

# FAMILY AND MEDICAL LEAVE LAWS

Department of Human Resources

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# AGENDA

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- ✘ Family and Medical Leave Act (FMLA)
- ✘ California Family Rights Act (CFRA)
- ✘ Pregnancy Disability Leave (PDL)

# BASICS OF FMLA, CFRA AND PDL

<p>FMLA &amp; CFRA</p>	<p>12 workweeks of unpaid leave in a 12-month period for:</p> <ul style="list-style-type: none"> <li>• The birth or placement of a child for adoption or foster care</li> <li>• To care for a spouse, son, daughter, or parent with a serious health condition</li> <li>• For the employee's own serious health condition</li> </ul>
<p>FMLA  Military Family Leave</p>	<ul style="list-style-type: none"> <li>• <b><u>Military Caregiver Leave:</u></b> Employee who is the spouse, son, daughter, parent or next of kin of a current/veteran covered service member with a serious injury/illness may take up to 26 workweeks of unpaid leave during a single 12-month period</li> <li>• <b><u>Qualifying Exigency Leave:</u></b> Employee who is the spouse, son, daughter or parent may use their 12 workweeks of unpaid leave for any “qualifying exigency” arising from the service member’s call to active duty to a foreign country</li> </ul>
<p>CFRA</p>	<ul style="list-style-type: none"> <li>• 12 workweeks of unpaid leave in a 12-month period for the employee domestic partner’s serious health condition</li> </ul>
<p>PDL</p>	<ul style="list-style-type: none"> <li>• Provide up to 4 months of unpaid leave for pregnancy disability, childbirth recovery or related medical condition</li> </ul>

# EMPLOYEE ELIGIBILITY

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## FMLA and CFRA

- ✘ 12 months of County Service
- ✘ Worked 1,250 hours in previous 12 months
- ✘ Permanent, Temporary, Part-time or Recurrent

## PDL

- ✘ No “hours worked” or “length of service” requirement

***Note:*** For 4850 employees, the 1,250 hour requirement is based on the hours the employee worked prior to the 4850 leave

# MOST COMMON SERIOUS HEALTH CONDITIONS

- 1) conditions requiring an overnight stay in a hospital or other medical care facility;
- 2) conditions or illnesses that affect an employee or their eligible family member's health to the extent that they must be absent from work on a continuous or recurring basis;
- 3) continuing treatment by a health care provider;
- 4) chronic conditions; and
- 5) pregnancy related medical conditions (incapacity due to morning sickness, medically required bed rest, disability before and after child birth, etc.).

# BENEFITS AND PROTECTION

- ✘ During FMLA and PDL leave, the County must maintain the employee's health coverage.
- ✘ Upon returning from FMLA, CFRA and/ or PDL leave, the employee must be reinstated to the same or equivalent position with the same pay, benefits and terms of employment.

# FMLA AND CFRA QUALIFYING REASONS

Qualifying Reason	FMLA	CFRA
An employee's own serious health condition	✓	✓
Care of a newborn (baby bonding)	✓	✓
Care of a child, spouse or parent's serious health condition	✓	✓
Newly adopted child or foster care placement	✓	✓
Prenatal Care	✓	
Birth of a Child	✓	
Care of a Domestic Partner		✓
Care of a Domestic Partner's Child	✓	✓
Military Personnel Caregiver Leave	✓	
Qualifying Exigency Leave	✓	

# EMPLOYEE'S NOTIFICATION RESPONSIBILITY

- ✘ 30 Days Notice
- ✘ Emergency notice ASAP from employee or employee's representative (e.g. spouse, adult family member or other responsible party)
- ✘ Intermittent Leave should not disrupt the department's operation



# EMPLOYER'S NOTIFICATION RESPONSIBILITY



- ▣ It is management's **responsibility** to designate leave
- ▣ Employee must be notified of designation within 5 business days
- ▣ Certification of Health Care Provider (CHCP) form must be returned within 15 business days
- ▣ FMLA and CFRA are designated upon receipt of medical certification

# WORKERS' COMPENSATION INTERACTION WITH FMLA/CFRA

- ✘ An employee's serious health condition can be a result of an illness or injury on the job.
- ✘ In the case of a job-related illness or injury, FMLA and/or CFRA run concurrently with Workers' Compensation leave if the illness or injury meets the definition of a serious health condition, and the employee is properly notified.

# LABOR CODE 4850

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(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or by a city, county, or district firefighter, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

# FMLA/CFRA AND LABOR CODE 4850

## Labor Code 4850

- ✘ Provides full benefits to safety employees injured on the job
- ✘ Benefits run for one year or until RTW date (whichever comes first)
- ✘ Cannot run concurrently with FMLA and/or CFRA

***Note:*** For eligible safety employees, leave will be designated as FMLA/CFRA once the employee has exhausted their 4850 time



# SCENARIO ONE



Susan is a secretary. She had a trip and fall injury at work on January 3. She received treatment, and the physician removed her from work for 4 weeks, from January 3 through January 31. She is scheduled to return to work on February 1.

Susan has been a permanent employee with the County for five years. Susan worked over 1,250 hours in the previous 12-months.

FMLA/CFRA will run concurrently from January 3 through January 31.

