



Family Medical Leave Act (FMLA) & California Family Rights Act (CFRA) Fact Sheet

Family and Medical Leave Act (FMLA) – is a federal law that provides eligible employees with unpaid, job-protected leave for specific, qualifying family and medical reasons and is enforced by the Wage and Hour Division (WHD). Eligible employees may take up to 12 workweeks of leave in a 12-month period per federal law. Some County employees may be eligible to extend their leave for an additional 6 workweeks of County FMLA Extension (CFMLA+) with the same FMLA protections for a total of 18 workweeks of protected leave time pursuant to their MOU or County Policy.

California Family Rights Act (CFRA) – is a state law that provides eligible employees with unpaid, job-protected leave for specific, qualifying family and medical reasons and is enforced by the California Civil Rights Department (CRD). Eligible employees may take up to 12 workweeks of leave in a 12-month period. Please note, depending on the type of leave, CFRA may run concurrent with FMLA.

Eligibility Qualifications

- ▶ Employees must have worked a total of **1250 hours of service** in the 12 months immediately preceding the start of protected FMLA/CFRA leave.
 - Only time actually worked, including overtime hours, is counted. Time not actually worked (i.e., vacation, personal leave, sick leave, holidays, PTO) is not counted toward the 1,250 hours of service. Unpaid leave or layoffs are not counted.
 - Time worked as a part-time, temporary, or seasonal employee counts toward requirement.
 - A USERRA (Uniformed Services Employment and Reemployment Rights Act) covered military service obligation is credited with hours of service that would have been performed but for the period of military service.
- ▶ Employees must have **12 months of employment** (does not have to be consecutive) calculated at the time the leave is to begin.
 - Part-time, temporary, or seasonal work generally counts towards the 12 months of employment
 - If employee is maintained on the payroll for any part of a week, that week counts as a week of employment.
 - CFRA regulations state that the time during which the employee is on leave counts toward the length of service requirement (but not towards the 1,250-hour requirement).
 - Any combination of 52 weeks equals 12 months.
 - The 12 months is cumulative, going back seven (7) years.

Requalifying

- ▶ If an employee takes less than the full amount of leave allowed, they do not need to re-qualify in terms of the number of hours worked to take additional leave for the same reason as the first leave within the 12-month period.
- ▶ If the additional leave is requested for a different reason than the original leave, the employee must re-qualify.

Leave Entitlement and Qualifying Reasons

- ▶ Eligible employees may take up to 12 workweeks of FMLA/CFRA (or 18 workweeks if eligible) of leave in a 12-month period for one or more of the following reasons:
 - Disabled by pregnancy, childbirth, or a related medical condition (FMLA only).
 - To bond with the employee's newborn or a child adopted or placed in foster care with the employee.
 - A serious health condition that makes the employee unable to perform the essential function of their job.
 - FMLA - to care for a spouse, parent, child under 18, adult dependent child over 18 with a serious health condition.
 - CFRA – to care for a spouse, domestic partner, child of any age, grandparent, grandchild, sibling, parent-in-law, or "Designated Person" with a serious health condition.

- ▶ Designated Person - any individual related by blood or whose association with the employee is the equivalent of a family relationship. Only one Designated Person may be named in a 12-month period. (1/1/2023)
- Qualifying Exigency Leave -employee may take leave while a spouse, son, daughter, or parent is a military member on active duty or call to active duty in the Armed Forces; CFRA also allows domestic partner,
- ▶ Intermittent leave/reduced schedule – employee may take protected leave in separate blocks of time or by reducing the time they work each day or week for a single qualifying reason.
- ▶ The County uses a “Rolling 12-month Period” for determining when an employee is eligible to take FMLA/CFRA leave. Under a Rolling 12-month period, each time an employee takes FMLA/CFRA, the remaining leave entitlement is any balance of the 12 workweeks (or 18 workweeks if eligible) not used during the immediately preceding 12 months (look backwards for time taken).
- ▶ Employees receiving SDI benefits in conjunction with protected leave are required to participate in the County’s Integration Program (see SDI/PFL Fact Sheet).

Process for Applying for FMLA/CFRA

- ▶ Employees generally must request leave *30 days in advance when foreseeable*. When need is unforeseeable, notice must be provided as soon as possible and practicable under the circumstances. Employees should submit a “Request for Leave of Absence” form to their department personnel administrator or Leave Team.
- ▶ The department must provide employees with “Notice of Eligibility and Rights & Responsibilities Notice” *within 5 business days* of becoming aware or receiving request for protected leave.
- ▶ When leave is due to the employee’s own serious health condition or a covered family member’s serious health condition a “Certification of Health Care Provider” form is required (this is **NOT** required for baby bonding). Employee has *15 calendar days to return form* to their department’s personnel administrator.
- ▶ The County may require a second or third medical opinions (at the County’s expense) and periodic recertification of a serious health condition, or recertification if leave differs from original request.
- ▶ Once a department determines leave qualifies for protected leave, a “Designation Notice” is given to employee *within 5 business days of determination*. This notice can also be used to deny leave or conditionally grant leave pending receipt of additional information.

Job Restoration and Health Benefits

- ▶ Employees returning from FMLA/CFRA leave for their own serious health condition must be restored to their original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. Employees must submit a “Certification of Health Care Provider for Employee to Return to Work” form to their leave personnel prior to their return-to-work date (except for baby bonding).
- ▶ An employee’s use of FMLA/CFRA leave cannot be counted against the employee.
- ▶ If the employee is covered by the County’s health benefits plan before leave, coverage continues for the duration of leave as if still at work and employee continues to pay their share of premium.
- ▶ Employee may choose not to retain group health plan coverage or coverage may lapse during FMLA/CFRA leave. However, when an employee returns from leave, employee is entitled to be reinstated on the same terms as prior to taking leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

Enforcement

- ▶ **Always** check the employee’s MOU or County Policy for additional entitlements above state and federal laws.
- ▶ It is unlawful for the County, department, or supervisor to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by FMLA and/or CFRA.
- ▶ It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA/CFRA.
- ▶ For additional questions or clarification correspond with your department’s leave personnel or the Leave Program Manager at (925) 655-2141.