



Family and Medical Leave Policy

Purpose:

The purpose of this policy is to provide City of Petaluma employees with information about the federal and state laws and City rules and agreements that govern family and medical leaves of absence. The information in this policy describes eligibility requirements for family and medical leave, the process for applying for leave, and the benefits that will be available during approved periods of leave.

The laws covered by this policy are the Family and Medical Leave Act of 1993 (FMLA), which is federal law, and the California Family Rights Act (CFRA) and the California Pregnancy Disability Leave (CPDL) statutes, which are state entitlements and obligations. Additionally, this policy provides information from City Memorandum of Understanding (MOU) and Compensation Plan provisions.

Definitions:

“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. (29 CFR § 825.200(b)(4); 2 Cal. Code Regs § 11090(b).)

“Single 12 Month Period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date. (29 CFR § 825.200(f).)

“Family member” for FMLA leave means an employee’s child, parent, and spouse.

“Family member” for CFRA leave means an employee’s child, parent, spouse, domestic partner, grandchild, grandparent, and sibling. (1) “Grandparent” means a parent of the employee’s parent. (2) “Grandchild” means a child of the employee’s child. (3) “Sibling” means a person related to the employee by blood, adoption, or affinity through a common legal or biological parent.

“Child” under the FMLA, means a child under the age of 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 step-child. 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, or using telephones and directories.

“Child” under the CFRA, means a child, including a child who is 18 years of age or older who is incapable of self-care. (Effective January 1, 2021, SB 1383) An employee’s child means a biological, adopted, foster, step-child, legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

“Parent” means the biological 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. (29 CFR § 825.102; Gov. Code § 12945.2(c)(7).)

“Spouse” means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below. (29 CFR § 825.102; Fam. Code § 300; 2 Cal. Code Regs § 11087(r).)

“Domestic Partner” is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. (Fam. Code § 299.2.)

“Serious Health Condition” means an illness, injury impairment, or physical or mental condition that involves:

1. Inpatient Care in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; 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 (i.e., inability to work, or perform other regular daily activities) 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. (29 CFR § 825.120; Gov. Code §12945.2(c)(8).) Note that pregnancy is a “serious health condition” only under the FMLA. Under California law, an employee disabled by pregnancy is entitled to pregnancy leave. (*See applicable City Policy*)
- 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 that 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 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. (29 CFR § 825.113; Gov. Code § 12945.2(c)(8); 2 Cal. Code Regs § 11087(q)(1).)

“Health Care Provider” means:

- 1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery in 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, which 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. (29 CFR § 825.102; Gov. Code § 12945.2(c)(6).)

“Covered active duty” means:

1. in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
2. in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions. (29 CFR § 825.102.)

“Covered Servicemember” means:

1. a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
2. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. (29 CFR § 825.102 & 825.122.)

“Outpatient Status” means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either:

1. a military medical treatment facility as an outpatient; or
2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 CFR § 825.102.)

“Next of Kin of a Covered Servicemember” means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. (29 CFR § 825.102.)

“Qualifying Exigency” means:

1. Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
2. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs, and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
3. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
4. Making or updating financial and legal arrangements to address a covered military member’s absence;
5. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
6. Taking up to five days of leave to spend time with the covered military member who is on short-term temporary, rest and recuperation leave during deployment;
7. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member’s active duty status, and addressing issues arising from the death of a covered military member; and
8. Any other event that the employee and employer agree is a qualifying exigency.

“Serious Injury or Illness” means:

1. in the case of a member of the Armed forces, including a member of the National Guard or reserves, means an injury or illness that a covered servicemember incurred in the line of

duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; or

2. in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran. (29 CFR § 825.102.)

