

South Whittier SD

Administrative Regulation

Family Care And Medical Leave

AR 4161.8, AR 4261.8, AR 4361.8

Personnel

The District shall not deny any eligible employee the right to family care, medical, or pregnancy disability leave (PDL) pursuant to the Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA) nor restrain or interfere with the employee's exercise of such right. In addition, the District shall not discharge an employee or discriminate or retaliate against them for taking such leave or for their opposition to or challenge of any unlawful District practice in relation to any of these laws or for their involvement in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

Definitions

The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.

Child (son or daughter) means biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis, regardless of age or dependency status. . (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the District for at least 12 months and who has at least 1,250 hours of service with the District during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.110)

Employee disabled by pregnancy means an employee whose health care provider states that the employee is: (2 CCR 11035)

1. Unable because of pregnancy to perform any one or more of the essential functions of the job or to perform any of them without undue risk to the employee or other persons or to the pregnancy's successful completion
2. Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss of end of pregnancy, or any other pregnancy-related condition

Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; CFR 825.122)

Serious health condition means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental health condition of the employee or their child, parent, spouse, grandparent, grandchild, or sibling including, but not limited to, treatment for substance abuse, that involves either of the following: (Government Code 12945.2; 2 CCR 11087, 11097; 29 USC 2611; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity.

A person is considered an inpatient when a health care facility formally admits them to the facility with the expectation that they will remain overnight and occupy a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

Incapacity means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
 - a. A period of incapacity of more than three (3) consecutive full days
 - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
 - c. Any period of incapacity due to pregnancy or for prenatal care under FMLA
 - d. Any period of incapacity which is permanent or long term, due to a condition for which treatment may not be effective
 - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage, or a registered domestic partner within the meaning of Family Code 297-297.5 (Family Code 297, 297.5, 300; 2 CCR 11087; 29 CFR 825.122)

Eligibility

The District shall grant FMLA and CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2, 12945.6; USC 2612; CFR 825.112)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (parental leave)
2. To care for the employee's child, parent, spouse, grandparent, grandchild, or sibling with a serious health condition.
3. The employee's own serious health condition that makes them unable to perform one or more of the essential functions of their position.
4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or call to cover active duty (or has been notified of an impending call or order to covered active duty)
5. To care for a covered servicemember with a serious injury or illness if the covered servicemember is the employee's spouse, child, parent, or next of kin, as defined

In addition, the District shall grant PDL to any employee who is disabled by pregnancy, childbirth, or other related medical condition. (Government Code 12945; 2 CCR 11037)

Terms of Leave

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under “Military Caregiver Leave” below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945.2; 29 USC 2612)

This 12-month period shall be a rolling period measured backward from the date an employee uses any family care and medical leave, as defined in 29 CFR 825.200.

In addition, any employee who is disabled by pregnancy, childbirth, or related condition shall be entitled to PDL for the duration of the disability not to exceed four months. For part-time employees, the four months shall be calculated on a proportional basis. (Government Code 12945; 2 CCR 11042)

PDL shall run concurrently with FMLA leave for disability caused by an employee’s pregnancy. At the end of the employee’s FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of a child or to bond with or care for the child. (Government Code 12945, 12945.2; 2 CCR 11046, 11093)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of birth or placement of the child. Such leave does not need to be taken in one continuous period of time. (2 CCR 11090; 29 USC 2612)

If both parents of a child work for the District, the District will grant 12 workweeks of child bonding leave to both eligible parents, regardless of marital status. (Government Code 12945.2, 12945.6; 2 CCR 11088; 29 USC 2612)

Use/Substitution of Paid Leave

Option 1: An employee shall use their accrued vacation leave, other accrued time off, and any other paid time off negotiated with the District for any otherwise unpaid FMLA or CFRA leave not involving their own serious health condition. For PDL, CFRA, or FMLA leave due to an employee’s own serious health condition, the employee shall use accrued sick leave and may use accrued vacation leave and other paid time off at their option. (Government Code 12945, 12945.2, 12945.6; 2 CCR 11044; 29 USC 2612)

