



FAMILY MEDICAL LEAVE ACT/CALIFORNIA FAMILY RIGHTS ACT

PURPOSE:

In compliance with the Family Medical Leave Act (FMLA) and the California Family Rights Act, eligible District employees may take unpaid leave of up to 12 weeks for qualified health and family reasons. The purpose of the FMLA and CFRA is to provide employees reasonable leave to care for an eligible family member, or the employee himself or herself, in the event of a serious health condition, or to enable the employee to care for a child within one year of the child's adoption or receipt into foster care. While on leave, eligible employees are entitled to District paid benefits.

NOTE:

FMLA and CFRA leave runs concurrently with other applicable leaves. This means that Family Medical Leave is granted only to ensure a total of 12 weeks of leave with benefits for certain qualifying events (see below). For example, if an eligible employee has paid personal necessity leave of one week available, the unpaid Family Medical Leave will be for an additional 11 weeks, making a total of 12 weeks of leave in any 12-month period. The 12-month period is measured backward from the date upon which the employee uses any leave.

ELIGIBILITY:

Full-time or part-time employees are eligible for this leave who have been employed for more than 12 months with the District (even if there has been a break in service) and have worked at least 1,250 hours in the 12-month period prior to the date the leave begins.

QUALIFYING EVENTS FOR PURPOSE OF FAMILY MEDICAL LEAVE:

The conditions for which FMLA /CFRA leave may be taken are:

1. birth or adoption of a child, or the receipt of a child into foster care, within one year of such birth or placement, or
2. the employee's own serious health condition or
3. a serious health condition of an employee's child, parent, spouse/domestic partner, or member of the immediate household which requires the employee to care for the family member or during which the employee's presence would be beneficial.

ELIGIBLE CHILD:

An eligible child is defined as:

1. a biological, adopted or foster child, a stepchild, or a legal ward under the age of 18, or
2. an adult dependent child over the age of 18 who is incapable of self-help due to a mental or physical disability, or

3. a child under 18 who is treated as the employee's child or for whom the employee has been "in loco parentis."

PREGNANCY AND BABY BONDING

In California, a pregnant employee is entitled to pregnancy disability leave (PDL) of up to four months. An eligible CFRA employee can then take 12 weeks of CFRA baby bonding leave. The first 12 weeks of PDL can run concurrently with FMLA leave for eligible employees, and for that period, the employer must maintain health benefits.

The basic minimum leave duration is two weeks for CFRA-only baby bonding leave. However a request for leave of less than two weeks duration on two separate occasions will be granted. If both a husband and wife work for the District, both married employees have 12 weeks of CFRA leave each in the event of a birth, adoption, or foster care placement.

ESTABLISHING A SERIOUS HEALTH CONDITION

The definition of a serious health condition (SHC) is an illness, injury, impairment, or physical or mental condition which involves either inpatient care or continuing treatment by or under the supervision of a health care provider (see Serious Health Condition definition attached).

An employee establishes that he/she has a SHC by:

1. A period of incapacity of more than 3 consecutive calendar days, plus subsequent treatment on at least 2 occasions by a health care provider (HCP).
 - The first visit establishing a SHC must occur in person within 7 days of the incapacity along with the treatment (e.g., prescription medication).
 - The two visits must occur within a 30-day period from the onset of the initial incapacity; and
 - The HCP, not the employee, must determine if a second visit is needed during the 30 day period; or
2. Incapacity due to a chronic condition or treatment for such a condition, involving "periodic" visits to an HCP twice or more times per year for the condition; or
3. Absences to receive multiple treatments by a HCP, such as chemotherapy.

Generally excluded are common colds, the flu, minor infections, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems and periodontal disease and routine physical examinations, unless they involve complications.

ESTABLISHING NEED TO CARE FOR A FAMILY MEMBER WITH A SHC

Need to care for a family member is determined at the time the leave commences. An employee may take leave for a covered family member when the family member's SHC "warrants the participation of the employee."

