to care for a qualifying family member who is receiving treatment for substance abuse but management **cannot** take any action against the employee for taking the leave.

FMLA for Armed Forces Members and Caregivers

An employee who is the spouse, child, parent or next of kin of an Armed Forces member or a covered veteran is entitled to 26 workweeks of leave to care for a service member that is recovering from a serious illness or injury sustained in the line of active duty, or injuries or illnesses that existed before the service member's active duty and were aggravated by service in the line of duty on active duty.

A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

An employee is entitled to 12 workweeks of leave due to any defined qualifying exigency (see definition of "Qualifying Exigency" on page 14) that arises due to their spouse, child or parent's call to covered active duty in the Armed Forces to a foreign country.

SECTION 4: REPORTING AND NOTIFICATION RESPONSIBILITIES

Employee's Responsibility:

When leave is foreseeable (e.g. expected date of birth or planned medical treatment), the employee must provide management at least 30 days advance notice before FMLA and/or CFRA leave is to begin. If 30 days notice is not possible, due to lack of knowledge or an emergency, notice must be given as soon as possible absent extenuating circumstances.

The employee may provide notice either in person or by telephone, telegraph, facsimile (fax) machine or other electronic means. Notice may be given by the employee's spokesperson (e.g. spouse, adult family member or other responsible party) in accordance with the employee's departmental call-in procedure if the employee is unable to do so personally.



The employee need not expressly assert rights under FMLA and/or CFRA or even mention FMLA and/or CFRA. The mention of an FMLA and/or CFRA qualifying reason is considered sufficient notice. The employer should inquire further of the employee if it is necessary to have more information to determine whether the leave is FMLA and/or CFRA.

An employee must consult with his or her supervisor and make a reasonable effort to schedule the leave to not unduly disrupt the department's operation when planning intermittent leave for medical treatment for himself, herself or a family member. Employees are expected to consult with their supervisor prior to the scheduling of treatment in order to work out a schedule which best suits the needs of both the department and the employee. If an employee neglects to consult with the supervisor, the supervisor may initiate discussions with the employee and require the employee to attempt to make such arrangements.

It is management's responsibility to designate FMLA and/or CFRA leave. However, it is the employee's obligation to provide management with sufficient information to allow management to make the designation.

Employer's Responsibility

Management's determination of FMLA, CFRA or PDL must be based only on the information received from the employee or the employee's spokesperson in the event the employee is unable to communicate directly. If an employee requests to use vacation or other paid accrued time off without referencing the need for family leave, management must not ask whether the employee is taking time off for a family leave qualifying reason. However, if the employer denies the request and the employee then provides information that the requested time off is or may

be for an FMLA and/or CFRA-qualifying reason, the employer may inquire further into the reasons for the absence.

EXAMPLE

Thomas requests two weeks of vacation but does not indicate he needs the time to care for his mother and to find her a suitable nursing home. Management is unaware of the reason and denies his request. Thomas complains and insists that management cannot deny his request under FMLA and/or CFRA. However, Thomas refuses to explain why he needs the vacation, thereby preventing management from having sufficient information to determine whether his request is FMLA and/or CFRA qualifying. In this case, until he provides sufficient information for a determination to be made, his request can be denied, which would be consistent with the department's vacation policy.

In the same example, management would be required to grant FMLA and/or CFRA (and allow the use of vacation) if Thomas had provided enough information for management to be aware that the leave could be FMLA and/or CFRA qualifying. The ultimate resolution of the leave schedule remains subject to the approval of the health care provider and schedule established for the planned medical treatment.

Designating Leave

In all cases, it is management's responsibility to designate leave. Once management learns that leave is being taken for a qualifying reason, the employee must be notified in writing within **five** (5) business days that the leave is being designated as FMLA, CFRA or PDL.

Management must provide the employee with the "Notice of Eligibility and Rights & Responsibilities" form and the "Certification of Health Care Provider" form and instruct the employee to complete and return it within **15** calendar days. The employee does not need to mention the need for FMLA and/or CFRA leave. If the employee mentions a condition/situation which may be FMLA and/or CFRA qualifying, it is management's responsibility to inquire further, without requesting a diagnosis, and designate the leave as FMLA and/or CFRA qualifying when applicable. Any questions regarding the proper designation should be discussed with the Departmental Human Resources Office.

Retroactive Designation

In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated as FMLA leave. If the leave is not timely designated as FMLA, it may be retroactively

designated as FMLA with appropriate notice to the employee provided that the employer's failure to timely designate leave did not cause harm or injury to the employee.



An employer's failure to timely designate FMLA may constitute interference with an employee's FMLA rights. In this circumstance, the employer may be liable for restoring any lost compensation, benefits or other monetary losses associated with the interference.

Management may not ask for a diagnosis with regard to a request for family leave. However, management may require employees on FMLA and/or CFRA leave to comply with the department's procedural requirement for requesting leave. For example, the department may require the completion of a written form for all types of leave requests. However, FMLA and/or CFRA leave cannot be denied or delayed because the employee does not request it in writing if a timely verbal or other form of notice was provided. Management also cannot impose notification requirements which exceed those in the FMLA and/or CFRA regulations.

EXAMPLE

Lisa's spouse calls in on her first day of leave and verbally requests time off for her, because she has been hospitalized. A certification of health care provider form is sent and returned within 15 days. The entire period of time after the department received verbal notification from Lisa's spouse will be designated as FMLA and/or CFRA leave.



If the medical certification fails to confirm that the reason for the absence was an FMLA and/or CFRA reason, the employer will not designate the time off as FMLA and/or CFRA and will immediately notify the employee in writing. If the department needs clarification to determine whether the absence is FMLA and/or CFRA qualifying, the department should request that the employee provide a clarified medical certificate from the employee's health care provider. If no clarification is provided and/or the certification fails to confirm an FMLA and/or CFRA qualifying reason, the absence will then be governed by the department's attendance policy.

Delay or Denial of FMLA/CFRA Leave

If the need for leave was clearly foreseeable to the employee, but the employee failed to give 30 days notice with no reasonable excuse, management may delay FMLA and/or CFRA leave until at least 30 days from the date of the employee's notice. Any action taken as a result of the employee's failure to give adequate notice must be consistent with the department's practices as it is applied to other types of leave. In addition, before denying or delaying FMLA and/or CFRA leave, management must show that:

- The employee had knowledge of the notification requirement (proper posting of an FMLA and CFRA poster at the employee's work site will satisfy this requirement)

and

- The employee had knowledge of the need for the leave in sufficient time and failed to give the notice to management.

SECTION 5: LEAVE ALLOTMENT AND LIMITATIONS

FMLA/CFRA

The FMLA and CFRA allow an eligible employee to take a maximum of 12 workweeks of leave in one 12-month period for one or more FMLA and/or CFRA qualifying reasons. The 12-month period begins with the first day the employee uses FMLA and/or CFRA leave and starts their “leave year” if the employee is taking leave on a continuous basis. In cases of intermittent leave, the “leave year” is established by the certification date even if the employee does not immediately have FMLA and/or CFRA absences. Each time an employee takes FMLA and/or CFRA leave, it is subtracted from his or her leave entitlement of 12 workweeks. If more than one qualifying reason for leave occurs within the leave year, the employee is **only** entitled to a total of 12 workweeks for all FMLA and/or CFRA qualifying reasons.



If all FMLA and/or CFRA leave time is not used within a 12-month period, the unused time **cannot** be carried over to the following leave year.

EXAMPLE

Pam takes four weeks of FMLA and CFRA leave beginning on October 19, 2014 to care for her child’s serious health condition. Pam’s 12-month leave year begins October 19, 2014 and ends October 18, 2015. On January 9, 2015, she again requests 12 workweeks of FMLA and CFRA leave to care for her spouse’s serious health condition. Because it is still within the same leave year, only eight weeks of FMLA and CFRA leave are available. She would not be eligible for a new 12 workweek allotment until October 19, 2015 (provided all other eligibility requirements are met) but can use the remaining eight weeks.

If parents of a newborn are **married** and both are employed by the County, each is entitled to take 12 workweeks for the **birth, care, adoption or foster care placement of a child (“bonding with a newborn”), subject to any previous family leave.**

EXAMPLE

Sara works for the Department of Human Resources and her husband, George, works for the Fire Department. They are expecting a baby in October. In August, George requests two weeks of FMLA and CFRA leave to care for his mother’s serious health condition. After the birth of the baby, George requests additional FMLA and CFRA leave to bond with his new child.

Sara is entitled for up to four months of pregnancy disability leave for the period she is actually disabled by pregnancy. However, her doctor certified that she was actually disabled by pregnancy for only 8 weeks. After her pregnancy disability ends, Sara wants to take an additional 12 weeks to bond with her newborn.

ANALYSIS

George is entitled to 12 weeks of FMLA and CFRA leave during the leave year, which run together. Because George took two weeks of FMLA/CFRA leave to care for his mother, he has 10 weeks of FMLA/CFRA left to use to bond with his child.

Sara's FMLA leave ran concurrently with her PDL leave, which leaves her with 4 weeks of FMLA (12 weeks minus 8 weeks). Since CFRA and PDL run separately, Sara has 12 weeks under CFRA to bond with her child. Sara's remaining FMLA and CFRA time will run concurrently.

Special Limitations

- An employee's rights to family leave for baby bonding expires 12 months after the child's date of birth or adoption or foster placement date. Beyond the one year period, the child has to have a qualifying serious health condition before FMLA and CFRA leave can be taken.
- Under CFRA, leave for the birth, adoption, or foster care placement of a child must be taken in no less than two-week increments. However, the Act allows an employee to take less than two-week increments on two separate occasions.

