

County of Sonoma

# Medical Leave Policy

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# COUNTY OF SONOMA MEDICAL LEAVE POLICY

Including FMLA, CFRA, CPDL, Salary Resolution, Civil Service Rules, and Collective Bargaining Agreement leave provisions

## I. Introduction

This policy applies to employees of the County and County agencies and special districts. Where the policy uses terms such as “employed by the county”, “county employees”, “departments” or “department heads”, these include employees, executives, and policies of the Sonoma County Agricultural Preservation and Open Space District, the Sonoma County Community Development Commission, The Sonoma County Fair and Exposition, Inc., the Sonoma County Retirement Agency, and the Sonoma County Water Agency.

To assist in reading the policy, a glossary has been included containing key words which are part of applicable state or federal law or statute, or terms more technical in nature. Each time one of these words or phrases is used in the policy, they will be shown in italicized text. Additional documents to assist departments in the administration of this policy (including checklists) are available through the Human Resources Disability Management Unit.

## II. Purpose

The purpose of this policy is to provide County employees and departments/agencies with information about the federal and state laws and local regulations, rules and agreements that govern medical leaves of absence so when circumstances arise where a medical leave is needed, the information is available in one resource. The information in this policy describes eligibility requirements for medical leave, the process for applying for leave and the benefits that will be available during approved times of medical leave. This policy is a compilation of the applicable provisions relating to medical leave which are frequently subject to changes in the law. Should this policy be in conflict with laws, rules or agreements, those laws, rules or agreements shall control.

The laws covered by this policy are the Family and Medical Leave Act (FMLA)<sup>1</sup>, which is federal law, and the California Family Rights Act (CFRA)<sup>2</sup> and California Pregnancy Disability Leave (CPDL)<sup>3</sup> statutes, which are state entitlements and obligations. Additionally, this policy provides information regarding locally negotiated Memorandum of Understanding (MOU) leave provisions and Civil Service Rules leave provisions<sup>4</sup>, and any applicable county agency and special district personnel policies. After reviewing the policy, if you have any questions concerning these laws, agreement provisions or rules, please contact your department/agency designated representative (often the department’s Human Resources Liaison or payroll

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<sup>1</sup> 29 U.S.C. Section 2601, et seq.

<sup>2</sup> Govt. Code Section 12945.2.

<sup>3</sup> Govt. Code Section 12945.

<sup>4</sup> See Rule 12, “Leaves of Absence.”

professional) and or/bargaining unit representative.

### III. Policy

It is the intent of the County to comply with federal and state laws and local regulations, rules and agreements that govern medical leaves of absence.

#### A. Eligibility for Medical Leave: Federal & State Laws

FMLA and CFRA provide eligible employees with a right to unpaid, job-protected leave and health insurance benefits. To be an “eligible employee”, the individual must (1) have been employed by the County for at least 12 months (which need not be consecutive); (2) have *actual hours* worked for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave, and (3) have a qualifying *serious health condition* or family circumstance that is covered by FMLA/CFRA.

CPDL provides eligible employees the right to unpaid, job protected leave if you are disabled by pregnancy, childbirth or related medical conditions. There are no service time requirements to qualify for CPDL.

#### B. Type, Duration, and Reason for Leave

##### I. Basic FMLA/CFRA Leave Entitlement

The FMLA/CFRA provides eligible employees up to 480 hours (12 weeks) of unpaid leave for certain family and medical reasons during a 12 month period. This is determined by a “rolling” 12-month period measured backwards from when an employee first uses FMLA/CFRA leave. In some instances, leave may be counted under the FMLA but not CFRA, or CFRA but not the FMLA. Leave may be taken for any one, or for a combination, of the following reasons:

- For the employee’s own disability due to pregnancy, childbirth or related medical condition (counts only toward FMLA leave and CPDL entitlements);
- Bonding and/or caring for a newborn child. Bonding leave must be concluded within one year of the birth, *adoption* or foster placement of the child; (counts toward FMLA and CFRA leave entitlements);
- For placement with the employee of a child for *adoption* or *foster care* and to care for the newly placed *child*; (counts toward FMLA and CFRA leave entitlements);

Note: If both parents are county employees and the leave is taken for birth, adoption or foster child placement or the care of an ill parent, the combined leave may be limited to 480 hours (12 workweeks) for Represented employees and 600 hours (15 weeks) for Administrative Management, Confidential and Unrepresented employees;<sup>5</sup>

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<sup>5</sup> See County of Sonoma Salary Resolution 95-0926, Section 26.3.