The District and employee may also negotiate for the employee’s use of any additional paid or unpaid time off instead of using the employee’s CFRA leave. (2 CCR 11092)

Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or their child, parent, spouse, grandparent, grandchild, or sibling may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the District shall limit leave increments to the shortest period of time that the District’s payroll system uses to account for absences or use of leave provided it is not to be greater than one hour. (2 CCR 11042, 11090; 29 USC 2612)

The basic minimum duration of leave for the birth, adoption, or foster care placement of a child shall be two weeks. However, the District shall grant a request for such leave of less than two weeks on any two occasions. (2 CCR 11090; 29 USC 2612)

The District may require an employee to transfer temporarily to an available alternate position under any of the following circumstances: (2 CCR 11041, 11090; 29 USC 2612)

1. The employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned treatment for the employee or family member.
2. A medical certification is provided by the employee's health care provider that, because of pregnancy, the employee has a medical need to take intermittent leave or leave on a reduced work schedule.
3. The District agrees to permit intermittent leave or leave on a reduced work schedule due to the birth, adoption, or foster care placement of the employee's child.

The alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 11041, 11090; 29 USC 2612)

Request for Leave

The District shall consider an employee's request for PDL or family care and medical leave only if the employee provides at least verbal notice sufficient to make the District aware of the need to take the leave and the anticipated timing and duration of the leave. (2 CCR 11050, 11091)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, they must state the reason the leave is needed (e.g., birth of a child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire and obtain the necessary details of the leave to be taken. (2 CCR 11091)

The District shall respond to requests for leave as soon as practicable. (2 CCR 11091)

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the District is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

When an employee is able to foresee the need for PDL or family care and medical leave at least 30 days in advance of the leave, the employee shall provide the District with at least 30 days advance notice before the leave. When the 30 days notice is not practicable because of a lack of knowledge of when the leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the District with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial of leave. (2 CCR 11050, 11091)

In all instances, the employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or

supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 11050, 11091)

Certification of Health Condition

Within five (5) business days of an employee's request for family care and medical leave for their own or their child's, parent's, spouse's, grandparent's, grandchild's, or sibling's serious health condition, the Superintendent or designee shall request that the employee provide certification by a healthcare provider of the need for leave. Upon receiving the District's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11091; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, parent or spouse with a serious health condition, the health care provider's certification of both of the following:
 - a. Estimated amount of time the health care provider believes the employee needs to care for the child, parent, spouse, grandparent, grandchild, or sibling
 - b. Statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of the child, parent, spouse, grandparent, grandchild, or sibling during a period of the treatment or supervision.
4. If the employee is requesting leave because of their own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of their job
5. If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

When an employee has provided sufficient medical certification to enable the District to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within a reasonable amount of time whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

If the Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, the District may require the employee to obtain a second opinion

from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the District, again at district expense. The opinion of the third health care provider shall be final and binding. (29 USC 2613; Government Code 12945.2; 2 CCR 11091)

If additional leave is needed when the time estimated by the health care provider expires, the District may require the employee to provide recertification in the manner specified in the preceding paragraph. (29 USC 2613; Government Code 12945.2)

Employees who take family care and medical leave for their own serious health conditions shall present certification from their health care provider to the effect that they are able to resume work.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

For PDL, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if they have reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 11050)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because the employee is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 11050)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the District may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 11050; 29 USC 2613)

The Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011.

Release to Return to Work

Upon expiration of an employee's PDL or family care and medical leave taken for their own serious health condition, the employee shall present certification from the health care provider that they are able to resume work. The certification shall address the employee's ability to perform the essential functions of their job.

