



*putting people first*

## Family and Medical Leave Guide

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# I. Overview

## A. Introduction

The County of Riverside Family and Medical Leave Guide is intended to be a comprehensive reference manual for Managers, Supervisors, Department/HR Designees, and Employees. The guide provides information regarding mandated laws, statutes, provisions and recommended best practices as they pertain to family medical leave; information regarding employee rights and eligibility requirements; and procedures for Supervisors and Department/HR Designees.

Additionally, the approval of family medical leave may be a reasonable accommodation under the Americans with Disabilities Act (ADA) and/or the Fair Employment and Housing Act (FEHA). These regulations and County-provided disability benefits are also discussed in this guide as well as roles and responsibilities of the Employee, Supervisor, and Department/HR Designee.

## B. Confidentiality

To ensure confidentiality, all individually identifiable personal information is to be kept confidential at all times. All personnel files should be treated as confidential records. They should be kept in a secure environment, such as a locked cabinet, limiting access only to those people who have a legitimate business need to access the files.

### **Note:**

This guide has been created as a job aid and reference only, and is not intended to constitute legal advice. After utilizing this guide, if you require more information, contact your Department / HR Designee or Human Resources Services Team.

Special care should be taken with medical information pertaining to employees. This includes both oral and written health information. The Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) limit access to confidential medical information. Additionally, Title II of the Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking or obtaining genetic information about an employee, including almost any detail about their family's medical history. Supervisors, Managers and Department/HR Designees must keep medical records confidential and separate from any other personnel records.

Supervisors and managers must not ask employees about their family medical history. If an employee volunteers information, supervisors and managers should not seek medical details or ask probing follow-up questions about the family member's or employee's medical condition. Additionally, supervisors and managers must not contact an employee's healthcare provider. If authentication, clarification or additional information regarding a note from a health care provider is needed, supervisors should contact the Human Resources Department.

## II. Family and Medical Leaves



County of Riverside employees who work in California may be entitled to time off from work for specific reasons in accordance with a variety of different family and medical leave laws. This section covers all the major leave laws including leave entitlements to military families (Note: Military leave is covered in a separate guide accessible by choosing **Military Leave** from the HR Website/FMLA, CFRA, PDL and Other Leaves page). Information provided includes eligibility requirements, job protection and other employee rights, and benefits information.

The spirit of these statutes is to provide an opportunity for employees to balance their work and family life by taking reasonable leave time for specific reasons, without the fear

of having to choose between their job and their family. Through use of this guide, County of Riverside Employees, Managers, Supervisors, and Department/HR Designees will gain a better understanding of their rights and responsibilities under these statutes.

## A. Federal and State Leave Regulations

### 1. Family and Medical Leave Act (FMLA)



FMLA is a federal law that became effective on August 5, 1993, that allows employees to balance their work and personal lives by taking unpaid, job-protected leave of up to 12 weeks (or 480 hours) in a 12-month period for certain family and medical reasons. The United States Department of Labor issued regulations for FMLA leave, which became effective April 6, 1995.

Subsequently, the FMLA was amended in 2009 to provide new FMLA leave entitlements to military families. The first entitlement provides eligible employees with up to 26 weeks of FMLA leave in a single 12-month period to care for a covered military member who is undergoing medical treatment, recuperation, or therapy, or is otherwise on the temporary disability retired list for a serious injury or illness that occurred or was aggravated in the line of duty while on active duty. Eligibility for this type of leave continues up to five years after a veteran leaves service, if a service-related injury or illness develops that was incurred or aggravated while on active duty. This type of leave is referred to as **Military Caregiver Leave**. FMLA also provides eligible employees with up to 12 weeks of FMLA leave for a qualifying exigency related to a family member who is a covered military member. This is known as **Qualifying Exigency Leave**.

## 2. California Family Rights Act (CFRA)

CFRA is a California state law that provides California workers with unpaid, job-protected leave time to bond with a newborn, adopted, or foster child; to care for certain family members with a serious health condition; to care for the employee's own serious health condition; or due to a "qualifying exigency" related to a family member who is a covered military member.



## 3. Pregnancy Disability Leave (PDL)

PDL is a California state law pursuant to the California Fair Employment and Housing Act that provides California workers with unpaid time off and job protection for prenatal care as well as pregnancy-related and childbirth-related disabling conditions, for up to 4 months for each pregnancy.

## 4. Employee's Rights

FMLA, CFRA, and PDL provide employees with certain rights and protections, including:

### a. FMLA/CFRA

- Retention of health benefits;
- Retention of seniority date;
- Return to the same or an equivalent/comparable position at the end of the leave,

### Note:

If the employee takes CFRA leave directly following PDL, the employee will be returning from CFRA, and it is the CFRA return rights that prevail.

with equivalent pay, benefits, and working conditions; \*

- Continuation of health benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) at the end of the leave for employees who do not return to work; and
- Protection against unlawful discharge, discrimination, or retaliation for employees exercising their rights to take a leave.

**b. PDL**

- Retention of seniority date;
- Retention of health benefits;
- Return to the same position; if the same position is no longer available, such as in a layoff or unit closure, the employee must be returned to a position that is comparable in terms of pay, location, job content, and promotional opportunities; \*
- Continuation of health benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) at the end of the leave for employees who do not return to work; and
- Protection against unlawful discharge, discrimination, or retaliation for employees exercising their rights to take a leave.

*\*Supervisors must consult with their HR Service Team for any questions regarding the possible reinstatement of an employee to an alternative position, after taking family medical leave.*



## 5. Eligibility Requirements

All employees who work for the County of Riverside are eligible for FMLA, CFRA, and PDL, subject to the specific service requirements noted below. This includes all regular, full-time and part-time employees, and those employees who are employed by the County on a temporary, per diem or seasonal basis.

### a. FMLA and CFRA

To be eligible for FMLA and CFRA, the employee must have been employed with the County for at least 12 months as of the time the leave begins, and the employee must have worked at least 1,250 hours during the 12-month period immediately preceding the leave. *(See Note below regarding military leave.)*

It is important to recognize that the employee's 12 months of service do not have to be continuous or consecutive. All time as a County employee in any capacity is counted. However, if the employee has a 7-year break in service, the service that is more than 7 years old does not need to be counted unless the break was due to National Guard, Reserves, or other military service. If the employee meets the one-year service requirement while on non-FMLA leave, the employee becomes eligible on that date.

The 1,250 hours only includes actual hours worked, including overtime hours and any military service. Paid or unpaid leave time, including vacation, sick, annual leave, holiday, voluntary or mandatory furloughs, unpaid personal leave, etc., is not counted towards the 1,250 hours worked.

### b. FMLA/CFRA Qualifying Exigency Leave

To be eligible for Qualifying Exigency Leave the employee's spouse, son, daughter, parent or registered domestic partner must be a covered military member. They must be a member of the Armed Forces (includes the National Guard and Reserves) called to "active duty" (as defined in § 825.126(b)(2) of the Code of Federal Regulations) in a foreign country.

