

- ◆ Family and Medical Leave Act (FMLA) ◆ California Family Rights Act (CFRA)
- ◆ California Pregnancy Disability Act (PDL)

## FREQUENTLY ASKED QUESTIONS

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**Q1: *What are the circumstances that qualify me for protected leave under the Family and Medical Leave Act (FMLA) and/or California Family Rights Act (CFRA)?***

**A1:** You may be eligible to take a job-protected leave of absence for: the birth of a child; the placement of a child in your family for adoption or foster care; to care for your spouse (including same sex spouse), child or parent with a serious health condition; or for your own serious health condition that makes you unable to perform the functions of your job. Additionally, under CFRA, you may take leave for the serious health condition of your registered domestic partner, child of the registered domestic partner, sibling, grandparent, grandchild, parent-in-law, or other “designated person” as defined by law.

FMLA and CFRA also include leave for any qualifying exigency arising out of the fact that your spouse, child, parent or registered domestic partner is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; and to care for a covered servicemember with a serious injury or illness if you are the spouse (including same sex spouse), child, or next of kin of the servicemember.

**Q2: *Who is considered an “eligible” employee under FMLA/CFRA?***

**A2:** You are an eligible employee if you have been employed by the County for at least 12 months, and worked at least 1,250 hours during the 12-month period immediately preceding the leave. The 12 months of employment need not be consecutive months. However, employment periods prior to a break in service of seven years or more are not counted in determining whether you were employed for at least 12 months.

**Q3: *Do the 1,250 hours include paid leave time or other absences from work?***

**A3:** No, unless those absences from work are due to military service. The 1,250 hours include only those hours actually worked for the County. Paid leave and unpaid leave, including FMLA/CFRA leave, are not included. However, employers are required to count the time that reservists or National Guard members would have worked, if they had not been called up for military service, towards FMLA/CFRA eligibility.

**Q4: *How much leave am I entitled to under FMLA/CFRA?***

**A4:** If you are an “eligible” employee, except in the case of leave to care for a covered servicemember, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

In the case of care for a covered servicemember with a serious injury or illness, FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period" to care for that servicemember.

**Q5:** *Do I need to take FMLA/CFRA leave for a serious health condition all at one time?*

**A5:** No, you do not. FMLA/CFRA leave taken for a serious health condition or to care for a covered servicemember does not need to be taken in one continuous period of time; it can also be taken intermittently, when medically necessary. However, if you need to take intermittent leave for planned medical treatment, you must make a reasonable effort to schedule such treatment so as to minimize disruption to the employer's operations.

**Q6:** *Do I need to take FMLA/CFRA bonding leave all at one time?*

**A6:** No, bonding leave under CFRA may be taken in increments of at least two weeks at a time, with the exception that on two occasions, it may be taken in increments of at least a day but less than two weeks.

**Q7:** *If I know about an upcoming need for leave ahead of time, how much notice do I need to give when requesting leave?*

**A7:** For foreseeable leaves, you must request FMLA/CFRA leave at least 30 days in advance. If you cannot give at least 30 days' notice of your need for FMLA/CFRA leave, you must provide the notice as soon as practicable. In cases where 30 days notice was not given, the County has the right to ask you to explain why it was not possible to give 30 days notice of your need for FMLA/CFRA leave. If you fail to comply with notice requirements or your explanation is not satisfactory, the County can delay your leave.

**Q8:** *Does the County have the right to designate FMLA/CFRA leave?*

**A8:** Yes, the County has this right, regardless of the employee's preference provided that the County has sufficient information on hand to do so.

**Q9:** *How is the 12-month period calculated under FMLA/CFRA?*

**A9:** For all FMLA/CFRA leaves except military caregiver leaves, the County uses a "rolling" 12-month period measured backward from the date an employee starts FMLA/CFRA leave.

The "single 12-month period" for military caregiver leave begins on the first day the eligible employee takes the leave and ends 12 months after that date.

**Q10:** *Does the law guarantee paid time off?*

**A10:** No, FMLA/CFRA only provides for unpaid leave. However, the law permits you to elect and also allows the County to require you to substitute appropriate accrued paid leave accruals, subject to certain restrictions, for some or all of the FMLA/CFRA leave period (please refer to *Use of Accruals For Family and Medical Leave* chart). Regardless of whether your time off is paid or unpaid, applicable leave time is still counted against the 12-week FMLA/CFRA leave entitlement.

**Q11: *Who is considered an immediate “family member” for purposes of taking FMLA/CFRA leave?***

**A11:** An employee’s spouse (including same sex spouse), children (son or daughter), and parents are immediate family members for purposes of FMLA/CFRA. Under CFRA only, registered domestic partners, children of registered domestic partners, grandparents, grandchildren and siblings are also included. The term “parent” does not include a parent “in-law.” The term “child” includes adult dependent children over the age of 18.