Rights to Reinstatement

Upon granting an employee's request for PDL or FMLA/CFRA leave, the Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 11043, 11089; 29 USC 2614)

However, the District may refuse to reinstate an employee returning from FMLA or CFRA leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 2 CCR 11089; 29 USC 2614)

1. The employee is a salaried “key employee” who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee’s worksite.
2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

The District may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee. (2 CCR 11089; 29 CFR 825.216)

The District may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee’s PDL. (2 CCR 11043)

Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, they shall maintain their status with the District and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 2 CCR 11092; 29 USC 2614)

For up to a maximum of four (4) months for PDL and 12 workweeks for other family care and medical leave, the District shall continue to provide an eligible employee the group health plan coverage that was in place before they took the leave. The employee shall reimburse the District for premiums paid during the leave if they fail to return to District employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstance beyond their control. (Government Code 12945.2; 2 CCR 11044; 29 USC 2614; 29 CFR 825.213)

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the District shall not make plan payments for an employee during any unpaid portion of time accrued under the plan. (Government Code 12945.2; 2 CCR 11044, 11092)

Military Family Leave Resulting from Qualifying Exigencies

An eligible employee may take up to 12 work weeks of unpaid FMLA/CFRA leave, during each 12-month period established by the District in the section entitled “Terms of Leave” above, for one or more qualifying exigencies while their child, parent, or spouse who is a military member is on call to covered active duty status. (29 USC 2612; 29 CFR 825.126)

Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law. (29 USC 2611; 29 CFR 825.126)

Qualifying exigencies include time needed to: (29 CFR 825.126)

1. Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of call or order of short notice deployment
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status
3. Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. Make or update financial and legal arrangements to address a military member's absence
5. Attend counseling provided by someone other than a health care provider
6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, rest and recuperation leave during deployment
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. Care for military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. Address any other event that the employee and District agree is a qualifying exigency

The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. Their certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)

During the period of qualified exigency leave, the District's rule regarding an employee's use of their accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Military Caregiver Leave

The District shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be a

spouse, son/daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA/CFRA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

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.
2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran

Son or daughter of a covered servicemember means the biological, adopted, or foster child, stepchild, legal ward, or a child of any age for whom the covered servicemember stood in loco parentis. (29 CFR 825.127)

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood loco parentis to the covered servicemember (except "parents in law"). (29 CFR 825.127)

Next of kin means the nearest blood relative to the covered servicemember, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty in the Armed Forces, and that may render the member medically unfit to perform duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
 - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered them unable to perform the duties of their office, grade, rank, or rating

- b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
- c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to their military service or that would do so but for treatment received by the veteran
- d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VTA's Program of Comprehensive Assistance for Family Caregivers

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

During the period of military caregiver leave, the district's rule regarding an employee's use of their accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

Notifications

The Superintendent or designee shall provide the following notifications regarding state and federal law related to PDL or FMLA/CFRA leave:

1. General Notice: Information explaining the provisions of the FEHA/PDL and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks.

The general notice shall also explain the employee's obligation to provide the Superintendent or designee with at least 30 days notice of the need for the requested leave, when the need is reasonably foreseeable at least 30 days prior to the start of the leave. (2 CCR 11050, 11091)

2. Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five (5) business days, provide notification to the employee of their eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)
3. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)

- a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying
 - b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
 - c. The employee's right to use paid leave, whether the District will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
 - d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
 - e. The employee's status as a "key employee" if applicable, potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial
 - f. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
 - i. Any time the information in the above notice changes, the Superintendent or designee shall, within five (5) business days of their receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing and changes to the notice. (29 CFR 825.30)
4. Designation Notice: When the Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, they shall, within five (5) business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (2 CCR 11091; 29 CFR 825.300)

If the leave needed is known, the notice shall include the number hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

Any time the information provided in the designation notice changes, the Superintendent or designee shall, within five (5) business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (2 CCR 11091, 11097; 29 CFR 825.300)