- To care for the employee's *spouse, domestic partner, child, or parent* (but not in-law) with a *serious health condition*; (counts toward FMLA and CFRA leave entitlements; time to care for an employee's domestic partner counts only toward CFRA leave);
- For the employee's own *serious health condition* that makes the employee unable to perform one or more of the essential functions of the employee's job (counts toward FMLA and CFRA leave entitlements);
- Because of any *qualifying exigency* arising out of the fact that an employee's *spouse, son, daughter or parent* is a U.S. National Guard or Reserves (NOT Regular) member on active duty, or has been notified of an impending call or order to active duty status in the U.S National Guard or Reserves in support of contingency operations (counts toward FMLA leave entitlement only);
- For military caregiver leave for eligible employees who are needed to care for a *spouse, son, daughter, parent, or next of kin* who is a U.S. National Guard, Reserve, or Regular member of the U.S. Armed Forces with a serious injury or illness.

FMLA regulations require the County to provide individual employees with a written summary of the amount of FMLA leave time used and time remaining. Employees must submit a *written request* to their departmental payroll unit in order to receive this summary.

## II. Military FMLA Leave Entitlement

An eligible employee who is the *spouse, son, daughter, parent or next of kin* of a *covered servicemember* is entitled to take up to 26 weeks of leave during a 12-month period to care for the servicemember with a serious injury or illness. Leave to care for a servicemember shall only be available during a single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the injured servicemember.

## III. *Intermittent Leave* and Reduced Leave Schedules

FMLA/CFRA/CPDL leave usually will be taken for a period of consecutive days, weeks or months. However, employees are also entitled to take these leaves intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a *covered servicemember*. *Intermittent leave* can also be taken for any qualifying exigency.

Employees are also eligible for intermittent CFRA leave for bonding with a child following birth or *placement*. *Intermittent leave* for bonding purposes generally must be taken in two-week increments, but the County permits two occurrences of leave taken for less than two weeks. Bonding leave must be concluded within one year of the birth, *adoption* or placement of the child.

## C. Additional Medical Leave Provisions

The County provides continuation of active benefit coverage (including medical, dental, life, vision and, and LTD) for 13 pay periods (26 weeks) of unpaid leave per illness or disability. During this continuation period, the County will continue paying the County portion of the health benefit premiums (including medical, dental, life, vision and LTD) and the employee is responsible for paying the employee portion. Please see Section L for further details.

Once FMLA/CPDL or FMLA/CFRA leave exceeds 480 hours (for example, in cases of FMLA/CPDL leave followed by CFRA bonding leave), and/or the leave exceeds 26 weeks (13 pay periods), including any designated FMLA/CFRA leave, an employee will be notified of his or her COBRA right to continue group health insurance benefits at the employee's cost.

The 13 pay period benefit applies to all regular employees, regardless of length of service or hours worked. Depending on the leave circumstance, the 13 pay period benefit may run concurrently or in addition to FMLA/CFRA if eligible. The 13 pay period benefit applies to the employee's own medical or pregnancy disability only. There are no additional provisions for family care or *qualifying exigencies*.

The Salary Resolution extends all benefits, rights, and obligations of FMLA/CFRA for an additional 120 hours, for a total of 600 hours (15 weeks), to Administrative Management, Confidential and Unrepresented employees covered by the Salary Resolution.

