

	<p>COUNTY OF KINGS California POLICY MANUAL</p>	<p>Number: 10-23 BOS Agenda Date: 06/25/2024</p>
<p>SUBJECT</p> <p><u>FAMILY AND MEDICAL LEAVE ACT AND CALIFORNIA FAMILY RIGHTS ACT POLICY</u></p>	<p>By Action of the Board of Supervisors</p> <p><input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Emergency Action</p>	
<p>DEPARTMENT</p> <p>Human Resources Department</p>	<p>Established Date: February 1995 Revision Date(s): 07/13/2004 06/07/2011 07/01/2024</p> <p><i>Citation: Federal law</i> <i>State Laws</i></p>	
<p>Overview: This policy provides eligible employees to take a protected leave from employment to attend to their own health issues, or those of qualifying family members, as prescribed by law.</p>		

FAMILY AND MEDICAL LEAVE ACT AND CALIFORNIA FAMILY RIGHTS ACT POLICY

I. STATEMENT OF POLICY

The federal Family and Medical Leave Act of 1993 (FMLA) and California Family Rights Act (CFRA) provide eligible employees the opportunity to take unpaid, job protected leave for certain medical needs for themselves and their family members. The County of Kings (County) will implement the FMLA and CFRA Policy to provide family and medical care leave for eligible employees in accordance with the requirements of current law, any future legislated amendments, and applicable memorandums of understanding.

The following sets the general terms and conditions of this Policy. It does not purport to cover all provisions of federal and state laws. This policy is not intended to provide any additional leave or time off beyond that required by law. In conjunction with this Policy, other state leave and/or benefit laws may be applicable to eligible employees, either in addition to or concurrent with FMLA and/or CFRA leave, such as the California Pregnancy Disability Leave Act (PDL) and the California Paid Family Leave Act (PFL).

II. DEFINITIONS

Terms are defined at the end of the policy.

III. EMPLOYEES ELIGIBLE FOR FMLA/CFRA LEAVE

An employee is covered by the provisions of FMLA/CFRA if the employee:

- A. Has worked for the County for at least 12 months as of the date the leave is to start. (The 12 months of employment does not have to be consecutive and can be any combination of 52 weeks within a seven (7) year period); AND,
- B. Has worked at least 1,250 hours of service in the 12 months immediately preceding the start of leave. *(Only the time actually worked, including overtime hours worked and paid administrative leave is counted. Time not actually worked, including vacation, personal leave, sick leave, holidays, paid leave due to job-related accidents or injuries, and any other form of paid time off (PTO) is not counted towards the 1,250 hours of service. Unpaid leave of any kind or periods of layoff also are not counted.)*
- C. All periods of absence from work due to or necessitated by service in the uniformed services are counted as hours worked in determining eligibility. Employees returning from fulfilling their National Guard or Reserve military obligation, will be credited with the hours of service that would have been performed for the period of such military service in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA).

IV. REASONS FOR LEAVE

FMLA and CFRA have differing definitions of “family member,” and only FMLA allows employees to take up to twenty-six (26) weeks of leave to provide care for an injured military family member. Because of this, FMLA and CFRA leave may not always run concurrently. In general, FMLA and/or CFRA leave may be taken for any of the following reasons:

Reasons for Leave (See related definitions at the end of the policy.)		FMLA	CFRA	Both
To care for or bond with:	An employee’s newborn child or newly placed foster or adopted child.			X
	A domestic partner’s newborn child or newly placed foster or adopted child.		X	
To care for a family member with a serious health condition who is the employee’s:	Spouse, parent or child under the age of 18, or age 18 or older who is incapable of self-care.			X
	A registered domestic partner, child or registered domestic partner’s, child of any age, parent-in-law, sibling, grandchild, grandparent, or designated person.		X	
The employee’s own serious health condition that makes the employee unable to perform their job, excluding leave for the medical disability related to pregnancy and birth.				X
The employee’s own medical disability related to pregnancy and before the birth of the child.		X		
A qualifying military exigency related to the covered active duty or call to covered active duty of an employee’s spouse, domestic partner*, parent or child in the United States armed forces.				X*

Military caregiver leave for a service member with a serious health condition who is the employee’s spouse, domestic partner, child, parent or next of kin**.			X**
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* CFRA leave **will not run** concurrently when a qualifying exigency is related to an employee’s registered domestic partner in the United States Armed Forces.

** CFRA leave **will run** concurrently when the family member, regardless of military status and with the exception of next of kin, meets the standard criteria for a serious health condition.

