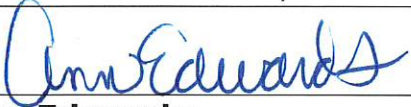


		Policy # 838
Subject: FMLA/CFRA Policy		
Responsible Department: Personnel Services		
Effective Date: 10/2015	Revision Date: 12/2022	
		
Ann Edwards County Executive		
		
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1. Purpose

To define and implement the policy to be followed with respect to administration of the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) and Sacramento County Code Section 2.78.

2. Authority

Family and Medical Leave Act

California Family Rights Act

Sacramento County Code – Section 2.78

3. Scope

FMLA and CFRA ensure paid or unpaid time off for certain family care or medical care. FMLA is enforced by the U.S. Department of Labor. CFRA is state law that is enforced by the California Civil Rights Department. Leave issues related to military service members are covered under a separate section in this policy. To the extent that there are any inconsistencies between this policy and existing memoranda of understanding covering employees in any representation unit created pursuant to Chapter 2.79 of the Sacramento Code, the provisions of the memoranda of understanding

shall prevail.

Definitions

Eligible Family Members

Child: A biological child, adopted child, foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of child is applicable regardless of age or dependency status. Covered under both FMLA and CFRA. Child also includes the child of a Registered Domestic Partner, and if you do/did not stand in loco parentis, then their caregiving is covered under CFRA only.

In Loco Parentis: A person acting in loco parentis has or had day-to-day responsibilities to care for and financially or emotionally support a child. Covered under both FMLA and CFRA.

Parent: A biological parent, foster parent, adoptive parent, stepparent, or a legal guardian of an employee or registered domestic partner, or a person who stood in loco parentis to an employee when the employee was a minor child. A biological or legal relationship is not necessary. Parent also includes a parent that is a Registered Domestic Partner. If the Registered Domestic Partner parent did not stand in loco parentis to the employees, then they are covered under CFRA only. Parent-in-laws (the parent of a spouse or domestic partner) are covered under CFRA only. All other parents are covered under both FMLA and CFRA.

Spouse: An individual to whom the employee is legally married as defined by state law. It does not include a Registered Domestic Partner. Covered under both FMLA and CFRA.

Registered Domestic Partner (RDP): Two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, have satisfied eligibility criteria according to California Family Code Section 297, and further have filed a Declaration of Domestic Partnership with the California Secretary of State. RDP's are covered under CFRA only.

Sibling: A person related to another person by blood, adoption, or affinity through a common legal or biological parent. Siblings are covered under CFRA only.

Grandchild: A child of the employee's child (see prior definition of child). Grandchildren are covered under CFRA only.

Grandparent: A parent of the employee's parent (see prior definition of parent). Grandparents are covered under CFRA only.

Designated Person: Any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. Employees may only have one designated person per 12-month period. Designated persons are covered under CFRA only.

Health Care Provider

A "health care provider" may be a physician, surgeon, nurse practitioner, nurse midwife, podiatrist, dentist, clinical psychologist, chiropractor, optometrist, clinical social worker, physician assistant, Christian Science practitioner listed with the First Church of Christian Scientist, Boston, and any health care provider recognized by the County's group health plan. The health care provider can be licensed either in the United States or any other country.

Serious Health Condition

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- 1) Inpatient care is any admission to a hospital, hospice or residential medical facility (including any period of incapacity or any subsequent treatment or recovery), or any subsequent treatment in connection with the 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) A period of incapacity of more than three consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves: a) treatment by a health care provider two or more times within 30 days of the first day of incapacity (unless extenuating circumstances exist); or b) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.

NOTE: "Treatment by a health care provider" means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

- b) Any period of incapacity due to pregnancy, birth or related medical condition, or for prenatal care.

NOTE: Under CFRA, an employee's pregnancy is not a serious health condition, but it is a serious health condition under FMLA. Under California's pregnancy disability leave law, an employee has the right to a leave of up to four months if disabled due to pregnancy.

- c) Any period of incapacity or treatment for incapacity due to a chronic serious health condition. Employees must continue to visit a health care provider at least twice per year for the same condition to qualify.
- d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- e) Any period of absence to receive multiple treatments by a health care provider (including any period of recovery therefrom), 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.

NOTE: Serious health condition does not ordinarily include the following: the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., unless they result in incapacity for more than three calendar days and the employee has received treatment in accordance with the Serious Health Condition section of this policy regarding continuing treatment by a health care provider. Mere absence from work does not by itself establish incapacity.