Concurrent Running of FMLA and CFRA Leaves:

The City provides family and medical care leave for eligible employees as required by State and Federal law. Employees who misuse or abuse family and medical care leave may be disciplined up to and including termination. Employees who fraudulently obtain or use CFRA leave are not protected by the CFRA's job restoration or maintenance of health benefits provisions. This Policy is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA"). Unless otherwise stated in this Policy, "Leave" means leave pursuant to the FMLA and CFRA. Unless otherwise provided by law, the City will run each employee's FMLA and CFRA leaves concurrently.

Reasons for Leave:

Leave is only permitted for the reasons listed below.

1. The birth of a child or to care for a newborn of an employee; (29 CFR § 825.120; Gov. Code § 12945.2(c)(3)(A));
2. The placement of a child with an employee in connection with the adoption or foster care of a child; (29 CFR § 825.121; Gov. Code § 12945.2(c)(3)(A));
3. Leave to care for a child, parent, or spouse who has a serious health condition. (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(A) & (B)) Under the CFRA only, leave is also permitted to care for a domestic partner, grandparent, grandchild, or sibling who has a serious health condition. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA; (Effective January 1, 2021, SB 1383);
4. Leave because of a serious health condition that makes the employee unable to perform any one or more essential functions of his/her position; (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(C));
5. Leave for a variety of "qualifying exigencies" arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or call to active duty

status in the National Guard or Reserves in support of a contingency operation (29 CFR § 825.126 -- This is a FMLA leave and not a CFRA leave); or

6. Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the U.S. Armed Forces who has a serious injury or illness: incurred in the line of duty while on active military duty; or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. This leave can run up to 26 weeks of unpaid leave during a single 12-month period. (29 CFR § 825.127 -- This is a FMLA leave and not a CFRA leave.)

Employees Eligible for Leave:

In addition to meeting at least one of the reasons listed above, an employee is eligible for leave if:

1. The employee has been employed by the City for at least 12 months; and
2. The employee has been employed by the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

An employee is eligible for 12 weeks of parental leave to bond with a new child within one year of the child’s birth, adoption or foster care placement if:

1. The employee has been employed by the City for at least 12 months; and
2. The employee has been employed by the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

Amount of Leave:

Eligible employees are entitled to a total of 12 work weeks (or 26 workweeks to care for a covered servicemember) of leave during any 12-month period. If FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first. (29 CFR § 825.127.)

Minimum Duration of Leave:

1. If 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 leave for one of these purposes (e.g. bonding with a newborn) for less than two weeks duration on any two occasions. (2 Cal. Code Regs § 11090(d).)
2. If leave is requested to care for a child, parent, spouse or the employee him/herself with serious health condition, there is no minimum amount of leave that must be taken. Leave may be requested to care for a domestic partner, grandparent, grandchild, or sibling under

the CFRA. However, compliance with the notice and medical certification provisions in this Policy is required. (29 CFR § 825.205; 2 Cal. Code Regs § 11090(e).)

Parents Both Employed by the City:

If both parents of a child, adoptee, or foster child are employed by the City and are entitled to bonding leave, (1) the aggregate number of workweeks of FMLA leave to which both may be entitled may be limited to 12 workweeks during any 12-month period and (2) each parent is entitled to take 12 workweeks of CFRA leave during any 12-month period. (Effective January 1, 2021, SB 1383) If both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered service-member, the aggregate number of workweeks of leave to which both may be entitled is limited to 26 work weeks during the 12-month period. This limitation does not apply to any other type of leave under this Policy. (29 CFR § 825.127(f).)

Employee Benefits While on Leave:

1. **Group Health Insurance During Unpaid Leave:** Leave under this Policy is unpaid. While on unpaid leave, employees will continue to be covered by the City's group health insurance for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the City will maintain coverage while the employee is disabled by pregnancy (up to four months or 17 1/3 weeks) and during CFRA leave (up to 12 weeks). (Gov. Code §§ 12945(a)(2)(A) & 12945.2(s).)
2. **Benefit Plans Not Provided through the City's Group Health Plan During Unpaid Leave Do Not Continue:** The City does not pay for benefit plans that are not part of the group health plan for any employee on unpaid leave. As a result, employees will not continue to be covered under the City's benefit plans that are not provided through the City's group health plans while the employee is on unpaid leave. (2 Cal. Code Regs § 11092(e).)
 - a. **Payment of Premiums:** Employees may make the appropriate contributions for continued coverage under the health benefits plans by payroll deductions (if the employee is using his or her paid leave) or direct payments (if the employee is not using his or her paid leave). The City will inform the employee whether the direct payments for premiums should be paid to the carrier or to the City, and the deadlines for paying premiums in order to prevent coverage from being dropped. Employee contribution rates are subject to any changes in rates that occur while employee is on leave.
 - b. **Recovery of Premium if the Employee Fails to Return from Leave:** If an employee fails to return to work after his/her leave entitlement has been

exhausted or expires, the City 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. (29 CFR § 825.213; Gov. Code § 12945.2(f)(1); 2 Cal. Code Regs § 11092(c)(5).)

Using Paid Leave for Unpaid FMLA/CFRA Leave:

Although family and medical care leave is unpaid, an employee may use earned or accrued paid leave while on a designated, job protected leave(s). However, employees can only use accrued sick leave if their circumstances are eligible for the use of accrued sick leave.

Depending on the eligibility event, an employee may be eligible for Paid Parental Leave (PPL). PPL is subject to the provisions outlined in the City's Paid Parental Leave Policy. Following the exhaustion of PPL, an employee is required to notify the City if he or she wishes to use paid leave and also designate the earned or accrued leave to be used.

1. The City has the right to require an employee exhaust FMLA/CFRA leave concurrently with other leaves. If an employee takes a leave of absence for any purpose which also qualifies under both the FMLA and CFRA, the City will designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on paid industrial injury leave. (Labor Code §4850(e).)
2. Employees are not required to use paid leave during leave pursuant to a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; (29 CFR § 825.207(d); 2 Cal. Code Regs. § 11092(b)(2) & (3).

Medical Certification/Recertification:

Employees who request leave must provide a medical certification and/or recertification to support the need for the leave as described below:

1. Employee's Own Serious Health Condition: Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position. (Gov. Code § 12945.2(j)(2); 2 Cal. Code Regs § 11087(a)(2); 2 Cal. Code Regs § 11091(b)(2).) Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional

leave is requested. (Gov. Code § 12945.2(j)(2); 2 Cal. Code Regs § 11091(b)(2); 29 CFR § 825.308.

2. Family Member Serious Health Condition: Employees who request leave to care for a qualified family member who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the qualified family member and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the qualified family member. The term “warrants the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. (Gov. Code § 12945.2(k)(1); 2 Cal. Code Regs § 11087(a)(1); 2 Cal. Code Regs § 11091(b)(1).) Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested. (Gov. Code § 12945.2(j)(2); 2 Cal. Code Regs § 11091(b)(1); 29 CFR § 825.308.)
3. Servicemember Serious Injury or Illness: Employees who request FMLA leave to care for a covered servicemember who is a child, spouse, parent or “next of kin” of the employee, must provide written certification from a health care provider regarding the injured servicemember’s serious injury or illness. (29 CFR § 825.310.) The City will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.310(e) &(f).)
4. Qualifying Exigency: The first time an employee requests FMLA leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member’s active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member’s active duty service. A copy of the new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member. (29 CFR § 825.309.) The City will verify the certification as permitted by the FMLA and CFRA regulations. (29 CFR § 825.309(d).)

Time to Provide a Medical Certification: When an employee has provided at least 30 days’ notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to the City within the time frame requested by the City (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. (2 Cal. Code Regs § 11091(b)(3); 29 CFR § 825.305(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 cure any such deficiency. (2 Cal. Code Regs § 11091(b)(3); 29 CFR § 825.313(a) & (b).) However, if an employee fails to provide a medical certification within the time frame established in this Policy, the City may delay the taking of FMLA/CFRA leave until required certification is provided, or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification. (2 Cal. Code Regs § 11091(b)(3); 29 CFR § 825.313(a).)

