



SAN DIEGO STATE
UNIVERSITY

The Center for Human Resources

FAMILY CARE & MEDICAL LEAVE FREQUENTLY ASKED QUESTIONS

All California State University (CSU) employees are entitled to Family Care and Medical Leave (FML), in accordance with the Federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA). In some circumstances, CSU policy is more generous than required under state and federal laws. For represented employees, the respective collective bargaining agreement may supersede some provisions of the CSU FML policy.

1. What is the purpose of Family Care and Medical Leave?

Congress enacted The Family and Medical Leave Act (20 United States Code section 2601) to provide workers with up to 12 weeks of leave time without risking the loss of their jobs. The FMLA mandates leave for eligible employees to cover childbirth and newborn childcare, for placement of a child with the employee for adoption or foster care, for those who become seriously ill, or for those who have to be away from work to care for a sick relative. CSU employees are also covered by the California Family Rights Act (CFRA - Govt. Code 12945 (b)(2)), which mirrors the FMLA except in regards to pregnancy disability leaves.

2. Who is an eligible employee?

Under CSU policy, all full-time and part-time employees (see #3 for student employees) employed for at least one academic year or 12 months (not necessarily continuously) preceding the leave are eligible.

Please note: the definition of “employment” includes employment at all CSU campuses as well as other California state employment.

3. Are student employees eligible?

Yes. Student employees are eligible but have different eligibility criteria. Under CSU policy, student employees must be employed at least one year (not necessarily continuously) AND must have worked at least 1,250 hours in the 12 months preceding the leave.

4. In what circumstances must leave be granted?

Employees are entitled to FML leave under the following circumstances:

- To care for a child following birth or placement with the employee for adoption or foster care
- To care for the employee's spouse, domestic partner, child, or parent who has a serious health condition
- If the employee is unable to perform the essential functions of his/her own job due to a serious health condition

An employee must initiate FML within twelve months of the date of birth or placement of a child.

A "**child**" includes a biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*. Normally, a child must be under age 18, but there is no age limit if he/she is incapable of self-care because of a mental or physical disability as defined under the Americans with Disabilities Act.

A "**parent**" includes the employee's parent or parent *in loco parentis*, but not a parent-in-law.

A "**spouse**" includes a husband or wife as defined or recognized under state law. An eligible employee may take Family Medical Leave to care for his/her domestic partner who has a serious medical condition. In order to access this benefit, the employee's domestic partnership must be registered through the designated process with the Secretary of State.

A "**health care provider**" is defined very broadly to include doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, and Christian Science practitioners. Christian Science practitioners must be listed with the First Church of Christ in Boston, Massachusetts. All other providers must be authorized to practice under state law and must be performing within the scope of their practice. In addition, chiropractors are considered a health care provider only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.

A "**serious health condition**" is an illness, injury, impairment, or physical or mental condition that involves:

any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or any period of incapacity due to pregnancy, or for prenatal care; or any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or, any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

5. What is the length of FML leave permitted under the CSU policy?

The maximum leave is 12 weeks in a 12-month period. The CSU calculates the 12-month period on a forward rolling basis -- the period is measured forward from the date the employee's first FML leave begins.

Family and Medical Leave entitlements under both federal and state regulations run concurrently **except for pregnancy disability leave** (see #9 below).

All rights to FML terminate upon separation from employment (e.g., expiration of temporary appointment, resignation, layoff, etc.).

6. Under CSU policy, do any special FML rules apply if the same campus employs both spouses?

No. The CSU offers a more generous benefit than that provided for under the law. It offers both employees full FML eligibility.

7. Is Family Medical leave compensated under the CSU policy?

No. However, consistent with state and federal laws, the CSU requires employees to exhaust their personal holiday and any accumulated vacation and Compensatory Time Off (CTO) leave credits prior to beginning unpaid leave. Refer to the appropriate collective bargaining agreement, as treatment of vacation for represented employees may differ.

8. How does the use of sick leave affect FML?

Sick leave is considered paid leave. For an employee who accrues sick leave and charges sick leave for his/her own illness that meets the definition for FML coverage, the sick leave should be designated as and tracked towards the FML 12-week entitlement. As appropriate, the use of sick leave to care for a family member may be mutually agreed to by the employee and the appropriate administrator and charged against the FML entitlement. Refer to the appropriate collective bargaining agreement, as use of sick leave to care for family members may differ.

9. How are other leaves and disability benefits integrated with FML?

FML runs concurrently with most leave programs. For example, an employee who takes 12 months of maternity leave under Education Code Section 89519 would not be eligible for any additional FML leave. However, an employee eligible for 10 weeks of Nonindustrial Disability insurance (NDI) leave due to a heart attack would be eligible for two more weeks of FML within that year. Industrial Disability Leave (IDL) and Temporary Disability (TD) due to a serious work-related health condition would be treated similarly. All these examples count towards the employee's FML entitlement.