V. AMOUNT OF LEAVE

Eligible employees are entitled to a maximum of twelve workweeks of leave (*or 26 weeks to care for a “covered servicemember”*) during a 12-month period. In cases where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

A. Workweeks

Twelve workweeks means the equivalent of twelve of the employee’s normally scheduled workweeks. For eligible employees who work more or less than five days a week, or who work on alternative work schedules, the number of workdays (or hours) which constitute 12 weeks is calculated on a pro-rata basis. For a regular full-time employee who works five 8-hour days per week, 12 workweeks is equivalent to 60 workdays (or 480 hours). For Fire employees (56-hour workweek), part-time and other employees on alternative work schedules, 12 workweeks will be based on the employee’s schedule (e.g., a half-time (.50 FTE) employee is eligible for up to 12 weeks at half-time, or 240 hours).

B. Holidays

Holidays will be counted if the employee is absent the full week or would otherwise have been required to work on that day.

C. Minimum Duration of Leave

If bonding leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested for their own serious health condition or to care for a child, spouse, domestic partner, parent, sibling, grandchild, grandparent, parent-in-law, or a designated person there is no minimum amount of leave that must be taken. However, employees must comply with the notice and medical certification provisions of this policy.

D. Parents Both Employed by the County

In any case in which both parents are employed by the County, each parent is entitled to 12 workweeks of family medical leave during any 12-month period for the birth, adoption, or foster care placement of their child (e.g., bonding leave).

In any case in which both parents are employed by the County, each parent is entitled to 26 workweeks of family medical leave during any 12-month period to care for a covered service member.

Except as noted above, this limitation does not apply to any other type of leave under this policy.

VI. NOTICE OF NEED FOR LEAVE REQUIREMENT

- A. Although the County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. A Request for Family and Medical Leave form must be completed by the employee and submitted to the employee's supervisor or Department Head (or Department Head's designee).
- B. Except for qualifying exigency leave, if leave is foreseeable, an employee shall contact their supervisor at least 30 days prior or as soon as practicable (generally the same or next business day) if the leave is not foreseeable. For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.
- C. If an employee fails to give 30 days advance notice for a foreseeable leave with no reasonable explanation of the delay, approval for the leave may be delayed until 30 days after the employee provides notice.
- D. In unexpected or unforeseeable situations, an employee shall provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by submission of a completed Request for Family and Medical Leave form within three business days after verbal notice is given.

VII. COUNTY RESPONSIBILITIES

- A. County Human Resources will be responsible for ensuring this leave policy is uniformly and equitably applied throughout all County departments. Human Resources will provide information and assistance to County departments when reviewing employee requests for FMLA/CFRA and PDL. The Human Resources Office is responsible for leave management and is the central point of contact for department liaisons regarding employee leaves.
- B. It is the County's responsibility to designate leave as FMLA, CFRA and PDL, based on eligibility and information provided by the employee. If the reason for the absence is due to an FMLA/CFRA and/or PDL qualifying condition/reason, the County will properly notify Employee of their eligibility and designate their absence as FMLA/CFRA or PDL leave with acceptable certification/medical documentation.

- C. Under certain circumstances, the County may designate your absence as an FMLA/CFRA/PDL leave upon knowledge (e.g., hospitalization).
- D. When an employee requests (or the County identifies) a potential FMLA/CFRA-qualifying leave for the first time during the applicable 12-month period, the County must notify the employee, either in writing or orally, of their FMLA/CFRA eligibility status within five (5) business days. The employee must receive a notice when:
 - 1. Their FMLA/CFRA leave begins.
 - 2. It is determined the employee is not eligible for FMLA/CFRA leave. The notice must state at least one reason why the employee is ineligible, including whether the employee fails to meet the 12 months of service, 1,250 hours of work, or other eligibility standard.
- E. The County is required to give the employee written notice detailing specific expectations and obligations of the employee and explaining any consequences if the employee fails to comply. This notice must be provided to the employee each time the eligibility notice is provided. If leave has already begun, the notice must be mailed to the employee's email address or their address of record.