Review of the Contents of Medical Certification for Employee's Own Serious Health Condition:

1. *Complete and Sufficient:* The employee must provide a certification for his or her own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the Director of Human Resources, or HR designee, will give the employee written notice of the deficiencies and seven days to cure, unless a longer period is necessary in light of the employee's diligent, good faith efforts to address the deficiencies. (29 CFR § 825.305(c).
2. *Authentication and Clarification:* After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee's own serious health condition, the Director of Human Resources, or HR designee, may contact the health care provider who provided the certification to clarify and/or authenticate the certification. "Authentication" means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The Director of Human Resources, or HR designee, may not ask for additional information beyond that required on the certification form. (29 CFR § 825.307(a).)

Second and Third Medical Opinions for Employee's Own Serious Health Condition: If the City has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. (29 CFR § 825.307(b) & (c); 2 Cal. Code Regs § 11091(b)(2)(A).) The City must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee. (29 CFR § 825.307(d); 2 Cal. Code Regs § 11091(b)(2)(D).)

Intermittent Leave or Leave on a Reduced Leave Schedule:

FMLA/CFRA/CPDL leave usually will be taken for a period of consecutive days, weeks, or months. However, an employee is also entitled to take these leaves intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member, or the serious injury or illness of a covered servicemember. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule, the City may require the employee 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. (2 Cal. Code Regs § 11090(e); 29 CFR § 825.202(b).) The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position of equivalent pay and benefits that better accommodates the leave schedule. (2 Cal. Code Regs § 11090(e)(1); 29 CFR § 825.204.)

Employee Notice of Leave:

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much verbal or written notice as possible of their need for leave. (29 CFR § 825.304(a).) 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 day(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. (29 CFR § 825.302(a); 2 Cal. Code Regs § 11091(a)(2) & (3).) For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR § 825.302(a).)

Reinstatement Upon Return From Leave:

1. **Reinstatement to Same or Equivalent Position:** 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 benefits and pay. 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. (2 Cal. Code Regs § 11087(f) & (g); 2 Cal. Code Regs § 11089(a); 29 CFR § 825.214-215; 29 CFR § 825.216.)
2. **Date of Reinstatement:** 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 the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return. (2 Cal. Code Regs § 11089(c)(1) & (2).)
3. **Employee's Obligation to Periodically Report on Their Condition:** Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return. (29 CFR § 825.311.)

4. 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 or her job, the employee must obtain and present a fitness-for-duty certification from the health care provider stating that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement. (Gov. Code § 12945.2(k)(4); 29 CFR § 825.312.)
5. Reinstatement of "Key Employees": Under the FMLA only, the City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur. However, under the CFRA, the City may not deny reinstatement to a "key" employee during or upon the expiration of CFRA leave. (Effective January 1, 2021, SB 1383)

Required Forms

Employees must complete the applicable forms to receive family and medical care leave. Applicable Forms are attached to this policy as Exhibits.

If this policy conflicts with current statutory or case law, the law prevails.

Examples of Family Care and Medical Leaves

If an employee becomes disabled by pregnancy six weeks before giving birth, the FMLA and PDL might run concurrently (so long as the employer met its FMLA notice requirements and opted to run both at the same time). As a result of giving birth, the employee might be disabled for an additional six weeks (six weeks is the standard disability for a non-caesarean birth without complications). During that time, the FMLA and PDL would continue to run. Only after the employee was no longer disabled would the CFRA leave period begin. By that time, however, the employee would have used up her twelve (12) weeks of FMLA leave and PDL would no longer be applicable.