The Civil Services Rules, under Rule 12, Leaves of Absence, state that the Department Heads may grant leaves without pay, for periods not to exceed six months, at the request of the employee concerned, to employees of their departments because of illness, disability, pregnancy, child rearing, or for educational purposes or for any other reasons the appointing authority deems appropriate. Requests for leaves without pay for periods in excess of six months shall be submitted by the department head, together with a written recommendation, to the Human Resources Director for approval or disapproval. Rule 12 also provides for certain appeal procedures if said leave request is denied.

#### D. Restoration of Employment & Benefits Following a Leave

At the end of FMLA/CFRA/CPDL leave, subject to some exceptions including situations where job restoration of *key employees* will cause the County substantial and grievous economic injury, employees generally have a right to return to the same or equivalent positions they held before the FMLA/CFRA leave. Employees on CPDL leave who are not on FMLA/CFRA are entitled to the right to return to the same position or a substantially similar position held before the leave unless the position has been eliminated. The Department, in consultation with Human Resources Disability Management, will notify employees if they qualify as *key employees*, if it intends to deny reinstatement, and of their rights in such instances. Use of FMLA/CFRA leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee's FMLA/CFRA leave.

E. Coordination of FMLA Leave with Other Leave Policies and Provisions

FMLA does not affect any federal, state or local law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights. However, whenever permissible by law, the County will run FMLA/CFRA/CPDL leave concurrently with any other leave provided under state or local law, civil service rule, or an applicable collective bargaining agreement. Additionally, leave may also be provided as a reasonable accommodation under the Americans with Disabilities Act as determined on a case-by-case basis.

F. Questions and/or Policy Compliance

If you have questions regarding this policy, please contact your department's HR Liaison, payroll staff, or the Human Resources Disability Management Unit. The County is committed to complying with the FMLA/CFRA/CPDL, and shall interpret and apply this policy in a manner consistent with the FMLA/CFRA/CPDL.

The FMLA makes it unlawful for employers to: 1) interfere with, restrain, or deny the exercise of any right provided under FMLA; or 2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA. If employees believe their FMLA rights have been violated, they should contact the Human Resources Disability Management Unit immediately. The County will investigate any FMLA complaints and take prompt and appropriate remedial action to address and/or remedy any FMLA violation. Employees also may file FMLA complaints with the United States Department of Labor or may bring private lawsuits alleging FMLA violations. Discrimination is also prohibited under the CFRA and CPDL.

**IV. Responsibilities**

A. Department Head

- i. Ensure that appropriate departmental staff has all necessary information regarding the County of Sonoma's Medical Leave Policy.
- ii. Ensure compliance with the policy.

B. Department Human Resources/Payroll Liaison

- i. Determine employee eligibility for FMLA/CFRA leave and advise employee of leave options. Eligibility determination can be made through the Human Resources Management System (HRMS). (ADD LINK TO HRMS)
- ii. Send employees requesting FMLA/CFRA the Notice of Eligibility of Family Medical Leave (Appendix F) from the County when they are eligible for FMLA and/or CFRA leave. If not eligible, the employee shall be advised of the reasons why they are not eligible.

When eligible for FMLA/CFRA leave, employees are entitled to receive written notice of:

- their rights and responsibilities in connection with such leave;
  - the County's designation of leave as FMLA/CFRA-qualifying; and
  - the amount of leave, if known, that will be counted against the employee's leave entitlement if qualifying and the applicable 12-month period for FMLA entitlement.
- iii. Upon *written request*, provide employees with a written summary of the amount of FMLA/CFRA time used and remaining.
  - iv. Will advise employee's of FMLA eligibility within five (5) business days of a request for FMLA leave or from when the Department learns that the leave is potentially FMLA qualifying.
  - v. In consultation with the Human Resources Disability Management unit, process and track leave.
  - vi. Retain records relating to the leave as required.<sup>6</sup>

#### C. Human Resources Department

Posting requirements under the FMLA/CFRA are managed by the Human Resources Department.<sup>7</sup>

#### D. Employee

It is an employee's responsibility to read the Medical Leave Policy and provide his/her Department with the proper notification and medical certification when requesting and taking a medical leave of absence. This process is outlined below.

