



CERTIFICATED PERSONNEL- FAMILY CARE AND MEDICAL LEAVE ADMINISTRATIVE REGULATION – 4161.8

Purpose

An eligible employee may be entitled to paid or unpaid family care and medical leave (FCML) in connection with the birth, newborn care, adoption, or foster care placement of a child with the employee; the serious medical condition of a child, parent, spouse, or domestic partner of the employee; or the serious medical condition of the employee.

Eligibility

To be eligible for FCML, an employee must comply with all requirements of state and federal law pertaining to FCML, and must have:

- a. Worked for the District for at least one (1 year) prior to the leave; and
- b. Provided at least 1,250 hours of actual service during the 12 months immediately before the leave commences (not applicable to paid Parental Leave, discussed below).

Time spent on authorized military service while employed by the District counts toward both of the above eligibility requirements.

Reasons for Leave

Leave under this policy may be requested for:

- a. Birth of and care for the employee's newborn child;
- b. Adoption or foster care placement of a child with the employee;
- c. When the employee is needed to care for a child, spouse, domestic partner, or a parent with a serious health condition as defined in state and federal regulations;
- d. The serious health condition of the employee;
- e. The need to care for an injured military service member who is the employee's spouse, parent, child, or next of kin; or

- f. A qualifying exigency arising from the fact that the employee's spouse, child, or parent, who is a military Reservist or Guardsmen, has been called to active duty.

Serious Health Condition

To qualify for FCML for reasons (c) or (d) above, an employee or family member must have a serious health condition, as defined in the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy (under FMLA only), or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Duration of Leave

In all cases except for (e) listed above, the employee may be granted up to 12 workweeks of FCML during a 12-month fiscal year. Leave to care for an injured military service member may be available for up to 26 weeks.

Employees need not use the FCML entitlement in one block. Such a leave may be taken intermittently or on a reduced leave schedule when medically necessary. For intermittent leave or leave on a reduced work schedule, the employee must supply certification by a health care provider of the medical need for the leave, which must state that the medical need can best be accommodated through an intermittently or reduced work schedule. The employee must attempt to schedule leave so as not to disrupt District operations. The District may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position, so long as the alternative position has equivalent pay and benefits.

If the leave is to care for a newborn or newly placed child with a serious health condition, both parents who are employed by the District may use up to 12 weeks of leave provided they meet the eligibility requirements for such leave.

The occurrence of a holiday during a week of FCML does not extend the duration of the leave. Periods when the District's business operations temporarily cease and employees are not expected to report to work for one or more full weeks, such as summer vacation or winter break, do not count against the employee's leave entitlement.

Special Provisions for Pregnancy-Related Disability and Parental Leave

Upon expiration of any pregnancy-disability leave authorized by California Government Code section 12945 and Administrative Regulation 4561.2, an employee who meets the eligibility requirements for FCML is entitled to up to an additional 12 weeks of FCML to care for the employee's newborn child. The employee must provide at least 30 days' advance written notice of the request for foreseeable FCML in addition to pregnancy-disability leave, pursuant to these procedures. If the need for Parental Leave is not foreseeable, the employee must give the District as much advance notice of the need for Parental Leave as practicable under the circumstances.

Effective January 1, 2017, as provided by Education Code sections 44977.1 and 45196.1, certificated and classified employees with at least one year of service are entitled to Parental Leave. "Parental Leave" is leave for the purpose of bonding with the employee's newborn child, or with a newly placed child in the employee's household for adoption or foster care. Parental Leave does not include leave taken for the employee's disability due to pregnancy, childbirth, or recovery therefrom.

Employees must use all current and accumulated sick leave during Parental Leave, for up to 12 workweeks. When an employee with at least one year of District service has exhausted all current and accumulated sick leave and continues to be absent on account of Parental Leave, he or she is entitled to 50% pay (classified) or the greater of 50% pay or substitute-differential pay (certificated) for the remainder of the 12-week leave. Employees may not use vacation time to substitute for or extend Parental Leave.

Parental Leave must be used within 12 months following the birth or placement of the child. Parental Leave must be taken in increments of at least 2 weeks' duration; however, the employee may take parental leave in increments of less than 2 weeks on up to two occasions.

If both parents are employed by the District, each employee may take 12 workweeks of Parental Leave during the 12 months following the birth or placement of the child.

