

Family and Medical Leave

1047.1 PURPOSE AND SCOPE

The purpose of this policy is to provide general guidance for managing unpaid leave for eligible employees for qualified medical and family reasons, including (29 USC § 2612; Government Code § 12945.1; Government Code § 12945.2):

- The birth, adoption, or foster care placement of a child.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition.
- When an employee is unable to work because of his/her own serious health condition.
- To care for a spouse, son, daughter, parent, or next of kin service member of the United States Armed Forces who has a serious injury or illness incurred in the line of duty.

This policy does not address all possible situations and circumstances that may arise when an employee requests leave for family or medical reasons. As these leave situations arise, supervisors should consult with the Administration or legal counsel to obtain specific guidance regarding leave rights and obligations.

Nothing in this policy supersedes any provision of any collective bargaining agreement, civil service or other local rule, or any law that provides greater family or medical leave rights.

1047.1.1 DEFINITIONS

Definitions related to this policy include:

CFRA - California Family Rights Act (Government Code § 12945.1; Government Code § 12945.2).

Child - 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 (29 USC § 2611; 29 CFR 825.102; 29 CFR 825.122). An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster child, stepchild, or a child for whom the employee is standing in loco parentis (in place of a parent).

FMLA - The federal Family and Medical Leave Act (29 USC § 2601 et seq.).

Qualified health care professional - A physician, surgeon, doctor of osteopathy, podiatrist, dentist, psychologist, optometrist, nurse practitioner, nurse midwife, clinical social worker, or physician assistant duly licensed and authorized to practice medicine, chiropractors for some purposes, or any health care provider from whom the district benefits plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits (29 CFR 825.125).

Spouse - The person with whom an employee has entered into a marriage as defined or recognized by the location in which the marriage was entered into (29 USC § 2611; 29 CFR 825.102; 29 CFR 825.122).

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1047.2 POLICY

It is the policy of the Fresno County Fire Protection District to manage unpaid leave for eligible employees for qualified medical and family reasons in compliance with federal and state law and any applicable collective bargaining agreement.

1047.3 ELIGIBLE EMPLOYEES

Employees are eligible for FMLA/CFRA after working for the Fresno County Fire Protection District for at least one year and working 1,250 hours over the 12 months prior to the commencement of the leave (29 USC § 2611; 29 CFR 825.110). Employees may not be eligible for leave if there are less than 50 employees within 75 miles of the employee's work site.

1047.4 TYPE AND DURATION OF LEAVE

Generally, eligible employees are entitled under FMLA/CFRA to 12 work weeks of unpaid leave during a 12-month period (29 USC § 2612; 29 CFR 825.100). Up to 26 weeks of unpaid leave during a single 12-month period may be available to care for certain injured military service members. The 12-month period is measured backward from the date leave is taken and continuously with each additional leave day taken.

1047.4.1 SERIOUS HEALTH CONDITIONS

Eligible employees may take up to 12 weeks of leave to care for a spouse, child, or parent with a serious health condition or when the employee is unable to work because of his/her own serious health condition (29 USC § 2612(a)(1); 29 CFR 825.200).

If both spouses are employed by the Fresno County Fire Protection District, the combined number of work weeks to care for a sick parent is limited to 12 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.201).

Generally, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves (29 USC § 2611; 29 CFR 825.113):

- An overnight stay in a hospital, hospice, or residential medical care facility (29 CFR 825.114).
- Continuing treatment by a qualified health care professional due to a serious health condition of more than three full consecutive calendar days (29 CFR 825.115(a)).
- Any period of incapacity due to pregnancy complications or prenatal care (29 CFR 825.115(b)).
- A chronic condition which requires treatment (29 CFR 825.115(c)).
- A permanent condition for which treatment may not be effective (such as Alzheimer's or the terminal stages of a disease) (29 CFR 825.115(d)).
- Any period of absence to receive multiple treatments, including any recovery period, 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

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days without medical intervention or treatment (such as cancer chemotherapy or physical therapy for arthritis) (29 CFR 825.115(e)).

1047.4.2 BIRTH OR PLACEMENT OF A CHILD

Eligible employees may take up to 12 weeks of leave for the birth, adoption, or foster care placement of a child of the employee (29 USC § 2612; 29 CFR 825.200). The leave must be concluded within one year of the birth or placement of the child (29 CFR 825.120; 29 CFR 825.121).

If both parents are employed by the Fresno County Fire Protection District, the combined number of work weeks of leave is limited to 12 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.120; 29 CFR 825.121).