However, state law requires special treatment for pregnancy disability leave under Government Code Section 12945(b)(2). In California, FML does not track against pregnancy disability leave. As a result, if the employee takes all or part of the maximum four months under the government Code Section 12945(b)(2) entitlement, she will also be entitled to 12 weeks of FML leave for the birth of her child or for her own serious health condition under the FML entitlement.

10. Can FML leave be taken on an intermittent or reduced work schedule basis?

Leave for a serious health condition must be permitted on either an intermittent or reduced work schedule when medically necessary. State law permits leave on an intermittent basis for the birth/placement and/or care of a child. Although not mandated by law, requests for a reduced work schedule due to the birth or placement of a child may be approved at the discretion of the university.

For intermittent leave or leave on a reduced work schedule, there must be a medical requirement for that type of leave (as distinguished from voluntary treatments and procedures), and such medical need must be best accommodated through an intermittent or reduced work schedule. Employees needing intermittent FML or a reduced work schedule must try to schedule leave to avoid disrupting university operations. See #12 below for issues specific to Fair Labor Standards Act (FLSA) exempt employees.

Subject to applicable bargaining agreements and laws such as the Americans with Disabilities Act, the university may temporarily transfer an employee needing intermittent or reduced schedule leave to an “alternative position” to better accommodate the reduced leave schedule. The alternative position must have equivalent pay and benefits (including accumulation of seniority points), but does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to better accommodate the employee’s need for intermittent or reduced work schedule leave. However, the university may not require the employee to take more leave than is medically necessary. For example, an employee requiring a half-time work schedule may not be forced to accept an alternative position with fewer work hours.

11. How is the intermittent or reduced work schedule processed for FML?

With an intermittent or reduced work schedule, only the amount of leave actually taken may be counted against the maximum leave entitlement. For example, if a full-time employee who normally works eight hours per day is medically required to work only four hours per day, then the employee would be using only half a week of FML during each reduced work schedule week. In this example, the 12-week FML entitlement would become 24 weeks at half time.

12. Are “exempt” employees able to use intermittent or reduced work schedule FML?

Yes. There is no conflict with FLSA when the university is required by law to grant the FML. In such a case, there is a special exception to FLSA rules for family and medical leave. Under the law, an exempt employee may use intermittent or reduced work schedule leave during FML only if he/she has worked at least 1,250 hours in the year prior to the leave.

However, CSU policy is more generous than required by law and may grant FML to an employee for whom we are not mandated to grant it (for example, a person with less than 1,250 hours worked in the preceding 12 months).

FLSA allows for partial day docks or use of leave credits for absences under the FMLA.

In order to standardize attendance-reporting procedures under CSU policy, partial day absences while on FML are to be charged against an exempt employee's accrued leave credits. However, if an exempt employee exhausts his/her accrued leave and still has FML time, the employee is to receive regular pay.

Please note: There is no change in CSU attendance policy for exempt employees not on FML. Exempt employees continue to report regular absences in full workday increments.

13. What benefits must continue during FML?

If an employee has benefits, all benefits automatically continue during any paid leave. During any unpaid remainder of the 12 weeks of the FML entitlement, the CSU pays its normal share of any medical premiums pursuant to law. In addition, CSU will continue to pay its normal share of any premiums for dental insurance and vision coverage. An accounts receivable will be set up for the employee's share of the premium, if any. If the employee wishes to discontinue medical coverage during the unpaid leave, the CSU will also suspend its medical premium payments but dental and vision will be continued. Suspended medical coverage will be reinstated upon return to active status.

If the employee does not return from FML, the CSU may recover premiums paid during the unpaid portion of the leave, unless the reason the employee is not returning is due to a serious health condition of the employee, spouse, child or parent, or is due to some other reason beyond the employee's control. Each case must be reviewed on an individual basis. Recovery of premiums will also be waived if the employee retires at the end of the leave.

14. How does FML affect seniority?

Permanent employees earn seniority points during both the paid and unpaid portions of FML.

15. Is the employee required to notify the university of an impending FML?

The following are general guidelines; refer to the appropriate collective bargaining agreement for represented employees as timeframes may vary:

An employee expecting a new child (either by birth or placement) should provide at least 30 days notice to the university before commencement of the leave. However, if the leave must begin in less than 30 days, the employee must provide as much notice as possible.

An employee who takes a foreseeable leave based on planned medical treatment must make a reasonable effort to schedule the treatment, subject to the health care provider's approval, so as not to unduly disrupt university operations. The employee should provide at least 30 days advance notice; if that is not possible, the employee must provide as much notice as possible.

If the FML is not foreseeable, the employee should inform the university within five days of learning of the need for the leave.