### c. FMLA Military Caregiver Leave

To be eligible for Military Caregiver Leave, the employee must be the spouse, son, daughter, parent, or next of kin of a servicemember or veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that occurred or was aggravated in the line of duty while on active duty. This eligibility extends up to five years after a veteran has left service, if a service-related illness or injury was incurred or aggravated while on active duty.

#### **Note:**

Military leave taken while employed with the County is included in the calculation of the employee's 12 months of service. Additionally, when an employee returns to work from active duty, the County must count the time spent on duty as "time worked" for determining eligibility under FMLA and CFRA. More specifically, the time the employee would have worked if not engaged in military service must be added to the hours actually worked to determine whether the employee meets the required 1,250 hours in the preceding 12 months.

### d. PDL

All female employees of the County are eligible for PDL, regardless of their length of service or the number of hours that they have worked.

## 6. Qualifying Reasons for Leave

The qualifying reasons for leave under each of the statutes are:

### a. FMLA


- Employee's own "serious health condition" (covers incapacity due to pregnancy, including prenatal examinations and severe morning sickness).

- “Serious health condition” of an employee’s spouse (including “spouse” as defined by California law), child, or parent. Note: the term “parent” includes a person who stood “in loco parentis” (i.e., in the role of the parent) to the employee when the employee was a child. An employee can also establish an “in loco parentis” relationship with a child if the employee is responsible for the day-to-day physical care and financial support of the child. A biological relationship is not required in order to establish an “in loco parentis” relationship. The term “parent” does not include parents-in-law.
  - The term “child” also includes adult children (18 years or older).
- Birth, adoption, bonding or foster care placement of a child. Leave may be taken during the first 12 months from the time of birth or from initial placement for foster care or adoption of a child.
- Qualifying Exigency. When the employee has a sudden need to take off arising out of the fact that the employee’s spouse, son, daughter, parent or registered domestic partner is on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation, or any military operation in a foreign country. Qualifying Exigencies are non-medical and non-routine in nature. They may include:
  - Short-notice deployment (up to 7 calendar days from date of notice)
  - Military events and related activities
  - Childcare and school activities
  - Financial and legal arrangements
  - Counseling
  - Rest and recuperation (limited to 15 calendar days per each instance of rest and recuperation\*)
  - Post-deployment activities
  - Additional activities agreed to by the County and employee

*\*Note: California Military and Veterans Code Section 395.10 provides for up to 10 days of leave to spouses for this purpose.*

- **Military Caregiver Leave.** To care for a covered servicemember with a serious illness or injury, who is a spouse, son, daughter, parent or next of kin (see definition of next of kin in Section 9, *Explanation of Terms*).

## **b. CFRA**

- **Employee's own serious health condition except for pregnancy-related disabilities** (Note: If the employee continues to be disabled by pregnancy after exhausting her four months of leave time under PDL, and her health care provider determines that a continuation of the leave is medically necessary, the employer may, but is not required to, allow the employee to use CFRA prior to the birth of the child. In these situations, the employee is strongly encouraged to consult with her Department/HR Designee.)
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- **Serious health condition of an employee's spouse (including same sex spouse<sup>1</sup>), registered domestic partner, child [including an adult dependent child as defined by 2 CCR § 7297.0 (2)(c)], child of registered domestic partner, child with whom the employee has an in loco parentis relationship, parent and parent-in-law, grandparent, grandchild, sibling or other "designated person".** **Notes:** the term "parent" includes a person who stood "in loco parentis" (i.e., in the role of the parent) to the employee when the employee was a child. The term "designated person" means any individual related by blood or whose association with the employee is the equivalent of a family member.

*\*Note: The County may limit an employee to one designated person per 12-month period for CFRA Leave.*

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<sup>1</sup> Pursuant to 2 C.C.R. § 11087(r) "Spouse" means a partner in marriage as defined in Family Code section 300 or a registered domestic partner, within the meaning of Family Code sections 297 through 297.5. As used in this article and the Family Code, "spouse" includes same-sex partners in marriage.

- Birth, adoption, bonding or foster care placement of a child (birth or bonding). Leave may be taken during the first 12 months from the time of birth or from initial placement for foster care or adoption of a child. For adoption, a licensed adoption agency is not required to be used. Foster care requires state action, rather than an informal arrangement to take care of another person's child.
- Qualifying Exigency (See Section 6(a) above)

**c. PDL**

- Employee's own disability due to pregnancy, childbirth, and pregnancy-related conditions, such as pre- or postnatal care, severe morning sickness and postpartum depression.

## **7. Definition of a Serious Health Condition**

FMLA and CFRA cover occupational as well as non-occupational serious health conditions (see definitions below). A "serious health condition" means any illness, injury, impairment, or physical or mental condition that involves one or more of the following:

**a. Inpatient Care**

Inpatient care (i.e., an overnight stay or, for CFRA specifically, an *expected* overnight stay) in a hospital, hospice, or residential medical care facility; includes any period of incapacity (see *Explanation of Terms* section below) or subsequent treatment in connection with such inpatient care; or

**b. Continuing Treatment by a Health Care Provider**

Continuing treatment by a health care provider that includes the following:

- A period of incapacity of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** involves:

- In-person Treatment (see *Explanation of Terms* section below) at least once within seven days of the first day of incapacity by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider and at least one of the following:



1. A regimen of continuing treatment (see *Explanation of Terms* section below) initiated by the health care provider during the first treatment, or
2. A second in-person visit for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.

### c. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care. (NOTE: An employee's own incapacity due to pregnancy is not covered under CFRA unless the employee has exhausted her leave benefits under PDL and remains disabled by pregnancy. Under these circumstances, the employer may, but is not required to, allow the employee to use CFRA prior to the birth. An employee in this situation is strongly encouraged to consult with her Department/HR Designee.)

#### **d. Chronic Conditions Requiring Treatment**

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that:

- Requires treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, at least twice a year for that condition;
- 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).

#### **e. Permanent/Long-Term Conditions Requiring Supervision**

Any period of incapacity which is permanent or long-term, due to a condition for which treatment may not be effective. The employee or family member must be under continuing supervision of a health care provider, but need not be receiving active treatment. Examples include Alzheimer's disease, a severe stroke, and the terminal stages of a disease.

#### **f. Multiple Treatments**

Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider, either for restorative surgery, or for:



- a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment, such as:
  - cancer (e.g., chemotherapy, radiation)
  - severe arthritis (physical therapy)
  - kidney disease (dialysis)

## Additional Notes

- Under FMLA and CFRA, care for a family member can also include psychological/emotional support.
- Ordinarily, unless complications arise, the following are examples of conditions that do not meet the definition of a serious health condition and do not qualify for protected leave:
  - Common cold, flu
  - Earaches
  - Upset stomach; minor ulcers
  - Headaches other than migraines
  - Routine dental or orthodontia problems, periodontal disease, etc.
- Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions, unless inpatient hospital care or continuing treatment are required.
- Restorative dental or plastic surgery after an injury or removal of cancerous growths is a serious health condition, provided all other conditions are met.
- Allergies or mental illness resulting from stress may be serious health conditions, but only if all other conditions are met.
- Substance abuse may be a serious health condition if the above conditions are met. However, FMLA leave may only be taken for treatment of the substance abuse by a health care provider or by a provider of health care services on



referral by a health care provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

## 8. Definition of a Serious Injury or Illness

For the purpose of FMLA Military Caregiver Leave, a serious injury or illness is defined as an injury or illness that was incurred or aggravated by the servicemember in the line of duty on active duty in the Armed Forces (includes members of the National Guard, Reserves or Veterans thereof) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

In the case of a veteran, a qualifying injury or illness (as defined by the Secretary of Labor) is one that was incurred or aggravated 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 manifested itself before or after the member became a veteran, and is:

- a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- a physical or mental condition that substantially impairs the covered 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
- 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.

