



County of Santa Clara

Policy Name: Family and Medical Leave Policy

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Policy Type: Administrative

Category: Personnel

Policy Name: Family and Medical Leave Policy

Policy Owner: Employee Services Agency

Family and Medical Leave Policy

[Family Medical Leave Act \(FMLA\)](#), [California Family Rights Act \(CFRA\)](#), [Fair Employment and Housing Act \(FEHA\)](#), [Paid Family Leave Act \(Temporary Family Disability Insurance\)](#), California Labor Code Section 233 – Sick Leave to Attend Family (Kin Care), and California Labor Code Sections 230 and 230.1 (Domestic Violence Leave)

Effective: August 15, 2013

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I. Policy Statement

The County of Santa Clara's policy is to comply with the federal [Family and Medical Leave Act \(FMLA\)](#), the [California Family Rights Act \(CFRA\)](#), the [Fair Employment and Housing Act \(FEHA\)](#), the [Paid Family Leave Act](#) (California Unemployment Insurance Code Section 3300, et seq.), California Labor Code Section 233 – Sick Leave to Attend Family (Kin Care), and California Labor Code Sections 230 and 230.1 (Victims of Domestic Violence), and other applicable employee-leave laws. These Acts require the County to grant leave from work to employees who meet certain eligibility requirements. In addition, federal and state law prohibits discrimination,



harassment and retaliation against employees for taking legally-protected leaves from work.

- A. To receive consideration and benefits under this policy, employees should request and obtain approval for leave under this policy. The County will notify employees regarding their rights and benefits under this policy by distributing this policy to employees when hired and by posting it on the County website.
- B. Whether or not an employee makes a request, the County will designate all known qualifying periods of leave as the employee's family medical leave.
- C. An employee must provide the County with information regarding the purpose of each leave. Upon review of this information, the County will confirm whether or not the leave qualifies under this policy and notify the employee regarding his or her rights and benefits within five (5) business days absent extenuating circumstances. If the leave is denied the notice will include the reason for the denial.
- D. Depending on the circumstances, this designation may be made after the leave has begun, but with notice to the employee; the leave may be designated as family medical leave retroactive to the start of the leave if appropriate.
- E. This policy does not supersede any labor agreements or county ordinance code sections that provide more favorable family medical leave rights.

II. Employee Eligibility for FMLA/CFRA Leave

- A. Employees are eligible to take FMLA/CFRA leave under the following conditions:



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1. The employee has been employed with the County for any period(s) (including extra help, intermittent and dependent contractor work) totaling at least twelve months within the last seven years; and
2. The employee has at least 1,250 paid hours during the previous twelve-month period.

If an employee reaches eligibility during a paid leave period that was not FMLA/CFRA qualifying, the leave may become eligible since paid-leave time counts toward length of service.

- B. Independent contractors do not qualify for any leaves or benefits under this policy.

III. Duration of FMLA/CFRA Leave

- A. For all types of FMLA/CFRA leave except Military Caregiver leave, eligible employees may take a maximum of twelve workweeks of FMLA/CFRA leave during any twelve-month period. The twelve-month period is measured backwards from the first day leave is actually used. Twelve workweeks means the equivalent of twelve normally scheduled workweeks. For most full-time employees who have worked eight hours per day and five days per week, the twelve workweeks of leave means sixty working days or 480 hours.

For eligible employees working more or less than five days a week or working alternative work schedules, the number of working days constituting twelve workweeks is calculated on a pro rata or proportional basis. For eligible part-time employees who work a schedule that varies from week to week, the County will use the twelve-month average of hours worked before the commencement of the employee's FMLA/CFRA leave to determine the hours of leave the employee is eligible to take. For example,



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for most half-time employees, twelve workweeks means thirty full workdays or sixty half workdays.

