

SDCRAA HUMAN RESOURCES STANDARDS AND PROCEDURES

Section: **Attendance and Leaves of Absence**
Standard: **FAMILY AND MEDICAL LEAVE**
Section #: B-5
Effective: August 15, 2013

See Also: Leaves of Absence (All); Timekeeping

GENERAL STANDARD

Consistent with federal (Family and Medical Leave Act (FMLA)) and state (California Family Rights Act (CFRA)) family and medical leave laws, the Authority provides an unpaid leave of absence, to a maximum of 12 (and in some cases 26) work weeks within a rolling 12-month period measured backward from the date an employee uses FMLA/CFRA leave, to employees for certain qualifying situations, as described in this Standard and applicable law.

DEFINITIONS

Serious health condition means any illness, injury, impairment or physical or mental condition that requires in-patient care in a hospital, hospice or residential health facility or continuing treatment or continuing supervision by a health care provider.

Disability is any illness or injury, either physical or mental, that prevents an employee from performing the essential duties and functions of his/her position. Disability also includes absences from work for elective surgery, pregnancy, childbirth or related medical conditions.

Child is a biological, adopted or foster child, stepchild, legal ward or a child of person charged with parent's rights, duties and responsibilities as to that child. The child must be under 18 years of age or an adult dependant who is incapable of self-care because of a mental or physical disability.

Parent is a biological, foster or adoptive parent, stepparent, legal guardian or a person who stood *in loco parentis* when the employee was a child. Parents-in-law are not considered a **parent**.

SPECIFIC STANDARDS

FAMILY AND MEDICAL LEAVE

Eligibility

Full-time and part-time employees who have been employed for at least 12 months and who have worked at least 1,250 hours within a rolling 12-month period measured backward from the beginning date of the leave are eligible for family and medical leave.

Up to 12 weeks of leave may be taken for the purpose of:

1. The birth, adoption or foster care placement of a child with the employee; or
2. Caring for the employee's child, spouse, registered domestic partner (under the CFRA) or parent if that individual has a serious health condition; or
3. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position.
4. To deal with "any qualifying exigency" (as defined under the FMLA) that arises from a spouse's, child's, or parent's active duty in the Armed Forces, including an order or call to covered active duty.

Up to 26 weeks of leave for:

1. Caring for spouses, children, parents or next of kin who are covered service members (as defined under the FMLA) with serious illnesses or injuries incurred during active duty in the Armed Forces.
2. This leave is available only during one 12-month period and is combined with all other FMLA leaves in that period.

Male and female employees are eligible for the same leave for bonding purposes for birth, adoption or placement of foster care child. During such leave, male and female employees may accrue PTO.

Note: Pregnant employees may have the right to take pregnancy disability leave *in addition to* Family and Medical Leave. (See the ***Pregnancy Disability Leave*** Standard.) However, the first 12 weeks of pregnancy disability leave will be treated concurrently as leave under the FMLA, for eligible employees. Once an employee is no longer disabled by pregnancy, she may request up to 12 weeks of leave under the CFRA to bond with her new child. Such employees should contact their supervisor or a Human Resources Department representative regarding their individual situations.

FMLA and CFRA run concurrently to the fullest extent permitted by law.

Employee Responsibilities

Requests for Family and Medical Leave must be made to a Human Resources representative through the employee's manager at least 30 days' in advance for a foreseeable event. For events that are unforeseeable, employees must provide notice as soon as practicable after they learn of the need for leave, but no later than 2 business days thereafter. Failure to comply with these notice rules may result in a delay or denial of the requested leave. If leave is for planned medical treatment or supervision, the employee must make every effort to schedule it to avoid disruption to Authority operations.

1. The employee shall provide the Human Resources representative a certificate from the appropriate health care provider (if applicable) within 15 days of the Authority's request for certification, as described in the Documentation Requirements section of this policy.
2. The employee should consult with his/her supervisor regarding the scheduling of any planned medical treatment to minimize disruption to the operations of the Authority. Any such scheduling is subject to the approval of the employee's health care provider.
3. The employee shall maintain contact with a Human Resources representative and his/her supervisor during the duration of the leave of absence, as outlined in the "Maintaining Contact with the Employee" section of this Standard.

