

**SANTA CRUZ COUNTY
PERSONNEL ADMINISTRATIVE MANUAL**

Topic: FAMILY MEDICAL LEAVE ACT (FMLA) AND CALIFORNIA FAMILY RIGHTS ACT (CFRA) LEAVES OF ABSENCE Section: LEAVES OF ABSENCE Number: XIII.1.B.	Date Issued: 12/91 Date Revised: 2/5/94 2/24/98 2015
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PURPOSE:

To identify the regulations and procedures concerning leaves of absence qualifying under the Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), hereafter referred to as FMLA/CFRA. .

LEGAL BASIS:

- Federal Family and Medical Leave of 1993, Final Rule, January 2009 (29 C.F.R. Part 825)
- Moore-Brown-Roberti California Family Rights Act of 1993 (CA Government Code Sections 12945.2 and 19702.3)
- California Fair Employment and Housing Act, California Government Code, Title 2, Division 3, Part 2.8 , Rev. 1/1/07
- Personnel Regulations, Section 168.1 Leave of Absence Without Pay
- Personnel Regulations, Section 168.2 Absence Without Leave
- Personnel Regulations, Section 168.4 Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) Leaves of Absence
- Section 101(a)(13)(B) of title 10, United States Code
- Family and Medical Leave Act Amendments in the National Defense Authorization Act of 2010, Public Law 111-84

See provisions of the individual Memorandum of Understanding applicable to the employee regarding continuance of insurance during any leave of absence without pay.

CROSS REFERENCE:

- Personnel Regulation 150
- Personnel Administrative Manual Section XIII.2.A. Other Medical Leaves of Absence.
- Personnel Administrative Manual Section XIII.2.B. Personal/Educational Leaves of Absence Without Pay.

- Personnel Administrative Manual Section XIII.1.C. Pregnancy Disability Leave of Absence.
- Personnel Administrative Manual Section XIII.4 Return to Work Requirements.
- Personnel Administrative Manual Section II.13.A. Reasonable Accommodation Guidelines.
- Personnel Administrative Manual Section II.5. Reasonable Accommodation Policy
- Personnel Administrative Manual Section V.1.B.3. Substitute Appointments, regarding hiring of replacement during period of leave of absence without pay.

POLICY:

County employees who meet the eligibility requirements are entitled to FMLA/CFRA leave of absence for up to 12 workweeks (for reasons specified in Section II, A-D) during a calendar year. The employee may take up to a total of 26 workweeks in a “single 12-month period” to care for a covered servicemember (see Section II E) with a serious injury or illness.

Subject to limited exceptions for highly compensated employees, employees taking FMLA/CFRA Leave shall be guaranteed the same or equivalent position upon their timely return from an approved FMLA/CFRA leave of absence. The County will continue to provide the employee and his/her dependents group health plan coverage during an approved FMLA/CFRA leave of absence in the same manner as if the employee was working.

I. DEFINITIONS: FMLA § 825.122

For purpose of this policy, the following definitions apply:

- A. “Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA/CFRA leave is to commence.
- B. "Spouse" means a partner in marriage as defined in California Family Code Section 300 and Domestic Partners recognized by County after submission of Affidavit of Domestic Partnership.
- C. "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in place of a parent to the employee when the employee was a child. It does not include parents “in-law.”
- D. "Health Care Provider" is defined as a doctor of medicine or osteopathy, 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); nurse practitioners, nurse-midwives, clinical social workers and physician assistants, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, MA.

- E. “Covered Servicemember” means (A) a 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 (B) 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 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- F. “Covered Active Duty” means (A) in the case of a member of a regular component of the Armed forces, duty during the deployment of the member with the Armed forces to a foreign country; and (B) in the case of a member of a reserve component of the Armed forces, duty during the deployment of the member with the Armed forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

II. CONDITIONS UNDER WHICH LEAVE MAY BE APPROVED

Any leave of absence which is requested due to the following circumstances will be considered a FMLA/CFRA Leave:

- A. For birth of a child of the employee and to care for the newborn child; for placement with an employee of a son or daughter for adoption or foster care, or the serious health condition of a child of the employee. (See §§ 825.120 and 825.121)
- B. To care for a parent, spouse or domestic partner who has a serious health condition.
- C. Because of the employee's own serious health condition that makes the employee unable to perform the essential functions of his/her position.
- D. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

- E. To care for a covered servicemember (or certain veterans) with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.

III. WHAT CONSTITUTES A "SERIOUS MEDICAL CONDITION:

Serious Medical Condition means an illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential health care facility or more than 3 days' absence and requiring continuing treatment or continuing supervision (2 or more visits) by a health care provider. If the leave is for the employee's own serious medical condition, the employee must be unable to perform the essential functions of his/her position.

