

**SANTA BARBARA COUNTY**

**FAMILY AND MEDICAL CARE LEAVE POLICY**

**I. STATEMENT OF POLICY**

To the extent not already provided for under current leave policies and provisions, Santa Barbara County will provide family and medical care leave for eligible employees as required by State and Federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

**II. DEFINITIONS**

- A. “12-Month Period” - means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. “Family Leave” - means the maximum 12 weeks leave in a 12 month period that is for any of the following “Reasons for Leave.” This is a state and federal minimum benefit entitlement with specified rights and responsibilities as described within. The coordination of family leave with the other types of County leave is described under “Coordination of FMLA/CFRA Leave with Other County Policies.” In cases of employee illness, a period of “family leave” is coded as a “medical” leave for payroll purposes under the County leave of absence policies.
- C. “Child” - means a child under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or stepchild.

A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living - such as; caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

- D. “Parent” - means the biological or adoptive parent of an employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- E. “Spouse” - means a husband or wife as defined or recognized under California State law for purposes of marriage.
- F. “Serious Health Condition” - means an illness, injury impairment, or physical or mental condition that involves:
  - 1) Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other

regular daily activities due to the serious health condition, treatments involved, or recovery therefrom), or

- 2) Continuing Treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
- a) A period of incapacity due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; **or**
    - ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
  - b) Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)
  - c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
    - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); **and**
    - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
  - d) A 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 the continuing supervision of, but need not be receiving active treatment by a health care provider.
  - e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would

likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

G. “Health Care Provider” means:

- (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- (2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition.
- (3) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- (4) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- (5) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- (6) Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

**III. REASONS FOR LEAVE**

Family leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn child of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent or a spouse who has a serious health condition; or
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position, including both work-related and non-work-related illness or injury. Please note: Employees in “safety classifications” cannot be placed on family leave while receiving disability pay in lieu of workers’ compensation temporary disability payments under provisions of California Labor Code Section 4850.

**IV. EMPLOYEES ELIGIBLE FOR LEAVE**

An employee is eligible for family leave if the employee:

1. Has been employed for at least 12 months; and

2. Has worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave. Time spent on paid or unpaid leave is not counted towards hours worked.

## V. AMOUNT OF LEAVE

Eligible employees are entitled to a total of 12 workweeks of family leave during any 12-month period. The amount of family leave hours available to part-time employees is prorated based on the number of hours in their workweek. For a 30 hour per work week schedule, 12 weeks leave equals 360 hours leave (30 x 12). Leave hours taken during an employee's regular work schedule would be counted against this total.

### A. Minimum Duration of Leave

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

If family leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

### B. Spouses Both Employed By Santa Barbara County

In any case in which a husband and wife both employed by Santa Barbara County are entitled to family leave, the aggregate number of workweeks of leave to which both may be entitled are limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

### C. Intermittent Leave or Reduced Leave Schedule

Family leave may be taken intermittently or on a reduced leave schedule. "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason, rather than for one continuous period of time, and may include leave periods from one hour or more to several weeks. "Reduced leave schedule" means a leave schedule that reduces the employee's usual number of hours per workweek or workday, usually from full to part-time. The maximum amount of intermittent leave is prorated according to the number of hours in a work week. For a 40 hour per work week schedule, 12 weeks' leave equals 480 hours leave (40 x 12). Leave hours taken during an employee's regular work schedule would be counted against this total.

Where leave is taken because of the birth or the placement of a child for adoption or foster care, intermittent leave or leave on a reduced schedule may only be taken if the employer agrees. However where leave is taken to care for a sick family member or for the employee's own serious health condition, intermittent leave or leave on a reduced schedule may be taken when "medically necessary." Employees must have a medical need for such leave and it must be that such medical need can be best accommodated through an intermittent leave or reduced leave schedule. Employee needing such leave must attempt to schedule their leave so as not to disrupt their department's operations. In this case, employees on a reduced

or intermittent leave schedule may be assigned to an alternative position with equivalent pay and benefits that better accommodates the employee's needs.

