



STANISLAUS COUNTY PERSONNEL MANUAL FAMILY MEDICAL LEAVE OF ABSENCE (FMLA)

Reviewed / Revised 12/18

POLICY

Stanislaus County complies fully with all Federal and State leave laws. The following is a brief recap of the Family and Medical Leave Act (Federal) and the California Family Rights Act (State) and how these laws interact with each other and with County policies.

All employees of Stanislaus County, including personal service contractors (except elected officials and other key employees), are covered by this policy.

1. Eligibility for Leave

An employee is eligible for leave under this policy if the employee: (1) has been employed by the County for at least 12 months or 52 weeks (need not be continuous); and (2) has worked at least 1,250 hours during the 12-month period immediately preceding commencement of the leave.

An employee who fraudulently obtains or uses FMLA/CFRA leave is not protected by FMLA/CFRA job restoration or maintenance of health benefits provisions.

2. Reasons for Leave

The Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) allow an eligible employee to take a job-protected leave of absence for the following qualifying reasons:

- A. Birth of an employee's child to care for the newborn and to bond with the child (to be taken within one (1) year of the birth).
- B. Placement of a child with the employee for adoption or foster care. Leave must be completed within one year of placement.
- C. To care for an eligible family member (minor child, spouse, registered domestic partner (CFRA), parent, and in limited instances adult children (who are incapable of self-care) who have a "serious health condition."
- D. Employee's own "serious health condition" that makes the employee unable to perform the essential functions of his or her job.
- E. Qualifying Exigency related to the spouse, child, or parent of an employee who is a US military member on active duty or has been notified of an impending call or order to active duty related to an overseas deployment (FMLA).

- F. Military Caregiver Leave to care for an employee’s child, parent, spouse or “next of kin” who is a member of the Armed Forces (including a member of the National Guard or Reserves) or a veteran of the Armed Forces who is undergoing medical treatment related to injury or illness sustained while on active duty, recuperating, receiving therapy, is in outpatient status through the Armed Forces, or is otherwise on the military’s Temporary Disability Retired List for a serious injury or illness (FMLA).

3. Duration of Leave

For all types of FMLA/CFRA leave, other than Military Caregiver Leave that is addressed below, eligible employees are entitled to up to 12 weeks of FMLA/CFRA leave during any 12-month period defined as a rolling year.

When combined with other FMLA-qualifying leave, Military Caregiver Leave allows an eligible employee up to 26 weeks of leave during a single 12-month period to care for a seriously injured or ill service member or veteran. The single 12-month period begins on the first day the employee takes Military Caregiver Leave and ends 12 months after that date and may not exceed 26 weeks in a single 12-month period.

Except as noted below, when leave is taken for a reason that qualifies as both FMLA and CFRA leave, the leaves will run concurrently.

FMLA and CFRA leave will not run concurrently under the following circumstances: (1) Care of a registered domestic partner (CFRA); (2) when an employee takes Pregnancy Disability Leave (see Pregnancy Disability Leave policy below for further information), and (3) when an employee takes Qualifying Exigency or Military Caregiver leave (FMLA).

4. Intermittent or Reduced Schedule Leave

Leave may be taken intermittently or on a reduced leave schedule when necessary. Employees who take leave on an intermittent or reduced schedule must make a reasonable effort to schedule the intermittent leave so as not to unduly disrupt the County’s operations.

An employee requesting intermittent or reduced schedule leave for the employee’s or eligible family member’s “serious health condition” may be required to transfer temporarily to an available, alternative position when (1) the leave is due to planned medical treatment or the employee agrees, and (2) alternative position better accommodates recurring periods of leave, and (3) the employee is qualified for the alternative position, and (4) the alternative position has equivalent pay and benefits (equivalent duties are not required).

5. Employee Obligations

- A. Provide 30-day advanced notice of the need for leave unless the need for leave is unforeseeable.

- B. Cooperate in scheduling of planned medical treatment so as not to unduly disrupt the County's operations. For reasons unrelated to medical treatment, the employee shall attempt to work out a leave schedule that meets the employee's needs without unduly disrupting the County's operation.
- C. Pay the employee's share of Health Insurance premiums should the leave be on an unpaid basis. If the employee is on paid leave, the County will continue to deduct health premiums from the employee's paycheck in the same manner as if the employee was actively working.
- D. Provide the County with appropriate certification to support leave.
- E. Submit to a second medical opinion at the County's expense should the County have a good faith, objective reason to doubt the validity of the first opinion. If the second opinion is different than the employee's physician, the employee may request a third medical opinion at the County's expense. The third opinion shall be binding.