Authentication

As used in this policy, "authentication" means providing the health care provider a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.

Certification

An employee requesting leave because of a serious health condition or to care for a spouse, child, parent, registered domestic partner, sibling, grandchild, grandparent, parent in-law, or designated person with a serious health condition may be required to support the leave request with a certification issued by a health care provider. A certification must include the date on which the serious health condition began, the probable duration, and the appropriate medical facts within the knowledge of the health care provider regarding the condition.

Re-certification

Upon the expiration of the information contained in the original certification form, an employee may be required to obtain a second certification form to update the prior certification information. An employee who has been certified with a "lifetime" condition will not be required to submit a new medical certification.

Clarification

"Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.

County

A human resources professional will be the designated representative of the County.

4. Policy

FMLA/CFRA Eligibility

An eligible employee is an employee who:

- 1) Has been employed by the County for at least 12 months, and
- 2) Has actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

The 12 months of service in item 1 above need not be in consecutive months, and if an employee is on the payroll during any part of a week, including any periods of paid or unpaid leave during which other benefits or compensation are provided by the County (i.e., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment.

The 1,250 hours are "hours worked" under the Fair Labor Standards Act and does not include time off, even if paid. The determination of whether an employee has worked for 1,250 hours shall be made as of the date leave commences.

Time served as a temporary agency employee working for the County is counted when determining FMLA/CFRA eligibility once the temporary agency employee has accepted a position with the County.

As defined above, eligible employees may be entitled to up to 12 weeks of FMLA/CFRA leave in a 12-month period. The calculation of the 12-week FMLA/CFRA leave is on an individual basis and begins on the first day that the employee takes leave, paid or unpaid, for the qualifying medical event or new child. The commencement of the 12-month eligibility period is measured forward from the date an employee's first FMLA/CFRA leave begins. The next 12-month period would begin the first time FMLA/CFRA leave is taken after completion of any previous 12-month period. No carryover of unused FMLA/CFRA leave from one 12-month period to the next 12-month period is permitted.

FMLA/CFRA leave for eligible employees who work less than full time is calculated on a pro rata, or proportional, basis.

Under CFRA, an employee may be entitled to up to 12 weeks of leave to care for a registered domestic partner, the child of a registered domestic partner, grandparent, grandchild, sibling, parent-in-law, or designated person. However, because FMLA does not recognize registered domestic partners, grandparents, grandchildren, siblings, parent-in-laws, or designated persons, the employee may still be entitled to up to 12 additional weeks of leave for an FMLA-qualifying event. If an employee acts in loco parentis to the child of the employee's registered domestic partner and is absent from work due to a qualifying event related to the child, the employee would not be entitled to an additional 12 weeks of leave. The County may require the employee to provide reasonable documentation relating to eligibility, including but not limited to a simple statement from the employee, a child's birth certificate, a court document, a Declaration of Domestic Partnership, a marriage certificate, or other documents to verify relationship and/or medical certification.

The right to take FMLA/CFRA leave applies equally to male, female, or non-binary employees. In other words, a father, as well as a mother, can take family leave for the birth, care, placement for adoption or foster care of a child.

Employees who become eligible for FMLA while on non-FMLA leave may

acquire FMLA protections.

Basis for FMLA/CFRA LEAVE:

NOTE: See Military Leave section for military leave requirements.

There are four circumstances under which the County is required to grant FMLA leave:

- 1) For incapacity due to pregnancy, for prenatal care, for the birth of a child and to care for the newborn child;
- 2) For placement with the employee of a child for adoption or foster care;
- 3) To care for a child, parent, or spouse with a serious health condition; or
- 4) Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

NOTE (For FMLA only): Leave before the actual placement or adoption may be taken if an absence from work is required for the adoption to proceed. FMLA leave includes travel to another country to complete the adoption.

With the exception of the military caregiver leave as described in the Military Leave section in this policy, the circumstances in which the County is required to grant CFRA leave are the same as those noted above. An eligible employee is also entitled to a CFRA only leave in the following circumstances:

- 1) For the birth of the child of the registered domestic partner and to care for the newborn child of the registered domestic partner; and
- 2) To care for the registered domestic partner, or child of the registered domestic partner with a serious health condition; and
- 3) To care for a grandparent, grandchild, sibling, parent-in-law, or designated person with a serious health condition.