## 9. Explanation of Terms

- **Incapacity:** Incapacity is defined as inability to work, attend school or perform other regular daily activities due to a serious health condition, its treatment or recovery.
- **Treatment:** Treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.
- **Covered Servicemember:** A member or Veteran of the Armed Forces (including the National Guard and Reserves), who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability list, for a serious injury or illness that occurred or was aggravated in the line of duty while on active duty within the past five years.
- **Outpatient Status:** With respect to a covered Servicemember, outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- **Next of Kin:** The nearest blood relative other than a spouse, child, or parent, in the following priority order:
  - Blood relative designated in writing for purposes of Military Caregiver Leave
  - Blood relative who has been granted legal custody
  - Siblings
  - Grandparents
  - Aunts/uncles
  - First cousins

- **Health Care Provider:** A health care provider is a doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices. This includes:
  - Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law;
  - Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law;
  - Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
  - Health care providers recognized by the County or the County's group health plan benefits manager; and
  - A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.
  
- **Regimen of Continuing Treatment:** A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). The following treatments are not, by themselves, sufficient to constitute a regimen of continuing treatment:
  - Taking of over-the-counter medications such as aspirin, antihistamines or salves
  - Bed rest
  - Drinking fluids
  - Exercise and other similar activities that can be initiated without a visit to a health care provider

## 10. Amount of Leave Time Permitted

### a. FMLA/CFRA

Under FMLA/CFRA, an eligible employee is entitled to up to 12 workweeks of leave time in a 12-month period for qualifying reasons, with the exception of FMLA Military Caregiver Leave. Under this type of leave, an eligible employee is entitled to a combined total of up to 26 workweeks of leave time during a single 12-month period. The



“single 12-month period” for leave to care for a “covered servicemember” with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the County for other types of FMLA leave.

For other types of FMLA/CFRA leave, the 12-month period is a rolling 12-month period measured backward from the date an employee starts using FMLA and/or CFRA leave.

- **Bonding Leave / Leave to Care for an Ill Parent Limitation:** Under FMLA, an employee and his/her County-employed spouse are jointly entitled to a combined total of 12 workweeks in a 12-month period from the time of birth or from initial placement of the child for foster care or adoption, or to care for a parent’s “serious health condition”; however, under CFRA this limitation does not apply and County – employed parents may each receive up to 12 weeks of bonding leave.
- **Military Caregiver Leave Limitation:** For Military Caregiver Leave, if an employee and his/her spouse are both employed by the County, they are jointly entitled to a combined total of 26 workweeks in a single 12-month period and do not receive separate 26-week entitlements.

- **Calculating the 12 (or 26 for Military Caregiver Leave) Workweeks (FMLA/CFRA):** The 12 weeks under FMLA (26 for Military Caregiver Leave) and CFRA is the equivalent of 12 (or 26) of the employee's normally scheduled workweeks. If a holiday falls within a week, the holiday is counted as FMLA/CFRA and it does not extend the employee's leave time. However, if the employee works any part of a workweek that contains a holiday, the holiday does not count as FMLA, unless the employee was scheduled to work on the holiday.

For a part-time employee who is scheduled to work a set number of hours each week, the employee's hours are used in determining the employee's leave hours entitlement.

**Example:** An employee who regularly works 25 hours/week would be eligible for up to 12 weeks of leave at a rate of 25 hours/week.

- If a permanent change in a part-time employee's regularly scheduled hours occurs (for reasons other than FMLA and CFRA and prior to the notice of need for a leave), the hours worked under the new schedule are used for calculating the number of leave hours due (whether an increase or decrease in the number of hours worked).
- If an employee's work schedule varies from week to week, the average weekly hours worked during the 12 months prior to the start of the leave is used to calculate the employee's leave entitlement. For part-time employees and those who work variable hours, leave entitlement is calculated on a pro rata or proportional basis.

**Example:** An employee normally works 30 hours/week and is entitled to up to 360 hours FMLA/CFRA leave. Due to the employee's own serious health condition, the employee's health care provider indicates the employee can only work 20 hours/week on a reduced work schedule. The 10 hours of leave time used each week would be deducted from the 360 hours to which this employee is entitled.

## b. PDL

A female employee is entitled to up to four months of leave for each pregnancy, when unable to work due to a pregnancy-related disability. This includes time off needed for prenatal and postnatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, postpartum depression, or any other pregnancy-related medical condition.

Leave under PDL runs concurrently with the 12 weeks of FMLA time, if the employee is eligible for FMLA. Leave for a pregnancy-related disability does not run concurrently with CFRA leave. However, the employer may allow an employee to use CFRA leave during her pregnancy when she has exhausted her four months of leave time under PDL and remains disabled due to the pregnancy. In these situations, the employee is strongly encouraged to consult with her Department/HR Designee.

Under CFRA, an additional 12 weeks of leave may be available to an eligible employee following PDL, or the birth of a child. The additional 12 weeks under CFRA is reduced by any CFRA time already taken by the employee during the preceding 12-month period (e.g., for the employee's own serious health condition or to care for a family member with a serious health condition).

- **Calculating Four Months (PDL):** The four months under PDL means the number of hours the employee would normally work within 17 1/3 weeks. For a full-time employee who works 5 eight-hour days/week, four months means 693.2 hours of leave entitlement.



For employees who work more or less than five days a week, the number of hours which equate to four months is calculated on a *pro rata* or proportional basis. For example, an employee who works four hours a day for five days a week (or 20 total hours/week) would be eligible for 346.6 hours in a 17 1/3 week period.

## 11. Leave Integration – FMLA, CFRA and PDL

The circumstances of an employee's leave may qualify under more than one law. When eligibility overlaps and whenever possible, it is the County's practice to run the leaves concurrently under each applicable law.

The 12-month period runs concurrently for leaves under FMLA and CFRA with the following exceptions.

### a. During PDL

FMLA and PDL time run concurrently; FMLA allows up to 12 workweeks in a 12-month period, while PDL allows up to four months of leave for specific reasons, for each pregnancy. Although FMLA applies in the case of pregnancy disability, pregnancy-related disability is excluded under CFRA.

