

FAMILY CARE AND MEDICAL LEAVE

The district shall not refuse to hire and shall not discharge, fine, suspend, expel or discriminate against any employee because he/she exercises the right to family care leave or because he/she gives information or testimony related to his/her or another person's family care leave in an inquiry related to family leave rights. (29 U.S.C. 2615; Government Code 12945.2)

Definitions

"Child" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (29 U.S.C. 2611; Government Code 12945.2)

"Parent" means a biological, foster or adoptive parent, a step-parent, a legal guardian, or another person who stood in loco parentis to the employee when the employee was a child. (29 U.S.C. 2611; Government Code 12945.2)

"Serious health condition" means an illness, injury, impairment or physical or mental condition that involves either of the following: (29 U.S.C. 2611; Government Code 12945.2)

1. Inpatient care in a hospital, hospice or residential health care facility
2. Continuing treatment or continuing supervision by a health care provider

Eligibility

Any eligible employee who has served the district more than one year shall be eligible to take unpaid family care and medical leave under the provisions of state and federal law. The district may deny family care and medical leave to employees who worked fewer than 1,250 hours during the previous year. (29 U.S.C. 2611; Government Code 12945.2; 29 C.F.R. 825.110; Code of Regulations, Title 2, Section 7297.0)

Family care and medical leave may be used for the following reasons: (29 U.S.C. 2612, Government Code 12945.2)

1. Because of the birth of the employee's child, and in order to care for the child
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child
3. In order to care for the employee's child, parent or spouse with a serious health condition

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4. Because of the employee's own serious health condition which makes the employee unable to perform the functions of his/her job, except for leave taken for disability on account of pregnancy, childbirth or related medical conditions

Requests, Advance Notice and Certification

The employee shall give the district at least 30 days written advance notice of his/her need for family care and medical leave. If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (29 U.S.C. 2612; Government Code 12945.2)

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of district operations. This scheduling shall be subject to the health care provider's approval. (29 U.S.C. 2612; Government Code 12945.2)

When requesting family care and medical leave because of a serious health condition, the request shall be supported by a certification from the health care provider of the person requiring care. This certification shall include the following: (29 U.S.C. 2613; Government Code 12945.2; Code of Regulations, Title 2, Section 7297.0)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, spouse or parent who has a serious health condition, the health care provider's certification of both of the following:
 - a. Estimated amount of time the health care provider believes the employee needs to care for the child, parent or spouse
 - b. Statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent or spouse
4. If the employee is requesting leave because of his/her own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of his/her job

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The health care provider's certification need not identify the serious health condition involved. When the employee is requesting leave because of his/her own serious health condition, this information may be included at the employee's option. (Code of Regulations, Title 2, Section 7297.0)

If additional leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification as specified above. (29 U.S.C. 2613; Government Code 12945.2)

If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, the certification must also state 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. (29 U.S.C. 2613)

If the district has reason to doubt the validity of a certification that accompanies a request for leave, the district may challenge the certification and require the employee to obtain, at district expense, a second opinion from a district-approved health care practitioner. If the second opinion is contrary to the first, the district may require, again at district expense, that the employee obtain a third medical opinion from a third health care practitioner approved by both the employee and the district. (29 U.S.C. 2613; Government Code 12945.2)

Terms of Leave

Family care and medical leave shall not exceed 12 work weeks during any 12-month period. (29 U.S.C. 2612; Code of Regulations, Title 2, Section 7297.3)

This 12-month period shall coincide with the fiscal year.

Leave taken pursuant to the California Family Rights Act shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA), except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. In addition to family care and medical leave, an employee may be entitled to take pregnancy disability leave of up to four months. During the otherwise unpaid portion of pregnancy disability leave, the employee may use any accrued vacation, sick time or other paid leave. (Government Code 12945,12945.2)

(cf. 4161/4261 - Leaves)

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

(cf. 4261.1 - Personal Illness and Injury Leave)

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Leave taken for the birth or placement of a child must be concluded within one year of the birth or placement of the child. Such leave does not have to be taken in one continuous period of time. The basic minimum duration of the leave shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (Code of Regulations, Title 2, Section 7297.3)

During the period of family care and medical leave, the district shall require the employee to use his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district. Accrued sick leave shall be used when the purpose of the family care and medical leave is one for which sick leave may be taken pursuant to collective bargaining agreements and/or Board policy. (Government Code 12945.2)