FMLA Military Leaves

Military Caregiver Leave

The FMLA allows eligible employees to take up to 26 workweeks of Military Caregiver Leave in a single 12 month period to care for a covered servicemember with a serious injury or illness. The injury must have incurred in the line of duty, while on active duty within the last five years and for which the service member is undergoing medical treatment. The 12 month period begins on the first day the employee takes leave to care for a covered servicemember and ends 12 months after that date. If the employee takes less than 26 weeks of leave in the 12 month period, the balance is forfeited.

Unlike FMLA leave, the Military Caregiver Leave is applied on a per-injury, per covered servicemember basis. Thus an eligible employee may be able to take more than one Military Caregiver Leave to care for different covered servicemembers or for different injuries to the same covered servicemember.

However, no more than 26 combined work weeks can be taken in a single 12 month period. Leave taken to care for a covered servicemember, cannot be designated and counted as both Military Caregiver Leave and leave to care for a family member's serious health condition (even if the servicemember is the employee's spouse, parent or child). It is therefore important that the employer designate Military Caregiver Leave in the first instance.

Military Exigency Leave

Eligible employees are entitled to up to 12 workweeks in any 12 month period for Qualifying Exigency Leave. Qualifying Exigency Leave absences are combined with other FMLA-qualifying reasons to a maximum of 12 workweeks for each 12 month period.

SECTION 6: PAID LEAVE AND UNPAID LEAVE

FMLA, CFRA and PDL leave is unpaid. However, the Board of Supervisors allows employees to elect to use accrued time to cover any FMLA, CFRA and PDL leave. Therefore, at his or her option, an employee may use accrued time concurrently with a FMLA, CFRA or PDL leave.



After FMLA, CFRA and PDL is exhausted, employees are **not** permitted to use one day a month of accrued time in order to receive their County contribution unless one day of accrued time is all the time an employee has remaining. No employee may be forced to use paid leave benefits to cover a FMLA, CFRA or PDL leave.

Leave for an Employee's Own Serious Health Condition

An employee may use leave time (sick, vacation, holiday, short-term disability, Compensatory Time Off (CTO), Workers' Compensation, etc.). The fact that the employee is on FMLA, CFRA or PDL leave does not change any waiting periods, eligibility or other restrictions or limitations associated with those programs and benefits.

Leave for a Qualifying Family Member's Serious Health Condition

An employee may use accrued time (vacation, holiday, etc.) with special allowances for sick leave. With prior approval, the County allows employees to use up to twelve (12) days of "Sick Personal" time out of their accrued sick leave balance for any personal reason, which includes leave to care for an FMLA/CFRA qualifying family member. Also, under California's "Kin Care" Leave Law (AB 109 effective January 1, 2000), employees are allowed to use up to half of the sick leave they accrue within a calendar year to care for an ill child, parent, or spouse. When using sick leave to attend to an ill family member, California's Kin Care Leave and the County's twelve (12) personal sick days will run concurrently.



In accordance with County guidelines, an employee can start and stop using accrued paid time any time during the FMLA, CFRA or PDL leave. However, once the employee has stopped using paid time, the employee **cannot** start using it again without approval from the Department Head or his/her designee.

Interaction with Departmental Policies

When an employee takes time off for family and medical leave, he or she is still responsible for adhering to departmental policies. This includes following the employer's normal call-in procedures, except when extraordinary circumstances (such as incapacity) prevent the employee from doing so. Violations of the attendance policy may subject the employee to disciplinary action, although the taking of FMLA of itself may not be used as a negative factor in employment decisions.



If an employee has already been instructed to provide medical certification or to adhere to an attendance plan for non-FMLA absences, the employee still has to adhere to the established guidelines in order to be paid. The plan runs concurrently with family and medical leave. For example, if an employee is required to bring in certification to authorize their paid **non-FMLA** absences, that requirement continues while the employee is on FMLA and/or CFRA.

EXAMPLE

Shawn is on intermittent leave for his own serious health condition. Shawn's regular work schedule is 8:00 a.m. to 5:00 p.m. Shawn's department has an attendance policy that states that he must call in no less than one hour before his shift starts if he is going to be late or absent. Shawn continually arrives for work, without calling, at 8:30 a.m. or later stating that he wants to use 30 minutes of FMLA and CFRA leave. Shawn may be disciplined for his failure to adhere to the Department's call in procedures. Shawn is disciplined on the same basis as other employees who are not on a protected leave of absence and who fail to comply with the Department's call-procedures. However, employees may not be disciplined for solely using FMLA and CFRA.

The 30 minutes Shawn is using for FMLA and CFRA would be taken from Shawn's allotment of FMLA and CFRA. The time he uses to cover for his 30 minutes would be granted in accordance with the department's attendance policy which may include coding the time as unauthorized leave.

SECTION 7: MEDICAL CERTIFICATION

Management requires that leaves for a serious health condition for an employee or qualifying family member be supported with a medical certification from a health care provider. Refer to **Section 1: Definitions of Commonly Used FMLA/CFRA Terms** for a list of appropriate health care providers. The County's Certification of Health Care Provider (CHCP) form **must** be used for this purpose. Departments **cannot** design their own form and the original CHCP (not photocopies) **must** be submitted. Faxes are acceptable but must be followed up by submission of the original document. The request to an employee for a medical certification must be in writing, should be provided to the employee each time a certification is required (but no less often than the first time in each six-month period that an employee gives notice of the need for FMLA leave), and shall inform the employee of the consequences in the event medical certification is not provided in a timely manner.



The CFRA prohibits requesting a diagnosis or description of symptoms with regard to the serious health condition of the employee or family member.

If the need for leave is foreseeable, employees must provide management at least 30 days advance notice prior to the start of the leave. If the need for leave is unforeseeable, due to lack of knowledge or an emergency, notice must be given as soon as possible.

In most cases, management should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within five business days thereafter, or in the case of unforeseen leave, within five business days after the leave commences. The employee must provide the completed medical certificate within 15 calendar days from the date management makes the request, unless it is not feasible to do so despite the employee's good faith efforts.

If an employee provides a **complete** certification signed by the health care provider, the employer may not request additional information beyond what is required by the certification form. The County may seek authentication of the medical certification in accordance with Health Insurance Portability and Accountability Act (HIPAA) by contacting the health care provider with the employee's permission. The employer's contact person may be a health care provider, human resources professional, leave administrator or management official. In no case may the employer representative be the employee's direct supervisor. If clarification of the medical certification is needed, the employer must identify what information needs clarification and request that **the employee** provide clarification from his or her health care provider. The County must not contact the health care provider for clarification.

In the event of an incomplete or insufficient certification, the employer shall advise the employee in writing and give the employee seven calendar days to cure any deficiency, unless it is not feasible despite the employee's good faith efforts.

In circumstances when the employee or a family is visiting in another country, or family member resides in another country and a serious health condition develops, the employer shall accept a medical certification as well as a second and third opinions from a health care provider who practices in that country. Medical certification from a family member's health care provider need only confirm that the employee's presence would be beneficial to the ill family member.

Failure to Submit Medical Certification

When leave is foreseeable, FMLA and/or CFRA may be delayed until the employee provides the medical certification if:

- Management provided a request for the certification (this can be satisfied by proper posting) at the time the leave was requested

and

- There were no extenuating circumstances, which prevented the submission of the certification in a timely fashion (within 15 calendar days from request).



If the employee fails to provide medical certification within a reasonable time, management may delay or deny the start or continuation of FMLA and/or CFRA leave. If the employee does not make a good faith effort to return the CHCP or never produces medical certification, the leave will **not** be designated as FMLA and/or CFRA and the absences will be subject to the department's attendance policy. If the employer extends the deadline for the employee to submit medical certifications, the extension should be in writing and clearly state the consequences for failing to submit the certification by the deadline.

EXAMPLE

James went out on an unforeseen family leave and immediately turned in his CHCP to his physician when he received it. James returned to work four weeks later but his CHCP was not received until the following week with a note stating that the processing of the CHCP was delayed in his doctor's office. James' leave will be designated as FMLA and/or CFRA leave because he made a good faith effort to turn in the CHCP and the delay was on the part of the health care

provider.



Each situation should be evaluated on a case by case basis if the CHCP has not been received in a reasonable time. Generally, if the CHCP has not been received timely, the leave documentation due date should be extended up to two times before the leave is denied. If the CHCP is not returned, at that point the absences may be subject to the department's attendance policy. If management decides a leave of absence is not going to be designated as FMLA and/or CFRA leave, the employee must **immediately** be advised in writing that his or her leave will not be designated as FMLA and/or CFRA leave and the absences are subject to the department's attendance policy. If an employee is communicating with the Department, and the delay of the CHCP is unavoidable, Departments should continue to work with the employee to obtain the certification. If necessary, consult with the Countywide Family and Medical Leave Coordinator.

Recertification

Management may not request medical recertification more than once every 30 days and only in connection with an absence unless:

- The stated duration on the medical certification has expired.
- Circumstances described in the previous certification have significantly changed (e.g., the duration or frequency of absences, the severity of the condition, complications).
- Management receives information that casts a good faith objective reason to doubt upon the continuing validity of the certification.
- There is an ongoing pattern of unscheduled absences (such as Mondays, Fridays, days before and after holidays, etc.).
- The employee requests an extension of the leave beyond the time period specified on the medical certification.
- The employee has already been instructed to provide medical certification in accordance with an existing plan for their attendance for non-FMLA absences and conditions.

The employee must provide the recertification at his or her own expense. The recertification must be completed by a health care provider and returned to management within 15 calendar days from the date management makes the request, unless there are extenuating circumstances.

If the employee fails to provide the medical recertification within 15 calendar days from the date of request (absent extenuating circumstances), the employer may

delay the continuation of FMLA and/or CFRA leave until the recertification is received. If the employee never produces the medical recertification, the leave will not be designated as FMLA and/or CFRA leave and absences will be subject to the department's attendance policy.