Parental Leave runs concurrently with any parental (child bonding) leave to which the employee is entitled under the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). The total amount of Parental Leave may not exceed 12 workweeks in a 12-month period which shall be measured forward from the date of the employee's first family care and medical leave.

Substitution of Paid Sick Leave and Other Leave for FCML

Employees shall utilize and exhaust all available paid sick leave, substituting such paid sick leave for FCML for the employee's own serious health condition where the employee is unable to perform the essential functions of his/her position. Upon exhaustion of current year and accrued paid sick leave, the employee shall utilize all available extended illness leave, concurrent with any paid vacation and compensatory time off, substituting such

leave for FCML. If the total sick leave, vacation leave, compensatory time off, and extended illness leave is less than 12 workweeks, the remainder of the 12-week leave period shall be unpaid FCML (except paid Parental Leave, discussed above) if the employee continues to require leave.

Employees who take FCML to care for a family member with a serious health condition may use up to one-half of the employee's current year paid sick leave concurrent with and substituted for FCML. After exhausting available paid sick leave for this purpose, the employee shall utilize and exhaust all available paid vacation and compensatory time off, substituting such leave for FCML. If the total sick leave, vacation, and compensatory time off is less than 12 workweeks, the remainder of the 12-week leave period shall be unpaid FCML if the employee continues to require leave.

Employee Notice and Explanation of Reasons for FCML

The employee must provide sufficient information for the District to determine whether the leave qualifies as FCML entitlement. An employee who fails to identify the reason for the leave as one of those enumerated in this policy may be required to provide additional information upon request to substantiate whether the leave qualifies as FCML.

Pro Rata Leave for Part-time Employees

Part-time employees, who are otherwise eligible for FCML in that they meet all eligibility requirements, including (except for Parental Leave) providing at least 1,250 hours of service during the 12 months before leave commences, are entitled to up to 12 workweeks of leave in the proportion their regular work schedule bears to a full-time assignment.

FCML Procedures

Scheduling Foreseeable Leave

An employee must provide at least 30 days' advance written notice to his/her site administrator or department manager of the need for FCML if the need is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or family member. Where 30 days' advance notice is not practicable because the employee lacks knowledge of the date when the need for leave would begin, written notice must be given as soon as practicable after learning of the need for leave. Where the employee fails to give at least 30 days' written notice of the need for foreseeable leave with no reasonable excuse for the delay, FCML may be denied for up to 30 days after the date the employee provides written notice of the need for leave.

An employee requesting a foreseeable leave for planned medical treatment shall consult with his or her site administrator or department manager and make a reasonable effort to schedule leave so as not to disrupt District operations, subject to the approval of the employee's health care provider.

An employee who has previously taken FCML for a certified medical condition and seeks additional FCML must specifically make reference to the need for FCML or the previous condition for which FCML was used.

Employees must comply with all District and site/department call-in procedures when reporting absences due to FCML. Failure to follow these procedures may result in denial of FCML.

Salary and Benefits During Leave

Except to the extent paid leave is substituted for FCML as required under this policy, an employee is not entitled to compensation during such leave.

During FCML, the District will continue to pay all applicable group health insurance premiums it ordinarily pays on behalf of the employee for up to 12 weeks. Employees must continue to pay the employee portion, if any, of the insurance premium during the leave of absence. Failure by an employee to make his or her premium payment may result in a loss of benefits. If the employee fails to return from this leave, in some circumstances, the District may recoup the cost of the insurance premiums paid on behalf of the employee during the leave.

Reinstatement

Upon termination of FCML, the employee shall be reinstated to the same or comparable position as the employee held at the time the leave commenced. A "comparable position" is one with the same pay, benefits, and working conditions, involving the same or substantially similar duties and responsibilities, to be performed at the same or geographically proximate worksite as the position held at the time to leave commenced. If, however, the employee's previous position has been eliminated during the leave period due to a reduction in force or restructuring, the employee may be entitled to such other position, if any, he/she would have been entitled to on the basis of seniority had the leave not occurred. Employees who exceed statutory leave limits are not guaranteed reinstatement to the same or comparable position.

Prior to reinstatement following a leave due to the employee's own serious health condition, the District may require the employee to provide medical certification that the employee is able to return to work. Failure to provide such certification when requested may result in a delay in the employee's returning to work. During any such delay, the employee will remain in unpaid status.

