



STANISLAUS COUNTY FAMILY MEDICAL LEAVE OF ABSENCE (FMLA) 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), the California Family Rights Act (State), and Pregnancy Disability Leave 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.

The Family and Medical Leave Act (FMLA) of 1993 allows an **eligible** employee up to a total of 12 work weeks of unpaid protected leave of absence during a 12-month period for one or more of the following:

- A. Because of the birth of an employee's child and to care for the newborn child.
- B. Because of the placement of a child with the employee for adoption or foster care.
- C. Because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition.
- D. Because the employee's own serious health condition makes the employee unable to perform the functions of his or her job.
- E. Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call of order to active duty) in support of a contingency operation.

In addition eligible employees may take job protected leave for up to a total of 26 workweeks in a "single 12-month period" to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.

In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

An eligible employee is one who has worked for the County for a minimum of 12 months (does not have to be consecutive) and who has worked a minimum of 1250 hours during the 12 months prior to the requested leave effective date.

Determination of the 12-month period:

- A. For reasons A – E above the 12-month period is measured forward from the date any employee's first FMLA leave begins. The employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after the completion of the previous 12-month period.

- B. The “single 12-month period” begins on the first day of the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

A Serious Health Condition is:

- A. Inpatient care (overnight stay in a hospital, hospice, or residential medical care facility).
- B. Continuing treatment by a health care provider
 - a. Incapacity and treatment (a period of incapacity of more than three consecutive, full 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, unless extenuating circumstances exist or
 - ii. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
- C. Pregnancy or prenatal care (any period of incapacity due to pregnancy or for prenatal care).
- D. Chronic conditions
 - a. Requires periodic visits (at least twice a year) for treatment by a healthcare provider ;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition; and
 - c. May cause episodic rather than a continuing period of incapacity e.g. asthma, diabetes, epilepsy, etc.
- E. Permanent or long-term conditions (must be under the continuing supervision of, but not receiving active treatment, by a health care provider) e.g. Alzheimer’s, severe stroke, or terminal stages of a disease, etc.
- F. Conditions requiring multiple treatments

Definition of eligible family members:

- A. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides.
- B. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This does not include parents “in law.”
- C. Son or daughter for the FMLA leave taken for birth or adoption or to care for a family member with a serious health condition means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or 18 or older and is “incapable of self care” because of a mental or physical disability.
- D. Next of kin 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 servicemember has specifically designated in writing another blood relative as his or her nearest blood relative.

- E. Son or daughter on active duty, call to active duty or son or daughter of a covered servicemember means biological, adopted, or foster child, stepchild, legal ward, or a child for who the servicemember stood in loco parentis who is of any age.

Qualifying exigency:

- A. Short-notice of deployment
 - a. To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment;
 - b. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;
- B. Military events and related activities
 - a. To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member; and
 - b. To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- C. Childcare and school activities
 - a. To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a son or daughter (see definition of an eligible family member) at the time that FMLA is to commence;
 - b. To provide childcare on an urgent, immediate need basis (but not on a routine, regular or everyday basis) when the need to provide such care arises from the active duty or call to active duty of a covered military member for a son or daughter (see definition of an eligible family member) at the time that FMLA leave is to commence;
 - c. To enroll in or transfer to a new school or day care facility a son or daughter (see definition of an eligible family member) at the time that FMLA leave is to commence; and
 - d. To attend meetings with staff at a school or daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meeting with school counselors, for a son or daughter (see definition of an eligible family member) at the time that FMLA leave is to commence.
- D. Financial and legal arrangements
 - a. To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

- b. To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status for a period of 90 days following the termination of the covered military member's active duty status;
 - c. Counseling. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for son or daughter (see definition of an eligible family member) at the time that FMLA leave is to commence, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;
- E. Rest and recuperation
- a. To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;
 - b. Eligible employees may take up to five days of leave for each instance of rest and recuperation;
- F. Post-deployment activities
- a. To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status; and
 - b. To address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;
- G. Additional activities. To address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leaves.

Leave to care for a covered servicemember with a serious injury or illness.

- A. Eligible employees are entitled to up to 26 workweeks of FMLA leave, in a single 12-month period, to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, including a member of the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members of the permanent disability retired list.
- a. The "single 12-month period" begins on the first day of the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this "single 12-month period" the remaining part of his or her 26 workweeks of leave entitlement to care for a covered servicemember is forfeited.

- b. The leave entitlement described is to be applied on a per-covered-servicemember, per injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any “single 12-month period”. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness.
- c. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA qualifying reason during the “single 12-month period” provided that the employee is entitled to no more than 12 weeks of leave for one or more of the following: because of the birth of a child of the employee and in order to care for such child; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee’s own serious health condition; or because of a qualifying exigency. Thus an eligible employee may during the “single 12-month period” take 16 weeks of FMLA leave to care for a covered servicemember and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the “single 12-month period”, even if the employee takes fewer than 14 weeks of FMLA to care for a covered servicemember.

