

5.2.14 Family and Medical Leave Act, California Family Rights Act, and Pregnancy Disability Leave

(a) Policy

(1) California Correctional Health Care Services (CCHCS) and Division of Health Care Services (DHCS), California Department of Corrections and Rehabilitation (CDCR) shall comply with Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), Fair Employment and Housing Act (FEHA), Code of Federal Regulations, California Government Code (GC) Section, California Code of Regulations, Bargaining Unit (BU) Memoranda of Understanding (MOU) provisions, and state policy regarding leave of absence (LOA). State employees are eligible for various types of LOA pursuant to GC, respective MOU (if subject to collective bargaining), and federal and state laws. This policy supplements the Health Care Department Operations Manual, Section 5.2.6, Leave of Absence, and provides more detailed information regarding job protections and benefits afforded by the FMLA, CFRA, and Pregnancy Disability Leave (PDL) pursuant to the FEHA.

(b) Purpose

(1) To ensure consistent application of laws, regulations, and BU MOUs relating to FMLA, CFRA, PFL, and PDL.

(c) Procedure

(1) The coordination of leave entitlements afforded to a state employee can be very complex; therefore, employees are advised to contact their Human Resources office for assistance.

(2) FMLA, CFRA, PFL, and PDL Eligibility Criteria

(A) To be eligible for FMLA and CFRA job protection and benefits, a state employee shall:

1. Have worked for the state for at least 12 months.
 - a. **NOTE:** The 12 months of employment do not have to be consecutive.
2. Have physically worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.
 - a. **NOTE:** Overtime, Military Leave, Administrative Time Off (ATO), and hours restored pursuant to GC, Section 19584, any administrative order, and a settlement agreement in any court or administrative forum are considered time worked for FMLA and CFRA qualification purposes. Time off utilizing leave credits (e.g., vacation, sick leave, furlough) are not considered time worked for FMLA and CFRA qualification purposes.

(B) To be eligible for PFL, a state employee shall:

1. Be covered by SDI.
2. Have earned at least \$300 in the past 5 to 18 months.
3. Submit PFL claim within 41 days from the date the family leave begins.
 - a. **NOTE:** Do not file before the first day of leave.
4. Only claim 8 weeks of benefits per 12-month period.

(C) All employees who are disabled due to pregnancy and childbirth are entitled to PDL. Unlike FMLA and CFRA, there is no 1,250 minimum hours worked or length of employment eligibility requirement for PDL.

(3) FMLA, CFRA, and PDL Entitlement

(A) An FMLA and CFRA leave eligible employee may take up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

1. The birth and care of a newborn child of the employee within one year of birth.
2. The placement of a child for adoption or foster care with the employee and to care for the newly placed child within one year of placement.
3. Care for a family member (spouse, child, parent, registered domestic partner, grandparents, grandchildren, and siblings as well as for the child of a domestic partner) with a serious injury or illness in accordance with CFRA expansion.
 - a. **NOTE:** Parents who are both employed by the state are each entitled to 12 workweeks of family leave for a., b., c. above.
4. A serious health condition that makes the employee unable to perform the essential functions of their job.
5. A qualifying exigency arising out of the fact that the employee's spouse, domestic partner, child, or parent is a covered military member on "covered active duty" or a reservist who faces a recall to active duty, if a "qualifying exigency exists."

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6. Caring for a spouse, child, parent, or next of kin who is a “covered service member” injured while serving in the military. Employees are eligible for up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness.

(B) An employee disabled by pregnancy or childbirth is entitled to up to 4 months of PDL. PDL is paid for the first four weeks before the baby is born, then six weeks after the birth. Upon exhaustion of the paid benefit, the employee shall use PFL, if eligible.

(C) PDL runs concurrently with FMLA leave; however, it is a separate entitlement from leave taken pursuant to CFRA.

(4) Notice Requirements

(A) Employees applying for FMLA, CFRA, or PDL job-protected leave are required to provide a 30-day advance notice to their manager or supervisor of their need to take FMLA, CFRA, or PDL leave, when the need is foreseeable and such notice is practicable. If 30 days’ notice is not foreseeable (e.g., not knowing when leave will be required to begin, a change in circumstances, or a medical emergency), employees shall give as much notice as possible of their need for leave.

(5) Medical Certification Requirements

(A) Employees who request leave for themselves or to care for a family member shall provide written certification for the eligible individual with a serious health condition. If the leave is for the employee’s own serious health condition, the certification shall include a statement that the employee is unable to work at all or is unable to perform the essential functions of their position.