Other Recertification Guidelines

- Management may require the employee on FMLA and/or CFRA leave to periodically report to the department to confirm their intended return to work, provided that such a request is conducted in a consistent and non-discriminatory manner.
- Management has the right to waive medical certification if certification seems unnecessary based on the facts and circumstances of the particular case, provided that such a waiver is conducted in a consistent and non-discriminatory manner for all similarly situated illnesses.
- If the employee finds that he or she needs more or less leave time than originally anticipated, management can require the employee to notify the department within two (2) business days of the changed circumstance(s).

NOTE: If an employee gives unequivocal notice of his or her intent not to return to work, the employer's obligation to maintain health benefits and to restore the employee ceases. Once the employee's employment ends and is updated on the County's eHR system, Consolidated Omnibus Budget Reconciliation Act (COBRA) rights will be automatically sent to the employee within 30 days by the County's benefits administrator. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

Release to Return to Work and Fitness-for-Duty Reports

A release to return to work is a statement from the employee's health care provider stating that the employee is able to resume the employee's job duties. If the FMLA and CFRA leave is due to the employee's own serious health condition, a release to return to work statement may be requested for the condition which caused the need for FMLA and/or CFRA leave, if the following conditions are met:

- A release to return to work statement is required for all similarly situated employees with serious health conditions and there is no collective bargaining agreement forbidding a release to return to work statement.

and

- The employee was informed of his or her responsibility to provide a release to return to work statement at the time the notice of the need for leave was given or immediately after it commenced. This requirement can be fulfilled by providing the employee with a written notice of the release to return to work requirement.

If both of the above conditions are met, management may require that the employee provide a release to return to work statement before the employee may return to work. Any absence due to the failure to provide a release to return to work will be subject to the department's attendance policy. For example, if the department has a policy that requires pre-approval for usage of vacation time, the department is not obligated to approve vacation to cover the time away from work to obtain the return to work statement.

If, on the other hand, management failed to inform the employee of the release to return to work requirement or does not require a release to return to work for similarly situated employees, the employee's return to work cannot be conditioned upon or delayed by the employee's failure to provide a release to return to work statement.

An employer may not condition an employee's return to work on a County required fitness-for-duty examination. After an employee returns from their protected leave of absence, any fitness-for-duty examination must be job-related and consistent with business necessity. However, this does not negate the need for a more detailed report if such is required by other laws such as ADA, Workers' Compensation and/or MOUs governing an employee's return to work.



The employer may only require a release to return to work statement from employees on intermittent or reduced schedule leave if reasonable safety concerns exist and no more frequently than once every 30 days.

SECTION 8: PREGNANCY DISABILITY LEAVE (PDL)

Pregnancy Disability Leave (PDL) is available to female employees who become disabled due to pregnancy, childbirth, or related medical conditions. The PDL, FMLA, and CFRA all interact when an employee takes leave due to pregnancy. PDL provides up to a maximum of four months of disability leave per pregnancy.

FMLA runs concurrently with PDL. PDL and CFRA leave **cannot** run at the same time but can run consecutively. CFRA leave does not cover pregnancy. CFRA covers care of a newborn and placement of a child for adoption or foster care. In most situations, an employee may use accrued time concurrently with PDL, FMLA and/or CFRA, which may make them eligible for the full County cafeteria plan contribution or subsidy.

Eligibility

There is no length of service or hours-worked requirement for PDL. To qualify for PDL, an employee must be “disabled by pregnancy,” which means that a health care provider must certify that the employee’s pregnancy or a related medical condition makes her unable to perform one or more of the essential functions of her job, without undue risk to herself, the successful completion of her pregnancy, or to others or that she is suffering from severe morning sickness, or that she needs to take time off for prenatal care.

Length of PDL

A qualified employee must be provided a maximum of four months of PDL leave, as needed, for the duration of time an employee is disabled by pregnancy.

- Four months leave means the equivalent of the number of days an employee would normally work in four months.
- FMLA leave runs concurrently with PDL, but CFRA leave does not. CFRA leave starts when PDL ends. This means that an eligible employee can take additional leave under CFRA for baby bonding once she exhausts her entitlement to PDL.

Providing Accommodations

An employer must provide a reasonable accommodation to an employee affected by pregnancy, childbirth or related medical condition (including lactation), if the employee so requests, based on the advice of her health care provider. Departments may refer to the Return to Work Desk Reference Manual for specific guidance on the reasonable accommodation process. This may include a temporary transfer to an alternative job that better meets the employee’s need, with equivalent pay and benefits if:

- The employee's request is based on the certification of her health care provider that a transfer is medically advisable

and

- The transfer can be reasonably accommodated by the County (the employer is not required to create a job or transfer another employee).

If a woman's health care provider determines that it is medically advisable for her to take intermittent leave or have a reduced work schedule based on foreseeable planned medical treatment, then the employer may require the employee to temporarily transfer to an alternative position that better accommodates the schedule if it has equivalent pay and benefits. Transfer may include temporarily altering an existing position to accommodate the employee's need.

The employer and employee should meet to identify and implement any reasonable accommodation. The employer should respond to a request for reasonable accommodation or transfer as soon as possible, but in no event later than ten (10) calendar days after receiving the request.



Consult with your Departmental Human Resources Office or Chief Executive Office, Risk Management Branch regarding the reasonable accommodation process.

Benefits an Employer Must Provide to an Employee on PDL

An employer is required to pay for group health coverage for an employee on PDL on the same conditions coverage is provided when the employee is not on leave. An employee on PDL is entitled to accrual of seniority and to participate in other benefit plans to the same extent and under the same conditions as would apply to CFRA and FMLA. An employee may elect, at her option, to use any accrued time off that the employee is otherwise eligible to take during the unpaid portion of her PDL.

Job Protection While on PDL

After a PDL leave or transfer to an alternate job, an employee is required to be returned to the **same** position she held prior to her leave or transfer and the employer should confirm this in writing if requested by the employee. The employee may be reinstated to an available **comparable** position only if the same position is no longer available due to business reasons unrelated to the PDL leave or transfer, such as a workforce reduction or layoff. The comparable

position must be virtually identical in terms of pay, location, job content, and promotional opportunities; involve the same or substantially similar duties; and entail substantially equivalent skill, effort, responsibility, and authority. An available position is one that is open on the employee's scheduled date of reinstatement or within 60 calendar days.



Extreme caution must be taken before placing an employee in an alternative position. It is highly recommended that departments contact their Departmental Human Resources Office or Chief Executive Office, Risk Management Branch under these circumstances.

If an employee takes pregnancy related leave for longer than the four months provided by the PDL, the department must treat the employee in the same manner it treats other similarly situated employees who have taken a similar length of disability leave and is subject to the same notification and certification standards pursuant to the department's attendance policy.

Employee's Obligations Regarding PDL

An employee must provide, at minimum, a verbal notice of her need for pregnancy disability leave, reasonable accommodation or transfer and must notify the employer of the anticipated timing and duration of the leave, reasonable accommodation or transfer. If the need for leave, reasonable accommodation or transfer is foreseeable, the employee must provide 30 days advance notice; otherwise the notice must be given as soon as possible.

When the need for leave, reasonable accommodation or transfer is foreseeable, the employee shall consult with the employer and make a reasonable effort to schedule any planned medical treatment in a manner which would minimize disruption to the employer's operation, subject to the approval of any health care provider.

Employer's Obligations Regarding PDL

The employer must inform the employee in advance of any notice requirement or lose the right to enforce it.

The employer must respond to a PDL request as soon as possible, but no later than 10 calendar days after receiving the request. However, if FMLA and PDL run concurrently, the employer must respond to the leave request within five business days.

If an employee's health care provider releases her to return to work early from PDL leave than previously certified, the employer must reinstate her within two business days.

Medical Certification, Recertification and Return to Work Requests for PDL

As a condition for granting a pregnancy disability leave or transfer, the employer may require medical certification from the employee, if such certification is required from other similarly situated employees and the employee is notified of this requirement and the consequences of failing to provide the medical certification. If a certification is not received, the leave will be subject to the departmental attendance policy and the employee will not be in a job protected status while on leave nor have a right to return to work.

The certification should provide only the following:

- The date on which the employee became disabled due to pregnancy or the date on which a reasonable accommodation or transfer became medically advisable
- The probable duration of the period(s) of disability
- The date on which the need for reasonable accommodation or transfer became medically advisable and the estimated duration of the reasonable accommodation or transfer
- A statement that, due to the disability, the employee is unable to perform one or more of the essential functions of her position without undue risk to herself, to the successful completion of her pregnancy, or to other persons, or that a reasonable accommodation or transfer is medically advisable
- A description of the requested reasonable accommodation or transfer



Unlike the FMLA and CFRA, a second or third medical opinion may **not** be requested to certify pregnancy. A medical recertification may be requested upon expiration of the time period provided by the health care provider.

As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require that the employee obtain a release to return to work from her health care provider stating that she is able to resume her original job duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

In all cases, certification may be requested only if the employer has a uniformly applied practice or policy of requiring such release from other similarly situated employees.

Interaction of PDL, FMLA and CFRA Leaves

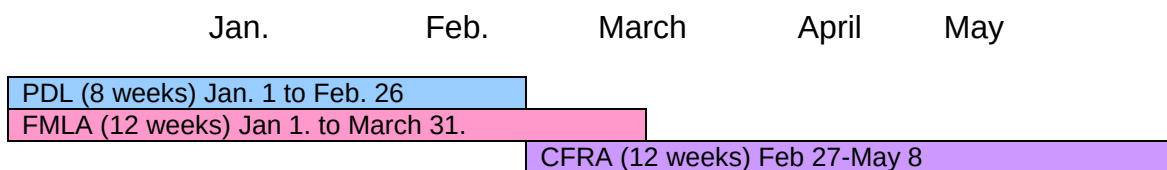
If an employee is eligible under PDL and FMLA, both leaves will run concurrently. If the employee is also eligible for CFRA, it will run consecutively with PDL.