## **VI. EMPLOYEE BENEFITS WHILE ON LEAVE**

### **A. Salary**

Leave provided under this policy is unpaid, however, an employee may qualify to use accrued paid leave balances as described in Section VII, below.

### **B. Benefits**

While on leave, an employee will continue to be covered by Santa Barbara County's group health insurance to the same extent that coverage is provided while the employee is on the job. An employees will also continue to be covered under Santa Barbara County's non-health benefit plans in the same manner. The employees must make the appropriate contributions for continued coverage under the preceding health and non-health benefit plans by payroll deductions or direct payments to Personnel Employee Benefits Division for these plans. For each benefit plans an employee is enrolled in, the Personnel Department Employee Benefits Division will inform the employee of the amount they owe to Santa Barbara County to continue coverage.

An employee's coverage for a particular plan may be canceled if he/she is more than 30 days late in making a premium payment. The cancellation date will be retroactive as of the last covered date for which the employee paid. Employee contribution rates are subject to any change in premiums that occurs while the employee is on leave. Payment of benefit cash allowances is prorated based on the amount of accrued leave balances used each pay period, and if an employee is in a paid leave status, accrued leave may be used to pay employee benefit premiums due as provided in County policies. In order to avoid loss of benefits, arrangements for direct payments to the Personnel Department should be made as soon as the leave period is known. If coverage is canceled during the leave, an employee may not be able to re-enroll until the next open enrollment for the canceled plan.

### **C. Retirement**

Retirement contributions are paid during family leave only on vacation, holiday, sick and other paid leave hours reported. No contributions are made on unpaid hours during the leave of absence. The Retirement Division of the Treasurer's Office should be consulted for specific information. Leave accruals, such as vacation and sick leave, do not continue during unpaid leave. Employees on family leave who may also be entitled to workers' compensation benefits must apply for and receive approval for these benefits from the Risk Management Division.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expired, Santa Barbara County shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. Santa Barbara County shall have the right to recover premiums through deduction from any sums due to the employee from Santa Barbara County (e.g. unpaid wages, vacation pay, etc.).

## VII. SUBSTITUTION OF ACCRUED PAID LEAVES

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves such as sick, vacation, or accrued overtime as authorized in County policies. Similarly, Santa Barbara County will require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying. This includes medical leaves which qualify for workers' compensation or state disability (SDI) and meet the definition of a serious illness.

### A. Employee's Right To Use Accrued Paid Leaves Concurrently With Family Leave

Where an employee has earned or accrued paid vacation or compensatory time or has rights to request administrative leave, that paid leave, if approved by their department, may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

- 1) The leave is for the employee's own serious health condition; or
- 2) The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave under the Santa Barbara County's sick leave policy. Up to 5 days (40 hours) may be used for this purpose (prorated for part-time employees).

Sick leave may not be used during the bonding period with an employee's newborn, adopted or foster child.

### B. Santa Barbara County's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves

If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying including leave for a work related injury or illness, Santa Barbara County may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

### C. Santa Barbara County and Employee's Rights If An Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

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

## VIII. MEDICAL CERTIFICATION

Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by Santa Barbara County. The Physician or Practitioner Medical Certification form should be used for this purpose.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

A. Time To Provide A Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to their supervisor within the time frame requested by their department (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to provide the missing information.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the employee's department may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Recertification

If the employee's department has reason to doubt the validity of a certification, the department may require a medical opinion of a second health care provider chosen and paid for by the department. If the second opinion is different from the first, the department may require the opinion of a third provider jointly approved by the department and the employee, but paid for by the department. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.

D. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

**IX. EMPLOYEE NOTICE OF LEAVE**

Although Santa Barbara County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the employee's department determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the department may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute employee.

**X. REINSTATEMENT UPON RETURN FROM LEAVE**

A. Right To Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and their department, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation To Periodically Report On His/Her Condition

Employees may be required to periodically report on their status as determined by their department and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness For Duty Certification

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

D. Failure to Return from Approved Leave of Absence

Failure to report for duty after the approved of leave of absence period has expired shall be considered an abandonment and constructive resignation of employment as provided in Civil Service Rules 1408.