The County's notices must detail the following, when appropriate:

- 1. The leave will be designated and counted against the employee's FMLA/CFRA leave entitlement and the applicable 12-month period for FMLA/CFRA entitlement;
- 2. Any requirements for the employee to provide certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active-duty status and the consequences of not doing so (e.g., denial of leave);
- 3. The employee's right to substitute paid leave, whether the County will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;
- 4. Any requirement that the employee make any premium payments to maintain health benefits, the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis (e.g., the circumstances under which coverage might lapse);
- 5. The employee's right to maintenance of benefits during the FMLA/CFRA leave;
- 6. The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA/CFRA leave if the employee fails to return to work after taking FMLA/CFRA leave;
- 7. Any requirement that the employee provide a return-to-work certification to be reinstated to employment; and
- 8. The employee's right to reinstatement to the same or an equivalent position upon return from leave.

VIII. CERTIFICATION REQUIREMENTS

Employees who request FMLA/CFRA leave for their own serious health condition or to care for a child, spouse, domestic partner, parent, parent-in-law, sibling, grandchild, grandparent, or a designated person who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the County. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of their position.

Employees who request leave to care for a covered servicemember who is a child, spouse, domestic partner, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the covered military member's active-duty orders or other documentation issued by the military which indicates that the covered military member is on "Covered Active Duty or Call to Active-Duty Status", and the dates of the covered military member's active-duty service. A copy of new active-duty orders or similar documentation shall be provided to the employer if the need for leave is because of a qualifying exigency, arises out of a different active duty, or call to active-duty status of the same or a different covered military member.

A. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the County within 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete or insufficient medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a complete and sufficient medical certification within the time frame established by this policy, the County may delay the taking of FMLA/CFRA leave until the required certification is provided. **Failure to provide complete and sufficient medical certification as required may result in the denial of leave or denial of continuation of leave.**

C. Second and Third Medical Opinions

If the County has reason to doubt the validity of a certification for an employee's own serious health condition, the County may require a medical opinion of a second health care provider chosen and paid for by the County. If the second opinion is different from the first, the County may require the opinion of a third provider jointly approved by the County and the employee but paid for by the County. The opinion of the third provider will be binding. An employee may

request a copy of the health care provider's opinions when there is a second or third medical opinion sought.

D. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (*a few days or hours at a time*) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. Employees who take intermittent leave for planned medical treatment must make reasonable effort to schedule such treatment so as not to unduly disrupt County operations.

E. Recertification

If an employee requests an extension of leave or circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications), an employee will be requested to provide a new medical certification.

The employee must provide recertification to the County within 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

IX. INTERMITTENT OR REDUCED SCHEDULE LEAVE

- A. An employee may request to take leave intermittently or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee, when medically necessary. Valid medical certification shall be required. Employees who require intermittent or reduced-schedule leave must try to schedule their leave so that it will not unduly disrupt County operations.
- B. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment of the employee or a covered family member.
- C. An employee may request intermittent or reduced schedule leave following the birth or placement for adoption or foster care of a child; however, leave for newborn care or bonding with a new child requires the Department Head's consent and may be denied based on the operational needs of the Department (also see section V, paragraph C).

X. USE OF PAID LEAVE

FMLA/CFRA leave is unpaid. However, employees on FMLA/CFRA leave for their own serious health condition must use and exhaust any accrued paid sick leave before going into unpaid status. Employees on FMLA/CFRA leave may also elect to use any accrued and available Family Sick Leave, vacation, or compensatory time off concurrently with their FMLA/CFRA leave. Employees on leave

shall not alternate between utilizing their accrued banks (e.g., vacation, sick, etc.) and going into unpaid status. These procedures are detailed below and in the applicable Memorandum of Understanding.

A. Use of Paid Sick Leave

1. An employee on unpaid FMLA/CFRA leave due to their own serious health condition **must** use and exhaust any accrued paid sick leave concurrently with their FMLA/CFRA leave.
2. An employee on unpaid FMLA/CFRA leave to care for a child, spouse, domestic partner, parent, parent-in-law, sibling, grandchild, grandparent, or designated person with a serious health condition **may** use, concurrently with their FMLA/CFRA leave, accrued paid sick leave pursuant to the County's Personnel Rules and applicable Family Sick Leave limits.
3. Exceptions and requirements for leave that also qualifies as PDL are covered in section XIII Coordination with Pregnancy Disability Leave (PDL).

B. Use of Accrued Vacation or Compensatory Time

An employee on unpaid FMLA/CFRA leave may elect to use their accrued paid vacation or compensatory time concurrently with their FMLA/CFRA leave, unless provided otherwise by contract or resolution.

C. County's Right to Require Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves

If an employee takes a leave of absence for any reason which is FMLA/CFRA-qualifying, the County shall designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on leave pursuant to Labor Code §4850.

