

## **PERSONNEL**

### **Family Care and Medical Leave (FMLA/CFRA) / Military Family Leave / Pregnancy Disability Leave (PDL)**

Pursuant to the Family Medical Leave Act and California Family Rights Act, any employee who has been employed by the San Joaquin County Office of Education (SJCOE) for at least 12 months and who has at least 1,250 hours of service with the SJCOE during the previous 12-month period, shall be eligible to take unpaid family care or medical leave pursuant to applicable state and federal law and this administrative regulation. Full-time teachers are deemed to meet the 1,250 hour test. (29 USC 2611; Government Code 12945.2; 29 CFR 825.110)

Family care and medical leave may be used for the following reasons:

1. Because of the birth of the employee's child, and in order to care for the child. (29 USC 2612; Government Code 12945.2)
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child. (29 USC 2612; Government Code 12945.2)
3. To care for the employee's child, parent, or spouse with a serious health condition. (29 USC 2612; Government Code 12945.2)
4. Because of the employee's own serious health condition that makes the employee unable to perform the functions of his/her position. (29 USC 2612; Government Code 12945.2)

### **Definitions**

For purpose of this Administrative Regulation, "child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (29 USC 2611; Government Code 12945.2)

"Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to an employee when the employee was a child. (29 USC 2611; Government Code 12945.2)

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

1. Inpatient care in a hospital, hospice, or residential health care facility and any subsequent treatment in connection with such inpatient care; or

2. Continuing treatment or continuing supervision by a health care provider as defined in 29 Code of Federal Regulations section 825.114.

### **Duration of Leave**

Family care and medical leave shall not exceed 12 workweeks during any 12-month period. The 12-month period for calculating leave entitlement shall commence on the date the employee's first family care or medical leave begins. The 12 workweeks of family care and medical leave to which an employee is entitled under state law shall run concurrently with the 12 workweeks of family care and medical leave to which an employee is entitled under federal law, except that any leave taken under state law for family care or medical leave shall run consecutively to an employee's leave entitlement on account of pregnancy, childbirth, and related medical conditions.

If both parents of a child work for the SJCOE, their family care and medical leave related to the birth or placement of the child shall be limited to a total of 12 weeks during the 12-month period following the birth or placement of child. (Government Code 12945.2)

An employee may take leave intermittently or on a reduced leave schedule if the leave is being taken due to an employee's own serious health condition or for the purpose of caring for a spouse, child, parent with a serious health condition provided that taking leave in this manner is medically necessary. (29 USC 2612; Government Code 12945.2)

An employee may also take leave intermittently for the birth, adoption, or placement of a child for foster care; however such leaves shall be taken for a minimum duration of two consecutive weeks, except that an employee shall be entitled to leaves of less than two consecutive weeks on two occasions within 12 months following the birth of the child. (2 CCR 7297.3)

The SJCOE may temporarily assign an employee requesting intermittent leave to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule. (29 CFR 825.117)

Leave taken for a birth, or placement for adoption or foster care placement of a child, must be concluded within one (1) year of the birth or placement for adoption or foster care.

### **Terms of Leave**

An employee who takes leave because of his or her own serious health condition, shall be required to substitute all accrued paid leave, including but not limited to sick leave and vacation, for unpaid leave.

An employee who takes leave for the reason of the birth, adoption, foster care placement of a child, or for the purpose of caring for a parent, child, or spouse with a serious health condition

shall be required to substitute all accrued paid leave, for unpaid leave. Under Government Code 12945 an employee has a right to unpaid pregnancy disability leave (PDL). However, under administrative regulations implementing Government Code 12945 (Title 2 of the California Code of Regulations 7291.11 (b)) an employer is authorized to require an employee to use any available sick leave during the otherwise unpaid PDL.

The employee's entitlement to unpaid leave hereunder shall run concurrently with the employee's use of paid leave. (29 USC 2612; Government Code 12945.2.)

### **Maintenance of Benefits**

During the period of family care or medical leave, the employee shall continue to be entitled to participate in the SJCOE's health plan and the SJCOE shall continue to pay health care premiums under such plan on the same terms as if the employee had continued to work during the period of the leave. However, for any unpaid leave granted in excess of the 12 weeks of family care or medical leave in any 12-month period, the employee will be required to pay the health care premium for the remainder of the leave. Any premium payments required to be paid by the employee during such a leave must be paid at the same time as they would have been due if paid by payroll deduction.