Time Off Under FMLA/CFRA:

The use of an employee's accrued leave balances runs concurrently with the use of FMLA/CFRA leave. FMLA/CFRA leave includes all time – paid or unpaid

– as outlined in the County’s Personnel Ordinance. FMLA/CFRA leave also includes all time while eligible and integrating leave balances with State Disability Insurance (SDI) and/or Workers’ Compensation (WC).

Under FMLA and/or CFRA leave, an employee is required to use all sick leave, vacation and holiday-in-lieu time off prior to the authorization of unpaid leave. An employee may opt to use CTO, but it is not required. When CTO is used, it will be counted against the employee’s FMLA/CFRA.

There are some exceptions to exhausting leave balances prior to unpaid leave:

- 1) While on FMLA/CFRA if employee provides evidence of receiving wage replacement from:
 - a) Workers’ Compensation
 - b) State Disability Insurance (SDI) without integration
 - c) Paid Family Leave (PFL)
- 2) While on leave to care for a new child, an employee cannot use sick leave, but does use all other balances prior to CTO or unpaid leave.
- 3) Check labor contracts for any other exceptions to using all leave balances prior to leave.

When off for their own serious health condition or the serious health condition of an eligible family member, an employee must use sick leave first prior to the authorization to use other balances, unless other leave balances are expiring or reaching the maximum allowed.

Intermittent:

Both FMLA and CFRA allow intermittent or reduced schedule leaves. An employee who takes intermittent leave for planned medical treatment must make a reasonable effort to schedule the leave to not unduly impact the County’s operation.

Under FMLA/CFRA, the employee’s entitlement to FMLA/CFRA leave for birth and bonding expires 12 months after the date of birth.

Under CFRA, the minimum duration of CFRA leave for the birth, adoption or foster care placement of a child is two weeks. The County shall grant a request for a CFRA leave of less than two weeks on any two occasions. In addition, leave taken for the birth, adoption, or foster care placement of a child must be completed within one year of the qualifying event.

When CFRA leave is taken for the serious health condition of a parent, child, spouse, registered domestic partner, grandparent, grandchild, sibling, parent-in-law, or designated person, or for the serious health condition of the employee, leave may be taken intermittently or on a reduced work schedule when medically necessary (as determined by the health care provider of the person with the serious health condition). The minimum duration of leave under these circumstances is one hour.

Coordination of Leaves:

FMLA/CFRA: FMLA and CFRA run concurrently except for pregnancy disability leaves, military caregiver leave, and leaves for the registered domestic partner, grandparent, grandchild, sibling, parent-in-law, or designated person. If the employee acts in loco parentis for a child of the employee's registered domestic partner, FMLA and CFRA run concurrently for a leave to care for the child of the registered domestic partner. However, if the employee does not act in loco parentis for that child, FMLA and CFRA would run separately for a leave to care for the child of the registered domestic partner.

Pregnancy Disability Leave (PDL) with FMLA: PDL and FMLA run concurrently.

PDL with CFRA: PDL does not run concurrently with CFRA; they are two separate and distinct rights. Therefore, at the conclusion of PDL, the employee is still eligible to take up to 12 workweeks of CFRA leave to the extent that CFRA leave has not previously been used in the 12-month period and the employee qualifies.

Parental Leave and PDL: Parental leave is separate and distinct from the use of PDL.

Parental Leave and CFRA: Parental leave is separate and distinct from the use of CFRA leave but may run concurrently.

Parental Leave and FMLA: Parental leave is separate and distinct from the use of FMLA leave but may run concurrently.

4850 pay and FMLA: 4850 pay is separate and distinct from the use of FMLA leave, but runs concurrently, except for disability because of pregnancy, childbirth or related medical conditions.

4850 pay and CFRA: 4850 pay is separate and distinct from the use of CFRA leave, and does not run concurrently.

Notification:

Employee Notice Requirements:

The employee should contact their supervisor thirty (30) days prior to a foreseeable leave or as soon as practicable (generally the same or next business day) if the leave is not foreseeable. For the first time, an employee is not required to invoke FMLA/CFRA by name to satisfy the notice obligation, but must provide sufficient specific information to the County to place the County on notice that the condition may be FMLA/CFRA-qualifying. However, once FMLA/CFRA leave has been granted, the employee must specifically reference either the qualifying reason or the need for FMLA/CFRA leave if the employee is using FMLA/CFRA leave. The initial notice provided by the employee should include information with respect to the anticipated timing and duration of the leave. The employee notice may be either verbal or written. However, the employee must follow-up with appropriate medical substantiation of a serious health condition.