D. County's and Employee's Rights If an Employee Requests Accrued Leave without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to an FMLA/CFRA-qualifying purpose, the County may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the County denies the employee's request and the employee provides information that the requested time off is for an FMLA/CFRA-qualifying purpose, the County may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the County may require the employee to exhaust accrued leave as described above.

XI. EFFECT ON EMPLOYEE BENEFITS AND STATUS

- A. An employee granted FMLA/CFRA leave shall continue to be covered under the County's group health insurance plan and life insurance plan (if applicable) under the same conditions as

coverage would have been provided if they had been continuously employed during the leave period.

- B. Employee contributions, if applicable, will be required either through payroll deduction during paid leave or by direct payment to the Finance Department during unpaid leave. If an employee goes into a leave without pay status, they will be responsible for paying their portion of the health insurance. Employee contributions are subject to any rate changes that occur while the employee is on leave, as well as any changes in plan coverage or insurance carriers.
- C. If the employee's contribution is more than 30 days late, the County may terminate the employee's insurance coverage. The employee will be mailed a notice at least 15 days before coverage is to cease, advising that their insurance will be dropped if the premium is more than 30 days late. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.
- D. If the employee exhausts their accrued banks and leave entitlement under FMLA/CFRA/PDL and is unable to return to work, the County shall terminate the employee's health insurance coverage. The employee may elect to continue their health insurance coverage for up to 18 months under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The employee will receive a notice at least 15 days before coverage is to cease, advising that their insurance will be dropped.
- E. If the employee fails to return from FMLA/CFRA leave for reasons other than (1) the continuation, recurrence, or onset of a serious health condition of the employee or a covered family member; (2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness; or (3) other circumstances beyond the employee's control, the County may seek reimbursement from the employee for the portion of the premiums paid by the County on behalf of the employee (also known as the employer contribution) during the period of leave.
- F. An employee on an approved FMLA/CFRA leave retains employee status. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave but will not lose service hours accrued prior to the leave start date.
- G. Postponement of the employee's anniversary date and any applicable step increase shall occur as provided for in Section 7020 of the Personnel Rules.

XII. JOB PROTECTION

A. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period. The taking of leave will not affect the County's right to eliminate an employee's position or terminate an employee while on leave. **Employee's failure to return to work when leave entitlements are exhausted may result in termination of employment.** The employee retains applicable rights of appeal.

B. Employee's Obligation to Provide Updates

Employees will be required to furnish updates on their status and intent to return to work if leave is extended. If the circumstances of the employees' leave changes and they can return to work earlier than the date previously provided, the employee will be required to notify their department at least two workdays prior to the date they intend to report for work. Employees will be required to provide medical documentation indicating release back to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness-for-Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform their job, the employee must obtain and present a fitness-for-duty certification from a health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

D. Reinstatement of Key Employees

The County may deny reinstatement to a key employee (e.g., an employee who is among the highest paid 10 percent of all employed by the County within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the County, and the employee is notified of the County's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

XIII. CIRCUMSTANCES UNDER WHICH LEAVE MAY BE DENIED OR DELAYED

- A. Leave may be delayed or denied if an employee fails to provide valid, timely medical certification or recertification, as required.
- B. When an employee goes on leave for their own serious health condition, which made the employee unable to perform their job duties, reinstatement from leave may be delayed or denied if an employee fails to provide a certification from their medical provider returning the employee to work.
- C. Reinstatement from leave may be denied if an employee's position was eliminated prior to reinstatement for reasons unrelated to the leave.
- D. Continued leave and reinstatement will be denied if an employee advises the County that they do not intend to return to work.
- E. Leave and/or reinstatement may be denied if an employee obtains or attempts to qualify for FMLA/CFRA leave fraudulently.

XIV. COORDINATION WITH CALIFORNIA PREGNANCY DISABILITY LEAVE (PDL)

- A. Under California law, a pregnant employee may take leave when they are disabled by pregnancy, childbirth, or a related medical condition. PDL is separate and distinct from the provisions of the CFRA and FMLA Family and Medical Leave laws.
- B. The possible leave entitlement for PDL, FMLA and CFRA is four months plus 12 work weeks. This assumes that the employee is medically disabled by pregnancy, childbirth, or related medical conditions for four months, and then requests, and is eligible for, CFRA leave for the newborn care or bonding leave with a new minor child.
- C. A pregnant employee may take up to four months PDL if they are, in the medical opinion of their treating physician or other treating licensed health care practitioner, unable to perform the essential duties of their job or to perform them without undue risk to themselves or others. For a regular full-time employee who works five 8-hour days per week, 4 months is equivalent to 693 hours of leave entitlement (1/3 of a year or 17 1/3 weeks). For eligible employees who work more or less than five days a week, or who work on alternative work schedules, the amount of PDL available is calculated on a pro-rata basis.
- D. At the end of the employee's period of pregnancy disability, or at the end of four months of PDL, whichever occurs first, the employee, if eligible, may request to take FMLA/CFRA of up to 12 workweeks for the birth of their child if the child has been born by this date.

