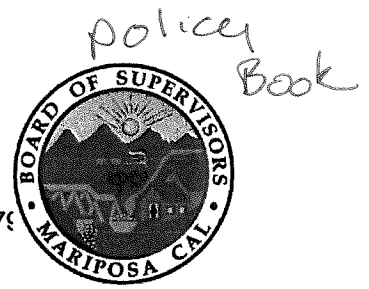


MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



RESOLUTION - ACTION REQUESTED 2016-57

MEETING: February 2, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Approve an Updated County FMLA and CFRA Policy

RECOMMENDATION AND JUSTIFICATION:

Approve an Updated County-wide Family and Medical Leave Act ("FMLA") and California Family Rights Act ("CFRA") Policy.

The County's current FMLA Policy ("Policy") was approved by the Board of Supervisors in 1996. But since that time many changes in State and Federal law have been approved that affect the use of leave time in California. In order to address these changes, the County's Human Resources/Risk Management Department staff engaged the services of labor law attorney Patricia Eyres, through the County's Insurance and Loss Prevention Agency, the California State Association of Counties - Excess Insurance Authority (CSAC-EIA) to review the County's existing Policy and to make recommended corrections and changes where needed to comply with legal requirements.

In addition to Ms. Eyres' review, staff also engaged in a review process of the updated Policy with all of the County's Department Heads, bargaining unit representatives, and the County's labor law firm of Liebert, Cassidy and Whitmore.

The result is the revised and attached updated Policy that is presented for the Board's review and approval.

If the Board approves the updated Policy, staff will: 1) distribute this Policy to all County employees along with a form that will require their signature to indicate that they have received and understand the Policy, and 2) post the Policy on the Human Resources/Risk Management Department portion of the County's website.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On July 16, 1996, the Board of Supervisors approved the County's existing FMLA Policy. No changes to this Policy have occurred since that time.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Board does not approve the revised Policy, the County will not be in compliance with State or Federal leave law.

ATTACHMENTS:

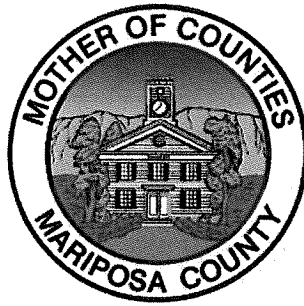
Mariposa County FMLA_CFRA Policy Update January 2016 (DOC)
Acknowledgement Form (DOCX)
Sample Certifications for Military Caregiver and Qualifying Exigency Leaves (PDF)
FMLA Dr's Certification-employee (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 1/28/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Kevin Cann, District IV Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier



**MARIPOSA COUNTY
FAMILY AND MEDICAL LEAVE POLICY AND PROCEDURES
FEDERAL FAMILY & MEDICAL LEAVE ACT AND
CALIFORNIA FAMILY RIGHTS ACT**

I. Purpose

This document sets forth the County's policy regarding employee leave requested under the Family and Medical Leave Act of 1993 (the "FMLA") [29 U.S.C. §§ 2601 et seq.; 29 C.F.R. part 825] and the California Family Rights Act of 1991 as amended (the "CFRA") [Gov. Code § 12945.2; Cal. Code Regs, Title 2, Div. 4.1, Chapt. 5, Subchapt. 2, Article 11, §§11087, etc. seq...]. This policy does not cover leave requested under other federal or state laws.

II. FAMILY AND MEDICAL LEAVE

- A. Any eligible employee may be granted a family and medical leave subject to the provisions of the California Family Rights Act as amended in 1993 and the federal Family Medical Leave Act of 1993 in accordance with applicable statutes, case law, ordinances, and policies in effect at the time of the family and medical leave. Family and medical leave shall be instituted only upon written request of a qualified employee. For purposes of complying with state and federal law, an "eligible employee" is defined in "B" below. A family and medical leave may be granted for any of the following reasons:
1. Birth of a child of the employee.
 2. Care of a newborn child of the employee.
 3. Placement of a foster child with an employee.
 4. Placement of a child with an employee in connection with the adoption of the child by the employee.
 5. To care for a child, parent, spouse or registered domestic partner (CFRA) of the employee who has a serious health condition.
 6. A serious health condition that makes the employee unable to perform the functions of his/her position.
 7. Leave for a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.
 8. Leave for care of 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.