For intermittent or reduced-schedule FMLA/CFRA leaves, only a single notice is required. The employee must inform the County of the schedule for any treatment, if known, and of the proposed schedule of intermittent leave or the proposed reduced-schedule leave.

County Notice Requirements:

General Notice: The County shall post and keep posted on its premises, in conspicuous places where employees are employed, a FMLA/CFRA notice explaining the FMLA and CFRA provisions and providing information concerning the procedures for filing complaints of violations. New employees must be separately apprised of their FMLA rights in writing, in an employee handbook, or otherwise upon hiring.

Eligibility Notice: 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, 1250 hours of work or other

eligibility standard.

- 3) There is a change in eligibility status.
- 4) If the employee's eligibility does not change by the next time FMLA/CFRA leave is requested, no additional eligibility notice is required.

Rights and Responsibilities Notice. 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 address of record.

The County's notice 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 (i.e., 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.

Medical Certification:

If an employee takes leave due to their own serious health condition or that of an eligible family member, the County may require that the need for time off under FMLA/CFRA be verified by a medical certification signed by the health care provider for the employee or family member. In the Rights and Responsibilities Notice, the County must notify the employee of this requirement and advise the employee of the anticipated consequences of the employee's failure to provide adequate certification. A verbal request to furnish any subsequent certification is sufficient.

This certification may be requested following the employee's notice of the need for a leave due to a serious health condition or within five (5) business days, or in the case of unforeseen leave, within five (5) business days after the leave commences.

The employee must provide the requested certification within fifteen (15) calendar days after the request, unless it is not practicable to do so despite the employee's diligent good faith efforts. The County must provide additional time to provide the certification and may not immediately deny or delay FMLA/CFRA if there is sufficient reason for the delay.

Own Serious Health Condition: If the FMLA/CFRA leave is for the employee's own serious health condition, the certification may state that, in the health care provider's opinion, the employee has a medical condition(s), which constitute a serious health condition.

Family Member: If the leave is to care for a family member, the County may require certification of the condition and the need for the employee's involvement in the case. The certification need not disclose the serious health condition involved, but must include a statement that, in the opinion of the health care provider, the serious health condition warrants the participation of a family member to provide care during a period of treatment or supervision.

The County can ask for certain types of information, which generally include the following:

- The date the condition commenced, if known;
- The probable duration of the condition;
- An estimate of the time period the health care provider believes the employee needs as leave to care for the child, parent, spouse, grandparent, grandchild, sibling, parent-in-law, designated person, registered domestic partner, or child of the registered domestic partner; and
- A statement that the employee is unable to work or to perform one or more of the essential functions of the job due to the condition.

In addition,

- If the requested leave is for an intermittent or reduced schedule, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery.
- If the requested leave is for an intermittent or reduced schedule for a serious health condition that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for the intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity.

NOTE: For FMLA leave only, a statement or description of appropriate medical facts regarding the patient's health condition which are sufficient to support the need for leave may be requested. Such medical facts may include information on symptoms, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment.

Clarification and Authentication of Certification:

For authentication or clarification, the appropriate Human Resources professional will contact the health care provider. Under no circumstances may the employee's direct supervisor contact the employee's health care provider.

The employee has seven (7) calendar days – unless not practical – to correct the deficiency. FMLA leave may be denied if the deficiencies are not corrected in the resubmitted certification. If an employee submits a complete and sufficient certification, the County may not request additional information from the health care provider.

Certification is deemed incomplete if one or more of the required entries has not been completed. Certification is insufficient if the information provided is

vague, ambiguous, or non-responsive. A certification that is not returned is not considered incomplete or insufficient, but constitutes a failure to provide certification.

If the employee believes that the information provided on the medical certification form has changed, is insufficient, or incomplete, it is the responsibility of the employee to discuss the concerns with their medical provider and secure an updated medical certification form, if appropriate.

If the employee does not rectify the medical certification deficiency, the County may deny the designation of FMLA/CFRA leave. It is the employee's responsibility to provide the County with a complete and sufficient certification.