If at the end of the maximum of four months of PDL the employee is not released by their treating physician or licensed health care practitioner to return to duty and they have not yet given birth, they may request under FMLA leave, if eligible, for a serious health condition as defined by applicable law. The employee must provide the required medical certification.

- E. Once the employee is released from pregnancy disability, there is no requirement that either the employee or the newborn child have a serious health condition in order for the employee to request and be granted up to 12 weeks of FMLA/CFRA for newborn care or bonding with a new minor child.
- F. The employee will be required to use sick leave concurrently with leave that also qualifies as PDL prior to going into unpaid status.
- G. The employee may choose, but will not be required, to use vacation or compensatory leave concurrently with PDL prior to going into unpaid status.

XV. COORDINATION WITH CALIFORNIA PAID FAMILY LEAVE (PFL)

- A. Paid Family Leave (PFL) does not create a separate right for leave or job protection. Instead, PFL allows an employee to receive wage replacement benefits when taking an otherwise unpaid leave.

Eligible employees who contribute through payroll deduction to State Disability Insurance (SDI) may apply to the California Employment Development Department (EDD) for up to eight (8) weeks of wage replacement benefits in a 12-month period:

- (1) To bond with a new minor child after birth, adoption, or foster care placement.
- (2) To care for a child, spouse, registered domestic partner, parent, parent-in-law, sibling, grandchild, or grandparent with a serious health condition, as defined in the law.
- (3) To participate in a qualifying event when a child, spouse, registered domestic partner, or parent, is deployed to a foreign country.

- B. If an employee is on unpaid protected leave for a PFL-qualifying event, any approved leave under PFL shall run concurrently with any protected leave entitlements.

If an employee experiences a PFL-qualifying event but does not qualify for protected leave (such as FMLA, CFRA, and PDL), the employee may be required to participate in the interactive process with Human Resources to request a Personal Leave of Absence, in accordance with Personnel Rule 7027. A request for a Personal Leave of Absence may be granted upon the recommendation of the Department Head and approval by the County Administrative Officer. There is no requirement that the County grant leave for a PFL-qualifying event even if the employee is eligible to receive SDI benefits under the law.

XVI. DEFINITIONS

The definitions below are intended for ease of reference. The definitions provided by the FMLA shall control for FMLA leave and the definitions provided by CFRA shall control for CFRA leave. In the event that the FMLA or CFRA definitions or regulations change, the updated definitions or regulations shall be controlled even if this policy has not been revised to reflect the changes.

- A. "12-month period" means a rolling 12-month period measured forward from the first day the eligible employee takes FMLA/CFRA leave and ends 12 months after that date. After the end of the 12-month period, the employee is eligible to begin a new 12-month period measured forward from the first day the employee again takes FMLA/CFRA. Note: The rolling 12-month period is used for FMLA/CFRA leave including "qualifying exigency leave". It is not used for "Military Caregiver Leave."
1. There is no carry-over of unused leave from one 12-month period to the next 12-month period.
- B. "Single 12-month period" means a 12-month period which begins on the first day the eligible employee takes FMLA/CFRA leave to take care of a covered servicemember and ends 12 months after that date. Note: It is used for "Military Caregiver Leave."
- C. "Family Member" for FMLA leave means an employee's child, spouse, or parent. "Family member" for CFRA leave means an employee's child, spouse, domestic partner, parent, parent-in-law, sibling, grandchild, grandparent, or a designated person.

D. “Child”

1. Under the FMLA, “child” means a child under the age of 18 years of age, or 18 years of age or older, who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care, and includes a biological, adopted, foster or stepchild. A child is “incapable of self care” if they require active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living - such as, caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
2. Under the CFRA, “child” means a child, including a child who is 18 years of age or older, regardless of whether the child is capable of self-care. An employee’s child means a biological, adopted, foster, stepchild, legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis (in place of a parent).

E. “Spouse” means two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below.

F. “Domestic Partner,” is another adult with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State and who meets the criteria specified in California Family Code sections 297 and 299.2. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient.

