

FAMILY CARE AND MEDICAL LEAVE

The District shall grant family care and medical leave to eligible employees in accordance with current state and federal law.

Family care and medical leave taken pursuant to this policy shall run concurrently with any paid leave to which the employee is entitled under any other District policy or state or federal law. (29 Code Federal Regulations [CFR], section 825.208). In the case of pregnancy leave taken pursuant to this policy, the employee may elect to use accrued paid vacation and/or sick leave in lieu of unpaid pregnancy leave, in which case unpaid pregnancy leave under this policy shall run concurrently with the paid leave.

Eligibility

Employees, including part-time staff, must have been employed for at least the 12-month fiscal year immediately prior to the date the leave is to start. Employees also must have provided a minimum of 1,250 hours of service to be eligible for leave under the California Family Rights Act of 1991 (Government Code 12945) and the Federal Family and Medical Leave Act of 1993 (FMLA) for a total of 12 work weeks during any 12-month period. Family care and medical leave benefits run concurrently with all employee leave benefits.

Reasons for Taking Leave

Leave is permitted for the following reasons:

- 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. If both parents of the child are employed by the District, their family care and medical leave related to the birth or placement of the child shall be limited to a total of 12 weeks.
- 2) To care for the employee's child, parent, or spouse with a serious health condition.
- 3) Because of 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.

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“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.

“Parent” means 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 United States Code [USC] section 2611; Government Code section 12945.2)

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

“Serious health condition” means an illness, injury, impairment, physical or mental condition that involves either of the following:

- 1) Inpatient care in hospital, hospice or residential health care facility.
- 2) Continuing treatment or continuing supervision by a health care provider involving:
 - i) A period of incapacity (i.e., inability to work) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (a) Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) 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.
 - ii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.
 - iii) A period of incapacity which 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, a health care provider.
 - iv) Any period of absence to receive multiple treatments 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 days in absence of medical intervention or treatment.

- 3) Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

Advanced Notice and Request for Family Care and Medical Leave

The employee shall give the District at least 30 days' written advance notice of his/her need for family care and medical leave. If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (20 USC section 2612; Government Code section 12945.2) Where leave is foreseeable but notice is not provided at least 30 days in advance, the District may deny the leave for up to 30 days from the date notice is given. (29 CFR Section 825.304)

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.

Medical 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. The certification shall include the following:

- 1) The date on which the serious health condition began.
- 2) The probable duration of the condition.
- 3) If the employee is requesting the leave to care for a child, parent, or spouse with a serious health condition, the health care provider's certification is required of both the following:
 - i) Estimated amount of time the health care provider believes the employee needs to care for the child, parent or spouse.
 - ii) Statement that a serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent or spouse.

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- 4) If the employee is requesting the leave because of his/her own serious health condition, the health care provider's certification must state that due to the serious health condition, the employee is unable to perform the functions of his/her job.
- 5) Employees who take medical leave for his/her own serious health condition shall present certification from his/her health care provider to the effect that he/she is able to resume work without restrictions prior to reporting to work to the supervising administrator.

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.

If additional leave is needed when the time estimated by the health care provider expires, the District may require the employee to provide rectification in the manner specified in the preceding paragraph.

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

Instructional Employees: Leaves Near the End of the Term

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

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

Reinstatement

Leave granted under the Family Rights Act shall run concurrently with leave granted under the federal Family and Medical Leave Act, i.e., grant of one is also a grant of the other. Employees taking this leave shall be reinstated in the same or a comparable position upon returning from family care leave, except as allowed by law. During the family care and medical leave, the employee retains the same employment status as before taking the leave, and is entitled to continue to participate in the District's group health plan.

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.

The District may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

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

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

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