The SJCOE may recover the premium that the SJCOE paid as required by state and federal law for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

- A. The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
- B. The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under state or federal law or other circumstances beyond the control of the employee.

An employee taking leave under this Administrative Regulation shall continue to be entitled to participate in retirement plans, supplemental unemployment benefit plans, and any other employee benefit plans, to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in this Administrative Regulation. In the absence of these conditions, an employee shall continue to be entitled to participate in such plans, and the SJCOE shall require the employee to pay premiums, at the group rate, during the period of time off, or any other paid or unpaid time off, as a condition of continued coverage during the leave period. However, the non-payment of premiums by an employee shall not constitute a break in service for purpose of longevity or seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2)

For purposes of retirement plans, the SJCOE shall not be required to make plan payments for an employee during the period of the leave, and the leave period shall not be required to be counted for the purposes of time accrued under the plan. However, an employee covered by a retirement plan may continue to make contributions in accordance with the terms of the plan during the period of the leave subject to approval by STRS or PERS.

The employee shall retain his/her employee status with the SJCOE during the leave period. For purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation, the employee returning from family care or medical leave shall return with no less seniority than he/she had when the leave began. (Government Code 12945.2)

### **Requests, Advance Notice, and Certifications**

If an employee learns of the need for family care or medical leave more than 30 days before the leave is to begin, he/she shall give the SJCOE at least 30 days advance notice. If the employee learns of the need for family care or medical leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (29 USC 2612; Government Code 12945.2)

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of the SJCOE operations. This scheduling shall be subject to the health care provider's approval. On or before the first day of an employee's family care or medical leave, the employee shall notify the SJCOE of his or her anticipated date of return to work. The SJCOE may require periodic updates on the employee's intent to return to work. If, because of changed circumstances, an employee requires more or less leave than originally anticipated, such employee shall give the SJCOE at least two business days' notice of his or her intent to return to work. (29 USC 2612; Government Code 12945.2)

An employee's request for leave to care for a child, spouse, or parent who has a serious health condition shall be supported by a certification from the health care provider of the person requiring care. This certification shall include:

1. The date, if known, on which the serious health condition began.
2. The probable duration of the condition.
3. An estimate of the amount of time the health care provider believes the employee needs to care for the eligible family member.
4. A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent, or spouse.

As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employee shall obtain certification from his or her health care provider that the employee is able to perform the essential job functions of his or her position with or without reasonable accommodation.

If additional leave is needed when the time estimated by the health care provider expires, the SJCOE may require the employee to provide recertification as specified above.

An employee's request for leave because of his/her own serious health condition shall be supported by a certification from the employee's health care provider. The certification shall include:

1. The date, if known, on which the serious health condition began.
2. The probable duration of the condition.
3. A statement that, due to the serious health condition, the employee is unable to perform the functions of his/her position. (29 USC 2613)

If the employee is requesting leave for intermittent treatment or leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of the treatment and the expected duration of the leave. (29 USC 2613)

Any required medical certification shall be provided within 15 days of the SJCOE's designation of the leave as FMLA/CFRA qualifying.

In any case in which the SJCOE has reason to doubt the validity of any certification provided to support an employee's request to take leave because of the employee's own serious health condition, the SJCOE may require that the employee obtain the opinion of a second health care provider designated or approved by the SJCOE, at the SJCOE's expense, concerning any information contained in the certification.

In any case in which the second opinion described above differs from the opinion in the original certification, the SJCOE may, at the SJCOE's expense require that the employee obtain the opinion of a third health care provider, designated or approved jointly by the SJCOE and the employee, concerning any information contained in the certification, which shall be final and binding on the SJCOE and the employee.

### **Reinstatement/Non-Discrimination**

Upon granting an employee's request for family care or medical leave, the SJCOE shall guarantee to reinstate the employee in the same or a comparable position when the leave ends "to the extent

required by law". (29 USC 2614; Government Code, 12945.2) At the employee's request, the SJCOE shall provide this guarantee in writing.