For second or third medical opinions or recertification of medical condition, the following shall apply:

- If the FMLA/CFRA leave is for the employee's own serious health condition, the County may require, at its expense, a second opinion from a health care provider that the County chooses. The health care provider designated to provide a second opinion will not be one who is employed on a regular basis by the County.
- If the second opinion differs from the first opinion, the County or the employee may require, at County expense, the opinion of a third health care provider designated or approved jointly by the County and the employee. The opinion of the third health care provider shall be considered final and binding on the County and the employee.
- Pending receipt of additional opinions, the employee's leave shall be provisionally deemed FMLA/CFRA leave and the employee shall be entitled to benefits of FMLA/CFRA leave pending resolution of the certification issues.
- The County must provide the employee with copies of the second and/or third medical opinions, at the employee's request, normally within five (5) business days.
- The County cannot require a second or third opinion concerning the serious health condition of a child, parent, spouse, grandparent, grandchild, sibling, parent-in-law, designated person, or registered domestic partner, or child of the registered domestic partner of an employee.

Recertification:

Generally, the County may request recertification at the end of the time originally estimated for leave, if additional leave is needed. The recertification must be provided to the County within fifteen (15) calendar days of the request. The County may request certification no more often than

every thirty (30) days and only in connection with an absence by the employee except under the following circumstances.

More than 30 Days: If the minimum duration is more than 30 days, the County must wait until that minimum duration expires before requesting a recertification. In all cases, the County may request a recertification every six (6) months in connection with an absence. Under CFRA, recertification is only available upon expiration of the original time period indicated on the original certification form.

Less than 30 Days: The County may request recertification in less than 30 days if the employee requests an extension of leave or circumstances described by the previous certification have changed significantly (e.g. duration or frequency of the absence, the nature or severity of the illness, complications) or if the County receives information casting doubt on the validity of the certification or reason for absence.

The County may not require a second or third opinion on a recertification.

The County may provide the health care provider with a record of the employee's absence pattern or information that casts doubt on the validity of the certification.

Continuation of Benefits:

An employee taking paid or unpaid time off under FMLA/CFRA is entitled to continue to participate in any benefit plan on the same basis as active employees, and the County must continue the same type and level of coverage. The County is required to continue coverage for the duration of the FMLA/CFRA leave.

The County is required to continue coverage not only for the employee but also for family members if covered before the employee's leave began under FMLA/CFRA.

To the extent the employee is responsible for payment of a premium, responsibility shall continue during the FMLA/CFRA leave.

The County's obligation to maintain benefits ends upon termination of the employment relationship under the following circumstances:

- 1) Employee notifies the County that they do not intend to return from the FMLA/CFRA leave;
- 2) Employee fails to return after exhausting the FMLA/CFRA leave;

or

- 3) The employment relationship would have terminated regardless of FMLA/CFRA leave.

If the County changes or adds benefits or plans while an employee is on unpaid leave within the FMLA/CFRA entitlement period, the changes will apply to the employee on leave to the same extent as if the employee were continuously working. Any changes in premium rates, including an increase or decrease in the employee's share of the premiums, will also apply.

If the County allows an employee's health coverage to lapse due to the employee's failure to pay premiums during FMLA/CFRA leave, the employee's coverage must be reinstated when they return to work.

Retirement Service Credits:

If an employee is on an unpaid FMLA/CFRA leave, the employee must pay retirement contributions to be eligible to receive retirement service credit for the period of unpaid leave.

Return to Work Certification:

The County may require an employee to obtain a certification from the health care provider that the employee is able to resume work, with or without restrictions, following FMLA/CFRA leave. The County may require that the certification specifically address the employee's ability to perform essential functions of the job.

The County may seek authentication and clarification of the return to work certification on the same terms and conditions as for a medical certification. However, the County may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a return to work certification may be required.

In cases of intermittent leave, the employee is not required to establish their ability to return to work for each absence taken on a reduced or intermittent work schedule. However, the County may require the employee to establish their ability to return to work for such absences up to once every thirty (30) days if reasonable safety concerns exist regarding an employee's ability to perform their duties. Reasonable safety concerns mean a reasonable belief of significant risk of harm to the employee or others.

Return from Leave under FMLA/CFRA:

Upon return from FMLA/CFRA, an employee will be reinstated to their original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions, unless the employee is no longer able to perform one or more essential functions.

If an employee on FMLA/CFRA would have been laid off had they not been absent, or if the employee's job is eliminated during the absence and no equivalent or comparable job is available, then the employee is not entitled to reinstatement.

