

Regulation 4361.8: Family Care And Medical Leave

Status: ADOPTED

Original Adopted Date: 07/2015 01/23/2013 | **Last Revised Date:** 06/01/2018 06/01/2023 |
Last Reviewed Date: 06/01/2023

The district shall not deny any eligible employee the right to family care; ~~or medical, or pregnancy disability leave (PDL) pursuant to the Family and Medical Leave Act (FMLA),) or the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA) nor~~ **restrain or to Pregnancy Disability Leave (PDL), when an employee is disabled by a pregnancy, childbirth, or related medical condition. The district shall not interfere with, restrain, or deny the employee's exercise of an employee's right to any such right. In addition, leave, nor shall the district shall not discharge an employee or, discriminate against, or retaliate against him/her an employee for taking such leave or for his/her opposition to, opposing or challenge of any challenging an unlawful district employment practice in relation to any of these laws, or for his/her involvement being involved in any related inquiry or proceeding.** (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

~~(cf. 4030 – Nondiscrimination in Employment)~~

~~(cf. 4032 –~~

~~Reasonable Accommodation)~~

~~(cf. 4033 – Lactation Accommodation)~~

Definitions

The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.

~~Child (son or daughter)~~ means a biological, adopted, or foster child; a stepchild; a legal ward; or a ~~child~~ **person** to whom the employee stands in loco parentis, ~~as long as the~~. **For purposes of CFRA leave, child also includes a child is under 18 years of age or an adult dependent child of a registered domestic partner.** (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

Designated person, for CFRA purposes, means any individual related by blood, or whose association with the employee is the equivalent of a family relationship. (Government Code 12945.2)

Eligible employee, for FMLA and CFRA purposes, means an employee who has been employed with the district for at least 12 months and who has at least 1,250 hours of service with the district during the ~~previous 12-month period.~~ **months immediately preceding the leave.** However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.110)

Eligible family member means an employee's child, parent, or spouse. For purposes of leave to care for a family member with a serious health condition pursuant to CFRA, eligible family member includes an employee's child, parent, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, sibling, or designated person. (Government Code 12945.2; 2 CCR 11087; 29 USC 2612)

Employee disabled by pregnancy means an employee whose health care provider states that the employee is: (2 CCR 11035)

1. ~~1-~~Unable because of pregnancy to perform any one or more of the essential functions of the job or to perform any of them without undue risk to the employee or other persons or to the pregnancy's successful completion
2. ~~2-~~Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss or end of pregnancy, or any other pregnancy-related condition

Parent means a biological, foster, or adoptive parent; a **parent-in-law**; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. ~~Parent~~ **However, for FMLA purposes, parent** does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

Serious health condition means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or ~~his/her child, parent,~~ **an eligible family member of the employee that involves either inpatient care or spouse continuing treatment, including, but not limited to, treatment for substance abuse, that involves either of the following: as follows:** (Government Code 12945.2; 2 CCR 11087, 11097; 29 USC 2611, **2612**; 29 CFR 825.113-825.115)

~~1-~~Inpatient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity.

A person is considered an inpatient when **formally admitted to** a health care facility ~~formally admits him/her to the facility with the expectation that he/she will remain~~ **of remaining** overnight and ~~occupy~~ **occupying** a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

1.

Incapacity means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

2. ~~2-~~Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
 - a. ~~a-~~A period of incapacity of more than three consecutive full days

- b. ~~b.~~ Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
- c. ~~c.~~ Any period of incapacity due to pregnancy or for prenatal care under FMLA
- d. ~~d.~~ Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
- e. ~~e.~~ Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage, ~~or~~. **For purposes of CFRA leave, spouse also includes** a registered domestic partner within the meaning of Family Code 297-297.5. (Family Code 297, 297.5, 300; 2 CCR 11087; 29 CFR 825.122)

Eligibility/Purposes of Leave

The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2; 29 USC 2612; 29 CFR 825.112, 825.126, 825.127)

