

COUNTY OF TUOLUMNE

Family and Medical Leave Policy



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County of Tuolumne

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COUNTY OF TUOLUMNE

FAMILY AND MEDICAL LEAVE POLICY

I. Statement of Policy

To the extent not already provided for under current leave policies and provisions, the County of Tuolumne will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this policy, “leave” under this policy shall mean leave pursuant to the FMLA and CFRA.

II. Definitions

- A.** “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B.** “Single 12-month period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.ⁱ
- C.** “Child” means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

- D.** “Parent” means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- E.** “Spouse” means a husband or wife as defined or recognized under California State law for purposes of marriage. “Spouse” also includes registered domestic partners and same-sex partners in marriage.

- F.** “Domestic Partner,” as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
- G.** “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:
- 1.** Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or
 - 2.** Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a)** A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full 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 within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or
 - ii)** Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - b)** Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave. (Under California law, an employee disabled by pregnancy is likely entitled to pregnancy disability leave.)
 - c)** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i)** Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;

- 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.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- 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.
- 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.

H. “Health Care Provider” means:

- 1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- 2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
- 3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- 4. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- 5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 6. Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

I. “Covered active duty” means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country, or (2) in the case of a member of a reserve component of the Armed

Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.

- J.** “Covered Servicemember” means (1) 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; or (2) 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, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- K.** “Outpatient Status” means, with respect to a covered servicemember, 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.
- L.** “Next of Kin of a Covered Servicemember” 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 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.
- M.** “Serious Injury or Illness”: (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service 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; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

III. Reasons for Leave

Leave is only permitted for the following reasons:

- 1.** The birth of a child or to care for a newborn of an employee;

2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position (i.e., an employee is unable to perform any one or more of the essential functions of his/her position);
5. Leave for a “qualifying exigency” may be taken arising out of the fact that an employee’s spouse, son, daughter, or parent is on covered active duty or call to active duty status (under the FMLA only, not the CFRA); or
6. Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

Employees who misuse or abuse FMLA and/or CFRA leave may be disciplined up to and including termination. Moreover, an employee who fraudulently obtains or uses FMLA/CFRA leave is not protected by the FMLA/CFRA’s job restoration or maintenance of health benefits provisions.

IV. Employees Eligible for Leave

An employee is eligible for leave if the employee:

1. Has been employed for at least 12 months; and
2. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

V. Amount of Leave

Eligible employees are entitled to up to a total of 12 workweeks (or 26 weeks to care for a covered servicemember) of leave during any 12-month period. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

A. Minimum Duration of Leave

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child.

In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the employee must comply with the notice and medical certification provisions of this policy.

B. Parents/Spouses Both Employed by the County of Tuolumne

In any case in which both parents are employed by the County of Tuolumne and are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). Similarly, where married spouses both work for the same employer, they may be limited to a total of 12 weeks of FMLA leave for bonding leave.

In any case in which a husband and wife both employed by the County of Tuolumne are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember.

Except as noted above, these limitations do not apply to any other type of leave under this policy.

VI. Employee Benefits While on Leave

Leave under this policy is unpaid. While on family and medical care leave, employees will continue to be covered by the County of Tuolumne's group health insurance to the same extent that coverage is provided while the employee is on the job for up to 12 weeks each leave year. If the employee is disabled by pregnancy, coverage will continue to be covered for up to 4 months (i.e. 17 and 1/3 weeks) for each pregnancy. In the event an employee is disabled by pregnancy and also uses leave under the California Family Rights Act, County of Tuolumne will maintain the employee's health benefits while the employee is disabled by pregnancy (up to four months or 17 and 1/3 weeks) and during the employee's CFRA leave (up to 12 weeks). Employees will still be responsible for the employee's share of the premiums for health benefits.

Employees will not continue to be covered under non-health benefit plans (e.g. AFLAC, any voluntary program, etc.) which are not provided pursuant to the County of Tuolumne's group health plans. If employees would like to continue to be covered under these non-health benefit plans, employees may make the appropriate contributions for continued coverage by payroll deductions or direct payments made to these plans. Depending on the particular plan, the County of Tuolumne will inform you whether the premiums should be paid to the carrier or to the County of Tuolumne.

Your coverage on a particular plan, including health benefits plans, may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the County of Tuolumne shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The County of Tuolumne shall have the right to recover premiums through deduction from any sums due the County of Tuolumne (e.g. unpaid wages, vacation pay, etc.).

VII. Substitution of Paid Accrued Leaves

While on leave under this policy, as set forth herein, an employee shall concurrently use paid accrued leaves. Similarly, the County of Tuolumne shall require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and shall also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

A. Employee's Right to Use Paid Accrued Leaves Concurrently with Family Leave

Where an employee has earned or accrued paid vacation, sick leave, compensatory time, or personal leave, that paid leave shall be substituted for all or part of any otherwise unpaid leave under this policy.

B. County of Tuolumne's Right to Require an Employee to Use Paid Leave When Using FMLA/CFRA Leave

Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with the exception of employees are required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act.

C. County of Tuolumne's and Employee's Rights if an Employee Requests Accrued Leave, Other Than Accrued Sick Leave, Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off, other than accrued sick leave, without reference to a FMLA/CFRA-qualifying purpose, the County of Tuolumne may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the County of Tuolumne denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-

qualifying purpose, the County of Tuolumne may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the County of Tuolumne shall require the employee to exhaust accrued leave.

VIII. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent, registered domestic partner, or spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the County of Tuolumne.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of new active duty orders or similar documentation 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.

A. Time to Provide a Certification

When an employee's leave is foreseeable and at least 30 days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the County of Tuolumne within the time frame requested by the County of Tuolumne (at least 15 calendar days), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification, the employee will have seven calendar days to cure any such deficiency.

However, if an employee fails to provide a medical certification within the seven calendar days, the County of Tuolumne may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Second and Third Medical Opinions

If the County of Tuolumne has a good faith, objective reason to doubt the validity of a certification, the County of Tuolumne may require a medical opinion of a second health care provider chosen and paid for by the County of Tuolumne. If the second opinion is different from the first, the County of Tuolumne may require the opinion of a third provider jointly approved by the County of Tuolumne and the employee, but paid for by the County of Tuolumne. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.

D. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. Employees on an approved flexible work agreement must accurately reflect FMLA time on the time card regardless of the number of hours worked during the week. For example, if you take 6 hours of FMLA time during the week and work an additional 6 hours to avoid using leave accruals, the 6 hours of FMLA must still be reflected on the time card. The Department Head may revoke a flexible work agreement if FMLA time is not accurately recorded.

IX. Employee Notice of Leave

Although the County of Tuolumne recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give notice of their need for leave as soon as is practicable. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. If the County of Tuolumne determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the County of Tuolumne may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

X. Reinstatement upon Return from Leave

A. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent

employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and County of Tuolumne, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation to Periodically Report on His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness-for-Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

D. Reinstatement of "Key Employees"

The County of Tuolumne may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the County of Tuolumne within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the County of Tuolumne, and the employee is notified of the County of Tuolumne's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

XI. Required Forms

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request for Family or Medical Leave Form" prepared by the County of Tuolumne to be eligible for leave. **NOTE: EMPLOYEES WILL RECEIVE A COUNTY OF TUOLUMNE RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE.**
2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner.

3. Authorization for payroll deductions for benefit plan coverage continuation.
4. Fitness-for-duty to return from leave form.

ⁱ 29 C.F.R. § 825.127(e)(1).