1047.4.3 MILITARY EXIGENCY LEAVE

Eligible employees may take service member leave of up to 12 weeks for qualifying exigencies occurring because a spouse, child, or parent is on covered active duty or has been notified of an impending order to active duty (29 USC § 2612(a)(1)(E); 29 CFR 825.200). This type of leave is available to a family member of a person in the National Guard, Reserves, or members of the regular Armed Forces deployed to a foreign country. Qualifying exigencies include (29 CFR 825.126):

- Addressing issues that arise from a short notice (seven or less days) deployment.
- Attending military events related to the active duty or call to duty.
- Attending family support or assistance programs.
- Making child care or educational arrangements or attending school activities arising from active duty or a call to active duty.
- Making financial and legal arrangements.
- Spending time with a military member who is on short-term rest-and-recuperation leave during a period of deployment.
- Attending post-deployment activities.
- Addressing issues that arise from the death of a military member, such as making funeral arrangements.
- Caring for a military employee's parent who is incapable of self-care, such as providing care on an immediate need basis or arranging for alternative care.

1047.4.4 MILITARY CAREGIVER LEAVE

Eligible employees may take up to 26 weeks of leave in a single 12-month period to care for a spouse, son, daughter, parent, or next of kin who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces, provided that such injury or illness may render the family member medically unfit to perform work (29 USC § 2612; 29 CFR 825.200).

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Military caregiver leave is also available to family members of covered veterans who were members of the Armed Forces, including the National Guard or Reserves, at any point in the five years preceding the date on which the covered veteran undergoes medical treatment, recuperation, or therapy (29 USC § 2612; 29 CFR 825.127).

During the single 12-month period, employees are entitled to no more than a combined total of 26 weeks of FMLA leave. In any case in which both spouses are employed by the Fresno County Fire Protection District, the combined number of work weeks of leave is limited to 26 during any 12-month period (29 USC § 2612(f); 29 CFR 825.127).

Service member FMLA leave runs concurrent with other leave entitlements provided under federal, state, and local law. 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.

1047.4.5 FAMILY MILITARY LEAVE

An employee who is a spouse or registered domestic partner of a member of the military who is deployed to designated combat zones is entitled to take up to 10 days unpaid leave (Military and Veterans Code § 395.10).

1047.4.6 INTERMITTENT LEAVE

An employee may take leave for the employee's own serious health condition, for the serious health condition of the employee's spouse, child, or parent, or to care for a covered service member with a serious injury or illness, intermittently or on a reduced schedule if medically necessary, and if that medical need can best be accommodated by an intermittent schedule as defined in federal law (29 USC § 2612(b); 29 CFR 825.202; 29 CFR 825.124).

Leave due to a military exigency may be taken on an intermittent or reduced-leave schedule (29 CFR 825.202).

Intermittent leave for the birth, adoption, or foster care placement of a child is only available if granted at the discretion of the Fire Chief, unless the employee has a serious health condition in connection with the birth or if the newborn child has a serious health condition (29 CFR 825.120; 29 CFR 825.121).

Intermittent leave for any employee shall be tracked and calculated.

1047.4.7 PREGNANCY DISABILITY LEAVE

FMLA is separate and distinct from disability leave for pregnant employees. Pregnant employees may be entitled to a disability leave as provided in the Pregnancy Disability Leave Policy in addition to any FMLA/CFRA leave.

1047.4.8 LEAVE FOR VICTIMS OF ABUSIVE BEHAVIOR

Eligible employees may take leave if the employee is the victim of domestic violence, stalking, or sexual assault and needs leave for any of the purposes specified in Labor Code § 230.1. Reasonable advance notice of leave is required except in cases where notice is not feasible.

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Information relating to this leave shall be kept confidential to the extent permitted by law (Labor Code § 230.1).

The District shall provide written notice of the rights specified in this section to newly hired employees and upon request (Labor Code § 230.1).

1047.4.9 NEW PARENT LEAVE ACT

Eligible employees may take parental leave up to 12 weeks to bond with a new child within one year of the child's birth, adoption, or foster care placement. The employee shall be able to utilize accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the Fresno County Fire Protection District during the period of parental leave. If both parents are employed by the Fresno County Fire Protection District and both qualify for the requested leave, the leave is limited to 12 weeks combined. Employees eligible for both FMLA and CFRA are not eligible for parental leave (Government Code § 12945.6).

1047.5 EMPLOYEE BENEFITS WHILE ON LEAVE

While on leave, employees will continue to be covered by any group health insurance to the same extent that coverage is provided while the employee is on the job (29 USC § 2614(c); 29 CFR 825.209). However, employees will not continue to be covered under non-health benefit plans.

Employees are responsible for any health plan employee contributions while on leave (29 CFR 825.210). Employee contribution rates are subject to any change in rates that occurs while the employee is on leave. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the District may recover its share of health plan premiums for the entire leave period unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member that would entitle the employee to leave, or because of circumstances beyond the employee's control (29 CFR 825.213). The District and Employee will work to reach an informal resolution regarding any such health plan contributions. If the District and the Employee do not reach an informal agreement, the District may pursue repayment of such contributions by pursuing legal action against the Employee.