Intermittent leave or reduced leave schedule

- A. Medical necessity.
 - a. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition if such medical need can be best accommodated through an intermittent or reduced leave schedule.
 - b. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer’s operation.
 - c. If need for leave is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one’s own serious health condition, a serious health condition of a spouse, parent, son or daughter or a serious injury or illness of a covered servicemember, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position or for which the employee is qualified and which better accommodates the recurring periods of leave than does the employee’s regular position.
- B. Birth or placement. When leave is taken after the birth of a healthy child or placement of a health child for adoption or foster care, an employee may take leave intermittently or on a reduced work schedule only if the County agrees. The

employer's agreement is not required, however, for a leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

- C. Qualifying exigency. Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

Substitution of paid leave

- A. An employee may elect to substitute any applicable leave accruals they have earned or the County may require an employee to substitute their applicable leave accruals for an unpaid leave of absence in accordance with County policies. The term "substitute" means that the accrued paid leave provided by the County, will run concurrently with the unpaid FMLA leave. If an employee fails to comply with County policies that govern the use of paid leave accruals the request may be denied until the employee fully complies with the policy.
 - a. The County elects to require employees to substitute available applicable leave accruals while employees are on an approved FMLA leave except in the following instances:
 - i. An employee is receiving disability benefits from any source.
 - ii. An employee has been placed on *sick leave abuse contract* prior to the approval an active FMLA leave.
 - iii. In the case of pregnancy related disability vacation accruals may not be required unless the employee voluntarily elects to use vacation used as sick.
 - iv. The employee has failed to comply with County policies governing the use of any paid leave accrual benefits.
 - b. An applicable leave accrual 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 may be used for the purposes of bonding with the employee's new born child or a child placed with the employee for adoption or foster care. Vacation may also be used in lieu of sick benefits if the employee has exhausted their sick leave accruals (subject to department head approval). Comp time benefits may also be used at the employee's request.

Certification required:

- A. Medical certification is required for all medically related leave of absences (see Certification of Health Care Provider for Family and Medical Leave Act –FMA at the back of this policy). *Employee may submit an alternate form as long as all required information is provided.*
 - a. Failure of an employee to provide certification will result in FMLA leave being denied. An employee will have 15 days to submit the appropriate certification. Once the appropriate certification is received the FMLA leave will be re-evaluated and if certification meets eligibility the leave will be approved on a retroactive basis. If the employee needs additional time to obtain and submit the certification the employee must contact the CEO-Risk Management Division's Disability Management Unit at 209-525-5782 and advise when they will be able to obtain the certification.

- b. New medical certification will be required at the beginning of any FMLA leave year.
- c. Recertification may be requested every 6 months for intermittent or irregular leaves.
 - i. Recertification may be requested sooner under extenuating circumstances e.g.: information is received that casts doubt on the continuing validity of the certification; circumstances described by the previous certification have changed significantly, etc.
 - ii. Recertification is required anytime a medical leave extension is requested.
- B. Certification for a qualifying military exigency is required (see Certification of Qualifying Exigency Military Family Leave form at the back of this policy).
- C. Certification for leave to provide care for an eligible injured or ill servicemember (see Certification for Serious Injury or Illness of a Covered Servicemember – for Military Family Leave (Family and Medical Leave Act – FMLA) at the end of this policy).
- D. Certification for bonding with the employee’s new born child or the placement of a child for adoption or foster care with the employee may include a copy of the birth certificate, a copy of the placement papers, etc.

The California Family Rights Act (CFRA) of 1995 mirrors the FMLA with a few exceptions:

- A. CFRA does not apply to any period of pregnancy related disability; and
- B. CFRA extends to Domestic Partners (refer to California Family Code section 297-297.5)

When CFRA mirrors the FMLA they will run concurrent. The County is only required to provide 12 weeks of continuation of Health Benefits through the FMLA. When CFRA does NOT mirror the FMLA, CFRA will be applied independently. As in the case of a pregnancy, FMLA will apply during the pregnancy related disability period and CFRA will begin when the pregnancy related disability ends.

Pregnancy Disability Leave Act (PDL)

Pregnancy Disability Leave (PDL) provides female employees up to 4 months of job protection for absence related to pregnancy related disability. An employee shall be entitled to use any accrued vacation leave during this period of time. Reasonable accommodations shall be granted upon the employee’s request if medically necessary and certified by the employee’s health care provider. Reasonable accommodations may include a temporary transfer to a less strenuous or hazardous position for the duration of her pregnancy when requested and that can be reasonably accommodated.