



## **Management, Supervisory and Confidential Personnel**

### **Family Care and Medical Leave**

The district shall not refuse to hire and shall not discharge, fine, suspend, expel or discriminate against any employee because he/she exercises the right to family care leave or because he/she gives information or testimony related to his/her or another person's family care leave in an inquiry related to family leave rights. (29 USC 2615; Government Code 12945.2)

#### **Definitions**

"Child" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (29 USC 2611; Government Code 12945.2)

"Parent" means a biological, foster or adoptive parent, a stepparent, a legal guardian, or another person who stood in loco parentis to the employee when the employee was a child. (29 USC 2611; Government Code 12945.2)

"Instructional employee" means an employee whose principal function is to teach; instructional employees include athletic coaches, driving instructors, special education assistants and signers for the hearing impaired. The term does not include teacher assistants or aides, counselors, psychologists, curriculum specialists or other primarily noninstructional employees. (29 CFR 825.600)

"Serious health condition" means an illness, injury, impairment or physical or mental condition that involves either of the following: (29 USC 2611; Government Code 12945.2)

1. Inpatient care in a hospital, hospice or residential health care facility
2. Continuing treatment or continuing supervision by a health care provider

#### **Eligibility**

Any eligible employee who has served the district more than one continuous year shall be eligible to take unpaid family care and medical leave under the provisions of state and federal law. The district may deny family care and medical leave to part-time employees who worked fewer than 1,250 hours during the previous year. (29 USC 2611; Government Code 12945.2; 29 CFR 825.110; 2 CCR 7297.0)

For eligibility purposes, full-time teachers are deemed to meet the 1,250 hour test. (29 CFR 825.110)



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Family care and medical leave may be used for the following reasons: (29 USC 2612; Government Code 12945.2)

1. Because of the birth of the employee's child, and in order to care for the child
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child
3. In order to care for the employee's child, parent or spouse with a serious health condition
4. Because of the employee's own serious health condition which makes the employee unable to perform the functions of his/her job, except for leave taken for disability on account of pregnancy, childbirth or related medical conditions

#### **Requests, Advance Notice and Certification**

The employee shall give the district at least 30 days' written advance notice of his/her need for family care and medical leave. If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (29 USC 2612; Government Code 12945.2)

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of district operations. This scheduling shall be subject to the health care provider's approval. (29 USC 2612; Government Code 12945.2)

When requesting family care and medical leave because of a serious health condition, the request shall be supported by a certification from the health care provider of the person requiring care. This certification shall include the following: (29 USC 2613; Government Code 12945.2; 2 CCR 7297.0)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, spouse or parent who has a serious health condition, the health care provider's certification of both of the following:



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- a. Estimated amount of time the health care provider believes the employee needs to care for the child, parent or spouse
- b. Statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent or spouse
4. If the employee is requesting leave because of his/her own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of his/her job

The health care provider's certification need not identify the serious health condition involved. When the employee is requesting leave because of his/her own serious health condition, this information may be included at the employee's option. (2 CCR 7297.0)

If additional leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification as specified above. (29 USC 2613; Government Code 12945.2)

If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave. (29 USC 2613)

If the district has reason to doubt the validity of a certification that accompanies a request for leave, the district may challenge the certification and require the employee to obtain, at district expense, a second opinion from a district-approved health care practitioner. If the second opinion is contrary to the first, the district may require, again at district expense, that the employee obtain a third medical opinion from a third health care practitioner approved by both the employee and the district. (29 USC 2613; Government Code 12945.2)

### Terms of Leave

Family care and medical leave shall not exceed 12 work weeks during any 12-month period. (29 USC 2612; 2 CCR 7297.3)

This 12-month period shall be measured forward from the date the employee's first family care and medical leave begins.