Eligibility

~~The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2, 12945.6; 29 USC 2612; 29 CFR 825.112)~~

1. ~~1.~~ The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. ~~2. To~~ **The care for the employee's child, parent, or spouse of an eligible family member** with a serious health condition
3. ~~3.~~ The employee's own serious health condition that makes ~~him/her~~ **the employee** unable to perform ~~one or more essential~~ **the job** functions of ~~his/her~~ **the** position
4. ~~4. Any~~ **A** qualifying exigency arising out of the fact that the employee's spouse, child, ~~or parent~~ **parent, or, for CFRA leave only, a registered domestic partner**, is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. ~~5. To~~ **The care for of** a covered servicemember with a serious injury or illness ~~if~~ **when** the ~~covered servicemember~~ **employee** is the employee's ~~sa~~ spouse, child, parent, or next of kin, ~~as defined of the covered servicemember~~

In addition, the district shall grant PDL to any employee who is disabled by pregnancy, childbirth, or other related medical condition. (Government Code 12945; 2 CCR 11037)

Terms of Leave

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945.2; 29 USC 2612)

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The 12-month period shall be measured forward from the date the employee's first family care and medical leave begins. (29 CFR 825.200)

In addition, any employee who is disabled by pregnancy, childbirth, or other related condition shall be entitled to PDL for the period of the disability not to exceed four months. For a part-time employee, the four months shall be calculated on a proportional basis. (Government Code 12945; 2 CCR 11042)

PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of a child or to bond with or care for the child. (Government Code 12945, 12945.2; 2 CCR 11046, 11093)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. (2 CCR 11090; 29 USC 2612)

~~If both parents of a child~~

Each eligible employee shall be granted up to 12 work weeks ~~for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 work weeks. This restriction shall apply~~ **a child**, regardless of the legal status of both parents' relationship. (Government Code 12945.2, 12945.6; 2 CCR 11088; 29 USC 2612)

whether both parents of the child work for the district.

Use/Substitution of Paid Leave

~~An employee shall use his/her accrued vacation leave, other accrued time off, and any other paid time off negotiated with the district for~~

During any otherwise unpaid period of FMLA or CFRA leave not involving his/her own serious health condition. For PDL, CFRA, or FMLA leave due to, except leave for an employee's own serious health condition, an employee shall use accrued paid leave, including, but not

limited to, vacation leave, personal leave, or family leave. If the leave is for the employee's own serious health condition, the employee shall use accrued **paid leave, including but not limited to, vacation leave, personal leave, or sick leave.** During an unpaid period of PDL, the employee shall use any accrued sick leave and may **elect to use accrued any** vacation leave ~~and time or other paid accrued personal time off at his/her option.~~ (Government Code 12945, 12945.2, ~~12945.6~~; 2 CCR 11044, **11092**; 29 USC 2612)

The district and employee may also ~~negotiate for~~ **come to agreement regarding** the employee's use of any additional paid or unpaid time off instead of using the employee's CFRA leave. (2 CCR 11092)

~~(cf. 4141/4241-~~

~~Collective Bargaining Agreement)~~

~~(cf. 4161/4261/4361 - Leaves)~~

~~(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)~~

~~(cf. 4261.1 - Personal Illness/Injury Leave)~~

Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or ~~his/her child, parent, or spouse~~ **eligible family member** may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district shall limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave provided it is not to be greater than one hour. **(Government Code 12945.2; 2 CCR 11042, 11090; 29 USC 2612)**

~~(cf. 4113.4/4213.4/4313.4-~~

~~Temporary Modified/Light-Duty Assignment)~~

The basic minimum duration of leave for the birth, adoption, or foster care placement of a child shall be two weeks. However, the district shall grant a request for such leave of less than two weeks on any two occasions. (2 CCR 11090; 29 USC 2612)

The district may require an employee to transfer temporarily to an available alternative position under any of the following circumstances: (2 CCR 11041, 11090; 29 USC 2612)