# SUSAN'S DISABILITY ILLUSTRATION

## 12 WEEKS OF FMLA/CFRA

Jan				Feb		Mar					
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12
FMLA will run from January 3 - January 31											
CFRA will run from January 3 - January 31											

*Note:* Susan has 8 weeks remaining of FMLA/CFRA that she may use through January 3 of the following year for her own illness or to care for an applicable family member.

# SCENARIO TWO



Charlie is a safety 4850 qualified employee. He suffered a back injury at the scene of a fire on January 28. The doctor determined he needs to have immediate back surgery. Charlie is removed from work for 8 weeks (from January 29 through March 26). He has been a County employee for 15 years and worked over 1,250 hours in the previous 12-months.

Should FMLA/CFRA be designated while the 4850 claim is pending?

## CHARLIE'S DISABILITY ILLUSTRATION PRIOR TO ACCEPTING 4850 CLAIM

12 WEEKS OF FMLA/CFRA											
Jan			Feb				Mar				
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12
FMLA will run from January 29 - March 26											
CFRA will run from January 29 - March 26											

1. FMLA/CFRA is designated while the 4850 claim is pending from January 29, through March 26.
2. Charlie's 4850 claim is accepted on March 5. The claim is accepted retroactive to the date of injury of January 28.

# CHARLIE'S DISABILITY ILLUSTRATION AFTER 4850 CLAIM IS ACCEPTED

## 12 WEEKS OF FMLA/CFRA AVAILABLE

Jan			Feb			Mar					
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12

- Because the claim is accepted on March 5, FMLA/CFRA is removed retroactive to January 29.
- At the conclusion of his 4850 leave, Charlie has 12 weeks of FMLA/CFRA leave available.

# PAID AND UNPAID LEAVE

## Employee's Own Serious Health Condition:

- ❑ Any accrued time (sick, vacation, holiday, OT, etc.)
- ❑ Short-Term Disability
- ❑ Compensatory Time Off (CTO)

## Qualifying Family Member:

- ❑ Any accrued time with a special allowance for sick leave
- ❑ Twelve days of Sick Personal time (with prior approval)/Kin Care Law
  - Kin Care leave runs concurrently with Sick Personal time

# OTHER GUIDELINES

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- ▣ Under most circumstances, FMLA and CFRA leave may be taken intermittently or on a reduced work schedule.
- ▣ The employee does not need to express rights under FMLA/CFRA. Mentioning a FMLA/CFRA qualifying reason is considered sufficient notice.
- ▣ An employee cannot reject a designation of FMLA and CFRA.
- ▣ Exempt Employees must post their own time for FMLA and CFRA related absences.

# OTHER GUIDELINES

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- ❑ Power of Attorney does not create a relationship for FMLA and CFRA purposes.
- ❑ Medical certification can be required every six months for employees with chronic and ongoing health conditions.
- ❑ Employees must follow employer's call-in procedures.
- ❑ Employer (not direct supervisor) can contact employee's health care provider for more information if needed.
- ❑ If fraud or abuse is suspected, contact Human Resources.

# TIMECARD CODING

- ✘ FMLA/CFRA and PDL is unpaid. However, employees may use accrued time to receive pay.

## Event Code:

- ✘ 078 - Leave with pay
- ✘ 076 - Leave without pay
- ✘ 074 - CFRA only without pay

- ✘ In all cases, a Reason Code must be used:
  - + 150 Continuous Leave
  - + 151 Intermittent Own Illness
  - + 152 Intermittent Pregnancy
  - + 153 Intermittent Care of Child
  - + 154 Intermittent Care of Parent
  - + 155 Intermittent Care of Spouse
  - + 156 Intermittent Care of Domestic Partner
  - + 157 Intermittent Bonding - Newborn
  - + 158 Intermittent Bonding - Adoption
  - + 159 Intermittent Bonding Foster Child
  - + 161 Intermittent Military Caregiver Leave
  - + 162 Intermittent Military Exigency

# FMLA/CFRA DON'TS



- × **Don't** assume that you're not required to comply with FMLA/CFRA.
- × **Don't** assume that FMLA/CFRA only applies when the employee makes the request.
- × **Don't** make assumptions about what constitutes an illness.
- × **Don't** resent employees taking unforeseeable leave.
- × **Don't** discourage employees from using FMLA/CFRA.

# FMLA/CFRA **DON'TS**



- × **Don't** take adverse action against employees who are taking or have taken FMLA/CFRA leave.
- × **Don't** deny a leave to bond or care for a new child.
- × **Don't** prevent an employee from taking approved intermittent leave.
- × **Don't** deny a leave after employee exhausts all the leave entitlement under FMLA/CFRA. The leave may be required under the ADAAA.

*All of these **Don'ts** can lead to lawsuits!*

# FMLA/CFRA DO'S



- × **Do** monitor employees on leave.
- × **Do** communicate with the Departmental FMLA and/or RTW Coordinator.
- × **Do** insist that the medical certification be complete. It is the employee's responsibility to provide a complete certification.
- × **Do** review employee's timecard for FMLA/CFRA coding to prevent abuse.
- × **Do** follow departmental attendance policies for call in procedures.

# ANY QUESTIONS?

