

# SAN LUIS OBISPO COUNTY

## FAMILY CARE AND MEDICAL LEAVE POLICY

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# **SAN LUIS OBISPO COUNTY**

## **FAMILY CARE AND MEDICAL LEAVE POLICY**

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### **I. GENERAL POLICY STATEMENT**

To the extent not already provided for under current leave policies and ordinance, the County of San Luis Obispo (hereinafter “County”) will provide family and medical care leave and pregnancy disability leave for eligible employees as required by state and federal law. The following provisions set forth certain rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), the regulations of the California Family Rights Act (“CFRA”) and Government Code Section 12945, The California Pregnancy Disability Act (PDL). Unless otherwise provided by this policy, “leave” under this policy shall mean leave pursuant to the FMLA, CFRA, and/or PDL. All leaves will run concurrently as permitted by the applicable laws, unless otherwise noted. This policy may be modified at the discretion of the Human Resources Director in order to comply with changes in State or Federal law, or for administrative reasons.

### **II. QUALIFYING REASONS FOR FMLA/CFRA/PDL DESIGNATION**

Leave will be designated as FMLA, CFRA and/or PDL for the following reasons:

- A. The birth of a child or to care for a newborn of an employee;
- B. The placement of a child with an employee in connection with the adoption or foster care of a child;
- C. Leave to care for a qualifying family member with a serious health condition. Qualifying family members include a child, parent, spouse, grandparent, grandchild, sibling, or registered domestic partner);
- D. Leave because of an employee’s own serious health condition (including a workers compensation injury/illness) that makes the employee unable to perform the functions of his/her position;
- E. Leave required as a result of pregnancy disability to the extent that a health care provider determines leave of absence to be necessary (under PDL).

- F. Leave for a “qualifying exigency” related to the covered active duty or call to covered active duty of an employee’s spouse, registered domestic partner, child, or parent in the Armed Forces of the United States ; or
- G. Leave to care for a spouse, registered domestic partner, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces (including a member of the National Guard or Reserves) or a veteran of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty (“Military Caregiver Leave”).

### **III. EMPLOYEES ELIGIBLE FOR LEAVE**

- A. An employee is eligible for FMLA/CFRA leave if the employee:
  - 1. Has been employed for at least 12 months; and
  - 2. Has *worked* 1,250 hours during the 12-month period immediately preceding the commencement of the leave (The hours must be Fair Labor Standards Act “FLSA” working hours).
- B. Women who are disabled due to pregnancy may take Pregnancy Disability Leave regardless of length of service or hours worked per year.
- C. Eligibility for FMLA or CFRA must be confirmed by County Human Resources.

### **IV. AMOUNT OF LEAVE**

For all types of Family Care and Medical Leave, other than Military Caregiver Leave which is addressed below, eligible employees are entitled to up to 12 workweeks of FMLA/CFRA leave during a 12-month period. When FMLA and CFRA leaves may be designated concurrently, the County will do so.

For Military Caregiver Leave, eligible employees are entitled to up to 26 workweeks of leave during a single 12-month period. Where FMLA leave qualifies as both Military Caregiver Leave and care for a covered family member with a serious health condition, the leave will be designated as Military Caregiver Leave first. Military Caregiver Leave, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.

Employees are entitled to up to four (4) months of Pregnancy Disability Leave (PDL) as determined by the employee’s health care provider. PDL runs concurrently with FMLA

leave; however, PDL does not run concurrently with CFRA leave. This means that an employee may be entitled to up to 12 weeks of CFRA leave (e.g. for “baby bonding”) following exhaustion of PDL if the employee is eligible for CFRA leave and has not previously exhausted CFRA leave.

**A. Minimum Duration of Leave**

If leave is requested to care for a qualifying family member with a serious health condition or for the employee’s own serious health condition, there is no minimum amount of leave that must be taken; however, the notice and medical certification provisions of this policy must be complied with.

If leave is requested under CFRA for the birth, adoption or foster care placement of a child (bonding), it must be concluded by the child’s first birthday, or within one year of placement for adoption/foster care. Such leave must be taken in increments of no less than two weeks; however the employee may take shorter leave on two occasions during the year. Additional short duration leaves for the above stated purpose may be granted by approval of the Appointing Authority if in the best interest of the County.

**B. Spouses, Parents and Domestic Partners Employed by the County**

If both spouses, parents or domestic partners of a child are employed by the County, each employee is entitled to 12 workweeks off under CFRA to bond with the child. Both employees must use this leave within 12 months of the birth or placement of the child.

Military Caregiver Leave – The total amount of Military Caregiver Leave to which the spouses or domestic partners employed by the County may be entitled shall be limited to 26 workweeks during a single 12-month period.

These limitations do not apply to any other type of FMLA/CFRA leave.

**C. Intermittent or Reduced Schedule Leave**

Leave may be taken intermittently or in the form of a reduced leave schedule. An employee who takes intermittent or reduced schedule leave must make a reasonable effort to schedule the intermittent leave so as not to unduly disrupt County operations.

