

POLICY MEMORANDUM

Branch	Administrative Services	Number	12-060
Division	Human Resources	Effective Date	<u>June 10, 2013</u>

Title Family and Medical Leave Act and California Family Rights Act

Policy The federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) are designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for qualifying family and medical reasons.

The FMLA and CFRA provide leave, maintenance of health benefits, and other protections to eligible employees in three situations. First, leave is permitted for the serious health condition of an employee or to care for a family member with a serious health condition. Second, leave is permitted for the birth of a child or placement for adoption or foster care of a child. Third, leave is permitted due to a covered family member's qualifying military exigency, or to care for a covered service member with a serious injury or illness incurred in the line of military duty.

FMLA and/or CFRA provide eligible employees with up to twelve (12) workweeks of unpaid, job-protected leave in a 12-month period (twenty-six (26) workweeks to care for a covered service member with a serious injury or illness). The FMLA and/or CFRA is unpaid; however, as described in the FMLA and CFRA Procedures, employees may use their accrued leave credits during the leave.

Note: Where there is a difference between the provisions of the FMLA or CFRA or other state law or Memorandum of Understanding, the provision which provides the greater family or medical leave rights to the employee will prevail.

Requirements An employee must provide at least verbal notice sufficient to notify his or her supervisor of the need for FMLA and/or CFRA leave and the anticipated timing and duration or time of the leave.

To be eligible for FMLA and/or CFRA leave, an employee must meet both of these requirements:

- Have at least 12 months of state service (months need not be consecutive); and

- Worked at least 1,250 hours (actual time worked) during the 12-month period immediately preceding the commencement of the leave (hours need not be consecutive).

Qualifying Events

FMLA and/or CFRA leave may be taken for the following events:

- For an employee’s own serious health condition* that makes the employee unable to perform the essential functions of his or her position.
- To care for an employee’s family member* (spouse, child, parent, domestic partner, or child of a domestic partner) with a serious health condition.
- Bonding Leave - for the birth of an employee’s child or to care for a newborn or the placement of a child with an employee in connection with the adoption or foster care of a child by an employee. The law limits the total number of workweeks of Bonding Leave which spouses are both entitled to if they work for the same employer for a total of 12 workweeks (combined between the spouses). In other words, spouses who both work for the State of California are only entitled to a combined total of 12 workweeks of FMLA and/or CFRA within a 12-month period for Bonding Leave. Spouses may be on Bonding Leave simultaneously. This leave entitlement expires 12 months after the birth or placement of the child.
- Qualifying Exigency* Leave - for an employee’s family member who is a member of the Regular Armed Forces* (spouse, child, or parent) who is deployed in a foreign country on covered active duty or called to active duty or a member of the reserve components of the Armed Forces, and retired members of the Regular Armed Forces or Reserves who are called upon in support of a contingency operation.
- Military Caregiver Leave - to care for an employee’s family member* (spouse, child, parent or “next of kin”) who is a covered service member* of the Armed Forces and has a serious injury or illness incurred in the line of duty in a foreign country.

Qualifying Exigency and Military Caregiver Leave runs concurrently with other leave entitlements to which an employee may be entitled to under federal, state, or local law. If Military Caregiver Leave is taken concurrently with leave for another FMLA-qualifying reason, the leave will first be designated as Military Caregiver Leave.

* Refer to the FMLA and CFRA Procedures for definition of terms.

Duration Employees are eligible to take up to 12 workweeks of FMLA and/or CFRA leave in a 12-month period. The 12-month period is based on a calendar year (January 1 through December 31). Each time an employee takes FMLA and/or CFRA leave, the remaining leave entitlement is any balance of the 12 workweeks which has not been used during the current calendar year. FMLA and/or CFRA may be taken in one 12-workweek stretch, or as further described below, intermittently in increments of one hour or more.

If an employee takes multiple FMLA and/or CFRA leaves for different reasons, each will count towards the employee's maximum annual entitlement of 12 workweeks under each law. The time off may run concurrently with other legally required leaves of absence.

Example: In January, you take three weeks of FMLA and CFRA qualifying leave for your own serious health condition. In November, you take two weeks of FMLA and CFRA qualifying leave to care for your spouse who has a serious health condition. In this scenario, you have used five weeks of your 12-workweek entitlement for the current calendar year under both FMLA and CFRA (which run concurrently). On January 1st of the next calendar year, you would begin with a new 12-workweek entitlement of both FMLA and CFRA.