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Leave taken pursuant to the California Family Rights Act shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA), except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. In addition to family care and medical leave, an employee may be entitled to take pregnancy disability leave of up to four months. During the otherwise unpaid portion of pregnancy disability leave, the employee may use any accrued vacation, sick time or other paid leave. (Government Code 12945, 12945.2)

*(cf. 4161/4261 - Leaves)*

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

Leave taken for the birth or placement of a child must be concluded within one year of the birth or placement of the child. Such leave does not have to be taken in one continuous period of time. The basic minimum duration of the leave shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (2 CCR 7297.3)

If both parents of a child work for the district, each parent may take up to 12 weeks of family care and medical leave related to the birth or placement of the child. (Government Code 12945.2)

*(cf. 4141/4241 - Collective Bargaining Agreement)*

### Instructional Employees: Leaves Near the End of the Term

The district may require an instructional employee to continue taking a requested leave until the end of the term in any of the following situations: (29 USC 2618)

1. If the instructional employee begins a leave of three or more weeks' duration more than five weeks before the end of a term and would subsequently return to work during the last three weeks of the term
2. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than two weeks' duration during the period that begins five weeks before the end of the term and would subsequently return to work during the last two weeks of the term



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3. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than five days' duration during the period that begins three weeks before the end of the term

#### Intermittent/Reduced Work Schedule Leave

Leave related to the serious health condition of the employee or his/her child, parent or spouse may be taken intermittently or on a reduced work schedule when medically necessary. In such a case, the district may limit leave increments to the shortest period of time that the payroll system uses to account for absences or use of leave. The employee may also be required to transfer temporarily to a different job that has the equivalent pay and benefits but could better accommodate recurring periods of leave. The employee must be qualified for the position, but the position does not need to have equivalent duties. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work schedule. (2 CCR 7297.3)

*(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)*

#### Maintenance of Benefits

During the period of family care and medical leave, the employee shall continue to be entitled to participate in the district's medical, dental and vision plan. (29 U.S.C 2614; Government Code 12945.2)

If the employee fails to return from leave after the leave period has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control, the employee may be required to reimburse any health premiums paid by the district during the period of leave. (Government Code 12945.2)

The employee shall also continue to be entitled to participate in life, disability and accident insurance plans, pension and retirement plans, supplemental unemployment benefit plans, and/or any other employee welfare benefit plan to the same extent and under the same conditions as apply to an unpaid leave taken for any other purpose. In the absence of these conditions, the employee shall continue to be entitled to participate in these plans and the district may, at its discretion, require the employee to pay the premium for periods not covered by accrued leave. (Government Code 12945.2)



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#### Maintenance of Status

The employee shall retain his/her employee status with the district during the leave period, and the leave shall not constitute a break in service for purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation, the employee returning from family care and medical leave shall return with no less seniority than he/she had when the leave began. (29 USC 2614; Government Code 12945.2)

#### Reinstatement

Upon granting an employee's request for family care and medical leave, the district shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (29 USC 2614; Government Code 12945.2)

The district may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply: (29 USC 2614, Government Code 12945.2)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of those district employees who are employed within 75 miles of the employee's worksite
2. The refusal is necessary to prevent substantial and grievous economic injury to district operations
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If the district reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement, provided the district has no continuing obligations under a collective bargaining agreement or otherwise. (29 CFR 825.216)

(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

(cf. 4317.3 - Personnel Reduction)



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#### **Notifications**

In accordance with law, the district shall notify employees of their right to request family care and medical leave. Separate notices about federal and state law related to family care and medical leave shall be posted in a conspicuous place. Information about employee rights and obligations related to such leaves shall also be included in employee handbooks. (29 USC 2619; 2 CCR 7297.9)

At least the first time in each six-month period that an employee requests family care and medical leave, the Superintendent or designee shall provide written notice detailing specific expectations and obligations and explaining any consequences of a failure to meet these obligations. The notice shall include: (29 CFR 825.301)

1. Notice that the leave will be counted against the employee's annual family care and medical leave entitlement
2. Requirements for the employee to furnish medical certification of a serious health condition
3. The employee's right to substitute paid leave, conditions related to any substitution, and whether the district requires this substitution
4. Health benefit arrangements
5. If applicable, the employee's status as a "key employee" and information related to restoration of that status
6. The employee's right to restoration to the same or an equivalent job
7. The employee's potential liability for health benefits should the employee not return to service
8. The district's requirement that the employee, upon return, present medical certification to the effect that he/she is able to resume work

Replaces BP/AR 4361.8 (10/94)