An employee requesting intermittent or reduced schedule leave for the employee’s own serious health condition or the serious health condition of a family member may be required to transfer temporarily to an available, alternative position when the alternative position better accommodates recurring periods of leave, the

employees is qualified for the alternative position, and the position has equivalent pay and benefits.

## **V. EMPLOYEE BENEFITS WHILE ON LEAVE**

While on leave pursuant to FMLA/CFRA/PDL, employees will continue to be covered by the County's group health insurance to the same extent that coverage is provided while the employee is on the job. Such coverage shall not be provided beyond 12 weeks in a 12-month period (or 26 weeks for Military Caregiver Leave). However, employees who have elected to receive Cafeteria Cash-Out in lieu of group health insurance will not receive that cash-out while on leave unless they code 20 hours of paid time or coordinating time with State Disability Insurance or Paid Family Leave (see section VI.B.1.) each week. The County will continue to pay the premiums for the County-sponsored vision and dental plans during the employee's leave period.

Non-health benefits such as bilingual pay, uniform allowance, tool allowance, on-call pay, or other task-related benefits may be suspended during FMLA/CFRA/PDL leave at the discretion of the appointing authority.

When allowed by policy and law, employees who have elected certain voluntary, non-health related benefits, may elect to continue to make the appropriate contributions for continued coverage while on leave either by payroll deduction if coding time, or by direct payments submitted to the Auditor's Office. An employee's coverage on a particular plan may be dropped if the employee is more than 30 days late in making a premium payment. The employee will receive a notice at least 15 days before coverage is to cease, advising that he/she will be dropped if the employee's premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occur while the employee is on leave.

Employees are responsible for making their own arrangements with the San Luis Obispo County Pension Trust for the purchase of Pension Trust Service Credit during the time the employee is on any approved leave of absence without pay.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the County shall have the right to recover its share of health plan premiums for the entire leave period unless the employee's failure to return to work is authorized or excused by the County.

## **VI. USE OF PAID ACCRUED LEAVE BALANCES WHILE ON FMLA/CFRA**

### **A. Employee's Right to Use Paid Accrued Leave Balances while on FMLA/CFRA/PDL**

If an employee has any accrued paid leave balances, (sick leave, vacation leave, administrative leave, compensatory time or other paid leave balance), that paid leave may be used up to their regular allocation during FMLA/CFRA/PDL to the extent allowed by policy and ordinance. Even if an employee elects not to use paid leave accruals during otherwise unpaid FMLA/CFRA/PDL, an employee may be required to use paid leave accruals as noted below.

**B. County's Right to Require Use of Paid Leave while on FMLA/CFRA/PDL**

Employees on FMLA/CFRA leave are required to use vacation leave, administrative leave, and/or compensatory time during otherwise unpaid FMLA/CFRA leave.

Employees on FMLA/CFRA leave are required to use accrued sick leave prior to any other accrued leave time. If the employee is taking leave for the employee's own serious health condition.

Employees on PDL are required to use accrued sick leave but are not required to utilize any other paid leaves unless the employee elects to do so.

1. Coordinating Time - An employee who is receiving compensation through State Disability Insurance, Workers Compensation, Paid Family Leave, or other income replacement source must code paid leave balances in an amount such that the total of other compensation and County salary does not exceed the employee's normal salary.
2. Sick Leave - Employees may only code sick leave concurrently while on FMLA/CFRA/PDL if the leave is for the employee's own serious health condition or if the leave is needed to care for a relative of the first degree, registered domestic partner of the employee or child of such domestic partner with a serious health condition. The use of sick leave must be consistent with County Code chapter 2.44.060.
3. Voluntary Time Off - No Voluntary Time Off (VTO) may be granted to any employee in conjunction with FMLA/CFRA/PDL leave.

**C. County's Right to Require an Employee to Exhaust FMLA/CFRA/PDL Leave Concurrently with Other Leaves**

If an employee takes paid time off in the form of sick leave, vacation leave, administrative leave, comp time or other paid time off, and the reason for that leave is for an FMLA/CFRA/PDL qualifying event, the County may designate that leave as running concurrently with the employee's 12-week FMLA/CFRA/PDL entitlement.

## **VII. CERTIFICATION**

When required, upon a qualifying event for FMLA/CFRA/PDL leave the employee must provide written certification supporting the need for leave. The certification form will be provided to the employee.

Recertification, clarification, authentication, and/or additional certifications may be required in accordance with the provisions of state and federal law.

### **A. Time to Provide a Certification**

When an employee's leave is foreseeable and at least 30 days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the County within the timeframe requested by the County (which must allow at least fifteen (15) calendar days after the County's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

### **B. Consequences for Failure to Provide an Adequate or Timely Certification**

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency. If an employee fails to provide a medical certification within the 15 day timeframe the County may take further action including denial of the use of any paid leave.