EXAMPLE

Jennifer is pregnant and requests to take 20 weeks (5 months) of leave, from January 1 to May 8. She is eligible for PDL, FMLA, and CFRA leave and her physician has certified her as disabled due to her pregnancy from January 1 to February 26 (8 weeks). Jennifer has not taken PDL, CFRA, or FMLA leave in the last 12 months immediately preceding her leave.

- **FMLA and PDL** - Starting January 1, Jennifer will be placed on FMLA and PDL concurrently. Since she is entitled to a maximum of 12 weeks under FMLA, her FMLA leave will run from January 1 through March 31. While she is entitled to a maximum of four months under PDL, her PDL will run for only 8 weeks because her physician has certified her as disabled due to her pregnancy from January 1-15. She delivered her baby on January 16 and had six weeks to recover that ended on February 26.
- **CFRA leave** – On February 27 Jennifer will no longer be entitled to PDL and requests to take time off to bond with her newborn child. Since CFRA leave runs consecutive to PDL, she will be entitled to CFRA leave effective February 27. Jennifer is entitled to a maximum of 12 weeks of leave under CFRA. Since Jennifer has a leave balance of 4 weeks available under FMLA, FMLA and CFRA will run concurrently for 4 weeks (February 27 through March 31). Thereafter, the remainder of her leave will be covered under CFRA (April 1 through May 8).

PREGNANCY DISABILITY ILLUSTRATION



PDL, FMLA, and CFRA mandate the continuation of health coverage. Therefore, the County's contribution for the employee's medical and dental coverage will continue during the time the employee is disabled due to pregnancy for a maximum of four months, and for a maximum of 12 workweeks for baby bonding leave after pregnancy disability.

Intermittent PDL

Leave may be taken intermittently or on a reduced work schedule when medically necessary, as determined by the health care provider.

If a female employee's health care provider determines that it is medically advisable for her to take intermittent leave or have a reduced work schedule based on foreseeable planned medical treatment, then the employer may require the employee to temporarily transfer to an alternative position that better accommodates her period of leave, if it has equivalent pay and benefits. Transfer may include temporarily altering an existing position to accommodate the employee's need for intermittent leave or a reduced work schedule. The same requirements are true under FMLA.

PDL Posting Requirement

Departments must provide notice to their employees of the right to request pregnancy disability leave or transfer. This requirement is satisfied by posting the notice, "Notice B" Family Care and Medical Leave and Pregnancy Disability Leave, DFEH-100-21 (11/12), in a conspicuous location where employees tend to congregate (e.g. Human Resources office, employee lobby, break rooms, etc.). The Department must also give the employee a copy of the notice as soon as possible after the notification of the employee's pregnancy or sooner if she inquires about reasonable accommodation, transfer or pregnancy disability leaves. The County Employee Handbook also provides notice of a female employee's right to pregnancy disability leave.

SECTION 9: INTERACTION OF FMLA/CFRA WITH WORKERS' COMPENSATION, LABOR CODE 4850 AND AMERICANS WITH DISABILITIES ACT

Interaction of Workers' Compensation and FMLA/CFRA

The FMLA provides that an employee's serious health condition can be a result of an illness or injury on or off the job. In the case of a job-related illness or injury, FMLA may run concurrently with Workers' Compensation leave if the illness or injury meets the FMLA definition of a serious health condition and the employee is properly notified.

When FMLA, CFRA and Workers' Compensation run concurrently, an employee may not be forced to return to light duty work under FMLA or CFRA.

EXAMPLE

The health care provider treating Tammy under Workers' Compensation may certify that she can return to light duty work, but is unable to return to her normal job or an equivalent job. Under FMLA and CFRA Tammy may decline the employer's offer of the light duty job. In that event, Tammy should be made aware that Workers' Compensation benefits may be forfeited. Tammy may voluntarily and without coercion accept a "light duty" assignment while on FMLA and CFRA leave. In such a circumstance, Tammy's right to restoration to the same or equivalent position is available until 12 workweeks have passed within the 12-month period, including all FMLA and CFRA leave taken and the period of light duty.

Interaction of FMLA/CFRA and Labor Code 4850

FMLA and/or CFRA **cannot** run concurrently with Labor Code 4850 which provides full benefits to safety employees injured on the job. Safety employees who sustain a job-related injury are entitled to benefits under the provisions of the Labor Code Section 4850 for a maximum of one year or when they are able to return to work, whichever occurs first.

Interaction of Americans with Disabilities Act (ADA) and FMLA/CFRA

FMLA and/or CFRA leave does not affect the provisions or the regulations issued under the Americans with Disabilities Act (ADA). FMLA and/or CFRA leave does not limit ADA rights and protections. This means that if an employee qualifies for ADA, the employer must make reasonable accommodations in accordance with ADA and the employee would also be entitled to rights and protections under FMLA and/or CFRA. ADA, FMLA, and CFRA must be analyzed separately by

the Human Resources Office to determine which statute provides the employee with the greatest benefit.

For example, FMLA/CFRA entitles an eligible employee to a maximum leave of 12 or 26 workweeks (under NDAA) per 12-month period. ADA allows a qualified individual an indeterminate amount of time, barring undue hardship, if appropriate as a reasonable accommodation. The general rule is if ADA provides a greater benefit to the employee, then ADA prevails over FMLA and/or CFRA and vice-versa.

NOTE: ADA's definition of "disability" and FMLA's definition of a "serious health condition" are defined differently and must be analyzed separately.



An important difference in the return to work provisions of ADA and FMLA is that under ADA provisions, the employee must be reinstated to the **same** position if a reasonable accommodation is available. Under FMLA and/or CFRA an employee may be reinstated to the same or equivalent position.

ADA leave does not require an employer to continue the qualified employee's health coverage unlike FMLA and CFRA. Since FMLA and/or CFRA may run concurrently with ADA, the employee will be entitled to the continuation of medical and dental coverage for the 12 or 26 workweek (under NDAA only) period. Management must inform the ADA qualified employee that his or her ADA leave will also be designated as FMLA and CFRA leave.

SECTION 10: INTERMITTENT LEAVE, REDUCED WORK SCHEDULE AND ASSIGNMENT TO AN ALTERNATIVE POSITION

Intermittent Leave and Reduced Work Schedule

Under most circumstances, FMLA and CFRA leave may be taken intermittently or on a reduced work schedule. Intermittent leave is leave taken in separate increments. A reduced work schedule is a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. A reduced work schedule is a change in the employee's schedule for a period of time, normally from full time to part-time.



The County may proportionally reduce benefits (such as vacation accrual, sick leave accrual, etc.) when an employee chooses a reduced work schedule. Refer to the *Interpretive Manual*, Chapter 1, Section III, and (D) – Automated Leave Accrual in CWTAPPS and Chapter VII, Section IV – Designating Work Schedules. ⁶

Intermittent leave and a reduced work schedules can be used for the following:

- For the serious health condition of the employee, a qualifying family member,⁷ or under CFRA only domestic partner or a domestic partner's child⁸.
- Planned and/or unanticipated medical treatment when medically necessary for recovery from treatment of a serious health condition of the employee or a family member.
- To provide care and/or psychological comfort to a qualifying family member with a serious health condition; under CFRA this also includes a domestic partner or a domestic partner's child.
- A serious health condition which requires periodic treatment rather than one long period of treatment such as doctor appointments, physical therapy, chemotherapy, etc.
- For prenatal care and periods of disability due to pregnancy, under FMLA but not CFRA.⁹
- For absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition (see *Serious Health Condition*, pg. 10), even if the employee does not receive treatment by a health care provider.
- With some limitations, baby bonding time. Any leave taken shall be concluded within one year of the birth or placement of the child with the employee. Intermittent leave in less than two week increments or a reduced work schedule can only be taken with Departmental approval.

⁶ The Interpretive Manual can be retrieved from <http://dhrdcap.co.la.ca.us/IM/>

⁷ Family member means a spouse, parent, child and/or next of kin (under NDAA only).

⁸ Domestic partnership applies under CFRA but not FMLA.

⁹ CFRA does not cover prenatal care. In California such care is covered under Pregnancy Disability Leave.

Intermittent Leave and Employee Responsibility

An employee must provide the County at least 30 days advance notice before FMLA and/or CFRA leave is to begin if the need for leave is foreseeable. If 30 days notice is not possible, such as due to lack of knowledge of approximately when leave will be required to begin, notice must be given as soon as possible minus extenuating circumstances.

If the leave is foreseeable, employees must make a reasonable effort to schedule their intermittent leave to not disrupt the work of the department. Likewise, management must make a reasonable effort to meet the employee's needs. This can mean changing the employee to a reduced work schedule, an alternative work schedule (if available) or another arrangement agreeable to both management and the employee, in accordance with the medical certification.

When planning medical treatment, the employee must consult with management and make a reasonable effort to schedule the leave to not disrupt the department's operation, in accordance with the medical certification. Employees are ordinarily expected to consult with their departments prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the department and the employee.



Departmental Human Resources Offices can request that the employee provide the Department with the health care provider's hours of operation, appointment times for treatment and applicable locations.

The ultimate resolution of the leave schedule remains subject to the approval of the health care provider and the schedule established for the planned medical treatment. If an employee who provides notice of the need to take FMLA and/or CFRA leave on an intermittent basis for planned medical treatment neglects to consult with management to make a reasonable attempt to arrange the schedule of treatment to not disrupt the department's operation, management may initiate discussion with the employee and require the employee to attempt to make such arrangements.

Intermittent Care of a Newborn or Placement of a Child

Eligible employees are entitled to take CFRA leave for baby bonding for a one year period starting from the birth date of the baby. In cases of adoption or foster care placement, the one-year period starts on the date the baby was placed with the parent(s).