### V. **Leave of Absence Approval Process**

The purpose of this section is to provide information to employees to successfully manage their medical leave. This section:

- Explains how to begin the process of requesting a medical leave
- Identifies the type of documentation to include in the request
- Describes how to schedule or extend a medical leave, if necessary

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<sup>6</sup> See Title 29, Code of Federal Regulations, section 825.500

<sup>7</sup> See Title 29, Code of Federal Regulations, section 825.300

- Explains what is needed to return to work from a medical leave
- Discusses requests for continuation of health benefits.

#### A. Employee Notice

To trigger FMLA/CFRA leave protections, employees must inform (verbally or in writing) their supervisor of the need for FMLA/CFRA qualifying leave and if known, the anticipated timing and duration of the leave. Employees may do this by either requesting FMLA/CFRA leave specifically, or explaining the reasons for leave so as to allow the department to determine that the leave is FMLA/CFRA-qualifying. For example, employees might explain that:

- a medical condition renders them unable to perform the essential functions of their job;
- they are pregnant and can no longer perform the essential functions of their jobs
- they have been hospitalized overnight;
- they or a covered family member are under the continuing care of a *health care provider*;
- the leave is due to a *qualifying exigency* caused by a covered military member being on active duty or called to active duty status; or
- If the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a *covered servicemember* with a serious injury or illness.

#### B. Timing of Employee Notice

Calling in “sick,” without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA/CFRA/CPDL leave under this policy. Employees must respond to the County’s lawful questions to determine if absences are potentially FMLA/CFRA/CPDL qualifying. Some absences for medical reasons require medical verification to be provided prior to returning to work. Please see the appropriate MOU for details.

If employees fail to explain the reasons for FMLA/CFRA qualified leave, the leave cannot be approved. When employees seek leave due to FMLA/CFRA qualifying reasons for which the County has previously provided FMLA/CFRA protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA/CFRA leave. NOTE: “Reason” does not mean “diagnosis”. Refer to section IV.A for FMLA/CFRA qualifying reasons.

When the need is foreseeable, employees must provide 30 calendar days advance notice of the need to take FMLA/CFRA leave. When 30 calendar days notice is not possible,

or the approximate timing of the need for leave is not foreseeable, employees must provide the County notice of the need for leave as soon as possible under the facts and circumstances of the particular case.

Employees who fail to give 30 calendar days' notice for foreseeable leave without a reasonable explanation for the delay, or otherwise fail to satisfy FMLA/CFRA notice obligations, may have FMLA/CFRA leave delayed or denied.

The County may retroactively designate leave as FMLA/CFRA leave for a period of up to 30 calendar days with appropriate written notice to the employee. In all cases where a leave qualifies only for FMLA protection, the County and employee can mutually agree that leave be retroactively designated as FMLA leave.

### C. Required Documentation

The Request for Leave form is required to be completed for all leaves, along with a medical certification form. Medical certification forms are available for an Employee's Serious Health Condition or a Family Member's Serious Health Condition (see Appendices A, B and C), or an employee may submit their *health care provider's* own form as long as it contains the required information. County agencies and special districts may have separate required forms; please contact your agency/special district human resources representative for more information.

For the medical certification for a covered servicemember, the Military FMLA Leave and the Certification of Qualifying Exigency for Family Military FMLA Leave forms will need to be completed to effectuate the leave (see Appendices D and E).

### D. Submit Medical Certifications Supporting Need for Leave (Non-Military FMLA Leave)

Employees are required to submit medical certifications (different certification is required for Military Family Leave, see section E below) supporting their need for FMLA/CFRA qualifying leave. As described below (see sections H, I & J), there generally are three types of FMLA/CFRA medical certifications: an initial certification, a recertification, and a return to work certification.

It is the employee's responsibility to provide their Department with timely, complete and sufficient medical certifications. When the Department requests employees either verbally or in writing to provide FMLA/CFRA medical certifications, employees must provide the requested certifications within 15 calendar days after the Department's request, unless it is not practical to do so despite an employee's diligent good faith efforts. The Department shall inform employees if submitted medical certifications are incomplete or insufficient and provide employees at least 7 calendar days to cure deficiencies.