6. Pay and Benefits

FMLA/CFRA leave is an unpaid protected leave. The County requires employees to use available sick leave accruals for the employee's illness or vacation for other reasons in accordance with County policies except in the following instances: (1) an employee is receiving disability benefits from any source, or (2) an employee is on *leave restrictions* prior to the approval of FMLA/CFRA leave. Employees may request to use sick leave for care of an eligible family member. If an employee fails to comply with County policies that govern the use of paid leave accruals the use of paid leave accruals may be denied or delayed until the employee fully complies with County policy.

Applicable leave accruals may include sick leave for a medically related absence for the employee's own "serious health condition" or if the employee is needed to provide care for an eligible family member. Vacation accruals may be used for the purposes of bonding with the employee's newborn child or a child placed with the employee for adoption or foster care. With Department Head or designee approval, vacation may also be used in lieu of sick benefits if the employee has exhausted sick leave accruals. Compensatory time benefits may also be used at the employee's request.

California's Paid Family Leave provides for payments from the State Disability Fund to cover part of the wage loss suffered by employees who take time off work to care for a seriously ill child, spouse, domestic partner or parent or to bond with a newborn child. Employees should contact the State Employment Development Department for more information; the County does not determine eligibility of SDI or PFL. (http://www.edd.ca.gov/Disability/More_PFL_information.htm)

While on FMLA/CFRA leave, an employee will continue to be covered by the County's group health insurance to the same extent that coverage is provided while the employee is working, which includes any applicable payroll deductions. If the employee is on an unpaid

leave the employee will be responsible for remitting their share of cost of benefits while on FMLA/CFRA leave.

7. Certification

All leave requests must be submitted to the employee's Human Resources personnel. Employees must follow individual department policies and procedures related to leave requests, call-in procedures, and use of accruals.

A. Initial Certification

Employees who request FMLA/CFRA leave under this policy must provide written certification supporting the need for leave. Applicable certification forms are available on line on the Risk Management page or from Department Human Resource personnel. Employees may submit alternate certification forms as long as the required information is provided. <http://www.stancounty.com/riskmgmt/risk-medical-leaves-sub-main.shtm>

The employee must provide the required certification within 15 days of being notified absent extenuating circumstances. Failure of an employee to provide adequate and timely certification in support of the leave request may result in delay or denial of the request. If additional time is needed to comply the employee should contact Risk Management to request an extension and explain why the additional time is needed.

The County may not contact the health care provider for any reason other than to authenticate a medical certification.

B. Recertification

With the exceptions noted below, the County has the right to request an employee who is taking leave for the employee's own "serious health condition" or due to the "serious health condition" of a family member to provide a recertification of the need for leave every 30 days.

1. The County may not request a new certification for the purpose of FMLA/CFRA protected leave before the initial certification expires even if the initial certification included a "lifetime" condition.
2. The County may request recertification more frequently than once every 30 days if:
 - a. the employee requests a leave extension,
 - b. circumstances from the previous certification significantly change (e.g., a change in the duration of the leave or frequency of intermittent absences, a change in the nature or severity of the condition, or complications),

- c. the County receives information casting doubt on the validity of the certification or reason for leave (e.g., Monday/Friday absence pattern.) If the minimum duration of incapacity specified in the initial medical certification is more than 30 days, no recertification may be requested until that time has passed, unless one of the above-listed exceptions applies.

In all circumstances, the County may request recertification of a medical condition that extends beyond a FMLA/CFRA or PDL approved designated leave of absence.

8. Reinstatement Rights

Upon expiration of FMLA/CFRA 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. However, employees have no greater right to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the period of leave.

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

9. FMLA Definitions

- A. **“Eligible Employee”** has worked for the County for 12 months (need not be continuous) and has worked 1250 hours in the 12 months preceding the leave date.
- B. **“Leave Year”** is the 12-month period measured forward from the date any employee’s first FLMA leave begins. For example, the employee begins leave on February 1st, the employee is eligible for 12 weeks of leave during the year and is eligible for a new FMLA/CFRA leave the following February 1st, etc.
- C. **“Child”** For purposes of FMLA/CFRA leave other than Qualifying Exigency and Military Caregiver Leave, “child” means a biological, adopted, foster child, stepchild, 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 due to a mental or physical disability. A child is **“incapable** of self-care if he or she requires **active** assistance or supervision to provide daily self-care in three or more of the activities of daily living such as, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone, etc.

For purposes of Qualifying Exigency and Military Caregiver Leave, “child” means the employee’s biological, adopted, foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis who is of any age.

- D. **“Loco Parentis”** means in the place of a parent.