IV. ELIGIBILITY: To be eligible for FMLA/CFRA Leave, an employee must meet both of the following criteria:

- A. Have worked for the County for a total of 12 calendar months; and
- B. Have a total of 1000 hours of a combination of time worked and paid leave within the twenty five (25) pay periods preceding the requested leave.

V. TIME PERIOD OF LEAVE:

- A. An eligible employee is entitled to take up to 12 work weeks of FMLA/CFRA Leave in any calendar year for reasons A, B, and C and D in Section II. Leave is available to part-time employees pro-rata based on the amount of hours worked.
- B. An eligible employee is entitled to take up to 26 work weeks of FMLA Leave in any 12-month period for reason E in Section II.
- C. Employee eligibility for FMLA/CFRA Leave for the birth or placement of a child expires 12 months after the birth or placement of the child.
- D. Intermittent Leave: The County will grant FMLA/CFRA Leave on an intermittent basis or reduced work schedule where this type of leave is medically necessary to care for a seriously ill child, spouse, domestic partner or parent, because of the employee's own serious health condition, or for a qualifying exigency arising out of a covered military member on active duty or called to duty. However, a leave request for intermittent leave or a reduced work schedule for the birth or placement of a child may be granted at the discretion of the department. The County may place an employee in an alternative position during the period of any intermittent or reduced work schedule leave to better accommodate the operations of the department.

- E. Prior to the expiration of an approved FMLA/CFRA leave of absence, employees desiring an extension of leave beyond the time limits of FMLA/CFRA Leave must submit a request for an extension of the leave as either a Personal/Educational leave or Other Medical leave of absence.

VI. REQUEST FOR LEAVE/DOCUMENTATION REQUIRED:

- A. Employees must give thirty (30) days advance notice of the need to take FMLA/CFRA Leave when it is foreseeable. Except in the case of medical emergency, requests for leave must be made in writing 30 days in advance on the appropriate Personnel Form.
 - 1. Paid FMLA/CFRA Leave -OR- unpaid FMLA/CFRA Leave of less than 160 hours for a full time employee (prorated for part-time employees) must be requested on Personnel Form PER1082 (Employee Request for Time Off -Departmental).
 - 2. Unpaid FMLA/CFRA Leave of 160 or more hours for a full time employee (prorated for part-time employees) must be requested on Personnel Form PER1083 (Employee Request for Leave of Absence Without Pay Over 160 Consecutive Hours).
- B. When it is not reasonable under the circumstances to provide 30 days advance notice, notice must be given as soon as possible. "As soon as possible" ordinarily means at least verbal notification to the department within one or two business days of when the need for leave becomes known to the employee.
- C. When planning medical treatments which require a prolonged absence or periodic absences (intermittent leave), employees must consult with their departments to make reasonable efforts to schedule leave so as to minimize disruption to business operations.
- D. Requests for leave for the employee's or his/her family members' serious health condition must be supported by a medical certification from a health care provider. Medical certification of the need for the leave must be submitted on the appropriate County form and should accompany the request for the leave unless it is not possible to do so. In all cases, except adoption or placement of a child (see G. below), the appropriate medical certification is required for the leave to be approved as an FMLA/CFRA leave of absence.
 - 1. Personnel Form PER1081A (Physician's Certification for Medical Leave) must be submitted for the employee's own serious medical condition.
 - 2. Personnel Form PER1081B (Physician's Certification for Family Care Leave) must be submitted for family members if requesting

leave to care for a family member with a serious medical condition.

3. Requests for leave on an intermittent or reduced schedule basis for a condition which may result in unforeseeable episodes of incapacity require that the PER1081A provide information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity.
 4. The PER1081A and PER1081B Medical Certification forms must be completed in full by each treating physician. These forms are also required when requesting an extension of a previously approved leave.
- E. The County may require the employee to obtain a second medical opinion, at the County's expense, regarding the medical necessity of an employee's leave request. If the opinion of the employee's doctor and the doctor issuing the second opinion differ, the County may require that the opinion of a third health care provider be obtained, at County's expense. The third opinion, given by a health care provider mutually agreed on by the employee and the County, will be final and binding.
- F. While out on FMLA/CFRA Leave, employees may be required to submit a recertification from their health care provider, but generally no more often than every 30 days unless circumstances described by the previous certification have changed significantly or the County receives information that casts doubt upon the continuing validity of the most recent certification. The County reserves the right to request recertification every 6 months in connection with an employee's serious health condition.
- G. Employees requesting FMLA/CFRA Leave for the adoption or placement of a foster child must submit proof of the child's placement in their custody rather than medical certification.
- H. Certification for leave taken because of a qualifying exigency: the employee shall provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or impending call or order to covered active duty in the Armed Forces. The employee shall submit Personnel Form PER1090.
- I. Certification for leave taken to care for a covered servicemember (military caregiver leave): the employee must provide a certification completed by an authorized health care provider of the covered servicemember. The employee shall submit Personnel Form PER1091.

