

**ALL PERSONNEL**

**Family/Medical Leave Eligibility**

Qualified regular employees who have been employed for at least twelve (12) months of service, and who have worked at least 1,250 hours during the previous 12-month period before the date the leave is to begin, are eligible under federal Family and Medical Leave Act (FMLA) and state California Family Rights Act (CFRA) family leave laws to take up to a maximum of 12 workweeks of unpaid family/medical leave within a 12-month period.

Family/medical leave time is permitted for the birth of the employee's child or placement of a child with the employee for adoption or foster care, to bond with a newborn or adopted child, to care for the employee's spouse, child, or parent who has a serious health condition, or for a serious health condition that makes the employee unable to perform his or her job.

**Notification of Calculation Methods**

The COE uses the 12-month period measured forward from the date an employee's first FMLA leave begins to determine the 12-month period in which the 12 workweeks of leave entitlement occurs.

**Family Leave and Pregnancy**

An eligible employee is entitled to up to four (4) months of Pregnancy Disability Leave (PDL) because of the employee's disability due to pregnancy, childbirth or related medical condition. PDL is not counted as time used for CFRA leave, but is counted as time used for FMLA leave. Such employees should contact their immediate supervisor regarding their individual situation. Any leave taken for the birth, adoption or foster care placement of a child does not have to be taken in one continuous period of time. CFRA leave taken for the birth, adoption or foster care placement of a child will be granted in minimum amounts of two weeks. The EDCOE will provide a request for a CFRA leave of less than two weeks duration on any two occasions. Any leave taken must be concluded within one year of the birth or placement of the child with the employee.

**Requests for Leave**

The following procedures shall apply when an employee requests family leave:

Eligible employees will contact their immediate supervisor as soon as the need for family/medical leave is realized. If the leave is based on the expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, the employee must notify their immediate supervisor at least 30 days before leave is to begin. The employee must consult with his or her immediate supervisor regarding scheduling of any planned medical treatment or supervision in order to minimize

disruption to the operations of the EDCOE. Any such scheduling is subject to the approval of the health care provider of the employee or the health care provider of the employee's child, parent, or spouse. If the employee cannot provide 30 days' notice, the EDCOE must be informed as soon as practical.

### **Intermittent Leave**

Eligible employees may take FMLA/CFRA leave intermittently if the leave is for the serious health condition of the employee's child, parent, or spouse, or of the employee and the reduced leave schedule is medically necessary as determined by the health care provider of the person with the serious health condition.

### **Additional Requirements for Serious Health Condition**

If the FMLA/CFRA request is made because of the employee's own serious health condition, the EDCOE may require, at its expense, a second opinion from a health care provider that the EDCOE chooses. The health care provider designated to provide a second opinion will not be one who is employed on a regular basis by the EDCOE. If the second opinion differs from the first opinion, the EDCOE may require, at its expense, the employee to obtain the opinion of a third health care provider designated jointly by the employer and the employee. The opinion of the third health care provider shall be considered final and binding on the EDCOE and the employee.

### **Certification by Health Care Providers Policy**

The EDCOE may require the employee to provide certification as explained below within 15 days of any request for FMLA/CFRA leave, unless it is not practicable to do so. The EDCOE may require re-certification from the health care provider if additional leave is required.

- If the leave is needed to care for a sick child, spouse, or parent, the employee must provide a certification from the health care provider stating:
  - Date of commencement of the serious health condition;
  - Probable duration of the condition;
  - Estimated amount of time for care by the health care provider; and
  - Confirmation that the serious health condition warrants the participation of the employee.
- When both parents are employed by the EDCOE and request simultaneous leave for the birth, adoption or foster care of a child, the EDCOE will not grant more than 12 workweeks total of family/medical leave for each employee.
- If an employee cites his or her own serious health condition as a reason for a leave, the employee must provide a certification from the health care provider stating:
  - Date of commencement of the serious health condition;
  - Probable duration of the condition; and

- Inability of the employee to work at all or to perform any one or more of the essential functions of his or her position because of the serious health condition.

### **Certification**

The EDCOE will require certification by the employee's health care provider that the employee is fit to return to his or her job. Failure to provide certification by the health care provider of the employee's fitness to return to work will result in denial of reinstatement for the employee until the certificate is obtained.

### **Coordination with Health Insurance**

An employee taking family/medical leave will be allowed to continue participating in any health and welfare benefit plans in which he or she was enrolled before the first day of the leave (for up to a maximum of 12 workweeks) at the level and under the conditions of coverage as if the employee had continued in employment for the duration of such leave. The EDCOE will continue to make the same premium contribution as if the employee had continued working. The continued participation in health benefits begins on the date leave first begins under FMLA (e.g., for pregnancy disability leaves) or under FMLA/CFRA (e.g., for all other family care and medical leaves). In some instances, the EDCOE may recover from an employee premiums paid to maintain health coverage if the employee fails to return to work following family/medical leave.

Employees on family/medical leave who are not eligible for continued paid coverage may continue their group health insurance coverage through the EDCOE by paying the full premium by making monthly payments to the EDCOE for the amount of the applicable premium. Employees should contact Risk Management for further information.

### **Mandatory Use of Accrued Paid Leave Time**

Paid leave will be substituted for unpaid leave in the following circumstances:

Accrued sick leave is required to be used during FMLA/CFRA/PDL leave, up to a limit of that which is accrued over six months, for the employee's own serious health condition or to attend to the illness of a child, parent, or spouse of the employee.

### **Return from Family/Medical Leave**

Under most circumstances, upon return from family/medical leave, an employee will be reinstated to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. However, an employee has no greater right to reinstatement than if he or she had been continuously employed rather than on leave. For

example, if an employee on family/medical leave would have been laid off had he or she not gone on leave, or if the employee's job is eliminated during the leave and no equivalent or comparable job is available, then the employee would not be entitled to reinstatement. In addition, an employee's use of family/medical leave will not result in the loss of any employment benefit that the employee earned before using family/medical leave.

Reinstatement after family/medical leave may be denied to certain salaried "key" employees under the following conditions:

- An employee requesting reinstatement was among the highest-paid 10 percent of salaried employees employed within 75 miles of the work site at which the employee worked at the time of the leave request;
- The refusal to reinstate is necessary because reinstatement would cause substantial and grievous economic injury to the EDCOE's operations;
- The employee is notified of the EDCOE's intent to refuse reinstatement at the time the EDCOE determines the refusal is necessary; and
- If leave has already begun, the EDCOE gives the employee a reasonable opportunity to return to work following the notice described previously.

For additional information about eligibility for family/medical leave, contact the Risk Manager.

EDUCATION CODE:

44978; 45136; 45191 Sick Leave

GOVERNMENT CODE:

12945.2 California Family Rights Act

FEDERAL STATUTES

29 USC 2601 et seq. FMLA