An employee's use of FMLA/CFRA will not result in the loss of any employment benefit that the employee earned before using FMLA/CFRA.

Neither the cash-back subsidies nor the Plan Selection Incentive will be continued during an unpaid FMLA/CFRA leave, but will be reinstated as "equivalent benefits" upon the employee's return from leave.

Employee Protection:

An employee's use of FMLA/CFRA will not result in the loss of any employment benefit that the employee earned before using FMLA/CFRA leave, which includes all benefits provided or made available to employees by the County. The County may not use the taking of FMLA/CFRA leave as a negative factor in any employment action, retaliate against, and/or discriminate against an employee for involvement in any proceeding under or relating to FMLA/CFRA (including such actions as placing an employee on controlled leave).

MILITARY LEAVE UNDER FMLA /CFRA

PURPOSE:

FMLA changes in 2008 provided for two new kinds of leave, known as military exigency leave and military-caregiver leave, which provide FMLA leave for the families of service members called to active duty or injured in the line of duty. The FMLA is enforced by the U.S. Department of Labor.

This section addresses leave to care for a covered service member with a "serious injury or illness", and leave due to a qualifying exigency for the family member of a service member. All of the rules and requirements related to the FMLA/CFRA policy apply to this section unless otherwise noted here.

CFRA added military exigency leave on January 1, 2021. CFRA does not cover military caregiver leave. CFRA is enforced by the California Civil Rights Department.

RELATIONSHIP BETWEEN FMLA AND CFRA:

With respect to military caregiver leave, CFRA and FMLA do not necessarily run concurrently.

MILITARY LEAVE DEFINITIONS:

Covered Active Duty

For a member of the Regular Armed Forces, covered active duty or call to covered active duty status means duty during the deployment of the member with the Armed Forces to a foreign country.

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), covered active duty or call to covered active duty status means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

Covered Service Member

Includes current members of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, is in outpatient status, or is on the temporary disability retired list (TDRL) for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered Veteran

An individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

Next of Kin

The nearest blood relative of the covered service member, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters,

grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of FMLA military caregiver leave.

Outpatient Status

The status of a member of the Armed Forces assigned to 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.

Serious Injury or Illness

An injury or illness that was incurred in the line of duty and may render the service member medically unfit to perform the duties of their office, grade, rank or rating. Includes injuries or illnesses that existed before the beginning of the member's active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

MILITARY EXIGENCY LEAVE DEFINITIONS:

Call to Duty Documentation

Any available written documentation which supports a need for leave, such as a copy of a meeting announcement for information briefing sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs.

Military Member

Member of the National Guard and Reserves and the Regular Armed Forces during the deployment of the member to a foreign country.

Family Member

The employee's spouse, son, daughter or parent on active duty or call to active duty status. A "son or daughter" means the employee's biological, adopted or foster child, stepchild, legal ward or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

For CFRA only, family member also includes registered domestic partner.

Contingency Operation

A military operation that 1) is designated by the Secretary of Defense as an operation in which members of the 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) results in the call or order to, or retention on, active duty of members in the uniformed services under certain statutory provisions, or any other provision of the law during a war or during a national emergency declared by the President or Congress.

Leave Time:

Time Off for Military Caregiver Leave:

During a 12-month period, an eligible employee is entitled to a combined total of 26 workweeks of leave when the leave is taken for the serious injury or illness of a covered service member. The 26-week period includes covered service member leave as well as any "regular" FMLA leave events.

Intermittent Leave:

Employees are permitted to take military caregiver leave on an intermittent basis not only where it is medically necessary for the treatment of the service member, but also where the employee is needed only intermittently, such as where other care is available or care responsibilities are shared.

Leave for Covered Service Members for a Qualifying Exigency:

The employee is entitled to 12 weeks during a 12-month period when the leave is taken for a "qualifying exigency."

Eligibility for Both Leave Types:

The employee must meet the 12 months and 1250 hours requirements to be entitled to FMLA or CFRA leave related to covered service members. If the employee would have met the 1250 hours but for intervening military service (National Guard/Reserves), the employee remains eligible for FMLA and/or CFRA.

The employee must be the spouse, parent, child or next of kin of the covered service member to qualify for Military Caregiver Leave. Next of kin does not pertain to Exigency Leave.