Leave Duration and Type

- ❑ Family and Medical Leave may be granted for up to 12 weeks (and up to 26 weeks in some instances) in any rolling 12-month period measured backward from the beginning date of the leave.
- ❑ Family and Medical Leave may be granted to exempt or non-exempt employees for partial day and hour increments or on an intermittent, recurring basis, when necessary to:
 - Aid the employee's recovery from his/her serious medical condition;
 - Care for a family member who has a serious health condition.
- ❑ It is not necessary for leave taken for the birth, adoption or foster care placement of a child to be taken in one continuous period, and thus may be interrupted; recurring; or taken on an incremental, part-time basis. The following should be noted regarding such leave:
 - Typically, leave taken for the birth or placement of a child will be granted in minimum amounts of two weeks. However, in these situations, the Authority may grant an employee a leave of less than two week's duration on any two occasions.
 - Any leave taken must be concluded within one year of the birth or placement of the child with the employee.

Accommodating Transfers

- ❑ If an employee has a foreseeable need based on planned medical treatment for the employee, his/her family member, or a covered service member and needs to take an intermittent leave or work a reduced schedule, the Authority may require the employee to transfer temporarily to an available, alternative, and/or equivalent position. The employee must be qualified for the new position and the transfer must be deemed to accommodate the recurring need for leave more appropriately than if the employee were working in his/her regular position.

Vacancies and Reinstatement

- ❑ Under most circumstances, upon returning from a leave under this policy, an employee is entitled to reinstatement to his/her previous position or, if that is not possible, to an equivalent position with equivalent pay, benefits, and terms and conditions of employment. This is the practice even if the employee's position has been filled during his/her absence. However, an employee returning from such leave has no greater right to reinstatement than if s/he had been employed continuously rather than on leave.

For example, if the employee would have been laid off were s/he not on leave, then the employee would not be entitled to reinstatement.

- ❑ A position vacancy resulting from a Family and Medical Leave may be filled on a temporary basis. Should an extremely urgent and bona fide business necessity warrant filling the position on other than a temporary basis, the appropriate Vice President and the Director, Human Resources (or designee), must approve filling such a vacancy. In this situation, an increase in staff may be necessary should the employee who created the vacancy return to work before the planned ending date of his/her leave.
- ❑ Managers should contact a Human Resources representative to determine how to meet workload requirements most effectively during an employee Family and Medical Leave.

Documentation Requirements

- ❑
- ❑ An employee requesting a Family and Medical Leave to care for a seriously ill family member, or for a covered service member's serious illness or injury, is required to submit to the Authority certification from the member's health care provider regarding the necessity for care by the employee. The certification must include:

1. Date when the serious health condition began;

2. Probable duration of the family member's serious health condition;
 3. Necessity for the employee's care of the family member on either a full-time continuous or intermittent, recurring basis; and an
 4. Estimate of time needed by the employee for the family member's care.
- ❑ An employee requesting a Family and Medical Leave because of his/her own serious health condition is required to submit certification from his/her health care provider. The certification must include:
1. Date when the serious health condition began;
 2. Probable duration of the serious health condition;
 3. Certification that the employee is unable to perform one or more of the *essential functions* of his/her position due the serious health condition; and
 4. If requested and approved, the medical necessity for an intermittent or reduced work schedule.
- ❑ The Authority reserves the right to select a health care provider at the Authority's expense to obtain a second opinion regarding the medical necessity for leave due to an employee's serious health condition. If the two medical opinions differ, the Authority, at its own expense, may require the employee to obtain a third opinion from a health care provider jointly approved by the Authority and the employee. The decision of this health care provider will be binding on both the employee and the Authority.

Note: The Authority will require re-certification from the health care provider if additional leave is requested and/or required.

When an employee requests leave due to a qualifying military exigency, the Authority will require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. The Company also will require that such leave, because of a qualifying exigency, be supported by a certification from the employee that sets forth: (1) a statement or description of appropriate facts regarding the qualifying exigency for which the leave is requested; (2) the approximate date on which time off from work due to the qualifying exigency commenced or will commence; (3) the beginning and end dates for the employee's absence, or, where leave is requested on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and (4) if the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting and a brief description of the purpose of the meeting.

All medical certifications and military exigency certifications must be provided within 15 days of being requested by the Authority. If a certification is not provided within 15 days of the first request, the leave may be delayed or denied.

Group Health Coverage

While an employee is on Family and Medical Leave, the employee's group health coverage will continue in the same manner as if the employee were actively at work. Specifically:

- The same levels and conditions of coverage under the Authority's group health plan will continue;
- The Authority will continue to make the same contributions toward the cost of coverage as if the employee were actively at work;
- The employee will continue to make the same required contributions toward costs of coverage, as if he/she were actively at work, either through payroll deduction or by direct payment to the Authority.