Under CFRA provisions, baby bonding leave is allowed in increments of two weeks or longer. However, on **two occasions only**, parents may request baby bonding leave for less than two weeks.

EXAMPLE

- On 05/01/14 Macy requests two days off to bond with her child. (This is considered the first occasion in which leave is being granted for less than two weeks.)
 - On 08/01/14 Macy requests four days off to bond with her child. (This is considered the second occasion in which leave is being granted for less than two weeks block.)
 - On 09/01/14 Macy requests eight days off to bond with her child. Since Macy has already completed taking leave in less than two-week increments on two separate occasions, allowing such leave will be at the discretion of management. In this same situation, if the employee had requested 10 days of leave (2 weeks), management would have been obligated to grant the leave.
-
- If the Department opts to waive the CFRA two-week minimum duration for bonding with a newborn child and allows a parent to take intermittent leave in less than two-week increments, then the Department must also afford the same allowance to all other similarly situated employees requesting time to bond with a newborn child.



The two week minimum duration for intermittent leave is only applicable for time off for bonding with a newborn child. For example, leave related to the mother's illness (even if it is a result of her pregnancy) or leave taken to care for a child that has a serious health condition are not subject to the baby bonding intermittent leave limitations.

Only Time Taken Off Counts

An employee may take intermittent leave during all or any portion of the 12-month period as long as the total amount of leave does not exceed the 12 or 26 workweeks (under NDAA only) in one 12-month period. Only the actual time taken can be charged against the employee's entitlement. In other words, if the employee was not scheduled to work (e.g., holiday, weekend, etc.), the time cannot be counted as FMLA and/or CFRA time in accordance with departmental attendance policies.

EXAMPLE

An employee assigned to a 5-day, 40-hour workweek remains on that schedule, but takes off one day a week to take a family member for medical treatment. Each week, eight (8) hours are deducted from the 12 workweeks of FMLA and CFRA.

EXAMPLE

An employee is assigned to work five days a week, 6 hours per day (30 hours per week). The employee asks to take off one day per week to attend therapy sessions. Each week, six (6) hours are deducted from the 360 hours (12 workweeks) of FMLA and CFRA leave allotment.

A holiday occurring when a full week is taken as FMLA leave will be deducted from the employee's FMLA leave. The entire week is counted as a week of FMLA leave. However, if for any reason, the office or department is closed (e.g. work furlough, earthquake, etc.) the days of the closure cannot be applied against the 12 or 26 workweek entitlement.

If an employee needs less than a full week of FMLA leave and a holiday falls within the partial week of leave, the hours that employee does not work on the holiday cannot be counted against the employee's FMLA leave entitlement if the employee would not otherwise have been required to report to work on that day.

EXAMPLE

Susan is on certified FMLA leave from July 1 through July 30th. The 4th of July **would** be counted against her FMLA entitlement because she was scheduled to be off on FMLA the entire week.

EXAMPLE

Susan is scheduled to be off on intermittent FMLA leave every Tuesday in November and December to receive treatment. She takes off the Tuesday before Thanksgiving. Thanksgiving and the day after both holidays. Because she is only off part of the work week, Thanksgiving and the day after **would not** be counted against her FMLA entitlement because she would otherwise be at work.

Incremental Usage of FMLA/CFRA

Although there is no limit on the size of the increment an employee may take (i.e. the number of minutes or hours), management **cannot** require that more leave be taken than is needed. However, when intermittent leave taken is for less than a one-hour period, management may limit leave increments to the shortest period of time that the department's payroll system uses to account for leave or absences.

Assignment to an Alternative Position

Management may temporarily assign an employee who needs intermittent leave or a reduced work schedule to an available alternative position for which the employee is qualified and which better accommodates the recurrent periods of leave. However, management may not transfer an employee to an alternative position in order to discourage the employee from taking leave or otherwise create a hardship for the employee. For example, assigning an employee to another work site could be considered a hardship, if it substantially increases the employee's commute to and from work.

Assignment to an alternative position must comply with Civil Service Rules, existing MOUs and state and federal laws. Management should consult with their Departmental Human Resources Office in these circumstances.

Management may also transfer the employee to a part-time position as long as the employee receives the same hourly equivalent in terms of pay and benefits. Management may not transfer an employee to a part-time position if doing so would result in the employee taking more leave than needed. For example, if an employee required four hours of FMLA and/or CFRA leave each day, the employee could be transferred to a part-time position. However, if the employee only requires two hours per day, the employee could not be transferred to a 4-hour per day part-time position as the job he or she left when the leave commenced.

When FMLA and/or CFRA leave is no longer needed, the employee must be returned to the same position or an equivalent full-time position.

Alternative Position Pay and Benefits

An alternative position offered to an employee to accommodate intermittent leave or a reduced leave schedule must provide the employee with the same pay and benefits and be in compliance with other state or federal laws, County ordinance, and/or labor agreements. However, the employee's duties need not be the same while on a foreseeable intermittent or reduced leave schedule.

For Los Angeles County, same pay and benefits include the class item, maximum salary range and salary provisions under "Notes" as reflected in the County's Schedule A, as well as the item sub of the class encumbered by the employee. It is imperative that there is no change to the employee's "Item Sub" when an alternative position is used with intermittent FMLA leave. For example, if an "A item" (full-time permanent) switches to a "N" item (grant funded), the employee will lose permanent employment status; while a switch to an "U item" (half-time) the employee will lose the cafeteria plan contribution and benefits (e.g., Choices, Options, etc).

The reduction in pay associated with the reduced work hours can be achieved by coding the unworked hours as unpaid FMLA leave. However, the employee is free to use accrued time to cover the unworked hours.

EXAMPLE

Matthew is a full time permanent employee who is a participant in the Choices cafeteria plan. His salary, in his regular position, is the equivalent of \$17.50 per hour. The employee requires FMLA and CFRA leave for four hours each day for the next six months. Management elects to assign the employee to an alternative half-time position which pays \$12.00 per hour for the entire 6-month period. He must keep his "A" Item and continue to receive \$17.50 per hour and his Choices contributions during the 6-month period he is working in the alternative position. The unworked four hours are coded as unpaid FMLA and/or CFRA leave or the employee may cover the daily four hours with accrued time.

Benefits that are Directly Proportional to Hours Worked

Benefits which are directly proportional to hours worked such as vacation, sick leave, and non-elective leave may be proportionally reduced. However, vacation, sick leave, and annual leave benefits cannot be eliminated for a full-time employee who is taking FMLA leave on a reduced work schedule even though the County Code may limit such benefits to employees who work a certain number of hours.

EXAMPLE

Shawn accrues vacation at the rate of .060 for each hour worked. When he works a 40-hour week, the employee accrues 2.4 hours of vacation. When he is working a 20-hour week, due to the need for intermittent FMLA leave, he accrues 1.2 hours of vacation.

Reduced Work Schedule for FLSA-Exempt Employees

In a normal situation, an FLSA exempt employee is compensated with a set salary, regardless of the number of hours worked per week. However, under FMLA, an exempt employee on intermittent leave or a reduced work schedule can be docked for hours not worked if the time off is for a FMLA qualifying reason and is designated as FMLA leave by management. The docking cannot take place prior to the first day of the FMLA intermittent leave or reduced work schedule. Reduction in wages based on hours not worked will not affect the employee's exempt status if the time is taken for an FMLA qualifying reason. The guideline must be universally applied to all similarly situated employees.

NOTE: Time taken for a reason other than an FMLA qualifying reason **may not** be deducted from the exempt employee's salary.

EXAMPLE

Audrey, who is an exempt employee, leaves three hours early every Wednesday for six months to receive medical treatment. In this situation, the three hours will be deducted and/or charged against her accrued time. If Audrey takes a three hour leave for a non-FMLA and/or CFRA reason (e.g. routine dental visit, etc.), wages and/or accrued time may not be deducted from the employee.

SECTION 11: EMPLOYEE BENEFITS DURING FMLA/CFRA AND PDL LEAVE

Medical and Dental Coverage

During FMLA, CFRA, and/or PDL leave, an employee's group medical and dental coverage and Health Care Spending Account (HCSA) must be continued on the same basis and under the same conditions as were applicable prior to the commencement of the leave. This means:

- If the employee is in pay status for at least eight hours in any month, the County will pay the employee's full cafeteria plan contribution (e.g. Choices, Options, etc.) or medical subsidy (e.g. temporary, part-time employees).



Employees are **not** permitted to use one day a month of accrued time in order to receive their County contribution unless one day of accrued time is all the time an employee has remaining.

- If the employee is not in pay status during the month FMLA, CFRA, and/or PDL leave is taken, the County will pay the lower of the following for health benefits:
 - The full premium of the County sponsored or County approved union sponsored medical plan, the full premium for the County sponsored dental plan and the HCSA contribution amount in which the employee was enrolled prior to the leave. "Full premium" includes the premium for dependent coverage.
 - or
 - The County contribution to the cafeteria plan in which the employee is enrolled, or, in the case of temporary or recurrent employees, the full subsidy toward health insurance.
- If the employee paid any portion of the premium for his or her medical coverage prior to the FMLA, CFRA, and/or PDL leave, he or she will be billed for the same amount while on leave. The employee with cafeteria plan benefits will receive the cafeteria plan contribution for benefits in the following order: medical, dental then HCSA. If the contribution amount does not fully cover the cost of these benefits, the employee will be billed for the remainder of the cost for each benefit. However, while on FMLA/CFRA, and/or PDL leave, these payments will be on an after tax basis rather than a pre-tax basis. Employees will be billed by the Employee Benefits Division of the Department of Human Resources.