- J. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the delay or denial of FMLA leave.

VII. USE OF PAID LEAVE DURING FMLA/CFRA LEAVE:

- A. All employees must exhaust ALL accrued compensatory time prior to the effective date of any leave of absence without pay.
- B. Employees must use all earned sick leave prior to the effective date of any leave of absence without pay if leave is being taken for an employee's own serious health condition. This includes sick leave accrued by employees in the General Representation Unit prior to 7/20/79.
- C. Employees may elect to use accrued vacation or annual leave in lieu of leave of absence without pay for Family Care or Medical leave.

VIII. BENEFITS AND INSURANCES DURING THE TERM OF THE LEAVE:

- A. Group Health Insurance:
 - 1. During the term of FMLA/CFRA Leave the County will continue to maintain the employee's group health insurances as well as continue the County's contributions toward group health insurance as if the employee were still working.
 - 2. During the term of FMLA/CFRA Leave , employees will continue to be responsible for the employee contribution towards group health insurance.
 - 3. If the employee fails to return upon the expiration of FMLA/CFRA Leave for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control, the County shall be entitled to recover from the employee the cost of maintaining Group Health plan coverage on behalf of the employee and his/her dependents during the term of the approved leave.
- B. Service Hours: During any unpaid period of an FMLA/CFRA Leave an employee will not accrue service hours for purposes of step advancement, probationary period, or County service hours. Similarly, no paid leave (e.g. vacation, annual leave, sick leave, administrative leave) will accrue during any leave of absence without pay.

IX. RETURN FROM FMLA/CFRA LEAVE

- A. An employee who has taken FMLA/CFRA Leave due to his/her own serious health condition will be required to present a current certification on Personnel Form PER1086 (PHYSICIAN'S CERTIFICATION FOR RETURN FROM MEDICAL/DISABILITY LEAVE) from his/her health care provider that the employee is able to resume work. Employees will not be allowed to return from a Family Care or Medical leave of absence until this medical certification is received by the County from each health care provider.
- B. At the conclusion of an approved FMLA/CFRA Leave, employees will be restored to the same or an equivalent position, with the exception applicable to "key employees" as described below. Employees returning from an approved leave will receive the same benefits as if the employee was continuously working for the County, with the exception that unpaid hours of leave do not count as County service hours for purpose of step advancement, paid leave accrual, promotion or any other purpose.
- C. The County may deny restoration of employment to "key employees" if the restoration would cause substantial and grievous economic injury to the operations of the County. "Key employees" are defined as employees who are among the highest paid 10 percent of the County work force based on year-to-date earnings. At the time leave is requested, the County will notify the employee if he/she is a "key employee."
- D. An employee who fails to return upon the expiration of an FMLA/CFRA Leave or fails to obtain an approved extension of the leave prior to its expiration shall be regarded as having automatically resigned from County employment upon the expiration of the approved leave.
- E. A Federal Law, C.O.B.R.A., requires the County to offer employees and their eligible dependents the opportunity to temporarily extend health coverage after it is lost due to a qualifying event. For purposes of C.O.B.R.A. continuation coverage, the qualifying event which triggers the employee's right to continuation coverage for employees who do not return from an FMLA/CFRA Leave will be the date the employee notifies the County that they will not be returning from FMLA/CFRA Leave or the date their coverage would otherwise terminate due to their failure to return to work from an authorized leave of absence.

X. PROCEDURE FOR REQUESTING OR EXTENDING FMLA/CFRA LEAVE

- A. Within 5 business days of becoming aware of a condition which is or may be qualified for FMLA/CFRA leave, the department must notify the employee of their eligibility for FMLA/CFRA leave. PER1085A must be provided.

- B. Departmental payroll clerk verifies that employee is eligible for FMLA/CFRA Leave. Within 5 days of receipt of a request (or acquiring knowledge of a potentially qualifying condition) for an FMLA/CFRA-eligible leave, the employee's supervisor or departmental personnel/payroll clerk must prepare and provide to the employee a PER1085A: "Family Care and Medical Leave Eligibility Notice and Employee Rights and Responsibilities." A copy must be provided to the Personnel Department.
- C. Thirty (30) days before the requested period of foreseeable FMLA/CFRA Leave begins, the employee submits a PER1082 (Employee Request for Time Off -Departmental) for paid leave or unpaid leave of less than 160 consecutive hours for full time employees (prorated for part-time employees), showing beginning and ending dates of the leave which are consistent with physician's statement for the leave.