B. The definition of terms used in conjunction with family and medical leave are as follows:

1. Eligible employee means:

- a) An employee who has been employed with the County of Mariposa for at least 12 months and has been employed by the County of Mariposa for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave.

Serious health condition means:

- a) Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purpose of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or
- b) Continuing treatment by a health care provider. (29 C.F.R. § 825.114(a)(1) and (2).)

2. Continuing treatment means:

- a) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three 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 of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; 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.
- b) For purposes of the FMLA leave only, any period of incapacity due to pregnancy, or for prenatal care. [See Gov. Code § 12945] Refer to this policy at Section II.D.
- c) Any period of incapacity of treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

- 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. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- 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 restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

3. Health care provider means:

- a) An individual holding a physician's or surgeon's license, or osteopathic license in the state in which they practice;
- b) Podiatrists, dentists, clinical psychologists, and optometrists;
- c) Chiropractors and nurse practitioners who are licensed and performing within scope of their practice under state law;
- d) Christian Science practitioners, although the employee must consent to any request from the County for a second or third certification from a health provider other than a Christian Science practitioner.
- e) Nurse - midwives.
- f) Any health care provider that is recognized by the County or the County's group health plan.
- g) A health care provider who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

4. Child includes a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (who has parents' rights) who is either under age 18, or an adult dependent child. An adult dependent child is an individual who is 18 years of age or older and who is incapable of self-care because of a mental or physical disability at the time the leave is to commence within the meaning of Government Code section 12926(j) and (l).

5. Parent includes biological, foster or adoptive parent, a stepparent, legal guardian, or a person other than a natural parent who acted in loco parentis

to the employee, when the employee was a child. Parent specifically excludes a parent-in-law (29 CFR § 825.800).

6. Spouse means a partner in marriage as defined in Family Code section 300 or a registered domestic partner, within the meaning of Family Code sections 297 through 297.5. As used in this article and the Family Code, "spouse" includes same-sex partners in marriage.

C. An eligible employee shall be entitled to family and medical leave up to a total of 12 workweeks during a 12 month period which shall begin when the employee first takes leave which qualifies as family and medical leave. The County uses a "rolling" twelve month timeframe.

When medically necessary, leave may be taken intermittently or on a reduced leave schedule. Intermittent leave is taken in separate blocks of time due to a single illness or injury, and may be taken in blocks of an hour or more. Reduced leave schedule is a leave that reduces an employee's usual number of working hours per workweek, or hours per workday.

Should an employee request intermittent or reduced schedule leave when medically necessary, the employee may be required to transfer temporarily to an available alternative position for which the employee is qualified which has equivalent pay and benefits and which better accommodates the need for leave.

D. Although a pregnant employee may be eligible for FMLA leave for pregnancy-related health conditions, she is not entitled to CFRA leave for disability due to pregnancy. However, in California, she may be entitled to leave under the California Pregnancy Disability Leave Act. FMLA and PDL leave run concurrently. (See Gov. Code § 12945 and California Code of Regulations, title 2, section 11042 and 11093. E.) For family and medical leave taken for reason of the birth or adoption of a child of the employee or the placement of a foster child with the employee, any leave taken shall be initiated within one year of the birth or placement of the child with the employee. The CFRA allows parents to take up to 12 weeks for "baby bonding" after the birth or placement of child. Bonding time must be taken within the first year after placement or birth.

F. For leaves to care for a child, parent, spouse or domestic partner with a serious health condition, the employee shall provide, within 15 days of the leave request if practicable, written certification from the health care provider containing the following information:

1. A certification as to which part of the definition of "serious health condition," if any, applies to the patient's condition.