- B. For Military Caregiver Leave (see [Section XV](#)), eligible employees may take a maximum of twenty-six workweeks of FMLA/CFRA leave during any twelve-month period.
- C. When the FMLA/CFRA leave is a full week or more, holidays count against the FMLA/CFRA leave entitlement.
- D. Intermittent Leave
 - 1. If medically required, employees may take leave in blocks of time, or by reducing their normal weekly or daily work schedule.
 - 2. For bonding leave with newborns, leave must be completed within the first twelve months of birth or adoption. This bonding leave must be for a minimum of two weeks at a time except that on two occasions an employee may take a leave of at least one day but less than two weeks.
 - 3. Where qualifying FMLA/CFRA leave is taken for the birth or placement of a child for adoption or foster care within the first twelve months, intermittent leave may be taken only if the employer agrees.
 - 4. Employees needing intermittent leave must schedule their leave as much as possible at a time not to disrupt the department's business operation. Employees must make a reasonable effort to schedule appointments during lunch or before or after work so as not to unduly disrupt County operations.
 - 5. Employees must follow call-in procedures for intermittent leave.



- E. Spouses or Registered Domestic Partners who are both employed by the County are entitled to a combined total of twelve paid and/or unpaid workweeks of leave for the birth or placement for adoption or foster care of the employees' child.

IV. Reasons for Which FMLA/CFRA Leave May be Taken

Eligible employees may take FMLA/CFRA leave for one or more of the following reasons:

1. The birth of a child of an employee, and to care for a newborn child subject to the provisions of [Section III](#) above (expires within twelve months of the birth);
2. The placement of a child with an employee for adoption or foster care subject to the provisions of [Section III](#) above (expires within twelve months of placement);
3. Care for the employee's child, a child for which the employee stands in loco parentis, spouse, registered domestic partner, parent, or person who stood in loco parentis for the employee, when that person has a serious health condition. "In loco parentis" means providing day-to-day care or financial support for the child, and intending to assume the responsibilities of a parent regarding the child. Parents-in-law and grandparents are specifically excluded from the definition of parent, although FMLA/CFRA leave eligibility may be available to those individuals if they stood in loco parentis to the employee; or
4. The employee's own serious health condition that makes the employee unable to perform the functions of the employee's position.
5. Military Exigency Leave (see [Section XIV](#) of this policy for specifics).



6. Military Caregiver Leave (see [Section XV](#) of this policy for specifics).

V. Coordination of FMLA, CFRA, and FEHA Pregnancy Disability Leave

An employee is entitled to take up to four months of pregnancy disability leave under FEHA. An employee who is physically and mentally capable of returning to work before the expiration of the four months of pregnancy disability leave is not entitled to a full four-month leave of absence for pregnancy disability. There are no minimum employment qualifications for an employee to use FEHA pregnancy disability leave but certification from a physician is required.

- A. Pregnancy disability leave will be designated as FMLA leave in accordance with Sections [II](#), [III](#), and [IV](#) of this Policy.
- B. Pregnancy disability leave reduces the employee's FMLA leave entitlement but does not reduce the employee's CFRA leave entitlement. An employee is also entitled to up to twelve weeks of CFRA leave to care for a newborn child once the pregnancy disability leave ends. The length of available CFRA leave depends on the amount of CFRA leave the employee has used within the twelve months preceding the leave to care for a newborn child. If FMLA leave is not exhausted, then it will run concurrently with CFRA leave until FMLA leave is exhausted.
- C. CFRA leave cannot begin until pregnancy disability leave ends. FMLA leave, however, runs concurrently with pregnancy disability leave.
- D. An employee who takes pregnancy disability leave that is also FMLA leave does not need to re-qualify when taking CFRA leave for the birth of the child.



VI. Request and Advance Notice Requirements

An employee must provide at least thirty (30) calendar days' advance notice if the need for FMLA/CFRA leave is foreseeable. When thirty (30) days' notice is not possible, the employee must provide the requested certification to the County as soon as practicable and no later than fifteen (15) calendar days after the qualifying event. The employee must make a reasonable effort to schedule the leave to avoid disruption to the County's business operations.

