



## POLICIES AND PROCEDURES

**SUBJECT:** FAMILY AND MEDICAL LEAVE ACT

**POLICY NO:** 756.6

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**PURPOSE:**

To establish standardized Department policies and procedures for processing leaves of absence under the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), and Pregnancy Disability Leave (PDL).

**POLICY:**

The Department of Health Services (DHS) is required to comply with the provisions of FMLA, thereby DHS must designate FMLA leave whenever applicable to any eligible employee (including temporary and part-time employees).

Under FMLA and CFRA an eligible employee is one who meets the following criteria:

- Has completed an aggregate of 12 months of County service, which need not be consecutive
- and
- Has worked at least 1,250 hours during the 12-month period immediately preceding the first day of leave.

**FMLA and CFRA** entitle eligible employees up to 12 workweeks of unpaid job protected leave in a 12-month period for any of the following reasons:

- The employee's own serious health condition;
- The care of a child, spouse, or parent with a serious health condition;
- The birth of a child and to care for the child within one year of birth (baby bonding);
- Newly adopted child or a foster care placement; or

**FMLA (only)** entitles eligible employees up to 12 workweeks of unpaid job protected leave in a 12-month period for any of the following reasons:

- Prenatal care
- Any qualifying exigency arising from a spouse, child, or parent's call to active duty

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**APPROVED BY:**  
**REVIEW**  
**DATES:**

**EFFECTIVE DATE:** May 30, 2012

**SUPERSEDES:** August 1, 2004

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**FMLA (only)** also entitles eligible employees up to 26 workweeks of unpaid job protected leave in a 12-month period to care for a spouse, child, parent, or next of kin, who is an Armed Forces member recovering from an injury or illness sustained within the last five (5) years

**CFRA (only)** entitles eligible employees up to 12 workweeks of unpaid job protected leave in a 12-month period for any of the following reasons:

- The care of a domestic partner with a serious health condition
- The care of a domestic partner's child with a serious health condition

**PDL (only)** entitles a female employee up to 16 workweeks of unpaid job protected leave in a 12-month period if she is disabled due to pregnancy or any prenatal or childbirth related medical condition.

## **GUIDELINES:**

### **Designating Leave**

- Once management becomes aware that an employee is compelled to be absent for three (3) or more days due to their own illness *or* for any other qualified reason listed above, management must:
  - Provide the employee with the appropriate "Certification of Health Care Provider" form (FMLA380-E-Employee Illness, FMLA380-F-Family Illness, FMLA384-Military Qualifying Exigency, FMLA385-Military Illness & Injury), the "Employee Rights and Responsibilities" brochure, and the FMLA Leave of Absence (LOA) form and instruct the employee to complete and return the completed forms to the FMLA Unit within fifteen (15) calendar days
  - Complete the Acknowledgement of FMLA Packet Receipt and forward to the FMLA Unit immediately to initiate a case.
  - All forms are located on the DHS intranet [www.dhs.lacounty.gov](http://www.dhs.lacounty.gov).
- Where the need for leave is foreseeable, the employee must provide management 30 days advance notice before the leave is to begin. If 30 days is not possible due to lack of knowledge or an emergency, notice must be given as soon as possible absent extenuating circumstances.
- In all cases, when an employee takes time off for FMLA, he or she must advise management that leave is being taken for their FMLA qualifying reason.

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- Employees are still responsible for adhering to departmental attendance and leave request policies. Violation of the attendance policy may subject the employee to disciplinary action.
- If an employee has already been instructed to provide medical certification or to adhere to an attendance plan for **non-FMLA** absences, the employee still has to adhere to the established guidelines. The plan runs concurrently with FMLA.

Management's determination must be based on the information received from the employee or the employee's spokesperson in the event the employee is unable to communicate directly.

## **Use of Paid or Unpaid Leave**

- FMLA leave is unpaid, however, the employee may choose to use accrued paid leave to cover part or all of the leave period. The use of paid leave is subject to all of the same conditions that normally apply to the use of such time.
- An eligible employee who is granted family medical leave may use his/her accrued vacation and holiday time in a continuous block until all the available accrued leave balances are exhausted. An employee can start and stop using accrued paid time any time during the FMLA/CFRA leave. However, once the employee has stopped using paid time, the employee cannot start using it again without approval from the Department Head or his/her designee.
- An FLSA Exempt employee on intermittent leave or a reduced work schedule will be docked for hours not worked if the time off is for an FMLA qualifying reason and is designated as FMLA leave.
- Accrued sick leave benefits shall not be used while and employee is on a family medical leave for the care of a spouse, domestic partner, child and/or parent. (Exception: Personal "P" time may be used.)

## **Intermittent Leave**

- Leave taken in relation to the employee's serious health condition or that of a family member may be taken on an intermittent or reduced work-day basis in accordance with the medical certification.
- Employees must notify management of scheduled appointments as soon as they become aware of the appointment.
- The employee must consult with his or her supervisor and make a reasonable effort to schedule intermittent leave to not unduly disrupt the unit operations, including making such arrangements after work hours and weekends.

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## Leave Limitations

- FMLA and CFRA allow bonding with a child following the birth, adoption, or foster care placement, on an intermittent basis of two weeks or longer. However, baby bonding may be taken in less than two-week increments with management's approval, on two separate occasions only. The employee must submit an FMLA LOA request form along with proof of parenthood no later than 30 days prior to the request, when applicable.
- Under FMLA, there is a combined 12 workweek limit on the amount of leave that can be taken for the parents of a newborn who are both married and employed by the County.
- If the parents of a newborn are both employed by the County, but are not married, there is no combined 12 workweek limitation and they are both entitled to 12 workweeks each.