Seniority

Upon termination of leave and reinstatement, the employee retains the same seniority he/she had at commencement of the leave.

District Notices

When an employee requests leave that may qualify as FCML, the District will provide the employee with notices of eligibility, rights and responsibilities, and designation of leave, either separately or in combination, as required by law.

Certification

The District requires medical certification issued by a licensed health care provider treating the employee's or family member's serious health condition. Certification must be provided on a District-approved form or the appropriate form issued by the California Department of Fair Employment and Housing and shall include:

- a. The date on which the serious health condition commenced;
- b. The probable duration of the condition;
- c. For a family member's serious health condition, the health care provider's estimate of the amount of time the employee needs to care for the individual;
- d. For a family member's serious health condition, a statement that the serious health condition warrants the participation of the employee to provide care; and
- e. For an employee's own serious health condition, the statement that the employee is unable to perform the functions of his/her position.

In most cases, the written certification must be furnished 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 District may request certification at some later date if the District has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification within 15 calendar days after the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

In the case of an employee's own serious health condition, the District may require a second medical opinion, at the District's expense, from a health care provider not regularly employed by the District. In the event of a conflict between the first and second medical opinions, the District may obtain a third medical certification at the District's expense. The third health care provider shall be designated jointly by the District and the

employee. The opinion of the third health care provider shall be final and binding on the District and the employee.

FCML shall be provided to the employee provisionally pending receipt of the second or third medical opinion. If the certifications do not ultimately establish the employee's entitlement to FCML, the leave shall not be designated as such and shall be addressed under the District's other leave policies, as appropriate.

If leave due to the employee's own serious health condition extends beyond the period indicated in the original medical certification, or an additional leave is requested, or the circumstances described by the original certification have otherwise changed or come into doubt, the employee may be required to obtain recertification of the medical condition every 30 days during the course of the leave.

Certification of the birth, adoption, or foster care placement of a child is required for Parental Leave.

In all instances in which certification is requested, it is the employee's responsibility to provide the District with complete and sufficient certification and failure to do so may result in the denial of FCML.

Military Qualifying Exigency Leave

Eligible employees under FMLA may be provided up to 12 weeks of leave in a rolling 12-month period when the employee has a qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is on active duty or has been called to active duty in the Armed Forces, National Guard or Reserves in support of a contingency operation.

"Qualifying exigency" is defined by law as: (1) short-notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) post-deployment reintegration briefings, and (8) additional activities where the District and employee agree to the leave. Time off for Military Qualifying Exigency Leave counts toward the 12-week maximum allowable time for FCML under the FMLA.

To qualify for this leave, the employee must submit the appropriate certification on a form approved by the U.S. Department of Labor, including the information required by the physician of the servicemember. See DOL Form WH-384, available for download at <https://www.dol.gov/whd/forms/index.htm>.

Military Caregiver Leave

Employees who are eligible for FCML may be provided up to 26 weeks (one-half year) of leave during a single 12-month period to care for a covered servicemember. A covered servicemember is the employee's spouse, son, daughter, parent, or next of kin (meaning "nearest blood relative" or person "specially designated") who is recovering from a serious

injury or illness which occurred in the line of duty on active duty in the Armed Forces, National Guard, or Reserves, *and* which may render the servicemember medically unfit to perform his or her military duties; or for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. An employee may take a maximum combined total of 26 weeks of leave for Military Caregiver Leave, Military Qualifying Exigency Leave, or FCML under the FMLA in a single 12-month period.

To qualify for this leave, the employee must submit the appropriate certification on a form approved by the U.S. Department of Labor, including the information required by the physician of the servicemember. See DOL Form WH-385, available for download at <https://www.dol.gov/whd/forms/index.htm>.

FMLA/CFRA Protections

Use of any FCML as permitted by the FMLA and the CFRA may not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

It is unlawful for employers to interfere with, restrain, or deny the exercise of any right provided under the FMLA or the CFRA or to discharge or discriminate against any person for opposing any practice made unlawful by either law or for involvement in any proceeding under or relating to the FMLA or the CFRA. The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement that provides for greater family or medical leave rights.

If employees believe they have been aggrieved, they may file an administrative complaint with the U.S. Department of Labor or the California Department of Fair Employment and Housing, and may thereafter pursue other legal remedies.

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