The following graph illustrates this example:

	Pre-Birth Disability	Post-Birth Disability	“Bonding”
Health Care Coverage	FMLA	FMLA	CFRA
Job Protection	FMLA and/or PDL	FMLA and/or PDL	CFRA
Leave Period	6 Weeks	6 Weeks	12 weeks

Similarly, if the employee were disabled by the pregnancy for four weeks before the birth and disabled after the birth for six weeks, the graph would show:

	Pre-Birth Disability	Post-birth Disability	“Bonding”	“Bonding”
Health Care Coverage	FMLA	FMLA	FMLA and/or CFRA	CFRA
Job Protection	FMLA and/or PDL	FMLA and/or PDL	FMLA and/or CFRA	CFRA
Leave Period	4 weeks	6 weeks	2 Weeks	10 weeks



Family, Medical, or Pregnancy Leave Notification/Request/Response Form

You have requested leave which is covered under the federal Family Medical Leave Act (FMLA) and/or California Family Rights Act (CRFA). This notice confirms your eligibility, the terms of your leave, and provides information on your rights and responsibilities under the FMLA. This form meets requirements of the CRFA and FMLA.

To request such leave, please complete the employee section of this leave request form, attach the appropriate certification, and forward to Human Resources for processing.

I. LEAVE REQUEST – to be completed by Employee and forwarded to Human Resources

Employee Name

Date of Request

Department/Division and Position Title

Employee ID

Date of Hire

I am requesting Family Medical Leave for the following reason (check one):

- Care for Newborn or Newly Placed Child
- My Own Serious Health Condition
- Care for Family Member with Serious Health Condition
- Disability by Pregnancy, Childbirth, or Related Medical Conditions

Military Family Leave Entitlement (check one):

- To assist a child, spouse, or parent who is in the National Guard or Reserves with a “qualifying exigency” related to active Military duty or a call to active Military duty status.
- To care for a child, spouse, parent, or “next of kin” who is a covered service member of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active Military duty.

Accrued Leave: Leave under this policy is unpaid. However, an employee may request to use any earned or accrued paid leave while on a designated, job protected leave(s).

Important Notice: During UNPAID LEAVE, the following occurs:

- Employee (and family if applicable) premium portion of group health, dental, vision, life and any additional optional employee enrolled benefits will be paid by the employee directly to the City of Petaluma.

- Vacation and Sick Leave will not accrue, nor will the employee be eligible for any payments for time off work.
- Both the City's and the employee's contributions to the employees' retirement plan are discontinued and benefits do not accrue, nor can they be withdrawn, nor are they forfeited. An unpaid leave is reported to CalPERS.
- If you are receiving Cash-In-Lieu payments for Medical and/or Dental Benefits, payments will continue while you are on a designated, job protected leave(s).

Please check one:

- I have read and understood the foregoing important notice and opt for UNPAID LEAVE. I select the option to NOT have my accrued leave(s) used.
- I have read and understood the foregoing important notice and opt for PAID LEAVE. I select the option to have my accrued leave(s) used.

If you are selecting the option to use your accrued leave(s) please specify which accrued leave(s) you wish to use, specific amounts, and any specific order in which you wish to use your accrued leave(s): _____

I am requesting leave to begin: _____ Expected duration of leave: _____.

- Regular Leave
- Intermittent Leave
- Reduced Leave Schedule

Note: Attach Medical Certification or Attach Certification from the Department of Defense or Department of Veterans Affairs

Employee Signature _____ Date _____

II. ELIGIBILITY - to be completed by Human Resources

Employee Name: _____ Employee #: _____

Your leave is approved for the period of: _____ **to** _____

Your approved leave will be counted towards the following leave entitlement:

- FMLA
- CFRA
- CPDL

Leave Records indicate that you have the following accrued leave balances as of:

Sick leave _____ Vacation _____ Accrued comp time _____ Other _____

Your request for leave is not approved because: _____

Human Resources Signature: _____ Date: _____

III. THE NEXT STEP – to be completed by Employee and forwarded to Human Resources

Employee is to complete the Request for Leave or Notification of Absence form, attach this approved request, and forward the Request for Leave to Human Resources.