Records

The Superintendent or designee shall maintain records pertaining to individual employees' use of family care and medical leave in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References	Description
2 CCR 11035-11051	Unlawful sex discrimination: pregnancy, childbirth and related medical conditions
2 CCR 11087-11098	California Family Rights Act
Ed. Code 44965	Granting of leaves of absence for pregnancy and childbirth
Fam. Code 44965	Rights, protections, benefits under the law; registered domestic partners
Fam. Code 300	Definition of marriage
Gov. Code 12926	Definitions
Gov. Code 12940	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Gov. Code 12945.1-12945..2	California Family Rights Act
Gov. Code 12945.6	Parental leave
Gov. Code 12946	Fair employment and Housing Act: discrimination prohibited
Federal References	
1 USC 7	Definition of marriage, spouse
29 CFR 825.100-825.702	Family and Medical Leave Act of 1993
29 USC 2601-2654	Family Care and Medical Leave Act
42 USC 2000ff-2000ff-11	Genetic Information Nondiscrimination Act of 2008
Management Resources References	
Court Decision	United States v. Windsor, (2013) 699 F.3d 169
Court Decision	Faust v. California Portland Cement Company, (2007) 150 Cal.App. 4th 864
Court Decision	Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045
U.S. Department of Labor Publication	Military Family Leave Provisions of the FMLA FAQ and Answers
Website	U.S. Department of Labor, FMLA
Website	California Department of Fair Employment and Housing
Cross References	
0410	Nondiscrimination In District Programs and Activities
0470	COVID-19 Mitigation Plan
2121	Superintendent's Contract

4030		Nondiscrimination in Employment
4030-R(1)		Nondiscrimination in Employment
4032-R(1)		Reasonable Accommodation
4033		Lactation Accommodation
4112.2		Certification
4112.2-R(1)		Certification
4112.4-R(1)		Health Examinations
4112.9		Employee Notifications
4112.9-E(1)		Employee Notifications
4113.4		Temporary Modified/Light-Duty Assignment
4117.3		Personnel Reduction
4141		Collective Bargaining Agreement
4154		Health And Welfare Benefits
4154-R(1)		Health And Welfare Benefits
4161		Leaves
<u>4161-</u>	R(1)	Leaves
<u>4161.1-</u>	R(1)	Personal Illness/Injury Leave
<u>4161.2-</u>	R(1)	Personal Leaves
4161.9		Catastrophic Leave Program
4212.4-R(1)		Health Examinations
4212.42		Drug And Alcohol Testing For School Bus Drivers
4212.42-R(1)		Drug And Alcohol Testing For School Bus Drivers
4212.9		Employee Notifications
4212.9-E(1)		Employee Notifications
4213.4		Temporary Modified/Light-Duty Assignment
4217.3-R(1)		Layoff/Rehire
4241		Collective Bargaining Agreement
4254		Health And Welfare Benefits
4254-R(1)		Health And Welfare Benefits
4259		Employee Assistance Programs
4261		Leaves

<u>4261-</u>	R(1)	Leaves
<u>4261.1-</u>	R(1)	Personal Illness/Injury Leave
<u>4261.2-</u>	R(1)	Personal Leaves
4261.9		Catastrophic Leave Program
4261.9-R(1)		Catastrophic Leave Program
4312.4-R(1)		Health Examinations
4312.9		Employee Notifications
4312.9-E(1)		Employee Notifications
4313.4		Temporary Modified/Light-Duty Assignment
4354		Health And Welfare Benefits
4354-R(1)		Health And Welfare Benefits
4359		Employee Assistance Programs
4361		Leaves
<u>4361-</u>	R(1)	Leaves
<u>4361.1-</u>	R(1)	Personal Illness/Injury Leave
<u>4361.2-</u>	R(1)	Personal Leaves
4361.9		Catastrophic Leave Program
4361.9-R(1)		Catastrophic Leave Program

Regulation SOUTH WHITTIER SCHOOL DISTRICT

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