- ~~1.~~ **1.** ~~The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment for the employee or family member.~~
- ~~2.~~ **2.** ~~A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.~~

3. ~~3.~~The district agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child:

The alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 11041, 11090; 29 USC 2612)

Request for Leave

The district shall consider an employee's request for PDL or family care and medical leave only if the employee provides at least verbal notice sufficient to make the district aware of the need to take the leave and the anticipated timing and duration of the leave. (2 CCR 11050, 11091)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, ~~he/she~~**the employee** must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent Chief Learning Officer or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

The district shall respond to requests for leave as soon as practicable, but no later than five business days after receiving the employee's request. (2 CCR 11091)

Based on the information provided by the employee, the Superintendent Chief Learning Officer or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the district is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

When an employee is able to foresee the need for PDL or family care and medical leave at least 30 days in advance of the leave, the employee shall provide the district with at least 30 days advance notice before the leave. When the ~~30 days~~**30 days'** notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial of leave. (2 CCR 11050, 11091)

In all instances, the employee shall consult with the Superintendent Chief Learning Officer or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 11050, 11091)

An eligible employee may request CFRA leave to care for a designated person with a serious health condition. The employee may identify the designated person at the time of the employee's request for the leave. The district may limit an employee to using CFRA leave to care for one designated person per 12-month period. (Government Code 12945.2; Labor Code 245.5)

Certification of Health Condition

Within five business days of an employee's request for family care and medical leave for ~~his/her own~~ **the serious health condition of the employee** or ~~his/her child's, parent's, or spouse's serious health condition~~ **an eligible family member**, the Superintendent Chief Learning Officer or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 **calendar** days, unless either the Superintendent Chief Learning Officer or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11087, 11091; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)

~~The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)~~

1. ~~1-~~The date on which the serious health condition began
2. ~~2-~~The probable duration of the condition
3. ~~3-~~If the employee is requesting leave to care for a ~~child, parent, or spouse~~ **an eligible family member** with a serious health condition, both of the following:
 - a. ~~a-~~Statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of the ~~child, parent, or spouse~~ **eligible family member** during a period of the treatment or supervision
 - b. ~~b-~~Estimated amount of time the health care provider believes the employee needs to care for the ~~child, parent, or spouse~~ **eligible family member**
4. ~~4-~~If the employee is requesting leave because of ~~his/her~~ **the employee's** own serious health condition, a statement that due to the serious health condition, ~~he/she~~ **the employee** is unable to work at all or is unable to perform one or more essential **job** functions of ~~his/her job~~ **the position**
5. ~~5-~~If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

The Superintendent Chief Learning Officer or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the

California Genetic Information Nondiscrimination Act of 2011. (Government Code 12940)

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent Chief Learning Officer or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent Chief Learning Officer or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

If the Superintendent Chief Learning Officer or designee ~~doubts~~ **has a good faith objective reason to doubt** the validity of a certification that accompanies a request for leave for the employee's own serious health condition, ~~he/she~~ **the Superintendent Chief Learning Officer or designee** may require the employee to obtain a second opinion from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent Chief Learning Officer or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the district, again at district expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 2 CCR 11091; 29 USC 2613)

For

Certification for PDL, ~~the~~

The Superintendent Chief Learning Officer or designee shall request that the an employee who is requesting PDL provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent Chief Learning Officer or designee shall request the medical certification within two business days after the leave commences. The Superintendent Chief Learning Officer or designee may request certification at some later date if ~~he/she~~ **the Superintendent Chief Learning Officer or designee** has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

For PDL that is foreseeable and for which at least 30 ~~days~~ **days'** notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent Chief Learning Officer or designee which must be at least 15 **calendar** days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 11050)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because the employee is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 11050)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 11050; 29 USC 2613)

~~The Superintendent Chief Learning Officer or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011.~~

Release to Return to Work

Upon expiration of an employee's PDL or family care and medical leave taken for ~~his/her~~**the employee's** own serious health condition, the employee shall present certification from the health care provider ~~that he/she is able~~**of the employee's ability** to resume work. The certification shall address the employee's ability to perform the essential **job** functions of ~~his/her job~~.