(B) Employees shall be required to provide updated certification each time the certification on file is expired based on the dates provided by the health care provider or as often as every six months in conjunction with an absence.

(6) Use of Leave Credits

(A) An eligible employee may use their paid accrued leave (e.g., vacation, annual leave, personal leave), during a qualified FMLA, CFRA, or PDL event with no limitation; however, sick leave may only be used in accordance with the applicable collective BU MOU agreement or applicable civil service laws, rules, and state policies. Whether an employee chooses to use paid accrued leave credits during their FMLA, CFRA, or PDL-qualifying absence or not, CCHCS shall count this leave against the employee’s protected leave entitlements under the law.

(B) If the leave is FMLA, CFRA, or PDL-qualifying, no limitation shall be placed on the employee's use of accrued vacation, annual leave, or personal leave credits.

(C) CCHCS is responsible for designating an employee’s use of leave credits as qualifying FMLA, CFRA, or PDL leave, based on information received from the employee.

(7) Maintenance of Health Benefits

(A) FMLA and CFRA

1. The state shall maintain health, dental, and vision insurance coverage under “any group plan” for an employee on FMLA and CFRA-qualifying leave whenever such insurance was provided before the leave was taken, and on the same terms as if the employee had continued to work.

2. Accounts receivables shall be established for the employee’s share while the employee is on unpaid leave and collected upon the employee’s return. In some instances, the employer may also recover the employer’s share of the premiums paid to maintain health coverage for an employee who fails to return to work for reasons unrelated to the original reason for the leave.

(B) PDL

1. The state is required to maintain up to four months of health, dental, and vision insurance coverage for employees who are disabled due to pregnancy, childbirth, or a related medical condition. The time period that benefits are continued under FMLA and CFRA cannot be used to satisfy this requirement of PDL. In other words, the benefit continuation requirement under CFRA does not begin until the benefit continuation requirement under FMLA and PDL has been fulfilled.

(8) Calculation of Leave Usage

(A) When an employee takes leave on an intermittent or a reduced work schedule, only the amount of leave actually taken may be counted towards the employee’s leave entitlement. The actual workweek is the basis of leave entitlement.

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- (B) Where an employee takes leave for less than a full workweek, the amount of leave used is determined as a proportion of the employee's actual workweek. Time that an employee is not scheduled to report for work may not be counted towards the leave entitlement.
- (C) Mandatory overtime hours that are not worked by the employee because of an FMLA, CFRA, or PDL-qualifying reason shall be considered leave (counted) for the purpose of calculating the employee's remaining leave entitlement. The PFL benefit amount is calculated from the employee's highest quarterly earnings over the past 5 to 18 months, before the start of their claim. The Employment Development Department has an online [Disability Insurance and Paid Family Leave Calculator](#).
- (D) However, if overtime hours are worked on an "as needed basis" and are not part of the employee's usual or normal workweek, such voluntary overtime hours not worked due to an FMLA, CFRA, or PDL-qualifying reason, shall not be counted.

(9) Reinstatement Rights

- (A) Upon return from FMLA, CFRA, and PDL leave, an employee is entitled to be returned to the same or comparable position the employee held when the leave commenced or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, except in limited circumstances unrelated to the leave (such as layoffs).
- (B) 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 their job, the employee shall obtain and present a fitness for duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification shall result in denial of reinstatement.

(10) Military Caregiver Leave and Qualifying Exigency Leave Under FMLA

- (A) Military Caregiver Leave (MCL) and Qualifying Exigency Leave (QEL) expand FMLA rights by providing military families with two additional types of FMLA entitlements. The law contains provisions regarding:
 - 1. Employer coverage
 - 2. Employee eligibility for the law's benefits
 - 3. Entitlement to leave
 - 4. Maintenance of health benefits during leave
 - 5. Job restoration after the leave
 - 6. Notice and certification of the need for FMLA leave
 - 7. Protection for employees who request or take FMLA leave
- (B) The law also requires employers to keep certain records, such as a copy of military orders, copy of a meeting announcement, appointment, or a copy of a bill for service.