HR forms are found on the City's website at: <https://cityofpetaluma.org/employee-forms/>

IV. EMPLOYEE RIGHTS AND RESPONSIBILITIES – Under the Family Medical Leave Act

Basic Leave Entitlement

- FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:
- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son, or daughter, or parent who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlement Qualifying Exigency Leave. Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

Military Caregiver Leave. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

Definition of Serious Health Condition: A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay or expectation of an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regiment of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

A covered servicemember is a current member of the Armed forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in the outpatient status; or is on the temporary disability retired list.

Next of Kin of a Covered Servicemember: The nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA.

Benefits and Protections: During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements: Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months,

and if at least 50 employees are employed by the employer within 75 miles.

Employer’s Responsibilities: Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees’ rights and responsibilities. If they are not eligible, the employer must provide a reason for ineligibility.

Use of Leave:

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave:

Employees may choose or employers may require use of accrued paid leaves while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer’s normal paid leave policies.

Employee Responsibilities Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible the employee must provide notice as soon as practicable and generally must comply with an employer’s normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the

requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Unlawful Acts by Employers:

- FMLA makes it unlawful for any employer to: Interfere with, restrain, or deny the exercise of any right provided under FMLA
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining which provides greater family or medical leave rights.

California Family Rights Act (CFRA): Employee rights, responsibilities, eligibility requirements and entitlements under CFRA are extremely similar to those of FMLA. One exception is disability due to pregnancy, childbirth, or related medical leave. Leaves for pregnancy disability are not covered by CFRA (only by FMLA and PDL). CFRA, however, permits leave to bond and/or care for a child (following birth, adoption or foster placement) for up to 12 weeks in addition to disability leave. This is commonly called “bonding leave”. Bonding leave must be completed within one year of the birth or placement of the child.

The other exception is that CFRA includes leave to care for a domestic partner with a serious condition. FMLA does not.

For additional information: 1-866-4US WAGE (1-866-487-9243) TTY: 1-877-889-5627
www.wagehour.dol.gov

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

BENEFITS & PROTECTIONS

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, 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 that provides greater family or medical leave rights.



For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division





CALIFORNIA FAMILY RIGHTS ACT

THE MISSION OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING IS TO PROTECT THE PEOPLE OF CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS, AND FROM THE PERPETRATION OF ACTS OF HATE VIOLENCE AND HUMAN TRAFFICKING.

COMPLAINTS MUST BE FILED WITHIN ONE YEAR OF THE LAST ACT OF DISCRIMINATION FILING A COMPLAINT

If you believe your CFRA rights have been violated, you may, within one year of the discrimination, file a complaint of discrimination with the DFEH by following these steps:

- 1 *Contact DFEH by using the information on the back of this brochure*
- 2 *Be prepared to present specific facts about the alleged discrimination or denial of leave*
- 3 *Keep records and provide copies of documents that support the charges in the complaint, such as paycheck stubs, calendars, correspondence (such as doctors' letters provided to the employer, emails, voicemail, etc.), and other potential proof of discrimination*

DFEH will conduct an impartial investigation. We represent the State of California. DFEH will, if possible, try to assist both parties to resolve the complaint.

If a voluntary settlement cannot be reached, and there is sufficient evidence to establish a violation of the law, DFEH may litigate the case in civil court. If a court decides in favor of the complaining party, remedies may include reinstatement, back pay, reasonable attorney's fees, costs, damages for emotional distress, and punitive damages.

FOR MORE INFORMATION

Department of Fair Employment and Housing
Toll Free: (800) 884-1684
TTY: (800) 700-2320
Online: www.dfeh.ca.gov

Also find us on:



If you have a disability that prevents you from submitting a written pre-complaint form on-line, by mail, or email, the DFEH can assist you by scribing your pre-complaint by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice).

To schedule an appointment, contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY) or by email at [contact.center@dfeh.ca.gov](mailto:center@dfeh.ca.gov).

The DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.