### b. Following PDL

When FMLA and PDL time have been exhausted and the employee remains disabled by pregnancy, the employee may elect to use available CFRA leave during the remaining pregnancy-related disability period. Otherwise, immediately following the leave under PDL, an employee is entitled to an additional 12 weeks under CFRA to bond with a "newborn" child, reduced by any CFRA time taken during the preceding 12-month period. If CFRA leave is not used immediately after PDL and the employee does not return to work immediately after PDL, subsequent CFRA leave applies only if the employee is eligible.



### c. Leave Taken to Care for a Parent-in-Law, Grandparent, Grandchild, Sibling, Registered Domestic Partner or Child of a Registered Domestic Partner

FMLA does not recognize these individuals as "family members." Accordingly, for leave taken for this purpose, only CFRA leave time will run.

**d. Leave Taken Pursuant to California Labor Code 4850**

Safety members who sustain an occupational injury and are eligible to take leave under California Labor Code 4850 shall not have their leave entitlement under FMLA and CFRA reduced as a result. Accordingly, for leave taken for this purpose, FMLA and CFRA leave time will run concurrently after 4850 leave has exhausted, if eligible.

**e. Military Caregiver / Qualifying Exigency Leave**

CFRA does not recognize military-related leaves. Therefore, leave taken to care for a “covered servicemember” or due to a qualifying exigency will be counted as FMLA leave but not CFRA leave, unless the leave would otherwise be considered a qualifying reason under CFRA.

## **12. How Leave Can Be Taken**

**a. Continuous Leave**

Leave is considered “continuous” if it is taken all at once, in one block of time.

**b. Intermittent or Reduced Work Schedule Leave**

Employees are not required to take protected leave continuously. Depending upon the circumstances and when medically necessary, leave may be taken as follows:

- **Intermittent Leave:** Leave may be taken periodically over the course of several weeks or months, due to a single illness or injury, rather than one continuous period of time. Intermittent leave may include leave periods from the smallest interval of time used by the County for timekeeping purposes (i.e., an increment of one tenth [.10] of an hour) to several weeks.



- **Reduced Work Schedule:** Leave may also be taken on a schedule that reduces the usual number of hours per day or per week that an employee is scheduled to work.

Time off will be counted towards the designated leave(s) allowances, if an employee takes protected leave on an intermittent or reduced schedule basis. An example is an employee who needs 4 hours off work per week to attend treatment (e.g., doctor's appointments) for his/her serious health condition. Those four hours per week would be counted towards the employee's leave entitlement.

Employees are required to follow their department's usual notification and call-in procedures. Employees taking unforeseeable intermittent leave must notify their department when they call in that the leave is being taken under FMLA, CFRA, and/or PDL. Failure to do this could result in denial of FMLA, CFRA, and/or PDL for that particular day.

**Note:** Due to the importance of accurate tracking of FMLA, CFRA, and/or PDL, managers and supervisors are strongly discouraged from allowing employees to "make up" time lost due to an FMLA, CFRA, and/or PDL qualifying condition.

- **Required Medical Certification for Intermittent or Reduced Work Schedule Leave:**

If leave is requested on an intermittent or reduced work schedule basis, medical certification from the health care provider must include:

- A statement indicating that intermittent or reduced work schedule leave is medically necessary;
- Probable duration of such a schedule;
- Duration and frequency of episodes of incapacity;
- Probable number and intervals of treatments.

- **Scheduling Medical Treatment during Intermittent or Reduced Work Schedule:**



An employee must attempt to schedule all planned medical treatment to minimize disruption to the workplace. For instance, an employee should try to schedule health care provider appointments at the beginning or the end of the employee's regular workday, rather than scheduling them for mid-morning or mid-afternoon.

FMLA/CFRA taken after the birth, adoption, or foster care placement for the purposes of bonding with a child must be taken continuously within one year of the birth or placement of the child. The minimum duration of the bonding leave will be two weeks taken continuously, except on two occasions within the 12-month period, it may be taken in increments of at least one day but less than two weeks. However, a manager or supervisor may agree to permit an employee to take an intermittent or a reduced work schedule leave, although it is not required under FMLA/CFRA to do so.

- **Transfer to Alternative Position during Foreseeable Intermittent Leave or Leave on a Reduced Work Schedule:**

If an employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on planned medical treatment, the County reserves its right to temporarily transfer the employee to an alternative position with equivalent pay and benefits, if the position better accommodates the employee's leave schedule and the employee is qualified to perform the job functions. Such temporary transfers are generally expected to last only as long as the current medical certification allows. The County is not required to create a position solely for the purposes of accommodating the employee's new or modified schedule.

A job transfer does not require the employee's agreement, and there are no limitations on the nature of the alternative position. However, once the leave is completed, the employee must be returned to the same or an

equivalent/comparable position.\* Before selecting an alternative position, the provisions of ADA and FEHA, which might require reasonably accommodating the employee's health condition, must be considered. Managers and supervisors contemplating the temporary transfer of an employee on foreseeable intermittent or reduced schedule leave must contact their HR Services Team prior to making this change.

**\*Note:**

Under FMLA (Section 825.218), an exception to the requirement for reinstatement can be made for key employees (defined as a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite) if the reinstatement of the employee after FMLA leave will cause "substantial and grievous economic injury" to County operations. However, other factors, such as the employee's status under applicable MOUs or the Management & Confidential Resolution, must also be taken into consideration. Please contact your HR Services Team for questions about whether a particular individual can be considered to be a "key employee."

## 13. Employee Notification Requirement

When the need for FMLA/CFRA leave is foreseeable, employees are required to give at least 30 days' advance notice. If timely notice is not provided for a foreseeable need and no reasonable explanation is given, the start of the leave may be delayed up to 30 days after the request. In such cases, Department/HR Designees are encouraged to consult with their Human Resources Services Manager. The period of delay does not count as FMLA Leave.

If an absence or leave cannot be anticipated 30 days in advance, the employee must give notice as soon as practical, usually the same or next business day if off work when learning of the need for leave. Employees are also expected to comply with departmental notification policies and governing MOUs.

The initial notice by the employee does not need to specifically include terms such as FMLA, CFRA, and/or PDL. However, the employee must provide sufficient information so that the manager/supervisor is aware that a serious health condition or other qualifying event exists.

For subsequent requests for the same FMLA/CFRA qualifying reason, the employee must specifically reference the qualifying reason or state “FMLA” leave.

## 14. Employer Notification Requirement

### a. Notice of Eligibility\*

When an employee requests FMLA/CFRA leave, or when the County acquires knowledge that an employee’s leave may be for an FMLA/CFRA qualifying reason, the County must notify the employee of his/her eligibility to take such leave within 5 business days, absent extenuating circumstances. The eligibility notice must state whether the employee is eligible to take FMLA/CFRA leave. If the employee is not eligible for such leave, the notice must state at least one reason why the employee is not eligible.

Because of the 5-day notice requirement, it is critical that managers/supervisors notify their HR Service Team immediately upon being made aware of the need for such leave or when they believe there may be a need for such leave.