(cf. 4141/4241 - Collective Bargaining Agreement)

Leaves Near the End of the Term

The district may require an employee to continue taking a requested leave until the end of the term in any of the following situations: (29 U.S.C. 2618)

1. If the employee begins a leave of three or more weeks' duration more than five weeks before the end of a term and would subsequently return to work during the last three weeks of the term
2. If the employee, for reasons other than his/her own serious health condition, begins a leave of more than two weeks duration during the period that begins five weeks before the end of the term and would subsequently return to work during the last two weeks of the term
3. If the employee, for reasons other than his/her own serious health condition, begins a leave of more than five days' duration during the period that begins three weeks before the end of the term

Intermittent/Reduced Work Schedule Leave

Leave related to the serious health condition of the employee or his/her child, parent or spouse may be taken intermittently or on a reduced work schedule when medically necessary. In such a case, the district may limit leave increments to the shortest period of time that the payroll system uses to account for absences or use of leave. The employee may also be required to transfer temporarily to a different job that has the equivalent pay and benefits but could better accommodate recurring periods of leave. The employee must be qualified for the position, but the position does not need to have equivalent duties.

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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 schedule. (Code of Regulations, Title 2, Section 7297.3)

(cf. 4113 - Assignment)

Maintenance of Benefits

During the period of family care and medical leave, the employee shall continue to be entitled to participate in the district's medical, dental and vision plan at no cost to the employee under the same conditions as if the employee had not taken a leave. (29 U.S.C. 2614; Government Code 12945.2)

If the employee fails to return from leave after the leave period has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control, the employee may be required to reimburse any health premiums paid by the district during the period of leave. (Government Code 12945.2)

The employee shall also continue to be entitled to participate in life, disability and accident insurance plans, pension and retirement plans, supplemental unemployment benefit plans, and/or any other employee welfare benefit plan to the same extent and under the same conditions as apply to an unpaid leave taken for any other purpose. In the absence of these conditions, the employee shall continue to be entitled to participate in these plans and the district may, at its discretion, require the employee to pay the premium for periods not covered by accrued leave. (Government Code 12945.2)

Maintenance of Status

The employee shall retain his/her employee status with the district during the leave period, and the leave shall not constitute a break in, service for purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation, the employee returning from family care and medical leave shall return with no less seniority than he/she had when the leave began. (29 U.S.C. 2614; Government Code 12945.2)

Upon granting an employee's request for family care and medical leave, the district shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (29 U.S.C. 2614; Government Code 12945.2)

FAMILY CARE AND MEDICAL LEAVE (continued)**Reinstatement**

The district may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply: (29 U.S.C. 2614, Government Code 12945.2)

1. The employee is a salaried “key employee” who is among the highest paid 10 percent of those 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.

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If the district reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement, provided the district has no continuing obligations under a collective bargaining agreement or otherwise. (29 C.F.R. 825.216)

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

(cf. 4317.3 - Personnel Reduction)

Notifications

In accordance with law, the district shall notify employees of their right to request family care and medical leave. Separate notices about federal and state law related to family care and medical leave shall be posted in a conspicuous place. Information about employee rights and obligations related to such leaves shall also be included in employee handbooks. (29 U.S.C. 2619; Code of Regulations, Title 2, Section 7297.9)

At least the first time in each six-month period that an employee requests family care and medical leave, the Superintendent or designee shall provide written notice detailing specific expectations and obligations and explaining any consequences of a failure to meet these obligations. The notice shall include: (29 C.F.R. 825.301)

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1. Notice that the leave will be counted against the employee's annual family care and medical leave entitlement.
2. Requirements for the employee to furnish medical certification of a serious health condition.
3. The employee's right to substitute paid leave, conditions related to any substitution, and whether the district requires this substitution.
4. Health benefit arrangements.
5. If applicable, the employee's status as a "key employee" and information related to restoration of that status.
6. The employee's right to restoration to the same or an equivalent job.
7. The employee's potential liability for health benefits should the employee not return to service.
8. The district's requirement that the employee, upon return, present medical certification to the effect that he/she is able to resume work.

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least twelve months, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE

Unpaid leave must be granted for any of the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job

At the employees or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days' advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan".
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.