~~(cf. 4112.4/4212.4/4312.4 -- the position.~~

~~Health Examinations)~~

Rights to Reinstatement

Upon granting an employee's request for PDL or FMLA/CFRA leave, the Superintendent Chief Learning Officer or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 11043, 11089; 29 USC 2614)

~~However, the~~

~~The district may refuse to reinstate an employee returning from FMLA or CFRA leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 2 CCR 11089; 29 USC 2614)~~

- ~~1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.~~
- ~~2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.~~
- ~~3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.~~

~~(cf. 4117.3 - Personnel Reduction)~~

~~(cf. 4217.3 - Layoff/Rehire)~~

~~The district may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee. (2 CCR 11089; 29 CFR 825.216)~~

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 11043)

Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, ~~he/she~~**the employee** shall maintain ~~his/her~~**employee** status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 2 CCR 11092; 29 USC 2614)

For up to a maximum of four months for PDL and 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before ~~he/she~~**the employee** took the leave. The employee shall reimburse the district for premiums paid during the leave if ~~he/she~~**the employee** fails to return to district employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond ~~his/her~~**the employee's** control. (Government Code 12945.2; 2 CCR 11044, 11092; 29 USC 2614; 29 CFR 825.213)

~~(cf. 4154/4254/4354 – Health and Welfare Benefits)~~

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall not make plan payments for an employee during any unpaid portion of the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 11044, 11092)

Military Family Leave Resulting from Qualifying Exigencies

An eligible employee may take up to 12 work weeks of unpaid FMLA/CFRA leave, during each 12-month period established by the district in the section entitled "Terms of Leave" above, for one or more qualifying exigencies while ~~his/her~~**the employee's** child, parent, ~~or~~ spouse, **or, for purposes of CFRA leave, registered domestic partner**, who is a military member is on covered active duty or on call to covered active duty status. **(Government Code 12945.2; 29 USC 2612; 29 CFR 825.126)**

Covered active duty means, **for members of the Regular Armed forces**, duty during the deployment of a member of the regular Armed Forces to a foreign country or, **for members of the Reserve components of the Armed forces**, duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law. **Deployment to a foreign county includes deployment to international waters.** (29 USC 2611; 29 CFR 825.126)

Qualifying exigencies include time needed to: (29 CFR 825.126)

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1. ~~1-~~Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of call or order of short notice deployment
2. ~~2-~~Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status
3. ~~3-~~Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. ~~4-~~Make or update financial and legal arrangements to address a military member's absence
5. ~~5-~~Attend counseling provided by someone other than a health care provider
6. ~~6-~~Spend time (up to 15 **calendar** days of leave per instance) with a military member who is on short-term, temporary, rest and recuperation leave during deployment
7. ~~7-~~Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. ~~8-~~Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. ~~9-~~Address any other event that the employee and district agree is a qualifying exigency

The employee shall provide the Superintendent Chief Learning Officer or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent Chief Learning Officer or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent Chief Learning Officer or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)

During the period of qualified exigency leave, the district's rule regarding an employee's use of ~~his/her~~ accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Military Caregiver Leave

The district shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, ~~son, daughter~~ **child**, parent, or next of kin of the covered servicemember. This 26-week period is ~~not in addition to, but rather is inclusive of,~~ the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

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- ~~1.~~ **1.**—A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness
- ~~2.~~ **2.**—A veteran 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

~~Son or daughter~~ **Child of a covered servicemember** means the **covered servicemember's** biological, adopted, or foster child, stepchild, legal ward, or ~~a child of any age~~ for whom the covered servicemember stood in loco parentis—, **and who is of any age.** (29 CFR 825.127)

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except "parents-in-law"). (29 CFR 825.127)

