



## 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 are eligible for an additional 6 weeks of FMLA protected leave, as outlined in their applicable MOU or Management Resolution, which extends the FMLA period to 18 workweeks.

**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 Department of Fair Employment and Housing (DFEH). 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 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.
  - FMLA has a seven year look back limit, CFRA does not have a look back limit.

### Requalifying

- ▶ If an employee takes less than the full amount of leave allowed, he/she need not 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 of FMLA for those employees eligible pursuant to their MOU or Management Resolution) of leave in a 12-month period for one or more of the following reasons:
  - The birth of a child (FMLA only).
  - Placement of a child with the employee for adoption or foster care.
  - A serious health condition that makes the employee unable to perform the essential function of their job.
  - To care for a spouse, son, daughter, or parent who has a serious health condition (domestic partner is covered under CFRA only)

- A qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. (FMLA only)
- ▶ Intermittent leave/reduced schedule – employee may take FMLA/CFRA leave in separate blocks of time or by reducing the time he/she works 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 12/18 workweeks not used during the immediately preceding 12 months (look backwards for time taken).
- ▶ Employees receiving SDI benefits in conjunction with FMLA/CFRA leave are required to participate in either the County’s buyback or 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 and advise their manager of the intended leave.
- ▶ The department must provide employees with “Notice of Eligibility” and “Rights & Responsibilities Notice” *within 5 business days* of receiving request for FMLA/CFRA 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 (except 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 FMLA/CFRA 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**

- ▶ Upon return from FMLA and/or CFRA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. Employee must submit a “Certification of Health Care Provider for Employee to Return to Work” form to their department’s personnel administrator prior to their return to work date.
- ▶ 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.
- ▶ An 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, the employee is entitled to be reinstated on the same terms as prior to taking the 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 Management Resolution 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 refer to the Leave of Absence Guide or correspond with your department’s personnel administrator or the Leave & ACA Administrator at (925) 335-1741.