The failure to timely cure deficiencies or otherwise fail to submit requested medical certifications may result in the County not being able to approve FMLA/CFRA qualifying leave.

Medical certifications for both the employee's own medical condition/disability and for family members' medical condition/disability must include:

- The date, if known, on which the serious health condition commenced
- The probable duration of the condition
- An estimate of the amount of time the *health care provider* believes the employee needs to care for themselves, or the *child, parent, spouse, or registered domestic partner*
- A statement that, due to the *serious health condition*, the employee is unable to work at all or is unable to perform one or more of the essential functions of his or her job. When the leave is requested in order for the employee to care for a family member, a statement that the serious health condition of the family member warrants participation of the employee to provide care during a period of treatment and/or the need to provide direct care to the family member.
- Under no circumstance may the County inquire about or require information that identifies the *serious health condition* involved. The employee may identify the nature of the serious health condition, at the employee's option.

With regard to medical certification for leave taken because of an employee's own *serious health condition* or the serious health condition of a family member, if an employee does not submit complete and sufficient certification signed by his/her *health care provider* (i.e. the information is vague, ambiguous or non-responsive), the Human Resources Disability Management Unit may, after giving the employee 7 calendar days notice and an opportunity to cure any deficiencies, contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification). In general the Human Resources Disability Management Unit will seek the medical clarification from the health care provider; however, this clarification can also be made through a health care provider, human resource professional, leave administrator or management official but not the employee's direct supervisor.

If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the *health care provider* and if an employee does not otherwise clarify the certification, the County may deny the taking of FMLA leave if the certification is unclear.<sup>8</sup>

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<sup>8</sup> See 29 Code of Federal Regulations Section 825.307 (a) (c)

Employees requesting leave because of their own, or a covered relation's, *serious health condition*, or to care for a covered servicemember, must supply medical certification supporting the need for such leave from their *health care provider* or, if applicable, the health care provider of their covered family or service member. When employees provide at least 30 calendar days advance notice of the need for a medical leave, they should submit the required medical certification with the request for medical leave. If the Department has reason to doubt initial medical certifications regarding an employee's own serious health condition, it will consult with the Human Resources Disability Management unit, and may require employees to obtain a second opinion at the Department's expense. If the opinions of the initial and second health care providers differ, the Department may, at its expense, require employees to obtain a third, final and binding certification from a health care provider designated or approved jointly by the Department and the employee. The Department will reimburse employees for any reasonable "out of pocket" travel expenses incurred to obtain second or third medical opinions.

E. Submit Certifications Supporting Need for Military FMLA Leave

Upon request, the first time employees seek leave due to *qualifying exigencies* arising out of the active duty or call to active duty status of covered military members, the Department may require employees to provide: 1) a copy of the covered military member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or call to active duty status and the dates of the covered military member's active duty service; and 2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of new active duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies as a result of a different active duty or call to active duty status of the same or a different covered military member.

When leave is taken to care for a *covered servicemember* with a serious injury or illness, the Department will require employees to obtain certifications completed by an authorized *health care provider* of the covered servicemember. In addition, and in accordance with the FMLA regulations, the County may request that the certification submitted by employees set forth additional information provided by the employee and/or the covered servicemember confirming entitlement to such leave.

F. Leave Approval Authority for Longer Duration Medical Leave Requests

Requests for medical leaves less than six months duration are submitted for consideration to the department head/designee. Requests for medical leaves of six months or longer in duration require approval by department heads/designee and the Human Resources Director. This differs from FMLA/CFRA/CPDL leaves, which are statutorily mandated and must be granted for all eligible employees. However, these leaves still require the appropriate documentation for approval.

As noted previously, appropriate documentation is required in order for leaves to be approved. Employees who are not on approved leave are considered absent without official leave, which could subject the employee to disciplinary action.