VII. Health Care Provider Certification

- A. For FMLA/CFRA leave due to serious health conditions, the County requires that an employee provide certification from a health care provider. That certification should not include a diagnosis or description of the medical condition, but it must include:
1. The employee or qualifying family member has a serious medical condition that prevents the employee from working.
 2. The date on which the serious health condition of the employee or family member started;
 3. The probable duration of the condition;
 4. The estimated time for care for the family member (if applicable); and
 5. A statement that the serious health condition warrants the participation of the employee to provide family care if applicable.
- B. Requests for additional time beyond that originally estimated must be supported by a new certification from a health care provider.



- C. If the County requires a second or third opinion, then the County will pay the costs of the second or third opinion.
- D. For intermittent leaves, new certification may be required every thirty calendar days unless the medical provider note gives a longer duration of treatment. If the duration is longer than six months, or "lifetime," a new medical provider note may be required every six months.
- E. The County may contact the employee's medical provider to authenticate or seek clarification regarding the medical provider note. A manager or a Human Resources representative may contact an employee's medical provider, but in no circumstances will the employee's immediate supervisor contact the medical provider. The employee shall be notified of such contact.

VIII. Leave Usage

- A. Other than for pregnancy disability and Labor Code Section 4850 leave, FMLA and CFRA leave will run concurrently with all other qualifying leaves.
- B. For the employee's own medical leave other than pregnancy leave, the employee must exhaust all paid leave (e.g. sick leave, compensatory time, personal leave, vacation, Scheduled Time Off (STO) and/or Personal Time Off (PTO), before using leave-without-pay unless a labor agreement, statute or County ordinance provides otherwise. For the employees' own pregnancy leave, the employee must exhaust all sick leave before using leave-without-pay unless a labor agreement, statute or County ordinance provides otherwise; but the employee may choose to use accrued compensatory time, personal leave, vacation, STO and/or PTO to be paid during the pregnancy leave. An employee with STO or PTO will charge the



first day of any sick leave to STO or PTO in accordance with the applicable labor agreement.

- C. For all other family medical leaves (i.e., not the employee's own medical/pregnancy leave), employees must exhaust all paid leave (e.g., sick leave available for kin care, compensatory time, personal leave, vacation, STO, or PTO) before using leave-without-pay unless a labor agreement, statute or County ordinance provides otherwise. Employees with STO or PTO will charge the first day of such sick leave to STO or PTO in accordance with the applicable labor agreement.

IX. Benefits (Medical, Dental, Vision Care, Basic Life Insurance) Under FMLA/CFRA Leave

- A. An employee on leave without pay status during FMLA/CFRA leave will be provided benefits at the same level as if the employee were continuously at work during the entire leave period, to a maximum of twelve workweeks.
- B. The total entitlement for benefits under FMLA/CFRA leave, whether paid or unpaid, will not exceed twelve workweeks, subject to the provisions of appropriate labor agreements and except in case of pregnancy disability.
- C. In the case of pregnancy disability employees may be entitled to additional benefits coverage.
- D. Employees responsible for the payment of premiums will be required to continue such payment while on leave.
- E. Employees who resign, retire or are terminated without returning FMLA/CFRA leave may be required to reimburse the County any premiums the County paid on their behalf while they were on unpaid status.



X. Job Restoration

- A. Upon return from FMLA/CFRA leave an employee shall be restored to the positions/he held when the FMLA/CFRA leave began, or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
- B. In addition, an employee's use of FMLA/CFRA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using the leave, or be the basis for discipline of the employee.

XI. Paid Family Leave AKA Temporary Family Disability Insurance (Partial Wage Replacement)

- A. An employee may be eligible for a partial wage replacement benefit for his/her unpaid FMLA/CFRA leave. (See California Unemployment Insurance Code sections 3300, et seq., which is California's [Paid Family Leave](#) statute).
- B. The County will provide information regarding rights and benefits under Unemployment Insurance Code Sections 3300, et seq., to each employee taking FMLA/CFRA leave under this policy.
- C. To obtain benefits under the Paid Family Leave program, the employee must submit claims for benefits directly to the California Employment Development Department (EDD). The EDD administers the Paid Family Leave program and is responsible for determining whether the employee has provided the required documentation for the claim.