For Military Caregiver Leave, an employee may take up to 26 workweeks of leave during a single 12-month period to care for each injured or ill servicemember and/or injury or illness. The 12-month period begins on the first day of leave. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 workweeks in a single 12-month period. If an employee is eligible for leave to care for more than one servicemember or because of more than one injury or illness to the same servicemember within the same single 12-month period, the employee is limited to a total of 26 workweeks during that 12-month period. Any portion of the 26 workweeks of leave remaining at the end of the single 12-month period is forfeited.

Unless another covered reason applies, Qualifying Exigency Leave because of "short-notice" deployment may not exceed seven (7) calendar days, beginning on the date a covered military member is notified of an impending call or order to active duty.

Medical Certification or Leave Substantiation Employees requesting FMLA and/or CFRA leave will be required to provide a completed Certification of Health Care Provider which supports the need for leave due to a serious health condition affecting the employee, a covered family member, or a covered service member. The certification must be completed and returned within 15 calendar days after CalSTRS notifies the employee that the leave may qualify as FMLA and/or CFRA leave. A Health Care Provider* must complete the certification. A diagnosis of the serious health condition is not requested nor required on the medical certification.

* *Refer to the FMLA and CFRA Procedures for definition of term.*

If the medical certification is incomplete or insufficient, Human Resources may request the employee provide additional specific information to determine whether the employee is entitled to FMLA and/or CFRA leave.

CalSTRS, at its own expense, may request a second and/or third health care opinion if it has reason to doubt an employee's medical certification for his or her own serious health condition.

Employees who fail to provide a medical certification may have their FMLA and/or CFRA benefits delayed or denied.

Employees will be required to provide substantiation (sufficient documentation) for Bonding or Qualifying Exigency Leave.

If an employee requests leave because of a "qualifying exigency," CalSTRS may contact the Department of Defense to verify the covered military member is on or has been called to duty. Additionally, if an employee takes leave to meet with a third party, CalSTRS may contact the third party to verify the meeting and its purpose.

Recertification Upon the expiration of the duration period for the employee's medical leave or as otherwise permitted by law, he or she may be required to obtain recertification if additional leave is requested. Failure to timely provide a complete and clear medical certification may be grounds for delay or denial of leave.

Return to Work Return to Work/Fitness for Duty Release: Before an employee returns from leave for his or her own serious health condition, he or she may be required to obtain a release to "return to work" from his or her health care provider stating the employee is able to resume work.

Reinstatement: Unless otherwise required or permitted by law, upon return from FMLA and/or CFRA leave, the employee has the right to return to the same or equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave.

Reasonable Accommodation: If an employee is unable to perform the essential job functions of his or her position at the conclusion of FMLA and/or CFRA leave, the employee may be eligible for a reasonable accommodation. CalSTRS will engage in a timely, good faith, and interactive process with the employee to determine an effective reasonable accommodation. Refer to CalSTRS Reasonable Accommodation Policy for details.

Prohibition It is prohibited to interfere with, restrain, or deny the exercise of any right afforded to an employee through FMLA or CFRA. It is also prohibited to discharge or discriminate against an employee for their involvement in any process related to FMLA or CFRA.

Likewise, it is prohibited to misuse FMLA and/or CFRA leave for anything other than its intended purpose. Failure to do so may lead to disciplinary action, up to and including termination.

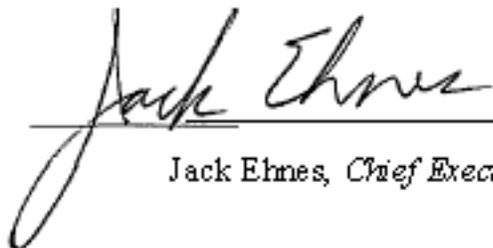
Enforcement of FMLA Rights An employee may file a complaint relating to FMLA with the U.S. Department of Labor or may bring a private lawsuit against an employer. The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

Questions For questions regarding FMLA and CFRA you may contact the Disability Coordinator in Human Resources.

References [Family Medical Leave Act \(FMLA\): Code of Federal Regulations, Title 29, Part 825](#)
[California Family Rights Act: California Code of Regulations, Title 2, Division 4, Section 7297.0 et seq.](#)
Family Code [297-297.5](#), [300](#)
G.C. Section [12945.2](#)

Attachments [Notice to Employees of Rights under the FMLA](#)
[FMLA Fact Sheet](#)
[FMLA FAQ](#)
[CFRA Brochure](#)
[Military Family Leave Entitlement](#)

Approved



Jack Ehmes, *Chief Executive Officer*