

## **Personnel**

### **Family Care And Medical Leave**

#### Eligibility

The district shall grant family care and medical leave of a minimum of 12 work weeks during any 12-month period, to eligible employees, for the following reasons: (Government Code 12945.2; 29 USC 2601)

1. Because of the birth of a child of the employee or placement of a child with the employee in connection with the adoption or foster care of the child by the employee.
2. To care for the employee's child, parent or spouse with a serious health condition.
3. Because of the employee's own serious health condition that makes him/her unable to perform the functions of his/her position. However, this does not include leave taken for disability on account of pregnancy, childbirth or related medical conditions.

The district shall not interfere with, restrain or deny the exercise of any right provided to an eligible employee under the law. Also, the district shall not discharge or discriminate against any employee for opposing any practice made unlawful by, or because of his/her involvement in any proceedings related to the family care and medical leave. (Government Code 12945.2; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)

#### 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)

Eligible employee means an employee who has at least 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period. (29 USC 2611; Government Code 12945.2)

Full-time teachers are deemed to meet the 1,250 hours of service requirement. (29 CFR 825.110)

Instructional employee means an employee whose principal function is to teach; instructional employees include athletic coaches, driving instructors, special education

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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)

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)

Serious health condition means an illness, injury, impairment, 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

#### **Rights to Reinstatement and Maintenance of Benefits**

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 work site
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)

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(cf. 4117.3 - Personnel Reduction)

(cf. 4217.3 - Layoff/Rehire)

(cf. 4317.3 - Personnel Reduction)

During the period when an employee is on family care and medical leave, he/she shall maintain his/her status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority or any employee benefit plan.

The district shall continue to provide an eligible employee on family care and medical leave, the group health plan coverage that was in place before he/she took the leave. If the employee fails to return to district employment after the expiration of the leave, for any reason other than the continuation, recurrence or onset of a serious health condition, or other circumstances beyond his/her control, he/she shall reimburse the district for premiums paid during the family care and medical leave.

(cf. 4154/4254/4354 - Health and Welfare Benefits)

#### Terms of Leave

This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

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. (Government Code 12945, 12945.2)

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

(cf. 4261.1 - Personal Illness/Injury Leave)

During the period of family care and medical leave, the employee may elect to use his/her accrued vacation leave, other accrued time off, or any other paid or unpaid time off negotiated with the district. Accrued sick leave may be used when the purpose of the family care and medical leave is one for which sick leave may be taken pursuant to collective bargaining agreements and/or Board policy. (Government Code 12945.2)

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4161/4261 - Leaves)

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#### Intermittent Leave/Reduced Leave Schedule

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 leave schedule when medically necessary. In such a case, the district may require the employee to transfer temporarily to a different position for which he/she is qualified, with equivalent pay and benefits, and that could better accommodate recurring periods of leave. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced leave schedule. (2 CCR 7297.3)

Where the employee involved is an instructional employee and would be on leave for greater than 20 percent of the total number of working days in the leave period, the employee shall have the option of temporarily transferring to an available alternative position or taking leave for periods of a particular duration, not to exceed duration of the planned medical treatment. (29 USC 2618)

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

#### Request for Family Care and Medical Leave

An employee shall request family care and medical leave in writing, at least 30 days before the commencement date of the leave. If the leave becomes necessary less than 30 days before its commencement, the employee shall provide such notice as soon as practicable. (29 USC 2612; Government Code 12945.2)

In every case in which the necessity for the leave is foreseeable based on 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)

#### Certification of Health Condition

A request by an employee for family care and medical leave for his/her serious health condition, or to care for a child, parent or spouse with a serious health condition, shall be supported by a certification from the health care provider of the employee or such other person as applicable. (29 USC 2613; Government Code 12945.2; 2 CCR 7297.0)

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

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

Employees who take family care and medical leave for their own serious health conditions shall present certification from their health care provider to the effect that they are able to resume work.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

### **Records**

The Superintendent or designee shall maintain records pertaining to individual employees' use of family care and medical leave.

### **Legal Reference:**

#### **GOVERNMENT CODE**

12940 Unlawful employment practices

12945 Pregnancy; childbirth or related medical condition; unlawful practice

12945.1-12945.2 California Family Rights Act

19702.3 Family care leave; exercise of rights

#### **CODE OF REGULATIONS, TITLE 2**

7291.2-7291.16 Sex discrimination: pregnancy and related medical conditions

7297.0-7297.11 Family care leave

#### **UNITED STATES CODE, TITLE 29**

2601-2654 Family and Medical Leave Act of 1993

#### **CODE OF FEDERAL REGULATIONS, TITLE 29**

825.100-825.800 Family and Medical Leave Act of 1993

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