Other Insurance Benefits

While an employee is on Family and Medical Leave, the employee's other benefits will continue as follows:

Deferred Compensation Plan(s)	The employee may continue to participate in the Authority's deferred compensation plan(s) while on an approved Family and Medical Leave, in accordance with the terms of the plan. To do so, the employee must continue to make contributions in accordance with the terms of the plan. To continue to derive a tax advantage for payments, such payments must be made through payroll deduction.
Other Insurance:	The employee may continue to participate in life insurance, short-term and long-term disability plans and AD&D, provided the employee remits to the Director, Human Resources (or designee), any and all required group rate premiums during the course of his/her Family and Medical Leave. Employees participating in the Flexible Spending Account benefit are eligible for certain election options under specifically defined circumstances when going on and/or returning from Family and Medical Leave.

GUIDELINES

Use of Time Off Benefits

Family and Medical Leave is unpaid. However, an employee must exhaust all accrued PTO as described below prior to utilizing unpaid leave while on an approved Family and Medical Leave of absence. Additional benefits, such as short-term or long-term disability may also be utilized under the terms of the plans, provided the employee was enrolled prior to the leave. Unless otherwise provided by law, the order of the use of time off benefits follows:

- Remaining sick leave hours in their Authority (prior SDUPD) sick leave bank (if applicable), followed by
- PTO, then by

- Unpaid leave.

Note: Long-term disability insurance is an optional coverage offered by the Authority to each employee. Enrollment is voluntary.

Leave Scheduling

When an employee requests Family and Medical Leave because of the employee's own serious health condition or that of a family member, the manager should discuss with the employee the expected leave duration and determine whether a full-time, continuous or a part-time and/or intermittent arrangement best accommodates the employee's personal or family medical treatment. The manager should refer the employee to a member of the Human Resources Department staff, generally the benefits specialist, to ensure the employee receives all benefits to which s/he is entitled and to ensure privacy is maintained.

Human Resources staff will work collaboratively with the manager and the employee to arrange a part-time or intermittent, recurring leave schedule when necessary, to meet the employee's needs. If circumstances warrant, the Authority may require the employee to transfer to an available, alternative, equivalent position that more appropriately accommodates the need for recurring or intermittent leave than the employee's regular position.

Managers should consult with a Human Resources representative for assistance in planning and arranging for the temporary coverage during the employee's leave period.

Employee Confidentiality

Detailed questions regarding the employee's or family member's medical condition and prognosis cannot be asked. The employee is guaranteed a right to confidentiality regarding such information.

Disability

If the leave is due to the employee's own serious medical condition, refer the employee to a member of the Human Resources Department for information on

benefits available to the employee under the Authority's disability benefits plans. For further information, see the applicable summary plan description.

If the employee has coverage under the Authority's disability plans, Human Resources Department staff will provide guidance to the employee.

Maintaining Contact with the Employee

During an employee's leave, a member of the Human Resources Department will maintain periodic contact if appropriate and based on the reason for leave, check on the employee's status and determine any changes to the employee's plan to return to work. The Human Resources representative will communicate with the manager, as appropriate. The Human Resources representative communication does not preclude the employee from maintaining communication with the manager, particularly in the interest of planning.

PROCEDURES

Handling Leave Requests

Managers should advise the employee to submit the leave request through the manager to a representative of the Human Resources Department. This request should be submitted on a Personnel Action Form (PAF) and as far in advance as feasible. Medical certification requirements will be addressed with the employee requesting leave by the appropriate Human Resources Department representative if the leave is due to the employee's own serious health condition or the serious health condition of an employee's family member.

See *Documentation Requirements* section for information on what the certificate must contain and when it must be provided. Copies of certificates forms are available from the Human Resources Department staff.

Managers must notify a member of the Human Resources Department *immediately* of any employee's request for a leave of absence, even if the employee's request or notification is not in writing.

Managers must contact the Human Resources representative promptly if an employee appears to need a leave under this policy but has not requested it.

Because of the complexity of coordinating Family and Medical Leave and other benefits, managers are asked to contact a representative of the Human Resources Department whenever these “alerts” arise:

- When an employee is out of the office more than five unscheduled days (three, if unpaid).
- When an employee requests time off for medical OR family reasons or implied his/her absence is for medical OR family reasons.