*\*Please note that for PDL requests, this notice, along with the required DFEH Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave Notice (formerly referred to as Notice “B”) must be provided within two business days of the employee’s request, or, in the case of unforeseen leave, within two days after the leave commences. This Notice is available from the **HR Toolbox, Leave Forms** page.*

### b. Notice of Rights and Responsibilities

The County must provide a *Notice of Rights and Responsibilities\**, detailing the specific expectations and obligations of the employee, and explaining any consequences of failing to meet these obligations. This notice must include specific information, such as:

- Advisement that the leave will count against the employee's 12-week entitlement;
- The requirement for the employee to furnish medical certification;
- The employee's right to substitute paid leave and the employer's right to require substitution of paid leave;
- Any requirement for the employee to make premium payments for health benefits;
- The employee's rights to maintenance of benefits while on FMLA/CFRA and their reinstatement rights;
- The employee's status as a "key employee" and the potential consequence that restoration may be denied upon return, and explaining the conditions required for such denial; and
- The employee's potential liability for payment of health insurance premiums paid by the County if the employee fails to return to work after taking FMLA/CFRA leave.

*\*Please note that in the County, the Notice of Eligibility and the Notice of Rights and Responsibilities are combined into a single document. Additionally, for PDL requests, this notice, along with the required **DFEH Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave Notice** (formerly referred to as Notice "B") must be provided within two business days of the employee's request, or, in the case of unforeseen leave, within two days after the leave commences. This notice is available from the HR Toolbox, Leave Forms page.*

#### **d. Notice of Designation**

The County is responsible for designating leave as FMLA/CFRA-qualifying, and for giving written notice of the designation to the employee. When the County has enough information to determine that the leave is being taken for an FMLA/CFRA-qualifying reason (e.g., sufficient medical certification), the County must notify the

employee that the leave will be designated and counted as FMLA/CFRA leave within 5 business days, absent extenuating circumstances. If the County determines that the leave will not be designated as FMLA/CFRA, the employee must also be notified of that determination within the same time period.

**Important:** Failure to follow any of the above notice requirements may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights, and could subject the County to liability.

## 15. Paid and Unpaid Leave Time

### a. Paid Leave

The County of Riverside requires leave balances to be used as required by MOUs and as allowed by applicable FMLA, CFRA, and PDL laws. Please refer to the *Use of Accruals for Paid Family and Medical Leave* chart located in the **FMLA, CFRA and Other Leaves** page from the **HR Website**, located at [www.rc-hr.com](http://www.rc-hr.com).

### b. Unpaid Leave

Employees on a protected unpaid leave under FMLA, CFRA, and/or PDL will retain their employment status with the County during their leave. Employees on unpaid leave will not be credited with service hours for seniority. Merit step increases, which are based on both an employee's length of service and his/her job performance, may be delayed for employees on unpaid leaves. Cost of living increases resulting from the negotiation process will not be affected by such leaves.

- **Seniority Date:** The County will not count unpaid protected leave as a break in service. Employees on unpaid leave are still considered to be active employees and retain their date of hire (seniority date).

- **Service Date:** If an employee is in an unpaid leave status (AWOP) for a full pay period, this will push the employee's service date back (i.e., later in time) by a pay period. This may delay benefits that are based on the actual hours worked.
- **Leave Balance Accruals:** An employee will not accrue any leave balances while on an unpaid leave.
- **Exempt Status Under FLSA:** The use of time off during protected leave will not result in the loss of employees' exempt status under the Fair Labor Standards Act (FLSA) minimum wage and overtime requirements, regardless of whether the time off is taken continuously or on an intermittent/reduced work schedule basis.

## 16. Voluntary Time-Bank

The County of Riverside has established a Voluntary Time-Bank program to help employees who have been out of work due to their own or an immediate family member's catastrophic injury or illness and have exhausted all their leave balances. The Voluntary Time-Bank program is intended to help such employees stay in a paid status by transferring donated leave hours to their leave banks. This transfer of hours can help employees continue to receive a partial or full paycheck when they might otherwise be completely absent without pay.

### a. Goals

- Minimize the employee's loss of income during a catastrophic injury or illness.
- Allow employees to help their co-workers who find themselves in a catastrophic situation/condition.

### b. Eligibility Criteria

Only employees in regular full-time or part-time positions who anticipate exhausting their leave balances are eligible to participate in the Voluntary Time-

Bank program. Employees receiving disability payments or Workers' Compensation disability benefits may be eligible for a prorated time-bank reimbursement, such that total payments do not exceed 100% of the employee's regular pay.

The employee must have a catastrophic illness or injury to be eligible to receive time bank donations. A catastrophic illness or injury is generally defined as a debilitating medical condition for which the employee is expected to be incapacitated for 14 or more calendar days. Chronic illnesses or injuries that result in intermittent absences from work over a specified period of time may also be considered catastrophic for the purposes of establishing a Time-Bank. Common illnesses or injuries which are short-term and are without complications are not catastrophic events.



An employee who must be off work in order to care for an immediate family member with a catastrophic illness or injury is also eligible for time bank donations. The employee is required to have been off work for 14 or more calendar days to care for the immediate family member. An immediate family member is defined as a spouse, registered domestic partner, child or child of a registered domestic partner, stepchild, foster child, parent, grandparent, sibling or any other person living in the immediate household of the employee.

The complete guidelines with definitions, conditions and procedures can be found in all Memorandums of Understanding and in the Resolution for Exempt Management, Management, Confidential and Other Unrepresented Employees. Forms and policy guidelines can all be found on the Human Resources/Employee Services webpage at [www.rc-hr.com](http://www.rc-hr.com).

## 17. Benefits While on Protected Leave

### a. Maintenance of Health Coverage



When on FMLA, PDL and/or CFRA leave, an employee is entitled to continued health coverage on the same basis as if the employee continued working. When FMLA and CFRA run concurrently, continued health coverage would run up to 12 weeks; in pregnancy situations, it would run up to 29 1/3 weeks, and in situations involving FMLA Military Caregiver Leave, coverage could extend up to 26 weeks. Health coverage includes the following plans: Medical, Dental, Vision and Health Care Flexible Spending Account. The specific procedure for retaining benefits will depend on whether or not the employee is using leave accruals.

- **Health Coverage when using Leave Accruals**

When using leave accruals during the pay period, the employee will continue to receive Flexible Benefit Credits as if the employee were actively at work and health premiums will be deducted from the employee's pay warrant.

- **Health Coverage when NOT using Leave Accruals**

If an employee has exhausted their leave accruals while on FMLA/CFRA or FMLA/PDL leave, the County will protect the employee's coverage by continuing to pay the cost of an employee's current health coverage, not to exceed semimonthly Flexible Benefit Credits provided to actively working employees in the same classification. If the total cost of the employee's elected health coverage exceeds the Flexible Benefit Credits the employee must pay the difference by making payment arrangements or by payroll deduction upon return to active status. An employee is not entitled to receive any cash back on Flexible Benefit Credits during unpaid leave. For example, excess cash will not be paid when an employee is waiving coverage or when the employee's share of health premiums is less than the amount of the Flexible Benefit Credits.