Notwithstanding the preceding paragraph, the SJCOE may refuse to reinstate an employee if all of the following apply:

1. The employee is among the highest paid 10 percent of SJCOE employees; and
2. The refusal is necessary to prevent substantial and grievous economic injury to the operations of the SJCOE; and
3. The SJCOE notifies the employee of the intent to refuse reinstatement at the time the SJCOE determines the refusal is necessary under subparagraph 2.

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If the SJCOE reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement. (29 CFR 825.216)

The SJCOE shall not refuse to hire and shall not discharge, fine, suspend, expel, or discriminate against any employee because he/she exercises his/her rights under this regulation or gives information or testimony regarding his/her or another person's family care or medical leave in an inquiry related to such leave.

### **Notifications**

In accordance with the law, the SJCOE shall notify employees of their right to request family care and medical leave.

### **Military Family Leave**

Pursuant to the Family and Medical Leave Act, any employee who has been employed by the SJCOE for at least 12 months and who has at least 1,250 hours of service with the SJCOE during the previous 12-month period, shall be eligible to take unpaid military family leave pursuant to applicable federal law and administrative regulation.

Military family leave may be used for the following reasons:

1. Because an employee is the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness (Military Caregiver Leave).
2. Because of a qualifying exigency arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or call to active duty status in support of a

contingency operation as a member of the National Guard or Reserves. This leave does not extend to family members of military members in the Regular Armed Forces. (Qualifying Exigency Leave).

### **Definitions**

“Covered service member” is 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.

“Serious injury or illness” is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

“Qualifying exigencies” include:

- Issues arising from a covered military member’s short notice deployment, i.e., deployment on seven (7) or less days of notice, for a period of seven (7) days from the date of notification;
- Military events and related activities; such as official ceremonies, programs and events sponsored by the military or family support or assistance programs;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member;
- Making or updating financial and legal arrangements to address a covered military member’s absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five (5) days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities;
- Any other event that the employee and SJCOE agree is a qualifying exigency.

### **Duration of Leave**

Military caregiver leave to care for a covered service member with a serious injury or illness shall not exceed 26 weeks in a single 12-month period and begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by SJCOE for other types of family care and medical leave. An eligible employee is limited to a combined total of 26 workweeks of leave for any family care and medical leave qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks total may be for a family care and medical leave qualifying reason other than to care for a covered service member.)

Qualifying exigency leave shall not exceed 12 workweeks during any 12-month period.

### **Employee Notice Requirements**

Employees must provide 30 days advance notice to SJCOE of the need to take military caregiver leave for planned medical treatment for a serious injury or illness of a covered service member. If the leave is foreseeable, and the 30 days advance notice is not practicable, the employee must provide notice as soon as practicable, generally the same or next business day. If the leave is unforeseeable, the employee must provide notice as soon as practicable under the facts and circumstances of the particular case.

Employees must provide notice to SJCOE as soon as practicable for foreseeable leave for a qualifying exigency.

### **Employer Notice Requirements**

In accordance with the law, the SJCOE shall post a notice and otherwise notify employees of their right to request military family leave.

### **Certification Requirements:**

An employee's request for leave to care for a covered service member with a serious injury or illness shall be supported by an appropriate certification that shall:

1. Be completed by an authorized health care provider; or
2. Include a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

An employee's request for leave for a qualifying exigency shall be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Second and third opinions and recertification are not valid for military family leaves. SJCOE may use third parties to authenticate or clarify a medical certification of a serious injury or illness, or an ITO, or ITA. SJCOE may also contact the person or entity on the certification of leave for qualifying exigency to verify the existence and nature of the meeting/event.

### **Pregnancy Disability Leave (PDL)**

Pursuant to California Law, all employers must provide a leave of up to four (4) months, as needed, for the period(s) of time a woman is disabled by pregnancy.

Disabled by pregnancy means that the employee is unable to work at all or is unable to perform any one or more of the essential functions without undue risk to herself. A woman is also considered to be disabled by pregnancy if she is suffering from severe morning sickness or needs to take time off for prenatal care.