APPLICATION FOR LEAVE:

An employee must provide at least 30 days advance notice before FMLA/CFRA leave is to begin if the need for the leave is foreseeable. A request for Leave is made in writing by completing the FMLA/CFRA Leave application form. The application must be submitted to the employee's administrator and then forwarded to the Office of Human Resources at least thirty days before the requested start of the leave unless the reason for the leave is due to an emergency, in which case the request must be made immediately.

CONDITIONS OF LEAVE:

1. An employee who requests medical leave for his or her own serious health condition (SHC) is required to use all accrued paid leave, including vacation time, sick leave and extended sick leave if applicable concurrently with the FMLA/CFRA leave. Because FMLA/CFRA leave is limited to twelve work weeks, it is unlikely that an employee will run out of extended sick leave within the duration of this leave.
2. An employee who requests FMLA/CFRA leave to care for his or her spouse/domestic partner child, parent or member of the immediate household with a serious medical condition must use all available paid leave, including vacation time and personal necessity and then sick leave for care of family members concurrently with FMLA/CFRA leave. At the exhaustion of all paid leaves, the remainder of the leave - up to a maximum of twelve weeks - will be unpaid.
3. With administrative approval, leave taken because of the serious health condition of an employee, spouse/domestic partner, child, parent or member of the immediate household may be taken intermittently or on a reduced time schedule. Such leave may be counted in full or partial days or full or partial weeks. Such intermittent or reduced time schedule leave may require the employee to transfer temporarily to another position.
4. While in unpaid status under FMLA/CFRA Leave, an employee will not accrue additional benefits such as sick leave, vacation, or seniority. However, FMLA/CFRA Leave is counted as active work status for purposes of pension vesting or eligibility in pension plans.

HEALTH CARE PROVIDER CERTIFICATION STATEMENT:

An application for leave based on the serious health condition of the employee or the employee's spouse/domestic partner, child, parent or member of the immediate household must be accompanied by a Health Care Provider Certification Statement completed by a health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the general type of condition. If leave is for the care of a family member, it should also estimate the amount of time the employee will be needed to care for the patient. If leave is for intermittent leave or a reduced work, the certification should also state whether it is medically necessary and, if so, the estimated amount of time off required for doctor's visits and duration of treatment.

The District may require the employee to obtain a second medical opinion regarding the employee's own SHC at District expense. If the two medical opinions conflict, the opinion of a third medical provider, approved jointly by the employee and the District, may be required at District expense, and the third opinion will be final and binding. If additional leave is requested beyond the period stated in the certification, the District may require re-certification in accordance with these procedures.

RETURN FROM OR FAILURE TO RETURN FROM LEAVE:

The employee is expected to return to work on the date stated in the application for leave. If the employee wishes to return earlier, both the employee's administrator and the office of Human Resources should be notified at least 5 days before the employee's planned return. Failure to return from leave without notification may be construed as an abandonment of the employee's position. The District will require a certification that the employee is physically able to return to work upon return from leave due to the employee's own serious health condition.

REINSTATEMENT RIGHTS:

Unless an employee is a “key” employee, an employee on FMLA/CFRA Leave is entitled to be returned to the same position held prior to the leave, if still available, or to a comparable position with equivalent pay, benefits, if applicable, and other terms and conditions of employment, subject to provisions of the contract with the relevant bargaining unit. A “key” employee is one who is among the highest paid 10% of the District’s employees and whose reinstatement would cause substantial harm to the District’s operations. Notice will be provided to a key employee at the time of the leave request.

An employee on FMLA/CFRA Leave will not suffer the loss of any other employment benefit that the employee earned or was entitled to before using the leave.

HEALTH CARE BENEFITS (if applicable):

District paid health care benefits for covered employees will continue during the period of FMLA/CFRA Leave. If the employee does not return from leave for a reason other than continuation or recurrence of the serious health condition that entitled the employee to leave in the first place and employment is terminated, the District can recover the cost of the health care premiums from the employee.