**XI. COORDINATION OF FMLA/CFRA LEAVE WITH OTHER COUNTY POLICIES & STATUTES**

Both the FMLA and the CFRA provide for unpaid leave of absence entitlements to employees who meet the requirements described above. In addition, the County has additional leave policies that must be coordinated with these leave entitlements.

Where an employee meets the requirements for a non-work related medical leave (Civil Service Rule 1410) and the definition of serious illness above, County departments have the right to approve up to four months *medical* leave of absence. This leave runs concurrently with the FMLA/CFRA period so long as the department notifies the employee that their family leave entitlement will be used. Any leave beyond this four month period must be approved by the department with the concurrence of the County Administrator. This leave period should be coded as an Illness/Accident (non-work related leave).

Where an employee meets the requirements for a work-related medical leave (Civil Service Rule 1411) and the definition of serious illness above, County departments should place the employee on a *medical* leave (Illness/Accident work related) and notify the employee that this leave will run against their family leave

entitlement. If Risk Management has not accepted this illness/injury as work related, departments shall place the employee on a *non-work related medical leave* until the decision is made. If the case is subsequently accepted as a workers' compensation illness/injury, the leave reason can then be changed to *work-related medical leave*. Please note: Employees in "safety classifications" cannot be placed on family leave while receiving disability pay in lieu of workers' compensation temporary disability payments under provision of California Labor Code Section 4850.

Pregnancy Disability / Maternity Leave - Employees on leave for pregnancy and birth of a child are covered by the state pregnancy disability statute (Gov. Code Section 12945). This statute allows employers to authorize up to four months leave of absence. Departments should obtain a physician's certificate to determine the length of this disability period. The initial pregnancy disability leave period should be coded as a *maternity leave* and is treated the same as other medical leaves. After this period, if the employee requests additional time off for bonding with the newborn child, this time off is authorized by the CFRA and can be up to 12 weeks in addition to the pregnancy disability period. The length of the pregnancy disability period should be determined by the physicians certificate or, if none has been obtained, by the State Disability Insurance period, if applicable (normally 4 weeks before birth and 6 weeks after birth). This second leave period (for bonding) should be coded as *family leave*. Sick leave cannot be used during this second *family leave* period. In addition, *family leave* should also be coded for fathers who take time off to bond with their newborn child(ren) or for either parent to bond with newly adopted or foster children.

Employees taking time off to care for a seriously ill child, parent or spouse are entitled to family leave. This leave period should be coded as *family leave* and the employee is entitled to the same County health insurance contributions and benefit rights as other for family leave reasons. Use of sick leave during this period is restricted to five days per year per family member.

Upon return to work, if an employee is on an unpaid leave of absence, their leave accrual date will need to be adjusted forward to reflect the number of days the employee was on unpaid leave (Civil Service Rule 1406). If the employee was on unpaid leave in excess of 30 days their salary anniversary dates will also need to be moved forward one month for each calendar month or major fraction thereof, of unpaid leave (Civil Service Rule 409(f)).

In the case of an employee's serious illness, if at any time during or at the conclusion of the employee's leave of absence it appears that an employee will be unable to return to work in the foreseeable future, the employee or their department should contact the County Retirement Division to request information about obtaining a disability retirement.

## **XII. REQUIRED FORMS**

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Employee Request For Family/Medical Leave Form" prepared by Santa Barbara County to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A DEPARTMENTAL RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;
2. "Physician or Practitioner Medical Certification" - either for the employee's own serious health condition or for the serious health condition of a child, parent or spouse;
3. "Permission to Contact Personal Health Care Provider"

4. “Fitness For Duty To Return From Leave Certification” form if required by employee’s department.

Authority

State Code: Government Code Sections 12945.2 & 19702.3  
State Regs: Title 2 CCR 7297 et seq  
Federal Code: 29 USC 2611 et seq.  
Federal Regs: 29 CFR Part 825

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