Next of kin means the nearest blood relative to the covered servicemember, ~~or another~~ **than the spouse, parent, or child, unless** designated in writing by the covered servicemember. (29 USC 2611, 2612)

; 29 CFR 825.127)

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

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- ~~1.~~ **1.**—For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating;

2. ~~2-~~For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
 - a. ~~a-~~A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered ~~him/her~~**the servicemember** unable to perform the duties of ~~his/her~~**the servicemember's** office, grade, rank, or rating
 - b. ~~b-~~A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
 - c. ~~c-~~A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to ~~his/her~~**the servicemember's** military service or that would do so but for treatment received by the veteran
 - d. ~~d-~~An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent Chief Learning Officer or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other **family care and medical** leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

During the period of military caregiver leave, the district's rule regarding an employee's use of ~~his/her~~ accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Notifications

The Superintendent Chief Learning Officer or designee shall provide the following notifications regarding state and federal law related to PDL or FMLA/CFRA leave:

1. ~~1-~~General Notice: Information explaining the provisions of the ~~FEHA~~**Fair Employment and Housing Act**/PDL and FMLA/CFRA and ~~employee~~**employees'** rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in

employee handbooks. (2 CCR 11049, 11095; 29 USC 2619)

2. The general notice shall also explain an employee's obligation to provide the Superintendent Chief Learning Officer or designee with at least 30 ~~days~~**days'** notice of the need for the requested leave, when the need is reasonably foreseeable at least 30 days prior to the start of the leave. (2 CCR **11049**, 11050, 11091)

~~(cf. 4112.9/4212.9/4312.9 - Employee Notifications)~~

3. ~~2-~~Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent Chief Learning Officer or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent Chief Learning Officer or designee shall, within five business days, provide notification to the employee of his/~~her~~-eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)
4. ~~3-~~Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent Chief Learning Officer or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)
 - a. ~~a-~~A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying
 - b. ~~b-~~Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
 - c. ~~c-~~The employee's right to use paid leave, whether the district will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
 - d. ~~d-~~Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
 - e. ~~The employee's status as a "key employee" if applicable, potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial~~
 - e. ~~f-~~The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
 - g. ~~The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave~~

- f. ~~Any~~**Any** time the information provided in the above notice changes, the Superintendent Chief Learning Officer or designee shall, within five business days of ~~his/her~~ receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

~~4-~~Designation Notice: When the Superintendent Chief Learning Officer or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, ~~he/she~~**the Superintendent Chief Learning Officer or designee** shall, within five business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (2 CCR 11091; 29 CFR 825.300)

5. If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

If the district requires paid leave to be used during an otherwise unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a release to return to work certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (2 CCR 11091, 11097; 29 CFR 825.300)

6. Any time the information provided in the designation notice changes, the Superintendent Chief Learning Officer or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

Records

The Superintendent Chief Learning Officer or designee shall maintain records pertaining to an individual employee's use of ~~family care and medical~~**FMLA or CFRA leave or PDL** in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 11035-11051	Unlawful sex discrimination; pregnancy, childbirth, and related medical conditions
2 CCR 11087-11098	California Family Rights Act
Ed. Code 44965	Granting of leaves of absence for pregnancy and childbirth

Fam. Code 297-297.5	Rights, protections, benefits under the law; registered domestic partners
Fam. Code 300	Definition of marriage
Gov. Code 12926	Definitions
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Gov. Code 12945.1-12945.2	California Family Rights Act
Gov. Code 12945.6	Parental leave
Gov. Code 12946	Fair Employment and employment and Housing Act: discrimination prohibited

Federal

1 USC 7	Description Definition of marriage and spouse
29 CFR 825.100-825.702	Family and Medical Leave Act of 1993
29 USC 2601-2654	Family Care and Medical Leave Act
42 USC 2000ff-2000ff-11	Genetic Information Nondiscrimination Act of 2008

