

POLICY STATEMENT NO. 2-94(P)

FAMILY CARE AND MEDICAL LEAVE  
General, Management/Confidential  
and Skilled Trades Units

General Policy

Under provisions of the California Family Rights Act, the federal Family and Medical Leave Act and the California Family Care and Medical Leave Act, the employer may grant a request by an employee for Family Care and Medical Leave (FCML) providing the requesting employee has worked for the employer for a minimum of twelve months, and has at least 1,250 hours of service during the twelve month period immediately preceeding the date the leave would begin. Leave may be taken under this policy for up to twelve workweeks in any twelve month period for family care and medical leave. Requests for leave in excess of twelve workweeks, whether in a paid or unpaid status, shall be reviewed on an individual basis relative to the needs of the employee and the needs of the department. The twelve week allowance provided per year is calculated on a calendar month basis commencing the first day qualifying leave is taken.

Under allowable circumstances a request for leave under this policy may be denied to a key employee. Such denial is allowable only if it is necessary to prevent substantial and grievous economic injury to the operations of the department; and the department head notifies the employee of the intent to refuse reinstatement at the time it is determined that refusal is necessary. A department head may grant FCML to a key employee but refuse reinstatement if it will cause the department substantial and grievous economic injury. In this situation, however, the department head must notify the employee at the time he or she requests or commences the leave (whichever is earlier) that he or she qualifies as a key employee and what the potential consequences are with respect to reinstatement.

Except where the law authorizes a different result, an employee who complies with the provisions of this policy will be guaranteed reemployment upon expiration of an approved leave. The employee will be reemployed in the same or an equivalent position as that which he or she occupied when the leave commenced. An employee who takes a leave because of his or her own serious health condition must provide a medical certification verifying that he or she is able to return to work in the same manner as employees who return from other types of medical leave. If an employee fails to return for work immediately after the period of the approved leave expires, and unless an extension has been requested and granted, the employee may be considered to have voluntarily separated from the employer's employ unless sufficient documentation can be provided which demonstrates both the employee's need for extended leave and the inability to have properly notified the employer of the need.

Leave granted under this policy for part-time employees shall be calculated on a pro-rata basis in accordance with their regular work schedule. For those occupying positions with irregular hours the average workweek shall be determined by taking an average of the hours worked per week over the previous three month period.

Upon receipt of a request by an employee for FCML, the department head shall immediately forward such notice to the personnel officer. The personnel officer shall have full authority to approve such requests in accordance with the provisions of this policy.

Definitions

For purposes of this policy, the following definitions shall apply:

1. "Child" means a biological, adopted or foster child, stepchild or legal ward of the employee, or a child of a person standing in loco parentis who is either:
  - A. Under eighteen years of age; or
  - B. An adult dependent child
  - C. An adult child, as approved by the personnel officer with evidence provided by the employee that he or she is the only individual available to provide the required care
2. "Employer" means the County of Trinity.
3. "Family care and medical leave" means leave taken for any of the following reasons:
  - A. To care for the employee's child after birth, or placement for adoption or foster care; or for the serious health condition of a child of the employee.
  - B. To care for the employee's spouse or parent, who has a serious health condition.
  - C. For a serious health condition of the employee which prevents him or her from being able to perform the functions of his or her position; with the exception of leave taken for disability resulting from the pregnancy, childbirth or medical conditions related specifically to pregnancy.
4. "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay which can be performed at the same or similar geographic location as the position held prior to the leave.
5. "Health care provider" means an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon who directly treats or supervises the treatment of the serious health condition or any other person determined by the United States Secretary of Labor to be capable of providing health care services under the federal Family and Medical Leave Act of 1993.
6. "Key employee" means an employee whose salary is in the top 10% of paid employees either at the work location or within a 75 mile radius of the work location.
7. "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

8. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:
  - A. Inpatient care in a hospital, hospice or residential care facility.
  - B. Continuing treatment or continuing supervision by a health care provider.

Required Notice and Medical Certification

If the employee's need for leave under this policy is foreseeable, the requesting employee shall provide his or her department head with reasonable advance notice, in writing, of the need for the leave -- generally thirty days' advanced notice is required. If the employee's need for leave is foreseeable reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer.

An employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition shall be supported by a certification issued by the health care provider of the individual requiring care. Failure to provide such certification shall result in the denial of the requested leave. Certification shall be considered sufficient if it includes all of the following:

- A. The date on which the serious health condition commenced.
- B. The probable duration of the condition.
- C. An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.
- D. A statement that the serious health condition warrants the participation of the employee to provide care during a period of the treatment or supervision of the individual requiring care.