## Employee Rights Upon Return from Leave

- The employee returning from FMLA leave must be returned to the same or an equivalent position with the same benefits, salary, and other terms and conditions of employment.
- If the employee is no longer qualified for the position because of a missed training class or failure to renew a license while on FMLA leave, the employee must be given a reasonable opportunity to comply upon his or her return to work.

## Employee Benefits while on Leave

Note: A leave which extends beyond 27 calendar days may affect your retirement, vacation, health and dental benefits as well as some bonuses.

During FMLA, PDL, and CFRA leave, an employee's group medical and dental coverage and Health Care Spending Account (HCSA) must be continued on the same basis and under the same conditions as were applicable prior to the commencement of the leave.

- If the employee is in pay status for at least eight hours in any month, the County will pay the employee's full cafeteria plan contribution (e.g. Choices, Options, etc.) or medical subsidy (e.g., temporary, part-time employees).
  - Employees are not permitted to use one day a month of accrued time in order to receive their County contribution unless one day of accrued time is all the time the employee has remaining.

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- The County has no obligation to continue medical and dental coverage for any of the following reasons:
  - The employee was not enrolled in a medical plan, dental plan or HCSA prior to their protected leave. Employees are not permitted to change their enrollment because of their protected leave. However, if the employee has a “Change of Status” as defined under the cafeteria plans, the employee may be qualified to change his or her enrollment.
  - The employee’s medical or dental coverage is canceled or suspended during their protected leave. This may occur when the employee must pay for part of the premium and prefers not to do so. In this case, the County will suspend the employee’s coverage until the first of the month after he or she returns to work. For reinstatement of the employee’s HCSA only, the employee may elect to resume coverage for the remainder of the Plan Year at the level in effect prior to the protected leave with a corresponding increase in the employee’s premium payments.
  - The employee notifies the department that he or she will not return from their protected leave.
  - The employee fails to return to work on the expected return date without notifying the department or requesting an extension.
  - The employee exhausts his or her protected leave entitlement.

The employee is expected to pay his or her portion of the premium otherwise coverage will be suspended on the first day of the month after the last payment was made. Under FMLA, PDL, and CFRA, the County is entitled to recover any premium payments made on behalf of the employee if he or she fails to return from their protected leave after the leave entitlement has been exhausted or leave expires.

## **Outside Employment**

An employee on an approved medical leave of absence is subject to the provisions—and limitations—of DHS Policy 740.000 in relation to all (non-conflicting) outside employment or activity. As part of this process employees are responsible for appropriately disclosing outside activity, subject to the provisions mentioned above, that may adversely impact or interfere with existing medical limitations and/or restrictions. Outside activities subject to approval include, but are not limited to: outside employment; expert witness testimony; volunteer activity; and performance of charity medical relief.

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## **DEFINITIONS:**

**“Spouse”** - A husband or wife as recognized under California law for the purpose of a legal marriage in California. California does not recognize common law marriages, except when such marriages are contracted in a state that does recognize common law marriages, and the specific marriage is recognized as a legal marriage in that state.

**“Domestic Partner”** - Pursuant to L.A. County Code Section 2.210.010, a domestic partnership refers to a relationship between two adults of the same or different sexes which is characterized by mutual interdependence and an abiding concern for each other’s well-being. Domestic partners generally share a common household and share financial responsibility for their joint household expenses. They frequently own property together and often authorize each other to act on each other’s behalf in emergency circumstances. For purposes of this policy, domestic partnerships must be registered with the L.A. County Registrar-Recorder/County Clerk’s office.

**“Child”** - A biological, adopted or foster child, a stepchild, a child of a domestic partner, a legal ward, or a child of a person standing in “loco parentis.” The child must be under 18 years of age unless he/she is incapable of self-care due to a mental or physical disability.

**“Parent”** - A biological parent or an individual who stood in “loco parentis” to the employee when the employee was a child.

**“Loco parentis”**- To stand in place of a parent. Persons in “loco parentis” are those who were responsible for the day-to-day care of, and financially supported the employee when the employee was a child. If the employee is standing in “loco parentis,” the natural parent cannot be residing with the child or substantially contributing to the support of the child. There does not have to be a biological relationship between the individual and the child, but there must be a true “child-parent” relationship. Documentation may be required to confirm relationship. Reasonable documentation may include but is not limited to, employee statement, a child’s birth certificate, a court document, etc.

**“Next of Kin”**- The nearest blood relative of an Armed Forces member to the individual needing care other than a spouse, parent, son or daughter and in the following order (1) blood relatives who have been granted legal custody of covered service member, (2) brothers and sisters, (3) grandparents, (4) aunts and uncles, and (5) first cousins.

**“Qualifying Exigency”** - Is used to refer to a number of broad categories for which employees can use FMLA under the National Defense Authorization Act (NDAA) only. A full list of qualifying reasons can be obtained by contacting the FMLA Unit at (323) 890-7892.

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**AUTHORITY:**

Family and Medical Leave Act of 1993, 29 United States Code (USC) Section 2601 et seq., 29 Code of Federal Regulations (CFR), Chapter V, Part 825, Sec. 825.100 et seq.  
California Family Rights Act, California Government Code Section 12945.2  
L.A. County Code Sections 2.210.010, 6.20.080(L)  
L.A. County Interpretive Manual  
County of Los Angeles Department of Human Resources, Family Leave Policy Guidelines

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