**Q12: *Do I have to give the County my medical records or diagnosis for leave due to a serious health condition?***

**A12:** The County is committed to compliance with all applicable confidentiality regulations, including those under FMLA/CFRA, the Confidentiality of Medical Information Act (CMIA), and the Genetic Information Nondiscrimination Act (GINA). Accordingly, the County neither requests nor requires you to provide confidential medical records or diagnostic information when requesting leave. In order for the County to determine if your medical condition qualifies under FMLA/CFRA, all that is required is a completed certification from your health care provider verifying whether your situation meets the definition of a *serious health condition* and specifying your need for leave related to that condition.

**Q13: *What if my medical certification is incomplete or more information is needed?***

**A13:** A complete and sufficient medical certification is required in order to take FMLA/CFRA leave. If your medical certification is incomplete (i.e., required questions not filled out) or insufficient (e.g., answers unclear or ambiguous), you will be notified in writing of the specific deficiencies. You will be given seven calendar days from the date of the notice to provide the additional information. If it is not practicable for you to provide the additional information within this timeframe despite your good faith efforts, you must notify your Department Representative prior to the expiration of the seven days.

**Q14: *What if I cannot perform my regular duties but can perform other useful tasks as a result of work restrictions given to me by my health care provider?***

**A14:** If your health care provider has given you temporary work restrictions, lasting 30 calendar days or less, you may be temporarily accommodated by your department in a light-duty job assignment if such work is available. If your work restrictions are beyond 30 days in duration, you may be eligible for a reasonable accommodation under ADA/FEHA. If you have questions about temporary or long-term accommodations under ADA/FEHA, please contact the Human Resources Department.

If you’re a Public Safety member or have sustained a work-related injury, you may be eligible for temporary modified work through the County’s Return-to-Work modified duty program. Contact your HR Services Team or the Workers’ Compensation Division of Human Resources for more information on this program.

***Q15: Can the County require me to return to work before I exhaust my leave?***

**A15:** The County may not require you to return to work early or require you to work in a light/modified duty assignment in lieu of taking FMLA/CFRA/PDL leave.

***Q16: Can the County make inquiries about my leave during my absence?***

**A16:** Yes, the Human Resources Representative coordinating your leave may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA/CFRA purposes, and may also require periodic reports on your status and intent to return to work after leave. The County may also require a comprehensive health statement, in accordance with MOUs. Please note that the County is not allowed to ask for information pertaining to your medical diagnosis.

The County may also have a health care practitioner, a human resources professional, a leave administrator, or a management official representing the County contact your health care provider, to clarify information in the medical certification or to confirm that it was provided by the health care provider. Your immediate supervisor is not allowed to make this contact, regardless of the circumstances involved. The inquiry may not seek additional information regarding your health condition or that of a family member.

***Q17: Can the County refuse to grant me FMLA/CFRA leave?***

**A17:** If you are an “eligible” employee who has met FMLA/CFRA’s notice and certification requirements (and you have not exhausted your FMLA/CFRA leave entitlement for the year), you may not be denied FMLA/CFRA leave. However, if you fail to fulfill any obligations to provide supporting medical certification, the County has the right to deny your request for FMLA/CFRA leave.

***Q18: Can the County hold my FMLA/CFRA leave against me?***

**A18:** It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under these laws. Employers cannot use the taking of FMLA/CFRA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. Under limited circumstances, an employer may deny reinstatement to work -- but not the use of FMLA/CFRA leave -- to certain highly-paid, salaried (“key”) employees. Departments must consult with Human Resources in situations where they are considering denying reinstatement to a “key” employee prior to making a decision.

The protections of FMLA/CFRA will not cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

***Q19: While I am on FMLA/CFRA leave, am I protected against being laid off?***

**A19:** While you are on FMLA/CFRA leave, you have no greater protection against layoff than you would have if you were at work. In other words, the County may not select employees for layoff based on their use of FMLA/CFRA leave, but the County is allowed to lay employees off if they would have been laid off had they continued to work during the FMLA/CFRA leave period.

**Q20: *Am I required to provide a release from my Health Care Provider in order to return to work following my leave?***

**A20:** Yes, if you are on leave due to your own serious health condition, you are required to submit a medical certificate of your ability to return to work prior to being allowed back to work. If you fail to provide this certification, the County may deny or delay reinstatement until the certification is submitted.

**Q21: *Are there other circumstances in which the County can deny me FMLA/CFRA leave or reinstatement to my job?***

**A21:** If you give unequivocal notice that you do not intend to return to work, you will lose your entitlement to FMLA/CFRA leave.