### **C. Intermittent Leave or Reduced Schedule Leave**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced work schedule for a qualifying event, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced work schedule.

## **VIII. EMPLOYEE NOTICE OF LEAVE**

Although the County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be given orally or in writing. If the County determines that an

employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the County may delay the granting of the leave until it can, in its discretion, adequately cover the duties of the position.

For unforeseeable leave, an employee must provide notice of the need for leave as soon as practicable.

The County shall respond to the leave request within five (5) business days, absent extenuating circumstances. The County shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

## **IX. REINSTATEMENT UPON RETURN FROM LEAVE**

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA/PDL period.

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 his/her job, the employee must obtain and present a certification for return to work from their health care provider stating that the employee is able to return to work with or without restrictions. Failure to provide such certification will result in denial of reinstatement.

For those employees whose leave was NOT due to the employee's own serious health condition, if a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and County, the employee will be reinstated within two business days, where feasible, after the employee notifies the County of his/her readiness to return.

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

## **X. REQUIRED FORMS AND APPROVALS**

Employees must fill out or provide the following forms in connection with leave under this policy:



- A. Required Leave Request Form – Employee must submit a request for leave on a form approved by County Human Resources in order to be eligible for leave. In certain cases, the employee’s department may fill out the request when the employee is unable. This request form is attached to this policy as an exhibit, and is available on the County intranet at <http://myslo.intra/HR/Forms.htm>. **NOTE: EMPLOYEES WILL RECEIVE A COUNTY RESPONSE TO THEIR REQUEST.**
- B. Certification Form – When required, an employee must provide a written Certification Form supporting the need for leave.
- C. Certification for Return-to-Work – If an employee has taken leave for the employee’s own serious health condition, the employee must submit a signed document from their health care provider certifying that the employee is able to return to work with or without restrictions. County HR may require additional return to work certification from the health care provider and will provide necessary forms for that purpose.

## **XI. DEFINITIONS**

For the purposes of this policy only, and consistent with the FMLA and CFRA, the following definitions shall apply:

- A. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. “Single 12-month period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered service-member and ends 12 months after that date.
- C. “Child” includes a biological, adopted, foster or step-child, legal ward, or child for whom the employee stands in loco parentis (in place of a parent).
- D. “Parent” means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis to an employee. This term does not include parents-in-law.
- E. “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
- F. “Grandparent” means a parent of the employee’s parent.
- G. “Grandchild” means a child of the employee’s child.

- H. "Spouse" means a husband or wife as defined or recognized under California State law for purposes of marriage.
- I. "Registered Domestic Partner," as defined by Family Code §§ 297 and 299.2, shall have the same meaning as "Spouse".
- J. "Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:
  - 1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
  - 2. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
    - a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three (3) full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
      - i) Treatment two or more times within 30 days of the first day of incapacity by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity; or
      - ii) Treatment by a health care provider on at least one occasion which must take place within seven (7) days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over-the-counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
    - b) Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave. (Under California law, an employee disabled by pregnancy is entitled to Pregnancy Disability Leave.)

- c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
  - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
  
- d) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
  
- e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral 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 (3) consecutive calendar days in the absence of medical intervention or treatment.

J. "Health Care Provider" means either:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California.
2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition.
3. 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) authorized to practice in California and performing within the scope of their practice as defined under California law.
4. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California law and who are performing within the scope of their practice as defined under California law.

5. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.
  6. Any health care provider for whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- K. "Covered active duty" means: (1) 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, or (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions
- L. "Covered Servicemember" means (1) a current 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 (2) 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 five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- M. "Outpatient Status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- N. "Next of Kin of a Covered Servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- O. "Serious Injury or Illness": (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and

that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

P. "Qualifying Exigency" includes:

1. Short-notice deployment: Leave taken to address issues arising from an impending call or order to active duty seven (7) days or less before the date of deployment.
2. Military events and related activities: Leave taken to attend an official military sponsored ceremony, program or event relating to a servicemember's active duty or call to active duty.
3. Childcare and school activities: Leave taken to provide or arrange for childcare when a servicemember's active duty or call to active duty requires a change in existing childcare arrangements.
4. Financial and legal arrangements: Leave taken to make to update financial or legal arrangements to address a servicemember's absence while on active duty.
5. Family counseling: Leave taken to attend counseling where the employee, the servicemember, or the servicemember's child needs counseling because of the active duty or call to active duty.
6. Rest and recuperation: Up to 5 days of leave taken to spend time with a servicemember who is on short-term leave from active duty for rest and recuperation.
7. Post-deployment activities: Leave taken to attend arrival ceremonies, reintegration briefings and events, and any other official military sponsored ceremony or program for a period of ninety (90) days after the termination of the servicemember's active duty status, and to address issues that arise from death while on active duty, such as meeting and recovering the body and making funeral arrangements.

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