#### G. Cooperating in the Scheduling of Leave

When planning medical treatment for the employee or family member or requesting to take leave on an *intermittent* or reduced schedule work basis, employees must consult with their supervisor or designee and make a reasonable effort to schedule treatment so as not to unduly disrupt the County's operations. Employees must consult with their supervisor or designee 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, subject to the approval of the applicable *health care provider*. When employees take intermittent or reduced work schedule leave for foreseeable planned medical treatment for the employee or a family member, including a period of recovery from a *serious health condition*, or to care for a covered servicemember, the Department may temporarily transfer employees to alternative positions with equivalent pay and benefits for which the employees are qualified and which better accommodate recurring periods of leave.

#### H. Medical Recertification

Depending on the circumstances and duration of FMLA leave, the Department may require employees to provide recertification of medical conditions giving rise to the need for leave every thirty days. For chronic or long term conditions, the County may require certifications every six months. For leave that also qualifies under CFRA, recertification's will be requested only when a prior medical certification has expired or is about to expire. The Department will notify employees if recertification is required and will give employees at least 15 calendar days to provide medical recertification. No medical recertification will be required for military caregiver leave.

#### I. Return to Work Medical Certifications

Employee returning to work from a FMLA/CFRA leave that was taken because of their own *serious health condition* must provide their Department medical certification confirming (1) the employee is able return to work and (2) the employee's ability to perform the essential functions of their position as outlined in the *Essential Functions Worksheet (EFW)* of their position, with or without reasonable accommodation.

The Department cannot approve job restoration until employees provide return to work certifications. The employee will remain on an approved medical leave until such return to work certification is received.

#### J. Reporting Changes to Anticipated Return Date

If an employee's anticipated return to work date changes and it becomes necessary for the employee to take more or less leave than originally anticipated, the employee must provide the Department with reasonable notice of the employee's changed circumstances and new return to work date. If employees give the Department unequivocal notice of their intent not to return to work, the County's obligation to maintain health benefits (subject to COBRA requirements) and to restore their positions will cease.

K. Using Paid Leave for Unpaid FMLA/CFRA/CPDL Leave

If an employee requests FMLA/CFRA/CPDL leave because of their own *serious health condition* or their own disability due to pregnancy, childbirth or related medical conditions, they must first use accrued paid sick leave for otherwise unpaid family/medical leave, but they may elect to reserve a balance of 40 hours of accrued sick leave. Employees may choose to use accrued vacation or compensatory time off for unpaid FMLA/CPDL leave once the employees' sick time is exhausted or reduced as described above, subject to department approval.

If an employee requests FMLA/CFRA (including Military FMLA) leave to care for a covered family member with a *serious health condition*, they must first use any accrued paid sick leave for otherwise unpaid family/medical leave up to 48 hours per occurrence of illness or injury, as allowed under their applicable MOU/Salary Resolution. However, employees may elect to reserve a balance of 40 hours of accrued sick leave. Once the employees' sick time is exhausted or reduced as described above, employees must use accrued vacation or compensatory time off for unpaid family/medical leave. However, employees may elect to reserve a balance of 40 hours of any combination of accrued vacation or compensatory time off.

If an employee requests CFRA leave to bond with a newborn, *adoptive* or *foster child*, they must first use any accrued vacation or compensatory time off for unpaid family/medical leave. However, employees may elect to reserve a balance of 40 hours of any combination of accrued vacation or compensatory time off. Employees may not use accrued sick leave for the purposes of bonding with a newborn, adoptive, or foster child.

A leave of absence in connection with a workers' compensation injury/illness or for which an employee receives short term or long term disability benefits shall run concurrently with FMLA/CFRA leave, except for those Safety personnel members on authorized on 4850 leave which does not run concurrently. Upon *written request*, the Department will allow employees to use accrued paid time off to supplement any paid workers' compensation, short term disability or long term disability benefits consistent with the type of applicable leave and County policy.

The substitution of paid time off for unpaid family/medical leave time does not extend the length of FMLA leaves and the paid time off runs concurrently with the FMLA/CFRA/CPDL entitlement.