The County has no obligation to continue medical and dental coverage for any of the following reasons:

- The employee was not enrolled in a medical plan, dental plan or HCSA prior to the FMLA, CFRA, and/or PDL leave. Employees are not permitted to change their enrollment because of FMLA, CFRA, and/or PDL leave. However, if the employee has a “Change of Status” as defined under the cafeteria plans, the employee may be qualified to change his or her enrollment.
- The employee’s medical, dental or HCSA coverage is canceled or suspended during the FMLA, CFRA, and/or PDL leave. This may occur when the employee must pay a part of the medical or dental premium and prefers not to do so. In this case, the County will suspend the employee’s coverage until the first of the month after he or she returns to work, except coverage continues in the months a partial HCSA deduction is taken from the employee’s paycheck.
- The employee notifies the department that he or she will not return from FMLA, CFRA, and/or PDL leave.
- The employee fails to return to work on the expected return date without notifying the department or requesting an extension.
- The employee exhausts his or her FMLA, CFRA, and/or PDL entitlement.

If the employee fails to pay his or her portion of the premium, the Employee Benefits Division of the Department of Human Resources will:

- Suspend the coverage when the payment is more than 30 days late. The suspension of coverage will take effect on the first day of the month following the last month for which the premium payment was made. For example, if the last premium payment was made for May, the suspension of coverage would take effect on the first day of June. The County will suspend the employee’s coverage until the first of the month after he or she returns to work.

Under FMLA, CFRA and/or PDL, the County is entitled to recover any premium payments made on behalf of the employee during an unpaid leave if he or she fails to return from FMLA, CFRA, and/or PDL leave after the leave entitlement has been exhausted or the leave expires, unless:

- The employee is unable to return to work because of the continuation, recurrence or onset of a serious health condition which would entitle the employee to continue FMLA, CFRA, and/or PDL leave.
- The employee is unable to return to work due to unexpected circumstance(s) beyond the employee’s control.



“Return to Work” means a return to active County employment for at least 30 calendar days or retirement under the County retirement system within the first 30 calendar days.

Premium payments made on behalf of the employee for the entire period of FMLA, CFRA, and/or PDL unpaid leave may be recovered from the employee. However, the County has no right to recover for premiums paid for any month in which the employee was in a pay status for at least eight hours.

An employee who is required to be out on unpaid leave after his or her FMLA, CFRA, and/or PDL expires may continue his or her medical and dental coverage and should direct their questions regarding premiums to the Employee Benefits Division of the Department of Human Resources.

Consolidated Omnibus Budget Reconciliation Act (COBRA) Coverage

An employee who terminates County service retains the right to continuation of health insurance under COBRA.

All questions regarding premium payments and/or COBRA should be referred to the Employee Benefits Division of the Department of Human Resources.

Non-Student Part Time Employees on FMLA/CFRA and PDL

Effective January 1, 2007, non-student part-time employees are eligible to enroll in a medical plan provided they worked an average of 20 hours per week during a three consecutive month period. An employee will be deemed to be in a pay status for an average of 20 hours a week for the three consecutive months prior to enrollment if:

- The employee is on a daily or hourly item and the employee's total pay status hours for the three consecutive months prior to enrollment is equal to or greater than 244 hours.
- The employee is on a 1/2 time, 3/5 time, 5/8 time, or 2/3 time monthly item and the employee's total pay status hours for the three consecutive months prior to enrollment are equal to or greater than 256 hours.

Medical coverage will continue through June 30 of the next year, as long as the employee works a minimum of 8 hours in a month. Employees must work the required average of 20 hours per week during January, February and March of the next year, to continue coverage after June 30. If they don't work the required average hours during January, February, and March, coverage is cancelled July 1. After July 1, employees may later re-qualify and be eligible to enroll in a medical plan if they work an average of 20 hours per week during a three consecutive month period.

FMLA allows employers to proportionately reduce benefits where an employer's normal practice is to base such benefits on the number of hours worked while the employee is on FMLA leave. For example, if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. Therefore, part-time employees that fail to meet the requisite hour's requirement may lose medical coverage until the employee re-qualifies and re-enrolls in a medical plan. For more information on medical coverage for non-student, part-time employees, please contact the Employee Benefits Division of the Department of Human Resources.

Health Care Spending Account (HCSA)

It is the employee's choice whether or not to continue with the monthly contribution into the HCSA. If the employee continues to make the contribution or has a partial contribution deducted from the employee's paycheck, he or she will be entitled to submit a request for reimbursement of any eligible charges incurred during the months the employee had a contribution to the HCSA during the FMLA, CFRA, and/or PDL leave period.

If the employee chooses not to make the monthly contributions, he or she may not submit a request for reimbursement of any charges incurred during the FMLA, CFRA, and/or PDL leave period. However, when the employee returns from FMLA, CFRA and/or PDL leave, his or her monthly contribution will resume and he or she will be entitled to submit a request for reimbursement of any eligible charges incurred prior to and/or after the FMLA/CFRA, and/or PDL leave.

Other Benefits

An employee may also continue benefits other than medical, dental and HCSA, including Life insurance, Accidental Death & Dismemberment (AD&D), Survivor in Benefit (SIB) and Long Term Disability (LTD) Health Insurance. The Employee Benefits Division of the Department of Human Resources will bill an employee monthly for the cost of these other benefits, under "direct pay." If the employee does not pay for the cost of one or more of these other benefits, the benefit(s) will be canceled. Benefits will be reinstated on the first of the month following the month the employee returns to work.

Other Guidelines Regarding Benefits

- Employees who are in cafeteria plans retain their right to enroll during the County annual enrollment period even if they are on FMLA and/or CFRA, and PDL leave during the enrollment period.
- Employees on FMLA, CFRA, and/or PDL leave retain their right to change their enrollment, in accordance with the plan rules, if they have a “Change in Family Status” during the period they are on FMLA, CFRA, and/or PDL leave. For example, an employee who has a baby has the right to change his or her health insurance coverage from employee and spouse to family coverage.
- Benefit changes which apply to all participants or employees (change in coverage, deductibles, premiums, methods of time accrual, etc.) also apply to the employee on FMLA, CFRA, and/or PDL leave and take effect on the same date as for all other participants or employees.
- The County’s established policy for County retirement and saving plan contributions, holiday pay, etc. apply to employees on unpaid FMLA and or CFRA, and/or PDL leave in the same manner as it does to employees on other types of unpaid leave.

SECTION 12: EMPLOYEE RIGHTS UPON RETURN TO WORK

Employee Reinstatement Guidelines

The FMLA and CFRA Guidelines give rights to employees which go beyond the rights guaranteed under County Civil Service Rules. The County may deny restoration of employment to an employee on FMLA and/or CFRA leave, if reinstatement would have been denied regardless of whether or not FMLA and/or CFRA leave was taken. Some examples include:

- Layoff - Civil Service Rules and MOUs regarding re-employment after layoff apply to employees on FMLA and/or CFRA to the same extent it would to employees not on FMLA and/or CFRA leave.
- Seasonal Workers - If a seasonal workers list is maintained for reemployment, the worker out on FMLA and/or CFRA leave must be placed on the list in the same manner as if he or she was never on FMLA and/or CFRA leave.

There may be circumstances in which a returning employee's health care provider certifies that the employee is unable to perform the essential functions of his/her position because of a mental or physical condition, including the continuation of a serious health condition. In this situation, management must take into account the County's obligation and the employee's rights under ADA.



Extreme caution must be taken before denying reinstatement to an employee returning from FMLA, CFRA or PDL leave. It is highly recommended that departments consult with your Departmental Human Resources Office before denying reinstatement.

Other Requirements Regarding Return to Work

- If the employee no longer qualifies for the position because of an expired license or missed training while on FMLA and or CFRA leave, the employee must be given a reasonable opportunity to renew his or her license or receive training upon return to work.
- The employee is subject to any general salary increases or decreases in pay instituted while the employee was on leave.
- The employee is entitled to any step increases due on a step anniversary date that occurs while the employee was on FMLA and/or CFRA leave and in accordance with County Code Section 6.08 – Rules for Application of Step Rates provided the step increase would have been granted had the employee been at work. The employee on FMLA and/or CFRA leave retains his or her step anniversary date.

Workers from Temporary Employment Agencies

FMLA and/or CFRA considers temporary employment agencies as the primary employer responsible for designating FMLA and/or CFRA leave and job restoration. However, the County, being the secondary employer, must accept the worker returning from FMLA and/or CFRA leave in place of the replacement worker, if the County continues to use the agency and the agency chooses to place the returning worker with the County. In addition, the County is prohibited from preventing a worker from a temporary employment agency from exercising his or her rights under FMLA or CFRA.

Equivalent or Comparable Position Under FMLA and CFRA

An equivalent or comparable position is one that is virtually identical to the employee's former position in terms of pay, benefits, working conditions, privileges, bonuses, and status. The equivalent position must provide all of the following:

- The same salary and benefit entitlement the employee held prior to the FMLA and/or CFRA leave. For example, an employee who received the MegaFlex cafeteria plan cannot be placed in a position that provides Choices or Options plans even if the salary is identical.
- The same working conditions, including privileges, bonuses, and status (i.e. permanent, temporary, recurrent, etc.). For example, if the employee qualified for an auto allowance prior to FMLA and/or CFRA leave, the equivalent position must provide the same privilege.
- The same or substantially similar responsibilities and duties requiring the same or substantially similar skills, effort, responsibility and authority.
- The same or geographically proximate worksite from where the employee had previously been assigned (i.e., not a significant increase in commute time). However, if the employee's previous worksite is closed, the employee on FMLA and/or CFRA leave is to be treated in the same manner as all other employees who were not on FMLA and/or CFRA leave even if this means a transfer which results in a significant increase in commuting time.
- The same shift or work schedule to the extent that such a schedule would have been available to the employee had the employee not taken FMLA and/or CFRA leave. If the employee, for example, worked a 9/80 work schedule prior to FMLA and/or CFRA, the equivalent position must provide the same schedule unless the 9/80 work schedule was eliminated for all employees.
- The same or equivalent opportunity to earn overtime, shift differential, bilingual bonus and other non-base rate compensation.