**Important:**

The employee is responsible for paying his/her share of health premiums while on leave to maintain coverage, whether or not the employee receives a paycheck from the County.

An employee whose pay warrant is insufficient to pay health coverage costs may arrange to pay his/her share of the costs by either:

- (1) Prepaying the share of the premium prior to going on leave; or
  - (2) Paying their share of the premium on a monthly basis during leave; or
  - (3) Repaying their share of premiums in arrears upon return to work.
- Employee's exercising this option should understand and plan for the entire arrears amount being collected from their first paycheck upon return to active status

- **Premium Due Date:** Health plan premiums are collected in the month prior to coverage. An employee who elects to pay premiums on a monthly basis during protected leave is responsible for paying his/her share of the premiums on or before the 25th day of the month preceding the month of coverage. For example, deductions from an employee's pay warrants in February are applied to March coverage. An employee is responsible for submitting the employee share of health plan coverage costs normally collected from his/her February pay warrants on or before February 25th to pay for March coverage.

### Note:

An employee may not always receive a courtesy invoice for uncollected health premiums. The employee is responsible for submitting payments on time, whether or not the employee received a courtesy invoice.

## b. Voluntary Termination of Health Coverage

An employee whose Flexible Benefit Credits are not sufficient to cover the total cost of his/her health care elections, may elect to modify their health plan elections by submitting a Benefit Election Form within 60 days of beginning an unpaid leave. The employee may choose between the options listed below.

- **Cancel Coverage:** An employee may choose to discontinue some or all of his/her health plans during unpaid leave.



This option terminates coverage for the employee and all covered family members.

- **Delete Dependent Coverage:** An employee may elect to drop dependent coverage for some or all of their health plans. This option provides continuation of coverage for the employee and reduces their cost for coverage to the “employee only” premium rate. Family members are deleted, but the employee continues to have coverage. Employee’s exercising this option should be aware that

CalPERS Health Plan rules may not permit reinstatement of the dependent’s coverage upon return to active status and they may be required to wait until the next open enrollment period before being permitted to enroll their dependents.



### Caution:

A voluntary termination of coverage is not a qualifying event defined by the Consolidated Omnibus Reconciliation Act (COBRA) and dependents removed from coverage will not be offered continuation of coverage rights under COBRA regulations.

Voluntary termination of health coverage requests will be effective the first of the month following the date Employee Services or the employee’s department receives the Benefit Election Form, whichever is earlier.

- **Retroactive Cancellation of Health Coverage:** The County cannot retroactively cancel health plan coverage. Health care premiums which were not paid and for which the County could not cancel coverage are the employee’s responsibility. The County may pursue any legal remedy to collect unpaid health premiums, including but not limited to deductions from future pay warrants.
- **Reinstatement of Health Benefits upon Return to Work:** Upon return to work, it is the employee’s



responsibility to re-elect health benefits. The re-enrollment provisions are described below:

- **Leave of Absence of 30 Days or Less:** An employee must elect enrollment in the same health plan with the same level of coverage that was in place before the employee's leave began. For example, if an employee had Kaiser with family coverage before the leave, then the employee must re-elect the same plan (Kaiser) with the same dependent coverage (family coverage).

**Exception:** If an employee experienced a Qualifying Event (e.g., marriage, divorce, birth of a child) or an Annual Enrollment occurred during the employee's leave, then they may make a new health benefit election.

- **Leave of Absence of More than 30 Days:** An employee who terminated health coverage and whose leave is greater than 30 days may make new health benefits elections.

An employee may reinstate health benefits by submitting a Benefit Election Form to his/her Department/HR Designee. If an employee is covered by a CalPERS medical plan, both a "Benefit Election Form" and a Health Plan Enrollment Form (HBD-12) will be required. Forms are available on the HR/Benefits website at [www.rc-hr.com](http://www.rc-hr.com).

- **Recovery of County Contributions for Health Coverage:** When an employee does not return to work following an unpaid protected leave, the County may recover any Flexible Benefit Credits utilized to provide continued coverage for the employee. Exceptions to this are:
  - The continuation, recurrence, or onset of a serious health condition affecting the employee or the employee's immediate family member; or
  - The employee's circumstances suddenly and unexpectedly change during the leave; or
  - Other circumstance beyond the employee's control, such as:

(a) The employee is laid off while on leave; or

(b) The employee's spouse is unexpectedly transferred more than 75 miles away from the employee's worksite.

- **Entitlement to Continue Health Coverage under COBRA:** An employee who does not return to work for the County from FMLA/CFRA/PDL leave has the right to COBRA continuation coverage. Coverage will begin on the last day of the employee's leave when the following conditions exist:



- The employee, spouse, or dependent child of the employee is covered under a County health plan on the day before the leave begins;
- The employee does not return to employment with the employer at the end of the FMLA leave; and
- The employee, spouse, or dependent child of the employee would, in the absence of COBRA coverage, lose their health coverage.

The last day of FMLA/CFRA/PDL leave is defined as the end of the approved FMLA/CFRA/PDL leave period or the date the employee informs their department that they will not be returning to work, whichever occurs first.

Any lapse in health coverage during FMLA/CFRA/PDL leave will not impact the employee's right to COBRA continuation; however, it may impact the COBRA effective date. COBRA coverage begins on the first day an employee originally lost health coverage.

### c. Other Benefits

#### **Note:**

For Supplemental Life Insurance under Standard Life for some, employees who (1) are absent due to their own illness or injury and (2) will be in an unpaid status for 180 days or more are eligible to file for a waiver of premium. Upon Standard Life's approval, the employee will NOT be required to pay a premium during the leave of absence. A waiver of premium is not available for coverage for SEIU and LIUNA represented employees Insurance policy.

The County is not required to continue any benefits beyond health coverage during an unpaid FMLA, CFRA and/or PDL leave. Below is a description of the effects of such leaves on other benefits:

- **Basic Life Insurance:** The County will continue to pay an employee's basic life insurance premiums during a leave.
- **Supplemental Life Insurance:** Supplemental life insurance coverage for the employee and any covered family members may continue during an approved leave of absence if premiums are paid. Please refer to the plan's Certificate of Coverage for details, required procedures and limitations.

Payroll deductions for supplemental life insurance coverage will continue while an employee is on paid leave. An employee will be required to pay the supplemental life insurance premiums whenever an employee is on unpaid leave.

- **State Disability Insurance/Paid Family Leave (for SEIU and LIUNA):** SDI/PFL benefits are paid to the State through withholding of taxable wages. Employees will continue to pay into the SDI/PFL program so long as there are taxable wages to withhold. To file a claim for SDI/PFL benefits, employees can file a claim with EDD at: [https://edd.ca.gov/Disability/DI\\_Claim\\_Process.htm](https://edd.ca.gov/Disability/DI_Claim_Process.htm)
- **Long-Term Disability:** The County will continue to pay an eligible employee's Long-Term Disability premiums.

## 18. Returning to Work Following a Protected Leave

Employees whose leave time is due to their own serious health condition must provide a medical release from their health care provider indicating the date they are released to return to work. Failure to provide the release may result in a delay in the employee's return to work. Employees will be required to return to work on the date indicated, unless additional leave time is approved.