Notifying a Human Resources representative will help the Authority ensure compliance with all appropriate regulations.

Managers in possession of an employee’s leave request and medical certificate must submit the information to the Human Resources Department representative:

- If there are any questions about the validity of the certification provided by the employee, the Human Resources staff may arrange with the employee to obtain a second opinion from a health care provider of the Authority’s choice. See the provisions regarding second and third opinions in the *Specific Standards* section.
- Any questions regarding the medical certification will be resolved before leave approval is given. When urgency of the leave request does not permit this, the leave will be approved contingent on the satisfactory resolution of questions about the certification’s validity.

Placing an Employee on Family and Medical Leave

To document the placement of the employee on a Family and Medical Leave:

1. The “Change of Employee Status” section of the Personnel Action Form is completed and signed by the manager and the employee;

2. The “Comments” section notes the leave’s expected duration and any special scheduling arrangements; and
3. The completed form is sent to the Human Resources representative who handles the action and coordinates with all involved parties to include payroll.

Completing the Time Sheet/ Time Record

Time records shall accurately reflect the employee’s time off.

- “Family and Medical Leave” must be recorded for all time taken, even if disability benefits or PTO are being used.
- Record any PTO being used.
- Record “unpaid leave” for full days, partial days or increments of hours being taken without pay.

Note: Partial days off may be recorded for exempt employees only for purposes of Family and Medical Leave. Partial days off cannot be recorded for exempt employees for any other similar types of leave without pay as required by state law.

Generally, paychecks (if applicable) are processed as usual and are mailed to the employee’s home address on the normal payroll cycle.

Not Returning from Leave

If the end of the 12-week (or 26-week) leave period has been reached and the employee is not returning to work, the following apply:

- If the employee was on leave of absence due to his/her own serious health condition *and* the employee is unable to return to work in his/her regular position for continuing health reasons, the Authority will make a good faith effort to accommodate the employee’s medical condition to the extent it is required to do so by law. Under such circumstances, Human Resources staff, in

consultation with the manager, the employee and the employee's health care provider, will determine whether an accommodation should and can be made. "Reasonable accommodation" may include approval of an extended sick leave where doing so would not impose an undue hardship to Authority operations.

- If the employee's leave was for reasons other than his/her own serious health condition, or where the employee's continuing health condition cannot reasonably be accommodated, the employee's employment may be terminated.

If the end of the approved leave period has been reached and the employee has neither returned to work nor provided certification from the appropriate health care provider extending his/her leave of absence, the employee's employment may be terminated.

Under circumstances in which the employee's employment is being terminated:

- The manager should complete the "Change of Employee Status" section of the Personnel Action Form in consultation with a Human Resources Department representative who will advise the manager on all aspects of the process which must be followed.
- The Human Resources representative will provide the employee with all appropriate separation information, including COBRA and disability benefit information.

Note: The Authority reserves the right, at its sole discretion, to extend a leave due to an employee's own serious health condition beyond the 12 weeks required by law. Consultation with the Human Resources representative is required in this situation.

Resignations While On Leave

If the employee resigns prior to returning from leave for reasons *other than* continuation, occurrence or onset of a serious health condition, the employee

may be required to repay the Authority for the costs of group health coverage the Authority paid on the employee's behalf.

Returning From Leave

When the employee returns from Family and Medical Leave, the following may apply:

- If the leave was due to the employee's own serious health condition, the employee must provide a medical release to return to work prior to beginning any activity in the work area. S/he must report to a member of the Human Resources Department and present the required medical release before reporting to his/her worksite. The Human Resources Department staff will notify the manager of any work restrictions and assist in determining how to accommodate employees with work restrictions, if possible and appropriate.
- The employee is returned/assigned to the position previously held without loss of seniority or eligibility for benefits, unless otherwise allowed by law. In the exceptional situation whereby the employee's position has been filled during his/her absence, the manager shall work with the Human Resources representative, in advance, to identify an available, equivalent position in the applicable department or division for which the employee is qualified.
- In rare circumstances in which the employee's position has been filled and an available equivalent position for the employee does not exist, a temporary or limited term position may be created for the employee (See ***Personnel Actions***) while the Human Resources representative pursues other placement options for the employee in the Authority.
- When the employee returns to work, the manager shall complete the "Change of Employee Status" section of the Personnel Action Form and send it to the Human Resources representative.