#### L. Paying Employee's Share of Health Insurance Premiums

During FMLA/CFRA leave, eligible employees are entitled to receive paid group health plan coverage while on leave for up to 480 hours at the same levels they had before they took leave. During this time, the County will continue paying the County portion of the health benefit premiums and the employee is responsible for paying the employee portion. Applicable MOU and Salary Resolution provisions also provide that the County continue to pay the County portion of insurance premiums for a period up to 13 pay periods of unpaid leave per illness or disability. The 13 pay period provision applies to the employee's own *serious health condition* only, not to care for a family member.

If paid leave is used during family/medical leave, the County will deduct the employee's shares of the health plan premium as a regular payroll deduction. If the family/medical leave is unpaid and the employee desires to continue health benefits while on medical leave, employees must pay their portion of the premium directly to the Auditor-Controller's Office.

Please note the County's obligation to maintain health care coverage ceases if an employee's premium payment is late. Please see the applicable MOU/Salary Resolution for details. If benefit coverage lapses, the employee and/or the employee's dependents may be eligible to enroll in COBRA benefits, Human Resources/Risk Management/Benefits will notify employees of their COBRA rights and eligibility as appropriate.

#### V. **Where to Find Additional Information**

In addition to this policy, the process and certification forms to request a leave of absence can be obtained by contacting your Department Human Resources liaison, the Human Resources Disability Management Unit, or on the County website (add location once available.)

#### Appendix

A – County of Sonoma Request for Leave Form

B - County of Sonoma Medical Certification for Employees

C - County of Sonoma Medical Certification for Family Members

D - County of Sonoma Medical Certification for Covered Servicemember Military FMLA Leave

E - County of Sonoma Certification of Qualifying Exigency for Military FMAL Leave

F - Notification of Eligibility of Family Medical Leave

## Glossary

**Adoption:** Legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA/CFRA leave.

**Actual hours:** These are hours the employee actually worked – not including paid sick leave, vacation leave, compensatory time off, Mandatory Time Off (MTO), holiday, or any leave without pay.

**Child:** See “Son, daughter or child”.

**COBRA (Consolidated Omnibus Budget Reconciliation Act):** Gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce and other life events. Qualified individuals may be required to pay the entire premium for coverage up to 102 percent of the cost to the plan. For more information go to: [www.dol.gov/dol/topic/health-plans/cobra.htm](http://www.dol.gov/dol/topic/health-plans/cobra.htm)

**Covered servicemember:** A member of the U.S. Armed Forces, including a member of the National Guard or Reserves or Regular U.S. Armed Forces, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary retired list, for a serious injury or illness. A member of the U.S. Armed Forces would have a serious injury or illness if he/she has incurred an injury or illness in the line of duty while on covered active duty in the U.S. Armed Forces provided that the injury or illness may render the servicemember medically unfit to perform duties of the member's office, grade, rank or rating.

**Domestic Partner:** Two adults who have established a registered domestic partnership in accordance with the requirements of California law or have signed a County Domestic Partner affidavit.

**Essential Functions Worksheet (EFW):** Describes in detail all specific skills (including: physical & environmental activities, lifting & carry requirements, sensory skills and mental activities) required for a job class.

**Foster child/care:** 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

**Health Care Provider:** (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; (2)

podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-Ray to exist) authorized to practice under the State law and performing within the scope of their practice as defined by State law; (3) nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized under State law and performing within the scope of their practice as defined by State law; (4) Christian Science practitioners (may be required to submit to second or third certification through examination - not treatment of a health care provider); (5) any other health care provider from whom the employer or the employee's group health plan benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and (6) a health care provider who practices in a country other than the United States who is authorized to practice in accordance with the laws of that country and is performing within the scope of his or her practice as defined under such law. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification: (1) a United States Department of Defense ("DOD") health care provider; (2) a United States Department of Veterans Affairs ("VA") health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider.