2.
 - i. The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity.
 - ii. Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition, and if so, the probable duration of such schedule.
 - iii. If the condition is pregnancy or a chronic condition, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

3.
 - i. (a) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.
 (b) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment, if known, and period required for recovery, if any.
 - ii. If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.
 - iii. If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen.

4.
 - i. If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.
 - ii. If the employee's family member will need care only intermittently or on a reduced leave schedule basis (i.e., part-time), the probable duration of the need.

Upon expiration of the time period which the health care provider originally estimated that the employee needed to care for the family member, the appointing authority shall require the employee to obtain recertification if additional leave is requested.

If the family and medical leave is requested because of the employee's own serious health condition, the certification must indicate whether 1) the employee is unable to perform work of any kind; 2) a statement of the essential functions of the position that the employee is unable to perform; or 3) the employee must be absent from work.

If the validity of the certification is questioned, the County may at its own expense, require the employee to obtain the opinion of a second health care provider chosen by the County. When the second opinion differs from the first, the County may require at its own expense the opinion of a third health care provider approved jointly by the County and the employee whose opinion shall be considered final and binding.

- G. If a husband and wife request leave due to the birth or placement of the same child, the leave time for both employees will be combined. Such employees may take a total of 12 weeks of leave due to the birth or placement of a child during a 12 month period. The County will not combine leave taken to care for a parent.
- H. If the event necessitating the leave becomes known to the employee more than 30 calendar days prior to the employee's need for a leave the employee shall provide, at a minimum, 30 days written advance notice to the County. If the event necessitating the leave becomes known to the employee less than 30 days prior to the employee's need for a leave, the employee shall provide to the County as much advance notice as possible.

If the employee's need for family and medical leave is foreseeable due to a planned medical treatment or planned supervision of the employee, a child, parent, spouse or domestic partner with a serious health condition, an employer may require the employee to provide reasonable advance notice of the need for the leave and to consult with the County regarding the scheduling of the treatment or supervision so as to minimize disruption to the operations of the County. Any such scheduling, however, shall be subject to the approval of the health care provider of the child, parent, or spouse.

If the employee is not to use paid leave, requests for family and medical leave shall be in writing and shall contain a date on which the leave will commence, an expected return to work date, and a statement of the nature of the leave. If the employee is to use any paid leave, the employee shall give the same notice as required for normal paid leave.

- I. While on leave, the employee will remain covered by the County's health care benefits to the same extent as he/she would be while an active employee. As such, should the employee wish to continue his/her health care benefits while on leave, the employee will be required to remit to the health plan any premiums he/she is responsible to remit via payroll deduction while active. If the employee does not return to work after the leave period, the County will require the employee to repay the health care premiums paid by the County during the leave period, unless a) the employee does not return to work due to circumstances beyond the employee's control, or b) the failure to return to work is due to the continuation, recurrence, or onset of a serious health condition which would otherwise entitle the employee to family and medical leave.

- J. Employees shall have the option to use accrued vacation leave while on a family and medical leave prior to going on an unpaid leave for birth, adoption, or to care for a family member. Employees shall be required to use sick leave if the family and medical leave is taken for their own serious health condition prior to going on unpaid status.

Such vacation leave, if used, or sick leave shall count towards the 12 workweeks of family and medical leave to which the employee is entitled.

- K. An employee returning from a leave will be reinstated to the same position or an equivalent position, with equivalent pay, benefits, and other terms of employment, unless the employee would not otherwise have been employed at the time reinstatement is requested.

An employee whose leave was due to the employee's own serious health condition shall be required to obtain and present a fitness-for-duty certification from the health care provider relative to the health condition which caused the leave prior to returning to full duty. Restoration to employment may be denied until the certification is obtained. If an employee is no longer qualified for the position, the employee shall be given a reasonable opportunity to fulfill any conditions required for qualification or the County shall attempt to make a reasonable accommodation. A fitness-for-duty certification is not required if the leave was intermittent.