If an employee takes an intermittent leave or a reduced work schedule, the amount of leave actually taken will be counted toward the four (4) months of leave to which the employee is entitled. For example, if an employee misses two (2) hours of work in a morning because of morning sickness, only two (2) hours would be charged against her PDL entitlement. The SJCOE provides for a minimum duration of the leave, based on the shortest period of time that its payroll system uses to account for absences or use of leave.

Employees using PDL must use any accrued sick leave during an otherwise unpaid portion of her PDL. The employee may also use vacation and compensatory leave, if any, in which case the leaves shall run concurrently.

PDL shall run concurrently with any FMLA leave. However, PDL shall not run concurrently with CFRA, because pregnancy is not a qualifying reason for CFRA leave. Therefore, after the pregnancy-related disability ends, the employee is entitled to 12 weeks of unpaid CFRA leave, if the employee qualifies and complies with SJCOE procedural requirements.

### **Employee PDL Notification Requirements**

An employee shall provide written notice to the Director of Payroll Services that the employee needs a PDL or transfer, and the anticipated timing and duration of the leave or transfer.

An employee must provide the SJCOE at least 30 days advance notice before PDL or transfer is to begin if the need for the leave or transfer is foreseeable because of pregnancy. This includes the scheduling of doctor's appointments for prenatal care. The employee shall consult with the SJCOE and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to SJCOE operations. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee.

If 30 day's advance notice is not practicable, such as lack of knowledge of approximately when leave or transfer will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

### **Employer PDL Notice Requirements**

The SJCOE shall post employee rights to PDL in a conspicuous place or places where employees tend to congregate. The notice shall also be contained in applicable employee handbooks. A copy of this notice is included below. As soon as an employee notifies her supervisor regarding her pregnancy, the supervisor will provide the employee with a copy of the appropriate notice (indicated below) as soon as practicable after the employee tells the SJCOE of her pregnancy or sooner if the employee inquires about PDL or transfers.

### **Reinstatement / Nondiscrimination (PDL)**

The SJCOE shall not discriminate or retaliate against any employee because of the individual's pregnancy and/or because that individual has exercised her right to take a PDL or transfer.

### **PDL Notice to Employees**

Under the California Family Rights Act of 1993 (CFRA), if an employee has more than 12 months of service with SJCOE and has worked at least 1,250 hours in the 12-month period before the date the employee wants to begin her leave, the employee may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of the employee's child, or for the employee's own serious health condition or that of the employee's child, parent, or spouse. This leave shall run concurrently with any existing paid leaves an employee may take for the same reason.

Even if an employee is not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, an employee is entitled to take a PDL of up to four (4) months, depending on an employee's period(s) of actual disability. If an employee is CFRA-eligible, she has certain rights to take BOTH a PDL and a CFRA leave for reason of the birth of her child. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law. Again, any PDL would run concurrently with existing paid leaves used for the same reason, with the exception of vacation leave, which the employee may use for that reason at her discretion.

If possible, an employee must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for the employee or of a family member). For events, which are unforeseeable, the SJCOE needs to be notified, at least verbally, as soon as an employee learns of the need for the leave.

Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until the employee complies with this notice policy.

SJCOE may require certification from the employee's health care provider before allowing a leave for pregnancy or for an employee's own serious health condition or certification from the health care provider of the employee's child, parent, or spouse who has a serious health condition before allowing an employee leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If an employee is taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two (2) weeks and the employee must conclude the leave within one (1) year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain employee benefits and the employee's seniority date. If an employee's wants more information regarding leave eligibility and/or the impact of the leave on seniority and benefits, please contact the Director of Human Resources.

### **Complaints About Denial of PDL / Discrimination**

If an employee believes she has been wrongfully denied leave and/or discriminated against or retaliated against on the basis of pregnancy, she must file a complaint pursuant to AR 4031 – Complaints Concerning Discrimination/Harassment in Employment.

Legal Reference:

FAMILY CODE

297-297.5 Rights, protections and benefits under law; registered domestic partners

GOVERNMENT CODE

12940 Unlawful employment practices

12945 Pregnancy; childbirth or related medical condition; unlawful practice

12945.1-12945.2 California Family Rights Act

CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 Sex discrimination: pregnancy and related medical conditions

7297.0-7297.11 Family care leave

UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993, as amended

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 Family and Medical Leave Act of 1993