XII. Labor Code Section 233 – Sick Leave to Attend Family (Kin Care)

- A. In each calendar year, for kin-care an employee is entitled to use half the annual accrual of paid leave that the employee may use for personal illness.



"Kin-care" is time off for the illness of the employee's child, parent, spouse, or registered domestic partner. "Child" includes a biological, foster, or adopted child, a stepchild, a legal ward, a child of a registered domestic partner, or a child of a person standing in loco parentis. "Parent" includes a biological, foster, or adoptive parent, a stepparent, or a legal guardian. There are no minimum employment qualifications for an employee to use this leave benefit.

- B. This leave runs concurrently with FMLA/CFRA leave and other leaves guaranteed under labor agreements.
- C. An employee must provide the name and relationship of the person for whom the leave is requested.
- D. An employee may not be disciplined for using such kin care leave under Labor Code Section 233.

XIII. Labor Code 230 and 230.1 – Time off for Victims of Domestic Violence

- A. Under Labor Code sections 230 and 230.1, an employee who is a victim of domestic violence or sexual assault may take time off from work:
 - a. to obtain, or attempt to obtain a temporary restraining order, restraining order or other injunctive relief to help ensure the safety, health or welfare of the employee or his/her child; or
 - b. to seek medical attention for injuries caused by domestic violence or sexual assault; or
 - c. to obtain services from a domestic violence shelter, program, or rape crisis center; or



- d. to obtain psychological counseling related to an experience of domestic violence or sexual assault; or
 - e. to participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault.
- B. Before the time off from work, or within a reasonable time following it, the employee shall provide certification of the need for the absence, as provided in Labor Code sections 230 and 230.1.

XIV. Military Exigency Leave Under the FMLA

- A. FMLA eligibility requirements apply to Military Exigency Leave. (See [Section II](#) of this Policy).
- B. An employee may take up to 12 workweeks of leave for a qualifying exigency arising out of the fact that the employee's spouse, registered domestic partner, child, 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. The phrase "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; and
 - 2. 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 an applicable provision of law.
- C. The County may require the employee to provide a copy of the family member's active duty orders or other reasonable documentation, including



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a copy of the servicemember's rest-and-recuperation-leave order or other documentation issued by the military setting forth the dates of the leave. This information may only be required once per family member.

- D. A Military Exigency Leave is not a 12-workweek entitlement in addition to the standard 12 workweek FMLA Leave entitlement.
- E. A Military Exigency Leave may be taken on an intermittent basis.
- F. The following circumstances qualify for Military Exigency Leave:
 - 1. Short-notice deployment (seven or less calendar days before the date of deployment);
 - 2. Military events and related activities (in advance of and during deployment, including family support or assistance programs and informational briefings);
 - 3. Childcare and school activities (e.g., to arrange for alternative childcare or to attend meetings at a school or daycare facility);
 - 4. Financial and legal arrangements (e.g., to prepare and execute powers of attorney, enroll for military health care or to prepare a will or living trust);
 - 5. Counseling, (non-medical) for oneself, the service member or a child;
 - 6. Rest and recuperation (up to fifteen days for each occurrence);
 - 7. Post-deployment activities (to attend ceremonies and briefings for a period of 90 days or to address issues arising from the service member's death);
 - 8. Additional activities agreed to by the employer and employee; and



9. Parental care to (a) arrange for alternative care for the service member's parent when that parent is incapable of self-care and the service member's covered active duty or call to covered active duty status necessitates a change in existing care arrangements; (b) provide care for a service member's parent on an urgent, immediate-need basis (but not on a routine, regular or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the service member's covered active duty or call to covered active duty status; (c) admit or transfer a service member's parent to a care facility when the admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and/or (d) attend meetings with staff at a care facility for a service member's parent (e.g., meetings with hospice or social service providers) when such meetings are necessitated by the covered active duty or call to covered active duty status of the servicemember.