(11) Military Caregiver Leave

- (A) Eligible employees are entitled to take up to 26 workweeks of unpaid job-protected leave in a 12-month period to care for a covered service member with a serious illness or injury incurred in the line of active duty. This leave may be taken intermittently or on a reduced schedule basis when medically necessary.
- (B) Employees who are eligible for MCL include the covered service member's:
 - 1. Parent
 - 2. Spouse
 - 3. Child
 - 4. Next of kin in the following priority order:
 - a. Custodial blood relatives
 - b. Siblings
 - c. Grandparents, aunts, uncles, and first cousins
 - d. Family members sharing the same relationship (e.g., siblings) shall all be considered next of kin and each will be entitled to leave for caregiving. However, a husband and wife who are FMLA-eligible and work for the same employer may be limited to a combined total of 26 workweeks of caregiver leave.
 - 5. MCL is not in addition to the 12 workweeks of FMLA leave normally available to eligible employees but is aggregated with all other types of FMLA-qualifying leave during the applicable 12-month period, provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying

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reason during this period. For example, in a single 12-month period, an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of MCL, but could not take 16 weeks of leave to care for a newborn child and 10 weeks of MCL.

6. The 12-month period begins on the day the employee begins MCL and ends 12 months thereafter.
7. Because MCL is available on a per service member per injury basis, an eligible employee may be entitled to take more than one such leave during the course of their employment to care for different service members or for the same service member with a subsequent injury or illness. In such circumstances, MCL is still limited to no more than 26 workweeks during the applicable period.
8. A certification form is required to be completed by either:
 - a. US Department of Defense (DOD) health care provider
 - b. US Department of Veterans Affairs health care provider
 - c. DOD TRICARE network authorized private health care provider
 - d. DOD non-network TRICARE authorized private health care provider

(12) Qualifying Exigency Leave

- (A) The military family leave provisions of the FMLA entitle eligible employees of covered employers to take FMLA leave for any “qualifying exigency” arising from the foreign deployment of the employee’s spouse, son, daughter, or parent with the Armed Forces or to care for a service member with a serious injury or illness if the employee is the service member’s spouse, son, daughter, parent or next of kin.
- (B) QEL may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or called to active duty status. Employees who are family members of a covered military member shall be entitled to take up to 12 workweeks of FMLA leave for “qualifying exigencies” during the 12-month period established by the employer for FMLA leave.
- (C) Covered active duty means:
 1. A member of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
 2. Members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.
 - a. **NOTE:** Deployment to a foreign country includes deployment to international waters.
- (D) This leave may be taken intermittently or on a reduced leave schedule basis and may be counted against the employee’s 12 workweek FMLA entitlement. However, because QEL is an FMLA-qualifying reason for leave, an eligible employee may take all 12 workweeks of their FMLA leave entitlement as QEL, or the employee may take a combination of 12 workweeks of leave for both QEL and leave for a serious health condition.
- (E) If the need for leave is foreseeable, the employee shall provide notice as soon as practicable, regardless of how far in advance the leave is being requested.
- (F) A separate certification form is used in connection with this leave. As part of the certification process, the employee is required to provide copies of their military orders or other military documentation, facts regarding the exigency, dates of active duty service, and approximate date on which the qualifying exigency commenced or will commence.
- (G) QEL is not available to family members of service members who are in the Active Regular Armed Forces. It is available only to family members of service members of the reserve components (Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard Reserve, Air Force Reserve, and Coast Guard Reserve) or retired service members of the Active Regular Armed Forces or Reserves.
- (H) An employee is entitled to use QEL for the following purposes (These are further defined in FMLA regulations.):
 1. Issues arising from short-notice deployment (i.e., deployment on seven or less days of notice).
 2. Military events, official ceremonies, or programs related to active duty or call to activity duty status of a covered service member.
 3. Childcare and school activities
 4. Financial or legal arrangements
 5. Counseling

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6. Rest and recuperation leave during deployment. Eligible employees may take up to 5 days of leave for each instance of rest and recuperation.
7. Post-deployment activities (e.g., arrival ceremonies and reintegration briefings)
8. Additional activities agreed upon by the employer and employee

References

- Code of Federal Regulations, Title 29, Subtitle B, Chapter V, Subchapter C, Part 825, Sections 825.100 – 825.313
- California Code of Regulations, Title 2, Division 3, Part 2.8, Chapter 6, Article 1, Sections 12945.1 and 12945.2
- Health Care Department Operations Manual, Chapter 5, Article 2, Section 5.2.6, Leave of Absence
- Bargaining Unit Memorandum of Understanding, California Department of Human Resources, Benefits Administration Manual – Family and Medical Leave Act of 1993
- State of California, Department of Fair Employment and Housing

Revision History

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