When work restrictions are indicated, the HR Services Team must be contacted. Any release to less than full duty will only be allowed as a reasonable accommodation as required under the Americans with Disabilities Act (ADA) or Fair Employment and Housing Act (FEHA), or as a result of the employee's participation in the County's Return-to-Work Program\* for occupational injuries.

*\*Note that employees of the Sheriff's Department may participate in the Return-to-Work program for both occupational and non-occupational injuries.*

Nothing shall prevent the earlier return to duty by the employee, except the Agency/Department may require two (2) weeks advance notice of the employee's intention to return.

#### **a. Reinstatement Rights under FMLA/CFRA**

An employee returning from a leave under FMLA and/or CFRA will be reinstated to the same or equivalent job (equal pay, benefits, and other employment terms and conditions) unless the employee would otherwise have been terminated or transferred during the period of the leave. Entitlement at the end of an employee's leave is limited to no greater rights of employment than if the employee had not been on leave. In other words, the County may deny reinstatement if it can be shown that the employee would not have remained employed if the leave had not been taken (e.g., due to a layoff). Departments must consult with their HR Services Teams in situations where they are considering not returning an employee to his/her same position.



#### **b. Reinstatement Rights under PDL**

The employee will be reinstated to the same position unless:

- The position ceases to exist because of legitimate business reason unrelated to the employee taking leave, or
- Any means of preserving the job would substantially undermine the County's ability to operate its business safely and efficiently.

If the same position is not available, the employee must be offered an equivalent position with equivalent employment benefits, pay, and other conditions of employment. Departments must consult with their HR Services Teams in situations following PDL where they are considering not returning an employee to her same position.

### **c. Reasons to Deny Reinstatement**

Departments must consult with their HR Services Manager before denying reinstatement after FMLA, CFRA, or PDL leaves. The following are reasons that employees may not be reinstated to their positions in the County:

- Layoff – If an employee would have been laid off except for being on the qualifying leave.
- No Intent to Return – If an employee unequivocally advises the County of his or her intent not to return to work.
- Employee Hired for Specific Term or Project – If an employee was hired to work for only a specific timeframe or for a specific project and the timeframe has passed or the project is completed.
- Fraud – If an employee has fraudulently obtained his/her leave, he/she will not be entitled to reinstatement.
- Key Employees – Although the FMLA allow the County to deny reinstatement to “Key Employees” under limited circumstance, CFRA does not. A Key Employee is defined as a salaried, FMLA-eligible employee in the top 10% of highest paid employees within a 75-mile radius of that particular employee's work site.



## 19. Additional Leave Time

If the employee needs additional leave time due to their own medical condition following the exhaustion of available leave time under FMLA/CFRA/PDL, in accordance with County MOUs, the employee may request an Official Leave of Absence for a period not to exceed one year (including leave time already used).



Application must be made on the Medical Leave of Absence Request & Medical Certification Form at least five work days prior to expiration of the current leave, unless circumstances make such advance request impossible. If the employee is unable to meet this deadline the employee must contact his/her Department/HR Designee to request an extension. In instances where the employee is medically unable to complete the Medical Leave of Absence Request prior to the effective date of the leave, the Department/HR Designee may request the leave on the employee's behalf, with sufficient medical documentation to support the leave. The request form can be obtained from the **HR Website, FMLA, CFRA PDL and Other Leaves** page at [www.rc-hr.com](http://www.rc-hr.com).

The completed Medical Leave of Absence Request & Medical Certification Form is submitted to the Department/HR Designee. The Designee must follow up with the employee's supervisor/manager to obtain his/her recommendation regarding the leave. The leave is then forwarded to the Department Head to recommend approval or denial. All Leave of Absence Requests beyond the initial 480 hours require the approval of the HR Director or Designee.

For leaves over 480 hours, the Human Resources Director/Designee will review the Medical Leave of Absence Request and the recommendation of the Department Head or designee. If approved, the Request for Leave will be forwarded to other appropriate Human Resources staff for further processing and tracking. If the Human Resources Director/Designee denies the request, it shall be so endorsed and returned to the

Agency/Department Head (copy to the Department Designee). The Department Head may present the leave request to the Board of Supervisors. The Board's action shall be final.

If an employee needs additional leave time due to a family member's medical condition following the exhaustion of available leave time under FMLA/CFRA, an application must be made on the Non-Medical Leave of Absence Request Form, following the same guidelines and process described above.

In all cases, once the leave has been processed, approved or denied by Human Resources, the Department Designee must notify the employee and the employee's supervisor of the approval/disapproval, absent extenuating circumstances. The employee and supervisor must also be apprised of payroll timekeeping requirements during the leave.

**a. Extensions of Official Leaves of Absence**

Extensions of Official Leaves of Absence may be requested where warranted and are processed in the same manner as the original request. Updated medical certification is also required to support the employee's need for additional time off. In general, the maximum time allowed for any continuous leave term may not extend beyond one (1) year in total duration; however, it is important to note that leave extension requests are reviewed on a case-by-case basis.

**b. Benefits While on an Official Leave of Absence**

If an employee continues to be disabled after leave for FMLA, CFRA, and/or PDL is exhausted, the employee may continue to be eligible to receive pay from unused, accrued time and/or benefits under one of the County's disability plans. However, the provisions of FMLA, CFRA, and/or PDL will no longer control the terms and conditions of the leave. The exhaustion of leave accruals will constitute a COBRA-qualifying event and the employee will receive applicable notice of his/her rights to continue coverage under COBRA.

**c. The Employee's Return to Work Following a Leave of Absence**



An employee on leave due to his/her own personal illness or disability, prior to being allowed to return to work, must submit a Return to Work Statement from the attending physician releasing the employee to full duty. Any release to less than full duty will only be allowed as a reasonable accommodation as required under the Americans with Disabilities

Act (ADA) and/or the Fair Employment and Housing Act (FEHA) or via referral to the County Return-to-Work Program. The Human Resources Director must be promptly notified of the return of any employee from official leave of absence. Nothing shall prevent the earlier return to duty by the employee, except the Agency/Department Head may require two (2) weeks advance notice of the employee's intention to return.

## 20. Interaction with Other Laws

The interaction between ADA/FEHA, FMLA/CFRA/PDL, and Workers' Compensation can be confusing because an injured or ill employee may have rights under each of these statutes. Each statute defines the protected employee differently, and provides different and frequently overlapping benefits and protections. In general, when an employee is covered by more than one law, the law that provides the greatest rights or protections to the employee is the one that prevails. This may differ, depending on the employee's specific situation. As a result, the circumstances of each employee must be carefully analyzed under each of the laws and consideration given to how the laws interact for each particular employee.

### a. ADA/FEHA

In California, the definition of a qualified individual with a disability is generally more broadly defined by FEHA than the ADA; thus, FEHA generally supersedes the ADA, unless the latter provides greater protections. If an employee has been determined to be a qualified individual with a disability within the meaning of ADA

or FEHA, the County must offer the good faith Interactive Process and must reasonably accommodate any functional limitations, in order to comply with the law. Based on the circumstances of any given case, this step may occur before, after or at the same time an employee is given his or her applicable FMLA/CFRA and/or PDL rights.