For purposes of subsections (a) – (d), "incapable of self-care" means the parent requires active assistance or supervision to provide daily self-care in three or more activities of daily living (such as grooming, dressing and eating) or instrumental activities of daily living (such as cooking, cleaning and paying bills).

XV. Military Caregiver Leave Under the FMLA

- A. FMLA eligibility requirements apply to Military Caregiver Leave (See [Section II](#) of this Policy).
- B. An employee may take a maximum of 26 workweeks of military caregiver leave during any 12-month period, measured forward from the first time the employee takes FMLA leave for this purpose to care for the employee's children, spouse, registered domestic partner, parents, and next of kin who



are covered service members. The phrase "covered service members" means:

1. 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
2. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who separated from membership in the Armed Forces (including membership in the National Guard or Reserves) during the five-year period before the first date the eligible employee takes leave to care for that person. The term "veteran" means a person who served in the active military, Naval or Air Service, and who was not dishonorably discharged or dishonorably released from that service.

C. A "serious injury or illness" is defined as:

1. In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), 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 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; and
2. In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces)



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and that manifested itself before or after the member became a veteran, and is:

3.
 - (a) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating;
 - (b) a physical or mental condition for which the covered veteran has received a Veterans Affairs Service Related Disability Rating of 50 percent or greater and such rating is based, in whole or in part, on the condition precipitating the need for caregiver leave;
 - (c) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities relating to military service or would do so absent treatment; or
 - (d) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- D. "Next of kin" is defined as nearest blood relative, other than the covered service member's spouse, registered domestic partner, 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
 - Brothers and sisters



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- Grandparents
 - Aunts and uncles
 - First cousins
 - Other blood relative by the covered service member as specifically designated in writing
 - When a covered service member does not make such designation, and there are multiple family members with the same level or relationship, all such family members shall be considered the covered service member's next of kin.
- E. The County may require an employee to provide reasonable documentation of the family relationship.
- F. International travel orders (ITO) and International Travel Authorizations (ITA) suffice as certification equal to medical certification of a service member's serious injury or illness.
- G. Employees may take this leave on an intermittent basis.
- H. This 26-workweek entitlement has its own rolling 12-month period as distinct from the 12 workweek FMLA entitlement with its own rolling 12-month period addressed in Section III above. But an employee is not entitled to 26 workweeks of leave to care for family members under the Military Caregiver Leave provision, and thereafter an additional 12 workweeks of leave in the same 12-month period for other FMLA-qualifying reasons.



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For additional details, please refer to the federal [Family and Medical Leave Act \(FMLA\)](#), the [California Family Rights Act \(CFRA\)](#), the [California Fair Employment and Housing Act \(FEHA\)](#), the [Paid Family Leave Act \(Unemployment Insurance Code Section 3300, et seq.\)](#), Labor Code Sections 230 and 230.1, and Labor Code Section 233 Kin Care. Copies of the Acts/statutes are available at the Departmental Employee Service Center for review. If there are any questions, please call your Departmental Employee Service Center or the Office of Labor Relations at 299-5820.

This policy, in its original format, is available at [\[url\]/sites/forms/esa/LaborRelationsCountywideForms/FMLA-Policy-and-Forms.pdf](#).

Procedures

See above.

Definitions

See above.

Frequently Asked Questions

None.

Related Policies

None.

Related Forms and Information



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- Family and Medical Leave Request Form -
[url]/sites/policies/FormsrelatedtoPolicies/Family-and-Medical-Leave-Request-Form.pdf
- FMLA Certification of Health Care Provider -
[url]/sites/policies/FormsrelatedtoPolicies/FMLA-Certification-of-Health-Care-Provider.pdf
- Employee Rights and Responsibilities under the Family and Medical Leave Act - [url]/sites/policies/FormsrelatedtoPolicies/FMLA-Employee-Rights-and-Responsibilities.pdf



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History

Date	Changes Made
4/3/2015	Added Table of Contents and reference links. NOTE: No substantive changes to the policy were made. (John Myers)
12/8/2014	Policy uploaded. (John Myers)