Return to Work Limitations

In general, the employee has the same (but not greater) rights to compensation and conditions of employment as if he or she had continuously been at work instead of on FMLA and/or CFRA leave. This means:

- An employee on FMLA and/or CFRA leave is not excluded from layoff as long as the layoff would have occurred had he or she been at work.
- An employee is not entitled to return to the same shift or work the same overtime hours, if such privileges have been eliminated for all employees within the same position, worksite, branch, department, etc.
- Employees hired only for a specific term or projects have no right under the FMLA and/or CFRA to restoration if the term has expired or the project has been completed. However, if the department maintains a list of seasonal workers for re-employment each year, the worker must be placed on the list in the same manner as if he or she was never on FMLA and/or CFRA leave.
- An employee who is concurrently placed on Worker's Compensation and FMLA and/or CFRA leave will not have FMLA and/or CFRA protection if the employee is unable to return to work after the 12-week entitlement has expired. The employee may have rights and protections under Workers' Compensation and ADA.

SECTION 13: POSTING AND RECORD KEEPING REQUIREMENTS

Posting Requirements

Each department is required to post at each worksite a copy of the FMLA, CFRA, and PDL notices. The notice must be posted in a location where it can be readily seen by the employees and applicants (e.g. Departmental Human Resources Offices, employee lobby, break rooms, etc.). It is permissible to copy and post notices provided they are no smaller than 8 ½ by 11 inches and the text can be easily read. Management cannot take any adverse action against an employee, such as delaying family leave, if the notices are not posted as required. This posting requirement can also be satisfied electronically provided all employees and applicants have access to the information. Failure to comply with these posting requirements can subject the County to fines for each offense.

Departmental Notification Requirements

The Countywide Handbook includes information on the employee's entitlement, rights and responsibilities under FMLA. Departmental notification requirements such as completion of a time-off request form should be explained during departmental orientation.

Inclusion of FMLA material in a handbook or general memo does not exempt the department from providing the employee with a statement when FMLA leave is requested and granted which includes the following:

- The leave will apply to their 12 or 26 (under NDAA) workweek entitlement.
- Any requirement to provide medical certification and the consequences of failure to provide such certification.
- The County rules on the use of accrued time during FMLA leave.
- The employee's rights and obligations regarding continuation of health care and premium payments.
- The employee's obligation to repay the County for any premiums paid by the County if the employee fails to return to work without good cause.
- Any department requirement for a fitness-for-duty statement if the leave is taken for the employee's own serious health condition.
- The employee's rights regarding return to the same or an equivalent position.

Record Keeping

All records pertaining to FMLA, CFRA, and PDL must be maintained in the Departmental Human Resources Office for three years, which includes copies of all general memos or notices related to family and medical leave issued to employees. Individual employee records must also be maintained for three years and must contain the following:

- ✓ Basic payroll and identifying employee data such as employee name, address, occupation, rate or basis of pay and terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, and total compensation paid.
- ✓ Beginning and ending dates family and medical leave was taken. The information may come from time records or employees' requests for leave. Leave must be designated as FMLA, CFRA and/or PDL.
- ✓ If leave is taken in increments of less than one full day, the hours of the leave must be reported.
- ✓ Copies of employee notices of leave furnished to the department in relation to family and medical leave and copies of all general and specific written notices given to employees as required under family and medical leave.
- ✓ Any documents (including written electronic records) describing employee benefits or County policies and practices covering paid and unpaid leaves.
- ✓ Premium payments of employee benefits.
- ✓ Records of any dispute between the employer and employee regarding designation of leave as FMLA, CFRA, and/or PDL, including any written statement from the employer or employee stating the reasons for the designation and the disagreement.
- ✓ Records and documents relating to medical certification, re-certification, or medical histories of employees or their family members, created for the purposes of FMLA and/or CFRA.

All medical records must be maintained as confidential medical information and, if applicable, in conformance with ADA confidentiality requirements, except that:

- ✓ Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
- ✓ First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
- ✓ Government officials, County Counsel, third party administrators or others acting as agents of the County investigating compliance with FMLA and/or CFRA (or other pertinent law) shall be provided relevant information upon request.

Internal Enforcement

If fraud or abuse is suspected, contact your Departmental Human Resources Office. If there are any questions regarding FMLA, CFRA or PDL provisions as they relate to discipline, contact your internal Employee Relations Section. Disciplinary action can be taken in accordance with departmental policies, MOUs, and Civil Service Rules. The Countywide Family and Medical Leave Coordinator at the Department of Human Resources is also available to assist with enforcement matters.

FREQUENTLY ASKED QUESTIONS

- 1. Question:** How much leave am I entitled to under the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA)?
Answer: If you are an eligible employee, you are entitled to 12 workweeks or 26 workweeks (under National Defense Authorization Act (NDAA)) of leave during a 12-month period.
- 2. Question:** What are the eligibility requirements to qualify for protected leave under FMLA or CFRA?
Answer: An employee must have: 1) an aggregate of 12 months of County service, which need not be consecutive; 2) worked at least 1,250 hours during the 12-month period immediately preceding the first day of leave; and 3) a qualifying leave reason.
- 3. Question:** Does Workers' Compensation leave count against an employee's FMLA and CFRA leave entitlement?
Answer: In most cases, FMLA and CFRA leave and Workers' Compensation leave can run concurrently provided the reason for the leave is due to a serious health condition.
- 4. Question:** Who is considered a qualifying family member for purposes of FMLA and CFRA leave?
Answer: An employee's spouse, children (son or daughter) and parents are covered under FMLA and CFRA. In some cases, FMLA provides coverage for Armed Forces Members to receive care by their next of kin. Additionally, an employee's domestic partner and domestic partner's child are covered under CFRA. The term parent does not include a mother-in-law or father-in-law. The term son or daughter does not include individuals age 18 or over unless they are incapable of self-care because of a mental or physical disability that limits one or more of the major life activities as defined in regulations used by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).
- 5. Question:** I have Power of Attorney for my uncle to make his medical decisions. Would that qualify me for FMLA?
Answer: No. Power of Attorney allows you to appoint a person to handle your affairs while you're unavailable or incapable to do so. Power of Attorney does not establish a parent-child relationship.
- 6. Question:** We prepare our holiday vacation calendar in advance. Right now, we are short staffed around the holidays and an employee is requesting FMLA leave to care for her mother's serious health condition

for 12 weeks beginning the last week of November. Can we deny her request?

Answer: No. Employers covered by FMLA are required to grant leave to eligible employees for care for a parent's serious health condition.

7. Question: Do the 1,250 hours include paid leave time or other absences from work?

Answer: No. The 1,250 hours include only those hours actually worked for the employer including overtime. Paid leave (sick, vacation, etc.) and unpaid leave, including FMLA and/or CFRA leave are not included.

8. Question: An employee has been gone for two weeks and has sent in notes from his doctor stating that he has a serious health condition. We did not designate the time as FMLA and CFRA when he first went out. What do we do?

Answer: The time must be designated as FMLA and CFRA time. The designation will have to begin from the first day that the employee was absent.

9. Question: What is the deadline for submitting a medical certification?

Answer: An employee must provide medical certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

10. Question: How does the FMLA and/or CFRA relate to other laws and union contracts?

Answer: The FMLA grants employees rights that are independent of other laws and union contracts. If other federal and state laws or a union contract provides a greater benefit than the FMLA and/or CFRA, the employer is obligated to provide the greater benefit to the employee.

11. Question: Is there a minimum duration for CFRA leave taken for baby bonding?

Answer: Yes. The minimum duration of CFRA leave for baby bonding is two weeks. However, employees are entitled to take CFRA leave for less than two weeks on two separate occasions only unless the department has developed a policy that allows CFRA baby bonding leave to be taken in shorter increments.

12. Question: We have an employee that has a 34-year old daughter with a serious health condition. Will this child qualify the employee for FMLA and CFRA leave even though they are over 18?

Answer: Only if the son or daughter has a mental or physical disability. A son or daughter is a qualifying family member for FMLA purposes if they are under 18 or individuals age 18 or over that are incapable of self-care

because of a mental or physical disability that limits one or more of the major life activities as those terms are defined in regulations used by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).

13.Question: How much leave must an employer provide for pregnancy?

Answer: In accordance with the Pregnancy Disability Leave (PDL) Law, an employer must provide up to four months disability leave for pregnant women who are disabled due to pregnancy, childbirth, or a related medical condition.

14.Question: Do pregnant employees have to be disabled to qualify for PDL?

Answer: To qualify for PDL, an employee must be “disabled by pregnancy,” which means that a health care provider must certify that the employee’s pregnancy or a related medical condition makes her unable to perform one or more of the essential functions of her job, or to perform these functions without undue risk to herself, the successful completion of her pregnancy, or to others.

15.Question: We have an employee who shows up late every day without calling in and says he cannot be disciplined because he is on intermittent FMLA leave. Is that true?

Answer: No. While on FMLA and/or CFRA, employees are required to adhere to their departmental call-in policies, just as other employees in similar situations, unless extraordinary circumstances (such as incapacity) prevented the employee from calling in.

16.Question: Are student workers and temporary employees covered by FMLA and/or CFRA?

Answer: Yes. As long as an employee-employer relationship exists, FMLA and/or CFRA leave is available to students and temporary employees provided they meet the eligibility requirements of 12 months of service and 1,250 hours worked in the preceding 12 months.

17.Question: We have a part-time employee in our department who also works part-time in another County department. He wishes to take FMLA/CFRA leave, but does not have 1,250 hours in our department. Do we have to grant him FMLA/CFRA leave?

Answer: The County is considered one employer for FMLA/CFRA purposes. Therefore, all hours worked in both departments must be considered when determining the employee’s eligibility. If the employee has a combined 1,250 hours worked, he would be eligible and entitled to FMLA/CFRA leave.