Certification:

For Exigency Leave: The County may require that leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders and additional supporting certification as related to the particular qualifying exigency for which leave is sought. For Rest and Recuperation leave the employee may be required to provide a copy of the military member's Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

For Caregiver Leave: The County may request certification of illness or injury. Such certification may be completed by a Department of Defense (DOD) health care provider, a Veterans Health Administration health care provider, a DOD TRICARE network-authorized private health care provider or any health care provider as defined on page 1 of this Policy. Recertification during the time period specified in the documentation is prohibited as are second and third medical opinions in connection with leave requested for this purpose.

The certification may seek information regarding:

- 1) Name, address and contact information of the health care provider, and the type of provider;
- 2) Whether the covered service member's injury or illness was incurred in the line of duty on active duty, or whether the injury or illness existed before the beginning of active duty and was aggravated by service in the line of duty on active duty;
- 3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;
- 4) A statement or description of medical facts regarding the service member's health condition for which FMLA leave is requested:
 - a) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the service member medically unfit to perform the duties of their office, grade, rank, or rating, and whether they are receiving medical treatment, recuperation, or therapy;
 - b) In the case of a veteran, such medical facts must include information on whether the veteran is receiving treatment for an injury or illness that is the continuation of an injury

or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered them medically unfit to perform the duties of their office, grade, rank, or rating; or information on whether the veteran is receiving medical treatment for a condition for which they received a Veteran's Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based on the condition precipitating the need for military caregiver leave; or information on whether the veteran is receiving treatment for a condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability related to military service; or documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

ITO or ITA:

The County must accept as sufficient certification "invitational travel orders" (ITO) or "invitational travel authorizations" (ITA) issued to any family member to join an injured or ill service member at their bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. No additional or separate certification may be required. An ITO or ITA is sufficient certification regardless of whether or not the employee is named in the order or authorization. During the specified ITO or ITA time period, an eligible employee may take leave to care for the covered service member in a continuous block of time or on an intermittent basis. The County may seek authentication and clarification of the ITO or ITA. The County may require an employee to provide confirmation of the covered family relationship to the seriously injured or ill service member.

Basis for Leave

Exigency Leave:

- 1) Short-notice deployment: To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven (7) or less calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to active duty in support of a contingency operation.

- 2) Military events and related activities: To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a the military member and/or to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to the active duty or call to active duty status of the military member.
- 3) Childcare and school activities to:
 - a) Arrange for alternative childcare when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;
 - b) Provide childcare on an urgent immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;
 - c) Enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; or
 - d) Attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member.
- 4) Financial and legal arrangements to:
 - a) Make or update financial or legal arrangements to address the military member's absence while on covered active

duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

- b) Act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.

5) Counseling:

To attend counseling provided by someone other than a health care provider for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member.

- 6) Rest and recuperation: Eligible employees may take up to fifteen (15) days of leave for each time a military member is on short-term, temporary, Rest and Recuperation leave during the period of deployment.

7) Post-deployment activities to:

- a) Attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the military member's covered active duty status; or
- b) Address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member,

making funeral arrangements, and attending funeral services.

- 8) Parental care: To address certain activities related to the care of the military member's parent who is incapable of self-care. This could include arranging for alternative parental care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the parent to a new care facility; and attending certain meetings at a care facility or with hospice staff.
- 9) Additional activities: To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the County and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Caregiver Leave

The covered service member must:

- 1) Have a serious injury or illness; and
- 2) Become injured or ill in the line of duty on active duty or have a condition that existed before the beginning of active duty and was aggravated by service in the active duty; and
- 3) Is receiving medical treatment, recuperation, therapy, is in outpatient status or is on the temporary disability list.

A veteran must have:

- 1) A serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; or
- 2) A physical or mental condition for which the covered veteran has received a VASRD of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
- 3) A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful

occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or

- 4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Per Service Member, Per Injury Basis:

The 26-week leave entitlement is applied on a per-covered service member, per injury basis. An eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered service member with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. This entitlement does not renew annually.

Husband and Wife Both Employed By the County:

A husband and wife who are otherwise eligible to Military Caregiver Leave and who are employed by the County may be limited to a combined total of 26 work weeks of leave during the single 12-month period.

Designation of Leave:

If leave qualifies under both military caregiver leave and FMLA leave, the County must designate the leave as military caregiver leave first. Leave may be retroactively designated as leave to care for a covered service member.

5. Review

Every 5 years or sooner if required by law.