16. *When can the employer ask about the circumstances of an employee's time off to determine whether it should be designated as leave time under FMLA?*

When the employer becomes aware that an employee has taken, or intends to take, three or more days away from work for illness, or to care for a family member who is ill, inquiry can be made about the circumstances to determine whether the time off should be designated as FML.

17. *Is medical certification required for leave?*

General guidelines are provided below, but please refer to the appropriate collective bargaining agreement for represented employees. The collective bargaining agreement supersedes this policy if it is more protective of employee rights.

The department/university may require a medical certification from an employee seeking leave for the serious health condition of either the employee or family member. Certification may be required to be submitted within 15 calendar days of requesting the information. If the employee does not comply, the university may delay approval of the leave until the requirement is met, unless it is not practicable for the employee to comply. Subsequent recertification may be required on a reasonable basis, but not more frequently than every 30 days except under unusual circumstances.

The university can require the certification from a health care provider to include the date on which the condition commenced, the probable duration of the condition, and appropriate medical facts regarding the condition. The university may also require a statement that the employee is needed to care for the family member, or, if the employee is sick, a statement that the employee is unable to perform his/her job. If the employee requests an intermittent leave or a reduced work schedule, the university may require that the certification include a statement of the medical necessity for the intermittent or reduced work schedule. The university may also require an estimate of the employee's modified work schedule and the expected dates and duration of treatment.

If the department/university questions the medical certification, regulations permit the university to require the employee to obtain a second opinion from another health care provider (at university expense) prior to granting FML. If the first and second opinions differ, the university may require a third (university-paid) opinion from a health care provider selected jointly by the employer and the employee. The third opinion is final and binding.

18. Who designates the time off as FML?

An employee can make a request for FML but it is the university's responsibility to determine whether the leave qualified as FML, to designate it as such, and to provide the employee with notice of its decision.

19. What type of notice must be given to the employee informing him/her that leave is being counted as FML?

Notice to the employee that the leave time will be counted against the 12 weeks of FML entitlement can be given orally or in writing by the university.

If the notice is oral, it must be confirmed in writing no later than the next pay period. However, if the end of the pay period is less than a week after the oral notice, the written notice may be given in the subsequent pay period. The written notice is to include all of the specific expectations and obligations of the employee and any consequences for failing to satisfy these obligations. FML related forms and policy statements should accompany the notice.

20. When does the FML time begin to run?

FML time begins to run after the employee has requested and is granted a FML, or the first day after the university notifies the employee that the time off is being designated as FML.

21. Can a campus apply FML retroactively to time already taken?

No, unless the employer does not learn of the FML qualifying reason for the leave until after the employee is already off work. In that case, the university has two days from learning of the qualifying reason in which to notify the employee that the leave is being considered as FML.

22. Must an employee report to the campus during FML?

The university may request that an employee report periodically on his/her status and intent to return to work. However, current law does not permit imposition of any penalties if the employee fails to comply.

23. What are the employee's rights to reemployment?

An employee on FML is entitled to return to the same position or another position with equivalent benefits, pay, and conditions of employment. The employee on leave has no different rights than if he/she were actively at work; therefore, the university may be able to deny reinstatement if the job is eliminated due to layoff. Benefits accrued prior to the leave cannot be taken away, and the leave does not constitute a break in service for seniority or benefits.

If the employee cannot perform the essential functions of the job, the university has no obligation under FMLA to create or find another position for the employee. However, other laws, such as workers' compensation and the Americans with Disabilities Act, must be considered prior to taking any personnel action.

24. Can an employer fill the empty position while the employee is out on FMLA?

Yes. However, the person hired to fill the empty position must be hired on a temporary basis, so that the job is available to be reclaimed by the absent employee.

25. What happens when the FMLA entitlement is exhausted but the employee is not able to return to work?

Under the law, an employer is obligated to hold an employee's job open for a "reasonable time" after the FMLA time is exhausted.

Thereafter, the employee can be medically terminated or retired with disability benefits, if eligible. The determination of what is "reasonable" must be reached with reference to the circumstances of each particular case, e.g., whether the employer has reason to believe that the employee will actually be capable of returning to work, whether the employee has any remaining paid benefits, etc.

26. Within the provisions of FMLA, what leave benefits are available for an employee to care for an injured service members?

Recent revisions to the FMLA provide a new qualifying leave to care for a seriously injured service member. The provision allows eligible employees up to 26 weeks of unpaid leave under the FMLA to care for a spouse, son, daughter, parent or "next of kin" service member who has a serious injury or illness suffered in the line of duty in the Armed Forces.

27. What are the university's FMLA communication requirements?

Campuses are required to post in conspicuous places where employees are employed a notice explaining the FMLA's provisions and provide information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division, Department of Labor. Rights under FMLA and CSU FML policy should also be included in any employee handbook or other guidelines outlining leave programs. FMLA notices may be obtained from local offices of the Wage and Hour Division.