If you are approved for unforeseeable, intermittent leave and fail to properly notify your department when you call in on a particular day that your absence is due to your FMLA, CFRA and/or PDL qualifying condition, you could be denied your FMLA/CFRA/PDL entitlement for that day.

If you are unable to return to work and have exhausted your 12 weeks of FMLA/CFRA leave in the designated "12 month period," you are no longer protected, nor do you have job restoration rights, under FMLA/CFRA.

**Q22: *Are absences due to a Workers' Compensation related injury/illness counted against an employee's FMLA/CFRA leave entitlement?***

**A22:** Yes they are, provided the reason for the absence is due to a qualifying serious health condition covered by FMLA/CFRA. It is the County's general practice to count all eligible time off towards the employee's FMLA/CFRA entitlement.

**Q23: *How long may a woman be off work for pregnancy?***

**A23:** Under California law, the County must provide up to four months of disability leave for pregnant women (i.e., 17.33 weeks or 693.2 hours). Pregnancy Disability Leave (PDL) is allowed for prenatal care, as well as when a woman is disabled due to pregnancy or childbirth. This includes severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, and related medical conditions.

**Q24: *Can the County count time on PDL as FMLA or CFRA leave?***

**A24:** Leaves for pregnancy-related or childbirth-related disability would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave. However, it cannot be counted against the 12 weeks of CFRA leave.

**Q25: *Is Pregnancy Disability Leave (PDL) separate from CFRA leave?***

**A25:** Yes, because CFRA was specifically written to exclude pregnancy-related disabilities. CFRA cannot run concurrently with PDL.

**Q26: *What happens to my benefits while on leave?***

**A26:** 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.

During the period of benefits continuation, the County is required to maintain your coverage under our group health plans, under the same conditions as coverage would have been provided if you had been continuously employed during the entire protected leave period. Therefore, while on protected leave you will be entitled to receive flexible benefit credits, up to the cost of your premium, for the time periods specified above. However, if you do not return from leave you may be responsible for repayment of these Flexible Benefit Credits. While on unpaid leave you must continue to pay your portion of the premiums. You may be required to use available and appropriate leave balances to pay for your leave (see the *Use of Accruals for Family and Medical Leave* chart for details). When the use of leave balance is not required you may elect to use them. If your leave balances are sufficient to cover your premiums, your premiums will be deducted.

If you are receiving Short-Term Disability (STD) benefits, you may elect to have your share of premiums deducted from these earnings. If you fail to pay your share of premiums while on FMLA/CFRA/PDL protected leave the County will pay them on your behalf and will collect these premiums from your pay warrant when you return from leave.

You may choose not to retain group health plan coverage during FMLA/CFRA/PDL. If you choose to terminate your coverage during FMLA/CFRA/PDL leave, when you return from leave, you are entitled to be reinstated to the same coverage elections in place prior to taking leave. It is your responsibility to request the termination of coverage by submitting a completed Benefit Election form within 60 days of beginning your FLMA/CFRA/PDL and for requesting reinstatement of coverage within 60 days of your return from leave by completing and submitting a new Benefit Election form upon your return.

While on an unpaid, unprotected Leave of Absence you will not be entitled to receive Flexible Benefit Credits. If your leave is paid through the use of available and appropriate leave balances you may continue your elections for group coverage and your premiums will be deducted from your pay warrants. If your leave is unpaid, or becomes unpaid when you exhaust your leave balances, you will lose eligibility for group coverage and you will be offered continued coverage under the provisions of the Consolidated Omnibus Reconciliation Act (COBRA). When you return from leave you will again be eligible for coverage and may reelect group coverage by completing a new Benefit Election form upon your return.

If you have additional questions regarding your group health plans, contact the Human Resources Benefits Division at (951) 955-4981.

**Q27: *What is a “designated person” under CFRA?***

**A27:** Under CFRA a “designated person” means any individual related by blood or whose association with the employee is the equivalent of a family member.

**Q28: *Can I designate my uncle for one CFRA request and my cousin for a separate CFRA request?***

**A28:** Under CFRA, an employee may be limited to one “designated person” in a 12 month period.

**Q29:** *What if I am unable to return to work once my FMLA/CFRA/PDL entitlement has been exhausted?*

**A29:** If you require additional leave time, you may apply for an Official Leave of Absence as a reasonable accommodation under ADA/FEHA which requires the review of your department and the approval of the County’s Human Resources Director. The Leave of Absence form is available on the HR Website/FMLA, CFRA, PDL and Other Leaves Page at: <http://www.rc-hr.com/HR-Services/Employee-Services/FMLA-CFRA-PDL-and-Other-Leaves> It is important to note that approval of an Official Leave of Absence request is not automatic. Leave requests will be evaluated based on your department’s operational needs, workload demands, and ability to reasonably accommodate your continued absence.