-OR-

- D. Employee submits to the appointing authority a PER1083 (Request for Leave of Absence Without Pay Over 160 Consecutive Hours) for unpaid leaves of absence of 160 or more consecutive hours (prorated for part-time employees), showing beginning and ending dates of the leave. These dates should be consistent with the dates of the physician's statement for the leave.

-AND-

- a) **For the employee's own serious health condition**, the employee submits a current PER1081A (PHYSICIAN'S CERTIFICATION FOR MEDICAL/DISABILITY LEAVE).
- b) **For the care of a family member**, the employee submits PER1081B (PHYSICIAN'S CERTIFICATION FOR FAMILY CARE LEAVE). These forms are used for paid and/or unpaid FMLA/CFRA Leaves of any length. Written proof of placement is required in lieu of medical certification **for adoption or placement of a foster child**.
- c) **For a qualifying exigency** arising out of the fact that the employee's spouse, son, daughter, or parent is a covered servicemember on active duty (or has been notified of an impending call or order to covered active duty) the employee shall complete PER1090 (CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE).
- d) **To care for a covered servicemember with a serious injury or illness** if the employee is the spouse, son, daughter, parent, or next of

kin of the servicemember, the employee shall submit PER1091 (CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICEMEMBER FOR MILITARY FAMILY LEAVE).Appointing Authority reviews request and documentation and approves or disapproves, or asks for missing information. Upon approval, Appointing Authority forwards all paperwork to the departmental payroll clerk for processing.

- e) In all cases, the employee’s supervisor or departmental personnel/payroll clerk must prepare and provide to the employee a PER1085B “Family Care and Medical Leave Designation Notice.”

- E. Departmental payroll clerk verifies that employee is eligible for Family Care or Medical leave. Departmental payroll clerk verifies that the employee has exhausted all accrued compensatory time prior to any FMLA/CFRA Leave without pay.

STEPS F. THROUGH H. BELOW APPLY ONLY TO UNPAID LEAVES OF ABSENCE OF 160 OR MORE CONSECUTIVE HOURS (PRORATED FOR PART-TIME EMPLOYEES)

- F. For unpaid leaves of absence of 160 or more consecutive hours payroll clerks must check the leave date information on the PER1083 and prepare an action form showing the beginning and ending dates of leave of absence without pay, and indicate on the PER1083 any paid leave that will be used. All paperwork should then be forwarded to the Personnel Department.
- G. The Records Unit in the Personnel Department will log paperwork and forward to the Leaves Analyst in the Risk Division.
- H. The Risk Division in the Personnel Department reviews the leave request for completeness and adherence to the regulations. Any discrepancies or questions are discussed with the Department. If approved on behalf of Personnel Director, Risk forwards all paperwork to the Records Unit.
- I. Records Unit inputs approved leave of absence into the payroll system, completes the log, and forwards the action form to the Payroll Unit of the Auditor's Office.

XI. PROCEDURE FOR RETURN FROM FMLA/CFRA LEAVES OF ABSENCE

- A. The employee submits to the Appointing Authority a current PER1086 form (Physician's Certification for Return from Medical/Disability Leave) from each treating physician, completed in full, at least one week PRIOR to the ending date of the leave of absence.

- B. If the leave is taken to care for a family member with a serious health condition or for the birth, adoption or foster placement of a child, the employee sends confirmation in writing to the Appointing Authority of his/her intent to return from leave, at least one week PRIOR to the ending date of the approved leave of absence.
- C. Appointing Authority reviews the PER1086 form(s) to make an initial assessment as to whether there are any work limitations which would preclude the employee from returning to work or which might require reasonable accommodation. The department MUST contact the Leaves Analyst in the Risk Division of the Personnel Department for discussion of any work limitations specified on the PER1086 form(s) BEFORE allowing the employee to return to work. The department should NEVER permit an employee to return to work based on a note for a doctor or health practitioner that simply releases the employee to return to work.
- D. The Appointing Authority, if satisfied that the employee can return to work without endangering his/her safety or the safety of others, and that the employee can perform the essential functions of the job, with or without accommodation, forwards the PER1086 forms to the departmental personnel/payroll clerk for preparation of paperwork to return the employee from leave.
- E. Departmental personnel/payroll clerk prepares action form for return from leave of absence without pay, attaches all documentation, and forwards documentation to the Personnel Department.
- F. Records Unit logs paperwork, checks for completeness and forwards to Risk Division staff.
- G. Risk Division staff reviews action forms and documentation and discusses any questions with the department. If approved, forwards all paperwork to the Records Unit.
- H. Records Unit inputs action into the Personnel/Payroll system and forwards a copy of the action form to the Payroll Unit in the Auditor's Office.