- E. **“Next of Kin,”** for purposes of Military Caregiver Leave, means the nearest blood relative, other than the service member’s spouse, parent, or child in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, siblings, grandparents, aunts, uncles, and first cousins, unless the service member has specifically designated in writing another blood relative as his nearest relative.
- F. **“Parent”** means a biological, adoptive, step or foster parent, or any other person who stood in loco parentis to the employee when the employee was a child.
- G. **“Qualifying Exigency Leave”** includes:
1. Short-notice deployment – Leave may be taken to address issues arising from an impending call or order to active duty 7 days or less before the date of deployment.
 2. Military events and related activities – Leave may be taken to attend an official military sponsored ceremony, program, or event relating to a service member’s active duty or call to active duty.
 3. Childcare and school activities – Leave may be taken to provide or arrange for childcare when a service member’s active duty or call to active duty requires a change in existing childcare arrangements.
 4. Financial and legal arrangements – Leave may be taken to make or update financial or legal arrangements to address a service member’s absence while on active duty.
 5. Family counseling – Leave may be taken to attend counseling where the employee, the service member, or the service member’s child needs counseling because of the active duty or call to active duty.
 6. Rest and recuperation – Up to 5 days may be taken to spend time with a service member who is on short-term leave from active duty for rest and recuperation.
 7. Post-deployment activities – Leave may be taken to attend arrival ceremonies, reintegration briefings and events, and any other official military sponsored ceremony or program for a period of 90 days after the termination of the service member’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.
- H. **“Registered Domestic Partner”** means two adults who have chosen to share one another’s lives in an intimate and committed relationship and have filed a Declaration of Domestic Partnership with the California Secretary of State pursuant to Family Code §297 et seq.
- I. **“Serious health condition”** means an illness, injury, impairment, physical, or mental condition that involves:

1. Inpatient Care (i.e., an overnight stay or expectation of an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. Continuing treatment by a health care provider. Including 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 a serious health condition of more than 3 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 by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider, where two of the physician's visits occur within 30 days beginning from the initial date of incapacity and the first physician visit occurs within the first 7 days of incapacity; or
 - ii. Treatment by a health care provider on at least one occasion, the first of which must occur within 7 days of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.
 - b) Any period of incapacity due to pregnancy or for prenatal care. (FMLA and Pregnancy Disability Leave (PDL)).
 - 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 the employee to make at least two visits per year to a health care provider, a nurse, or physician's assistant under direct supervision of a health care provider for treatment;
 - 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.).
 - 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 a health care provider, but need not be receiving active treatment.
 - 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: (1) restorative surgery after an accident or other injury, or (2) for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.

J. **“Health Care Provider”** means:

1. Individuals duly licensed as a physician, surgeon, osteopathic physician in the State or jurisdiction in which they practice, including another country, which directly treats or supervises treatment of a serious health condition;
2. 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) performing within the scope of their respective practice as defined law of the state or country in which they practice;
3. Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice and who are performing within the scope of their practice as defined under the law of the state or country in which they practice;
4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
5. Any health care provider from whom the County 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. **“Serious injury or illness,”** for purposes of Military Caregiver Leave, means an injury or illness incurred in the line of duty while the individual is on active duty in the Armed Forces, that renders the individual unfit to perform the duties of his/her office, grade, rank, or rating.

L. **“Servicemember”** means a member of the Armed Forces, including a member of the National Guard or Reserves.

M. **“Spouse”** means an adult couple of the same or opposite sex recognized under state or federal law for purposes of marriage.



**STANISLAUS COUNTY PERSONNEL MANUAL
PREGNANCY DISABILITY LEAVE
AND PREGNANCY ACCOMMODATION POLICY**

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POLICY STATEMENT

The County provides Pregnancy Disability Leave as required by the California Pregnancy Disability Leave Law (PDL) and provides reasonable accommodation to employees disabled by pregnancy pursuant to state and federal law.

1. Duration of Leave

An employee who is disabled due to pregnancy, childbirth, or related medical conditions (including doctor-ordered bed rest, severe morning sickness, prenatal or postnatal care, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, lactation-related medical conditions, or recovery from loss or end of pregnancy) is entitled to up to 4 months (17.3 weeks) of PDL. An employee need not have been employed by the County for a certain period of time to be eligible for PDL. The leave may be taken intermittently, or on a reduced work schedule, when medically necessary.

2. Pay and Benefits

PDL is unpaid. However the County requires the use of available sick leave accruals unless the leave runs concurrently with FMLA and the employee is receiving disability payments from any source. Employees may elect to use accrued sick leave, may request the use of vacation leave, or other accrued time off during the otherwise unpaid PDL.

Employees may be eligible to receive State Disability Insurance during PDL and should contact the California Employment Development Department to determine eligibility (<http://www.edd.ca.gov/Disability/>).