18. Question: I was told that our worksite is excluded from FMLA since we do not have 50 employees. Is that true?

Answer: No. All County employees are eligible for FMLA/CFRA regardless of the number of employees at individual worksites.

19. Question: We have an employee who has requested FMLA/CFRA leave to care for an exchange student residing with them who has a serious health condition as defined by the FMLA/CFRA. Is this a qualifying event?

Answer: An employee who is responsible for the day-to-day responsibilities to care for and financially support an exchange student would be considered "*in loco parentis*" to the student during the time the student resides with the employee. Therefore, the employee would qualify for FMLA leave if the exchange student develops a serious health condition. However, FMLA/CFRA leave applies only to children under age 18 unless there is a physical or mental disability making the student incapable of self-care as defined by ADA. Reasonable documentation may be required to confirm relationship, which includes but is not limited to, the employee's statement.

20. Question: If both parents (married or unmarried) work for the County, how many workweeks can they take to care for their newborn?

Answer: Each parent would get 12 workweeks to care for their newborn.

21. Question: One of our employees recently married and is requesting FMLA leave to bond with her new stepchild. Is this an FMLA/CFRA qualifying reason?

Answer: FMLA/CFRA leave for baby bonding would only be available if the employee is legally adopting the stepchild. However, if the child resides with the employee and develops a serious health condition, the employee would be entitled to FMLA/CFRA leave to care for her stepchild.

22. Question: Can an employee take FMLA and PDL leave before the actual birth or placement of a child?

Answer: Yes. An expectant mother can take FMLA and PDL leave for prenatal care or if her condition prevents her from performing one or more of the essential functions of her job. Adoptive parents may also use FMLA/CFRA time to attend hearings, etc. when adopting a child.

23. Question: Can an employee take FMLA and CFRA leave for placement of a child for adoption or foster care?

Answer: Yes. FMLA and CFRA leave can be taken if the absence is necessary for the placement of a child for adoption or foster care. For example, the adoptive or foster parents may be required to attend

counseling sessions, appear in court, consult with attorneys or physicians, or submit to physical examinations.

24. Question: We have an employee who wishes to take leave to care for a domestic partner. Are we required to grant the leave?

Answer: Yes, under County Ordinance and the California Family Rights Act (CFRA) the County would be required to grant an employee leave to care for his or her domestic partner or domestic partner's child.

25. Question: Does the medical certification have to state that the employee cannot perform all the essential functions of his or her job or can it be only one of the functions? If it is only one function the employee cannot perform, do we have to grant FMLA/CFRA leave if we make "reasonable accommodations" for the employee?

Answer: The DOL regulations state that an employee is considered unable to perform the functions of his or her position if the employee cannot perform one or more of the essential functions of the job held by the employee at the time the FMLA/CFRA leave is requested. FMLA/CFRA must be granted, if the employee meets the eligibility requirements, without regard to "reasonable accommodation." The DOL has stated that "reasonable accommodation" is irrelevant for purposes of the FMLA.

26. Question: Can an employee take intermittent leave for baby bonding time?

Answer: With some limitations, intermittent leave may be taken for baby bonding time. Any leave taken shall be concluded within one year of the birth or placement of the child with the employee. Under FMLA and CFRA, intermittent leave for baby bonding may be taken in increments of less than two weeks on two occasions or a reduced work schedule can be taken only if management agrees.

27. Question: What is the employee's responsibility when taking intermittent FMLA leave for medical treatments?

Answer: In passing FMLA, the U.S. Congress stated that the purpose of the Act was to be accomplished, "in a manner that accommodates the legitimate interest of the employers." Employees are required to consult with employers prior to scheduling of planned medical treatment where intermittent FMLA leave will be used in order to schedule such treatment, if possible, so that it will not unduly disrupt the employer's operation.

In many cases, employees on flexible schedules will be able to schedule such treatments on their regular day off (RDO). If treatment is required more frequently, or if it is for a family member and it cannot be postponed until the RDO, the time off must be approved. In cases like these, management should work with employees to try to arrive at an

arrangement that is beneficial to both. This might mean placing an employee temporarily on a flexible schedule, changing shifts, part-time work, etc.

28. Question: Is there a limit to the number of times an employee can take FMLA leave in the 12-month period?

Answer: No. The only limit is the maximum entitlement of 12 workweeks or 26 workweeks (under NDAA) in a 12-month period.

29. Question: A number of employees have told me that another employee currently on FMLA leave is not truly sick. Can I cancel the employee's FMLA leave and order the employee back to work?

Answer: No. The Department's designation decision must be based only on information received from the employee or the employee's spokesperson (if the employee is incapacitated). If the Department received information that casts doubt upon the continuing validity of the medical condition the Department may request medical re-certification or arrange a second or third medical opinion at County expense. (No second or third opinion on medical re-certification may be required).

30. Question: Can managers and supervisors be held individually liable for an FMLA/CFRA violation?

Answer: Although the courts have come to different conclusions, a significant number have held that managers and supervisors acting on behalf of a public employer can be held individually liable for any violations of FMLA/CFRA. That is why it is important to refer FMLA/CFRA requests and inquiries to the Department's Human Resources Office or FMLA/CFRA Coordinator.

31. Question: We have posted the FMLA notice in our Human Resources Office. Is this sufficient?

Answer: Both the FMLA and the combined CFRA/PDL notices must be prominently posted in conspicuous locations such as employee break rooms or the employee bulletin boards, etc.

32. Question: I have an employee that wants to use his own benefit time for the first six weeks he is out recovering from surgery. He wants to delay the start of FMLA/CFRA so the County will cover his benefits after he runs out of time. Can I do that?

Answer: No, you cannot delay the start of their FMLA/CFRA leave for that reason. The FMLA/CFRA begins the first day the employee goes out for a serious health condition regardless of whether they are using their own time or not.

33. Question: Are health benefits covered under the FMLA/CFRA or PDL?

Answer: An employee's group medical and dental coverage and Health

Care Spending Account (HCSA) must be continued on the same basis and under the same conditions as were applicable prior to the commencement of the leave.

Group medical and dental coverage and HCSA are continued when the employee is designated a leave of absence under FMLA, FMLA/CFRA, FMLA/PDL, PDL or CFRA.

34. Question: Our employee has utilized four months of PDL leave prior to giving birth and her doctor says that a continuation of her leave is medically necessary. What can I do?

Answer: Under this circumstance the employer may, but is not required to, allow the employee to utilize CFRA leave prior to the birth of her child. In this circumstance, the employer also has an obligation to engage in the interactive process with respect to providing leave as a reasonable accommodation under the ADA and FEHA. A Medical Leave of Absence may be offered under ADAA and CFRA may be reserved for bonding with a newborn.

35. Question: Are Group Health benefits covered for Baby Bonding after a PDL leave?

Answer: An employer is required to maintain group health coverage for up to 12 workweeks during the employee's CFRA maternal baby bonding (intermittent or continuous). The employee's entitlement to bond with her newborn child expires 12 months after the child's date of birth.

36. Question: The State of California, Employment Development Department offers a Paid Family Leave. What paid benefits am I entitled to receive?

Answer: County employees do not pay into the State Disability Insurance program; therefore, employees are not covered by the Paid Family Leave – State Disability Insurance based upon their employment with the County. However, employees who have been employed by private employers may contact the local Employment Development Department to determine whether they are eligible for benefits due to wages earned from a private employer during the base period.

County employees may choose to use their accrued benefit time while out on a protected leave of absence.

37. Question: An employee left County service in 2013 after 2 years of employment and then was rehired in 2015 by a different County department. After 8 months of county service in 2015, the employee requests time off for a protected leave of absence under FMLA/CFRA. Is the employee entitled to a protected leave of absence under FMLA/CFRA?

Answer: The County is considered **one** employer for purposes of leave entitlement. Therefore, eligibility must be determined by counting all County service. Length of service and hours worked within all departments must be combined for the purpose of determining eligibility. The employee's break in service was less than seven years; therefore, the 2 years of employment is counted towards the years of service.

38. Question: An employee has submitted a Certification of Health Care Provider form (CHCP) requesting intermittent FMLA and CFRA. The CHCP does not provide sufficient information such as the frequency and duration or the leave start and end dates to make a determination for eligibility. What can I do?

Answer: Send the employee a letter of incomplete packet with a copy of the CHCP, highlighting the sections with the missing information. Communicate with the employee and provide the employee with two opportunities to submit the requested information before denying the request for FMLA and CFRA. If the employee is making a reasonable effort to obtain the necessary information, Departments are encouraged to work with the employee by providing an additional extension.

RESOURCES

United States Department of Labor, Wage and Hour Division for more information on the Family and Medical Leave Act

<http://www.dol.gov/whd/fmla/>

United States Department of Labor, Wage and Hour Division for more information on Military Family Leave Provisions

<http://www.dol.gov/whd/fmla/MilitaryFLProvisions.htm>

California Department of Fair Employment and Housing for more information on the California Family Rights Act

http://www.dfeh.ca.gov/Publications_CFRADefined.htm

California Department of Fair Employment and Housing for more information on the Pregnancy Disability Leave

http://www.dfeh.ca.gov/Publications_StatLaws_PregDiscr.htm

APPENDIX

Employee Rights and Responsibilities under Family and Medical Leave Act

Certification of Health Care Provider for Employee's Own Serious Health Condition

Certification of Health Care Provider for Family Member's Serious Health Condition

Notice of Eligibility and Rights and Responsibilities

Designation Notice

Certification of Qualifying Exigency

Certification of Serious Injury or Illness of Covered Servicemember for Military Family Leave

Certification of Serious Injury or Illness of Covered Veteran Service member for Military Family Leave

Pregnancy Disability Leave Explanation of Rights

California Family Rights Act Leave Explanation of Rights

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