Contact the DFEH at (800) 884-1684 (voice or via relay operator 711), TTY (800) 700-2320, or [contact.center@dfeh.ca.gov](mailto:center@dfeh.ca.gov) to discuss your preferred format to access our materials or webpages.

The Fair Employment and Housing Act (FEHA), enforced by the Department of Fair Employment and Housing (DFEH), contains family care and medical leave provisions for California employees. These leave provisions are known as the California Family Rights Act (CFRA). CFRA covers employers who do business in California and have 50 or more part-time or full-time employees.

Under CFRA, if you have more than 12 months of service with your employer, and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to family care or medical leave. This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, spouse, or registered domestic partner.

All employers covered by CFRA must provide information about CFRA to their employees and post this information in a conspicuous place where employees tend to gather. A poster that meets this requirement is available on DFEH's "Resources" page online (www.dfeh.ca.gov).

EMPLOYERS WHO PROVIDE EMPLOYEE HANDBOOKS MUST INCLUDE INFORMATION ABOUT CFRA LEAVE IN THE HANDBOOK



CFRA LEAVE REQUIREMENTS:

RETURN RIGHTS AFTER CFRA LEAVE:

- To be eligible for CFRA leave, an employee must have more than 12 months of service with the employer and have worked at least 1,250 hours for that employer in the 12-month period before the leave begins.
- An eligible employee may take an unpaid leave to bond with an adopted or foster child or to bond with a newborn.
- An eligible employee may take unpaid leave to care for a parent, registered domestic partner, or child with a serious health condition. CFRA leave may also be taken for the employee's own serious health condition.
- Full-time employees may take leave of up to 12 work weeks in a 12-month period. Part-time employees may take leave on a proportional basis. The leave does not need to be taken in one continuous period of time.
- An employer may require a 30-day advance notice of the need for a CFRA-qualifying leave. When this is not possible due to the unexpected nature of the qualifying event, notice should be given as soon as practicable. Notice can be written or verbal and should include the timing and the anticipated duration of the leave, but an employer may not require disclosure of an underlying diagnosis. An employer must respond to a leave request within 5 business days.
- The employer may require written communication from the health-care provider of the child, parent, registered domestic partner, or employee with a serious health condition stating the reasons

- for the leave and the probable duration of the condition. However, the health care provider may not disclose the underlying diagnosis without the consent of the patient.
- In addition to the family care and medical leave requirements of the CFRA, employers of five or more persons have additional obligations pertaining to pregnancy disability leave (PDL). Please refer to the DFEH publication "Pregnancy Leave" for more information.
- Employees are entitled to take CFRA leave in addition to any leave entitlement they might have under PDL. Leave taken for the birth or adoption of a child must be completed within one year of the event.

SALARY AND BENEFITS DURING CFRA LEAVE

Employers are not required to pay employees during a CFRA leave. An employer may require an employee to use accrued vacation time or other accumulated paid leave other than sick time. If the CFRA leave is for the employee's own serious health condition, the use of sick time can be required.

If the employer provides health benefits under a group plan, the employer must continue to make these benefits available during the leave. Similarly, the employee is entitled to continue accruing seniority and participate in other benefit plans.

- 1 After CFRA leave, employees are guaranteed a return to the same or comparable position and can request the guarantee in writing.
- 2 If the same position is no longer available, such as in a layoff or closure, the employer must offer a position that is comparable in terms of pay, benefits, shift, schedule, geographic location, and working conditions, including privileges, perquisites, and status, unless the employer can prove that no comparable position exists. An employee is not entitled to reinstatement if the employee would have been otherwise laid off or terminated.

FAMILY TEMPORARY DISABILITY INSURANCE (FTDI) OR "PAID FAMILY LEAVE"

Employees on CFRA leave of absence may also be eligible for six weeks of paid leave under FTDI, a program administered by the California Employment Development Department (EDD). For further information, contact the EDD at (800) 480-3287 or visit EDD's website at www.edd.ca.gov.