While on FMLA/CFRA leave, an employee will continue to be covered by the County's group health insurance to the same extent that coverage is provided while the employee is working, which includes any applicable payroll deductions. If the employee is on an unpaid leave, the employee will be responsible for remitting their share of cost of disability benefits while on FMLA/CFRA leave. If the employee fails to return from FMLA/CFRA leave the County may, under certain circumstances, recover the premiums paid.

The County will maintain and pay for the employee's health care coverage during PDL. However, if the employee fails to return from PDL leave the County may, under certain circumstances, recover the premiums paid.

Seniority and other benefits continue to accrue on the same basis as during other leaves. PDL does not constitute a break in service for seniority purposes.

3. Transfer

An employee disabled by pregnancy or a related medical condition may request a temporary transfer to less strenuous or hazardous positions or duties for the duration of the disability provided that: (1) the employee's request is based on the advice of her health care provider that a transfer is medically advisable, and (2) such transfer can be reasonably accommodated by the County. To provide a transfer, the County is not obligated to create additional employment that the County would not otherwise have created, to discharge another employee, violate the terms of a collective bargaining agreement, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job. An employee requesting a transfer will be required to provide a medical certification supporting the employee's need for transfer.

If the employee's health care provider certifies that an employee has a medical need to take intermittent leave or leave on a reduced work schedule because of pregnancy, the County may require the employee to transfer temporarily to an available alternative position that meets the medical needs of the employee and better accommodates the employee's leave requirements than her regular job. The alternative position will have the equivalent rate of pay and benefits but may not necessarily equivalent duties.

When the employee's health care provider certifies that there is no further medical need for the transfer, intermittent leave, or leave on a reduced work schedule, the employee will be reinstated to the same or comparable position held prior to the transfer.

4. Interaction of PDL and Reasonable Accommodation Leave

If at the end of PDL an employee remains disabled from working, the County will engage in an Interactive Process with the employee to determine whether any additional leave of absence may be provided as a reasonable accommodation to the employee pursuant to the terms and conditions of state and federal disability accommodation laws.

5. Interaction of PDL and CFRA Leave

PDL does not run concurrently with leave taken under the California Family Rights Act (CFRA). This means that an employee may be entitled to take up to four (4) months (17.3 weeks) of PDL and an additional twelve (12) weeks of CFRA leave so long as the employee is eligible for CFRA leave. If after the expiration of PDL an employee takes CFRA leave, the employee's right to reinstatement is governed by the terms of CFRA.

6. Accommodation of Pregnancy Disability

An employee who is disabled by a pregnancy related medical condition may request an accommodation if the request is based on the advice of the employee's health care provider that accommodation is medically advisable and the requested accommodation is reasonable. Whether an accommodation is reasonable is a factual determination to be made on a case-by-case basis, taking into consideration such factors as: (1) the employee's medical needs, (2)

the duration of the needed accommodation, (3) the employer's past and current practices, and (4) other such factors, under the totality of the circumstances.

7. Notice of Need for Leave, Transfer or Accommodation

An employee shall provide at least 30 days advance notice of the need for PDL, transfer or other reasonable accommodation due to a pregnancy related disability. If such notice is not feasible, notice shall be given as soon as possible.

8. Medical Certification

An employee will be required to submit a medical certification from her health care provider to support any request for PDL, transfer or reasonable accommodation. An employee shall have 15 calendar days from receipt of the certification form to return the completed form to the Human Resources Department. If the employee fails to return the certification in a timely manner, the County may delay granting the request for PDL, transfer or accommodation so long as doing so would not endanger the employee's health or her pregnancy.

9. Right to Reinstatement

Generally, an employee has the right to be reinstated to the same position she held prior to taking PDL or being temporarily transferred to an alternate position due to pregnancy disability. However, an employee has no greater rights than she would have had if continuously employed during the PDL or transfer period. This means that there is no right to reinstatement to the same position if an employee would not otherwise have been employed in her same position at the time reinstatement is requested for legitimate business reasons unrelated to the PDL or transfer (e.g., layoff.)

If for the reason described above an employee returning from PDL cannot be reinstated to the same position, an employee generally has the right to be reinstated to an available comparable position (i.e., a position that is virtually identical to the employee's prior position in terms of pay, benefits, working conditions, and with substantially similar duties, in the same or geographically proximate worksite, and with the same or equivalent work schedule.) An exception to this general right exists if either of the following exist: (1) the County would not have offered a comparable position to the employee if she had been continuously at work during the PDL or transfer period, or (2) there is no comparable position available.

10. Lactation Policy

An employee shall be entitled to a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private.