Upon expiration of the time estimated by the health care provider, the employee shall be required to obtain recertification and shall be required to provide said recertification to the employer, if additional leave is required.

An employee's request for leave because of the employee's own serious health condition shall be supported by a certification issued by his/her health care provider. Failure to provide such certification shall result in the denial of the requested leave. Certification shall be considered sufficient if it includes all of the following:

- A. The date on which the serious health condition commenced.
- B. The probable duration of the condition.
- C. A statement that, due to the serious health condition, the employee is unable to perform the functions of his/her position.

Upon expiration of the time estimated by the health care provider, the employee shall be required to obtain subsequent recertification regarding the employee's serious health condition and shall be required to provide said recertification to the employer, if additional leave is required.

In any case in which the employer has reason to doubt the validity of the medical certification provided by the employee, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified. In any case in which the second opinion described above differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified. The opinion of the third health care provider concerning the information certified and in question shall be considered to be final and shall be binding on the employer and the employee.

As a condition of the employee's return from leave taken because of the employee's own serious health condition, the employer shall require the employee to obtain certification from his/her health care provider, at the employee's expense, that the employee is able to resume work.

Coordination of leave accruals while on FCML

An employee taking leave under the FCML policy shall be required to exhaust all sick leave, vacation leave, personal holiday leave, and compensatory time off prior to being authorized to take unpaid leave. All leave taken in coordination with FCML is computed toward the total twelve week allowance per year under FCML.

Benefits while on FCML

Paid Leave

During any period that an eligible employee takes paid leave under the provisions of this policy, the employer shall continue to pay the "employee only" portion of the medical, dental, life and vision insurance premiums; providing, however, that said employee was eligible for such county paid benefit prior to taking FCML. An employee shall continue to participate in and accrue benefits during any portion of the leave in which the employee remains in a paid status.

Unpaid Leave

During any period that an eligible employee takes unpaid leave under the provisions of this policy, the employer shall continue to pay the "employee only" portion of the medical insurance premium, the employee, however, shall be responsible for continued payment of the dental insurance premium, life insurance premium and vision insurance premium; providing that said employee was eligible for such benefits prior to taking FCML. An employee shall retain employee status with the employer, and the unpaid leave shall not constitute a break in service for purposes of longevity or seniority.

Return to work from FCML

The use of authorized FCML shall not result in the loss of any benefit accrued prior to the start of the FCML, with the exception of any accrued leave used in conjunction with the approved leave. During approved family care and medical leave the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or employee benefit plan.

If an employee qualifies for and takes unpaid leave in excess of thirty calendar days for a qualifying purpose under FCML, the anniversary date and any associated merit increase shall be extended an amount which is equivalent to the total unpaid leave.

Any increases in pay or change in benefits which are not dependent upon seniority accrual during the leave period will be made effective upon the employee's return to paid status.

Coordination of Family Medical Leave Act of 1993 (FMLA) and California Family Care Leave (CFCL)

Leave provided under this policy may be taken in one or more periods. Leave taken by an employee under this policy shall run concurrently with leave taken pursuant to the FMLA and the CFCL, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions.

In any case in which both parents entitled to leave under this policy are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the employees a combined total of family care and medical leave exceeding twelve workweeks in a twelve month period.

California Pregnancy Disability Leave and FCML

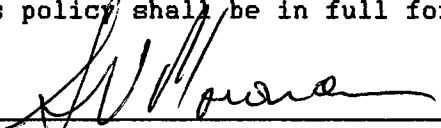
Under the Fair Employment and Housing Act, a woman is entitled to up to four months of pregnancy disability leave determined by the woman's actual period of disability. If an employee qualifying under the California Pregnancy Disability Leave has used the maximum pregnancy disability, and she qualifies for FCML, she is entitled to request the full FCML allowable under the provisions of this policy.

No reprisal

The employer shall not discharge, fine, suspend, expel, discriminate against, or refuse to hire, any individual because of an individual's sole exercise of the right to family care and medical leave; or for an individual's giving information or testimony as to his/her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this policy.

Effective Date

This policy shall be in full force and effect as of January 1, 1994.

  
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CHAIRMAN, Board of Supervisors  
County of Trinity

DATE: MAY 03 1994