Under the Pregnancy Disability Leave Act, this may also include "(1) an individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with [Section 2080](#)) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with [Section 2099.5](#)) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the pregnancy, childbirth or related medical condition."

**Incapable of self-care:** The individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

**In loco parentis:** Persons with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

**Intermittent Leave:** Under certain circumstances, leave may be taken in separate blocks of time due to a single qualifying reason, rather than for one continuous period of time

**Key employees:** A salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees (salaried and non-salaried, eligible and ineligible) employed by the employer within 75 miles of the employee's worksite. (29 C.F.R. 825.217; CA Govt. Code section

12945.2(r)) For determination if an individual is a “key employee”, please contact the Human Resources Disability Management unit.

**Mental or physical disability:** means a physical or mental impairment that limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

**Next of kin of a covered servicemember:** The nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember’s only next of kin.

**Parent:** A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents “in law.”

**Parent of a covered servicemember:** A covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

**Placement:** Placement of a child with an employee for adoption or foster care, or of a child of a person standing in loco parentis.

**Qualifying exigencies:** May include attending certain military events, arranging for alternative childcare, handling certain school issues, addressing certain financial and legal arrangements, attending certain counseling sessions, spending up to five (5) days of leave with a covered military member who is on short-term temporary, rest and recuperation leave during a period of deployment, and attending post-deployment reintegration briefings.<sup>9</sup>

**“Rolling” 12 months:** A rolling 12-month period is measured backward from the date leave first occurs. Each time an employee takes FMLA/CFRA leave, the remaining leave entitlement would be any balance of the 12 weeks that has not been during the immediately preceding 12 months. For example, if an employee used four weeks beginning February 1, 2010, four weeks beginning June 1, 2010 and four weeks beginning December 1, 2010, the employee would not be entitled to any additional FMLA/CFRA leave until February 1, 2011.

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<sup>9</sup> See code of Federal Regulations, Section 825.126

**Serious health condition:** An illness, injury, impairment, or physical or mental condition that involves one of the following:

- A. Hospital Care
  - 1. Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- B. Absence Plus Treatment<sup>♦</sup>
  - 1. A period of incapacity of more than three (3) consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
    - 2. Treatment two (2) or more times by a health care provider, 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,
    - 3. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
- C. Pregnancy
  - 1. Any period of disability due to pregnancy, childbirth, or for pregnancy related conditions, including for prenatal care counts toward FMLA and CPDL leave entitlements. [Note: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA.]
  - 2. CPDL allows up to four (4) months unpaid leave for disability due to pregnancy. CPDL approval requires medical certification. There are no service time requirements to qualify for CPDL. CPDL runs concurrently with FMLA (for FMLA eligible employees).
  - 3. Once the disability portion of the pregnancy leave has concluded, the employee can take up to 480 hours of CFRA leave for bonding purposes. Bonding leave shall be completed within one year of the birth or placement of the *child*.
- D. Chronic Conditions Requiring Treatments

A chronic condition which:

  - 1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

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

E. Permanent/Long-term Conditions Requiring Supervision

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.

F. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery there 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) kidney disease (dialysis).

G. Qualifying exigencies

May include attending certain military events, arranging for alternative childcare, handling certain school issues, addressing certain financial and legal arrangements, attending certain counseling sessions, spending up to five (5) days of leave with a covered military member who is on short-term, temporary, rest and recuperation during a period of deployment, and attending post-deployment reintegration briefings.

**Son, daughter or child:** For purposes of FMLA/CFRA leave taken for birth, or adoption, or foster placement; or to care for a family member with a serious health condition, a biological, adopted, or foster child, a stepchild (including children of a domestic partner under CFRA), a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" or an adult dependent child at the time that FMLA/CFRA leave is to commence.

**Son or daughter on covered active duty or call to active duty status:** The employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

**Son or daughter of a covered servicemember:** The servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco

parentis, and who is of any age.

**Spouse:** A husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

**Written Request:** A written request from an employee can take the form of an email, a letter or other type of note, or completion of applicable forms.

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♦ Treatment includes 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.

A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include 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.