Employees may not earn additional time off while on unpaid leave.

1047.6 SUBSTITUTION OF PAID ACCRUED LEAVES

Subject to applicable collective bargaining agreements and civil service rules, employees are required to exhaust all applicable paid leave before taking unpaid leave. Paid accrued leave includes vacation leave and sick leave pursuant to the Fair Labor Standards Act, during FMLA and/or CFRA leave. Employees may not use paid accrued leave to extend FMLA/CFRA leave beyond 12 work weeks per year.

1047.6.1 USE OF SICK LEAVE

Employees are required to first exhaust paid sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition.

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Employees may choose to use paid sick leave concurrently with leave under this policy (Labor Code § 233):

- To care for a parent, spouse, or child with a serious health condition.
- To care for a domestic partner recognized under California law who has a serious health condition.

1047.7 USE OF FMLA/CFRA LEAVE

Except as otherwise provided under State law, If an employee takes a leave of absence for any reason that is FMLA/CFRA-qualifying, the District may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

1047.8 PROCEDURES

The following procedures will apply for all employees requesting leave under FMLA/CFRA:

- (a) When a leave is requested for a medical or other FMLA/CFRA-related treatment appointment, the employee must make a reasonable effort to schedule the appointment at a time that minimizes disruption to the District's operations (29 USC § 2612; 29 CFR 825.302).
- (b) An employee who wishes to take FMLA/CFRA must provide his/her supervisor with 30 days' advance notice when the leave is foreseeable or as soon as practicable if the need for leave is not foreseeable (29 USC § 2612; 29 CFR 825.302; 29 CFR 825.303).
- (c) At the time of the request, the employee must complete a FMLA/CFRA request form.

Requests for medical leave shall be accompanied by a qualified health care professional statement, including the date on which the serious health condition began and the estimated date of return to work (29 USC § 2613; 29 CFR 825.302).

Once the leave is requested or designated by the District, the supervisor should forward the request and any medical certifications to the Administration and ensure the employee is provided the necessary forms and FMLA/CFRA information within five days (29 CFR 825.300).

Employees are required to provide medical certification of a qualified health care professional or military documentation, if requested (29 CFR 825.305; 29 CFR 825.308; 29 CFR 825.309; 29 CFR 825.310).

Employees shall be required to periodically report on their status and intent to return to work (29 USC § 2614; 29 CFR 825.311). This may assist in avoiding a delay in reinstatement when the employee is ready to return to work.

Employees returning from a medical leave from the employee's own serious health condition will be required to present medical verification from a qualified health care professional of the employee's ability to return to work and a list of any restrictions that need to be accommodated (29 USC § 2614; 29 CFR 825.100; 29 CFR 825.312).

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1047.9 REINSTATEMENT FOLLOWING LEAVE

Generally, employees returning from FMLA/CFRA within the qualified period will be restored to their original job or to an equivalent job with equivalent pay and benefits (but not seniority), unless the employee would not otherwise have been employed at the time reinstatement is requested (e.g., in the case of a layoff) (29 USC § 2614; 29 CFR 825.214; 29 CFR 825.216).

If the same position is no longer available, such as in a layoff, the employee will be entitled to a position that is comparable in pay, job content, and promotional opportunities and geographic location, if such a comparable position exists.

If upon return from leave an employee is unable to perform the essential functions of the job because of a physical or mental disability, the supervisor must work with the Administration or legal counsel to engage in an interactive process with the employee to identify a potential reasonable accommodation.

After exhausting paid FMLA/CFRA leave, non-paid leave will continue until the conclusion of the protected 12- or 26-week time limit. Following the protected leave, the Fire Chief, in consultation with the legal counsel or the Administration, will determine whether non-FMLA/CFRA leave should apply.

1047.10 RESPONSIBILITY

Supervisors should work with the Administration or legal counsel regarding questions relating to leave or reinstatement from leave under this policy. The Administration should advise the supervisor and inform members of their rights and responsibilities.

1047.11 RECORDS

The District will maintain leave-related records as required by 29 CFR 825.500 for at least three years and in compliance with the District's established records retention schedule.

Records and documents related to doctor certifications and other medical information created for purposes of complying with FMLA/CFRA and this policy shall be maintained as confidential medical records in separate files from employee personnel files.

1047.12 NOTICE TO EMPLOYEES

The Administration Officer should ensure that a notice explaining the FMLA/CFRA provisions and procedures is prominently posted in conspicuous places in the District where it can be readily seen by all employees and applicants for employment. Electronic posting is sufficient as long as the other posting requirements have been met as provided by 29 CFR 825.300 (29 CFR 825.300).