G. “Parent” means the biological, adoptive, step or foster parent of an employee or an individual who stood in loco parentis (in place of a parent) to an employee when the employee was a child. Under the CFRA only, this term also includes parents-in-law.

1. “In loco parentis” means in the place of a parent, instead of a parent, and/or charged with a parent’s rights, duties, and responsibilities. It includes those with the day-to-day responsibilities to care for and financially support a child. It does not require a biological or legal relationship.

H. “Parent-in-law” means the parent of a spouse or domestic partner.

I. “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

J. “Grandchild” means a child of the employee’s child.

K. “Grandparent” means a parent of the employee’s parent.

L. “Designated Person”, as defined by Government Code § 12945.2 & Labor Code § 245.5, means any individual related by blood or whose association with the employee is the equivalent of a family relationship. An employee is limited to one (1) designated person per 12-month period.

- M. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
1. “Inpatient Care” in a hospital, hospice or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved or recovery therefrom), or any subsequent treatment in connection with such inpatient care; OR
 2. “Continuing Treatment by a Health Care Provider”
 - A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - A period of incapacity (e.g., inability to work or perform other regular daily activities) due to a serious health condition of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - Treatment two or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, a nurse or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by, a health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity; or
 - Treatment by a health care provider on at least one occasion that must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over-the-counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - Any period of incapacity due to pregnancy or for prenatal care. (Note that pregnancy is a “serious health condition” under FMLA only, but not under CFRA. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)
 - Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy). Absences for such incapacity qualify for leave even if the absence lasts only one day.

- A period of incapacity that 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.
 - Any period of absence to receive multiple treatments (including any period of recovery therefrom) 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.
- N. "Intermittent leave" is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. *(For example: leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of several months, such as for chemotherapy.)* Employees who take intermittent leave for planned medical treatment must make reasonable effort to schedule such treatment so as not to disrupt unduly the employer's operations.
- O. "Reduced leave schedule" is a leave schedule that temporarily reduces an employee's usual number of working hours per workweek, or hours per workday. In other words, a reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. *(For example: an employee, with department head approval, works part-time while on newborn care leave; or because an employee who is recovering from a serious health condition is not strong enough to immediately resume a full-time schedule.)*
- P. "Health Care Provider" means:
1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
 2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
 3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors *(limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist)* authorized to practice in California and performing within the scope of their practice as defined under California State law;
 4. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
 5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
 6. Any health care provider from whom an employer or employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

For Family Military Leaves Only:

- Q. "Qualifying Exigency" may include short-notice deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, spending time with a "covered military member" who is on short-term rest and recuperation leave, and attending post-deployment reintegration briefings.
- R. "Covered Military Member" as defined by the FMLA regulations is the employee's child, spouse, or parent on "covered active duty or call to duty status." The term "covered military member" applies to an employee's use of qualifying exigency leave. The term "covered military member" applies to an employee's use of qualifying exigency leave.
- S. "Covered Active Duty or Call to Active Duty Status" means duty under a call or order to active duty (or notification of an impending call or order to active duty) during the deployment of the member of the Armed Forces (including members of reserve components of the Armed Forces) in support of a contingency operation, or when deployed to any foreign country.
- T. "Contingency Operation" means a military operation that is (1) designated by the Secretary of Defense as an operation in which members of the United States Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (2) that results in the call to order to, or retention of, active duty members of the United States Armed Forces by law or any other provision of law during a war or national emergency declared by the President or Congress.
- U. "Military Caregiver Leave" is to care for a child, spouse, domestic partner, parent, or "next of kin" who is a "covered servicemember" of the United States Armed Forces and who is ill or injured in the line of duty on active duty. This leave can run up to 26 weeks (6.5 months) of unpaid leave during a single 12-month period (*CFRA will run concurrently with FMLA with the exception of "next of kin".*)
- V. "Covered Servicemember" means (1) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a "serious injury or illness"; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a "serious injury or illness" and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. The term "covered servicemember" applies to an employee's use of "military caregiver leave."
- W. "Outpatient Status" means, with respect to a "covered servicemember," the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- X. "Next of Kin of a Covered Servicemember" means the nearest blood relative other than the covered servicemember's child, spouse, domestic partner, or parent, in the following order of

priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, siblings, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA.

- Y. "Serious Injury or Illness," in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means a injury or illness that was incurred by a covered servicemember in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and (2) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period described in V(2), means a qualifying injury or illness as determined by the Department of Defense (DOD) that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.