Not every employee who becomes seriously ill or is injured on the job is protected by FEHA. Illnesses or work-related injuries do not always cause physical or mental impairments severe enough to limit a major life activity, as required by the FEHA definition.

The following are examples of how FMLA/CFRA/PDL and ADA/FEHA may interact with respect to an employee with a disability:

**(1) Example #1**

Edward Employee has a non-work-related disability that qualifies for both leave under FMLA/CFRA and reasonable accommodation under ADA/FEHA. Although a reasonable accommodation has been located, Edward may nonetheless elect to take the FMLA/CFRA time to which he is entitled. Once Edward's FMLA/CFRA leave has been completed, should his need for accommodation continue, the County would need to continue the Interactive Process and reasonably accommodate his continued limitations.

**Note:**

If the employee elects to take FMLA/CFRA in lieu of available modified duty that meets his/her work restrictions, this could affect the employee's eligibility for disability insurance benefits. For more information, the employee should contact the Benefits Hotline at (951) 955-4981.

**(2) Example #2**

Ellen Employee has sustained a significant back injury, requiring surgery and leave from work. Upon completion of her 12 weeks of FMLA/CFRA, Ellen requests three additional months of leave as an accommodation under ADA/FEHA, in order to complete her rehabilitation and enable her to return to work. Through the Interactive Process led by the HR Services Team, and in

consultation with Ellen's department, it is determined that this additional leave time is a reasonable accommodation.

### (3) Example #3

Julie has been employed with the County for approximately six months. She just informed her supervisor that she is five months pregnant and that her doctor has ordered her off work on bed rest for the next month, due to complications with her pregnancy. Although Julie would not qualify to take a leave of absence under FMLA since she has not been employed by the County for at least a year, she would be eligible to take up to four months of leave under PDL. Furthermore, Julie is also considered a qualified individual with a disability, and would be entitled to a reasonable accommodation under ADA/FEHA. In this situation, granting Julie her leave entitlement under PDL would also be considered a reasonable accommodation under ADA/FEHA.

## b. Workers' Compensation (WC)

A medical leave can be for occupational as well as non-occupational serious health conditions. Time off, compensated through Workers' Compensation, can and should run concurrently with FMLA and CFRA\* if the reason for the occupational injury is also considered a qualifying reason under FMLA/CFRA. Notification of designation and all applicable required information and forms must still be completed, approved, and recorded for each leave type used while the employee is receiving Workers' Compensation benefits.

**\*Note:** If a Public Safety member is receiving 4850 benefits for a work-related injury, according to California Labor Code Section 4850(e), the County may not run CFRA leave concurrently with those benefits. As a result, it is the County's practice to run FMLA and CFRA leave once the 4850 period has concluded. If the employee had been eligible for FMLA and CFRA leave at the beginning of the 4850 period, then the employee remains eligible at the end of that 4850 period.

## 21. Healthy Workplaces, Healthy Families Act

Under the Healthy Workplaces, Healthy Families Act (California Labor Code 245–249), effective July 1, 2015 (as amended), the County must provide a minimum of 3 days or 24 hours of Paid Sick Leave (whichever is greater) to eligible employees. An eligible employee is defined as any temporary, part-time and per-diem employee, not covered by a current, valid collective bargaining unit, and who has worked for the County for at least 30 days within a year in the State of California.

The County will provide each eligible employee who has 90 calendar days of employment with the County of Riverside with 36 hours of Paid Sick Leave (PSL) starting July 1, 2015, and January 1<sup>st</sup> of each year thereafter. There is no carry-over of unused PSL hours from one calendar year to the next. Eligible employees with less than 90 calendar days of employment with the County will be credited 36 hours of Paid Sick Leave upon reaching their 90<sup>th</sup> day of employment.

Paid Sick Leave accrued specifically under this Act may be used for the following purposes:

- Diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee, or an employee's family member.
- For an employee who is the victim of domestic violence, sexual assault, or stalking.

As defined in the regulations, the term “family member” includes the following:

- Child (including a biological, adopted or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis);
- spouse
- registered domestic partner
- parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis to the employee when the employee was a minor)
- grandparent
- grandchild
- sibling

- A “designated person” (i.e., a person identified by the employee at the time the employee requests paid sick days) **Note: The County may limit an employee to one designated person per 12-month period for paid sick days.**

Employees are required to give reasonable advance notice if the need for Paid Sick Leave under this Section is foreseeable. However, if the need for leave is not foreseeable, the County is still required to provide Paid Sick Leave accrued under this Act upon the oral or written request of the employee.

In accordance with the Healthy Workplaces, Healthy Families Act, the County shall not deny eligible employees the right to use accrued Paid Sick Leave, nor shall the County discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to use accrued Paid Sick Leave, filing a complaint with the department or alleging a violation of these regulations, cooperating in an investigation or prosecution of an alleged violation, or opposing any policy or practice or act that is prohibited by regulations.<sup>2</sup>

## 22. Kin Care Leave

Pursuant to California Labor Code 233, employers that provide sick leave for their employees are required to allow employees to use up to one-half their annual sick leave accrual (provided that such leave is available) for the following purposes:

- Diagnosis, care, or treatment of an existing health condition of, or preventative care for, the employee, or the employee’s family member.
- For an employee who is the victim of domestic violence, sexual assault, or stalking.

As defined in Labor Code 245.5, the term “family member” includes the following:

- Child (including a biological, adopted or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis);

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<sup>2</sup> For a more complete explanation of the Healthy Workplaces, Healthy Families Act (CA Labor Code 245), please refer to County Policy C-36, Healthy Families, Healthy Workplaces Policy, which is available in the Board Policy Manual on the County Intranet at <http://www.rivcocob.org/board-policies/>.

- spouse
- registered domestic partner
- parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis to the employee when the employee was a minor)
- grandparent
- grandchild
- sibling
- A "designated person" (i.e., a person identified by the employee at the time the employee requests paid sick days) **Note: The County may limit an employee to one designated person per 12-month period for paid sick days.**

**The designation of sick leave taken for these reasons shall be at the sole discretion of the employee.**

Employers must not deny employees their right to use sick leave under these regulations. Additionally, employers must not discharge, threaten to discharge, discipline, or in any manner discriminate/retaliate against employees for using or attempting to use Kin Care Leave. Kin Care Leave should be considered "protected leave" similar to FMLA/CFRA, which means that the employee's use of Kin Care Leave must not be held against the employee. When applicable, Kin Care Leave should run concurrently with FMLA/CFRA.

*It should be noted that Kin Care also applies to Paid Time Off (PTO), which in the County equates to Annual Leave.*

## **23. Forms and Additional Information**

Forms and other resources referenced in this document can be located on the HR Website, FMLA, CFRA, PDL and Other Leaves page, located at [www.rc-hr.com](http://www.rc-hr.com).