The County may deny restoration to a previous position if the employee who has taken family and medical leave is considered a "key" employee (among the highest paid 10% of all employees) if:

1. Denial is necessary to prevent substantial and grievous economic injury to the operations of the County.
2. The County notifies the employee of the intent to deny restoration on such basis at the time the County determines that such injury would occur; and
3. In any case where the leave has commenced, the employee elects not to return to employment after receiving such notice.

- L. Employees on leave do not lose any benefits which have accrued prior to their first day of leave and the leave period will be treated as continued service (i.e., no break in service) for purposes of determining vesting and eligibility to participate in the County retirement plan. The employee does not accrue any other benefits during the leave period, nor does the leave period entitle the employee to any greater rights than he/she would have had if he/she had remained in the workplace.

- M. Military Caregiver and Qualified Exigency Leaves under the FMLA:

1. The following definitions will apply to this section:
 - a. "Covered Active Duty" means in the case of a member of a regular component of the Armed Forces, covered active duty is duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, covered active duty is duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty.
 - b. "Military Member" means employee's spouse, son, daughter, or parent on covered active duty or call to active duty status. The term "military member" applies to an employee's use of qualifying exigency leave.
 - c. "Covered Servicemember" means a member of the United States 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.

The term "covered servicemember" also includes a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves) within five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy. The term "covered servicemember" applies to an employee's use of military caregiver leave.

- d. "Outpatient Status" within the context of a "covered servicemember" means the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- e. "Next of Kin" within the context of a "covered servicemember" means The nearest blood relative of an injured servicemember, 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 servicemember by court decree or statute, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her

nearest blood relative for purposes of military caregiver leave under the FMLA.

- f. "Serious Injury or Illness" within the context of a "covered servicemember" means an injury or illness incurred by the covered servicemember in the 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. In the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, a "serious injury or illness" means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

(1) 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 servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(2) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or

(3) 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 related to military service or would do so absent treatment; or

(4) 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.

- g. **Qualifying Exigency Leave:** The FMLA provides for eight general categories of qualifying exigencies for which an employee can take up to 12 weeks of unpaid FMLA leave:

(1) Short-notice deployment;

(2) Military events and related activities;

- (3) Childcare and school activities;
- (4) Financial and legal arrangements;
- (5) Counseling;
- (6) Rest and recuperation;
- (7) Post-deployment activities;
- (8) Parental care; and
- (9) Additional activities which arise out of the military member's active duty or call to active duty status provided that the employer and the employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Notice: If an employee requires leave for a qualifying exigency, he or she must give notice as soon as practicable regardless of how far in advance the leave is foreseeable.

Certifications: If an employee requires leave for a qualifying exigency, he or she will be required to provide a copy of the military member's covered active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's active duty status. This information will only be required once at the time the employee first requests leave for a qualifying exigency. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.

- h. **Military Caregiver Leave:** Employees are also entitled to take up to 26 weeks of unpaid FMLA leave to care for a spouse, son, daughter, parent, or next of kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, 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 undergoing medical treatment, recuperation, or therapy, who is on outpatient status, or who is otherwise on the temporary disability retired list.

Military Caregiver Leave, unlike other types of FMLA leave is based on a single 12-month period which begins on the first day the eligible employee

takes FMLA leave to care for a covered service member and ends 12 months after that date.

Notice: An employee requesting military caregiver leave must provide the County 30 days advanced notice if the need for leave is foreseeable based on the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days' notice is not practicable, notice must be given as soon as practicable. If an employee does not provide at least 30 days' notice of foreseeable leave, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information. When the approximate timing of the need for military caregiver leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case.

Certification: An employee requesting Military Caregiver leave under the FMLA must provide certifications from both a health care provider and from either the employee him or herself or the injured servicemember. In addition to the list of health care providers specified above, the following providers may submit a certification for a covered service member:

(1) a U.S. Department of Defense health care provider; (2) Department of Veterans Affairs health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider.

The employee must provide the information requested in the County's Certification for care for a covered servicemember.

Created: 6/25/1996 (B/S Res No. 96-318)
Revised: 2/2/2016 (B/S Res No. 16-57)