Management Resources

Court Decision	Description Faust v. California Portland Cement Company (2007) 150 Cal.App.4th 864
Court Decision	Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045
Court Decision	United States v. Windsor (2013) 699 F.3d 169
U.S. Department of Labor Publication	Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers
Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Labor, FMLA
Website	California Civil Rights Department <u>California Civil Rights Department</u>

Cross References

Code	Description
0410	Nondiscrimination In District Programs And Activities Nondiscrimination In District Programs And Activities
0470	COVID-19 Mitigation Plan COVID-19 Mitigation Plan
1113	District And School Websites District And School Websites
1113	District And School Websites District And School Websites
1113	District And School Websites

2121	Superintendent's Contract
4030	Nondiscrimination In Employment Nondiscrimination In Employment
4030	Nondiscrimination In Employment Nondiscrimination In Employment
4032	Reasonable Accommodation Reasonable Accommodation
4033	Lactation Accommodation Lactation Accommodation
4112.2	Certification Certification
4112.2	Certification Certification
4112.4	Health Examinations Health Examinations
4112.42	Drug And Alcohol Testing For School Bus Drivers Drug And Alcohol Testing For School Bus Drivers
4112.42	Drug And Alcohol Testing For School Bus Drivers
4112.9	Employee Notifications Employee Notifications
4112.9-E PDF(1)	Employee Notifications Employee Notifications
4113.4	Temporary Modified/Light-Duty Assignment Temporary Modified/Light-Duty Assignment
4117.3	Personnel Reduction Personnel Reduction
4141	Collective Bargaining Agreement Collective Bargaining Agreement
4154	Health And Welfare Benefits Health And Welfare Benefits
4154	Health And Welfare Benefits Health And Welfare Benefits
4161	Leaves Leaves
4161	Leaves Leaves
4161.1	Personal Illness/Injury Leave Personal Illness/Injury Leave
4161.2	Personal Leaves Personal Leaves
4161.9	Catastrophic Leave Program Catastrophic Leave Program
4161.9	Catastrophic Leave Program Catastrophic Leave Program
4212.4	Health Examinations Health Examinations
4212.42	Drug And Alcohol Testing For School Bus Drivers Drug And Alcohol Testing For School Bus Drivers
4212.42	Drug And Alcohol Testing For School Bus Drivers
4212.9	Employee Notifications Employee Notifications
4212.9-E PDF(1)	Employee Notifications Employee Notifications

4213.4	Temporary Modified/Light-Duty Assignment Temporary Modified/Light-Duty Assignment
4217.3	Layoff/Rehire Layoff/Rehire
4241	Collective Bargaining Agreement Collective Bargaining Agreement
4254	Health And Welfare Benefits Health And Welfare Benefits
4254	Health And Welfare Benefits Health And Welfare Benefits
4259	Employee Assistance Programs Employee Assistance Programs
4261	Leaves Leaves
4261	Leaves Leaves
4261.1	Personal Illness/Injury Leave Personal Illness/Injury Leave
4261.2	Personal Leaves Personal Leaves
4261.9	Catastrophic Leave Program Catastrophic Leave Program
4261.9	Catastrophic Leave Program Catastrophic Leave Program
4312.4	Health Examinations Health Examinations
4312.42	Drug And Alcohol Testing For School Bus Drivers Drug And Alcohol Testing For School Bus Drivers
4312.42	Drug And Alcohol Testing For School Bus Drivers
4312.9	Employee Notifications Employee Notifications
4312.9-E PDF(1)	Employee Notifications Employee Notifications
4313.4	Temporary Modified/Light-Duty Assignment Temporary Modified/Light-Duty Assignment
4354	Health And Welfare Benefits Health And Welfare Benefits
4354	Health And Welfare Benefits Health And Welfare Benefits
4359	Employee Assistance Programs Employee Assistance Programs
4361	Leaves Leaves
4361	Leaves Leaves
4361.1	Personal Illness/Injury Leave Personal Illness/Injury Leave
4361.2	Personal Leaves Personal Leaves
4361.9	Catastrophic Leave Program Catastrophic Leave Program
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