LIMITING ABUSE OF LEAVES BY EMPLOYEES

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TOP 10 TIPS FOR LIMITING ABUSE OF LEAVES

1. Know the rules and how to enforce them.
2. Document, document, document!
3. Seek legal advice early and often.
4. Designate a point person or department responsible for leaves.
5. Work with labor negotiators to negotiate more employer-friendly procedures.
6. Do not ignore CFRA/FMLA.
7. Understand the interplay between worker's compensation leave and other leaves.
8. Pay attention to patterns and intervene as soon as possible.
9. Speak with employees, within legal limits, in an effort to learn the cause of their leave abuse and to determine if any reasonable accommodation is necessary.
10. Differentiate between problems which are leave-related and those that are discipline-related.

SELECTED EDUCATION CODE LEAVES — CERTIFICATED EMPLOYEES[1]

1. General Provisions of the Education Code:

A. A district may grant its certificated employees *greater* leaves of absence benefits than the law requires, but not less. (Ed. Code §§ 44962, 44963.)

These provisions merely restate what is already the law in any event: a district cannot lawfully deprive an employee of any leave of absence to which he or she is entitled by law.

B. At the expiration of a leave of absence, a certificated employee must be reinstated to the position held by the employee at the time the leave of absence was granted, unless the employee otherwise agrees. (Ed. Code § 44973.)

This requirement may trump the provisions of other leave statutes like CFRA and FMLA, which permit an employer in some circumstances to return an employee to a similar or equivalent, but not the same, position when returning from a leave of absence.

Therefore, districts should consult with legal counsel before refusing to return an employee to the position he or she held prior to the commencement of any leave.

C. No leave of absence granted to a probationary employee is a break in the continuity of service required for permanence. (Ed. Code § 44975.)

D. An employee can go from one paid leave to another.

EXAMPLE: *An employee is on extended sick leave recovering from cancer surgery when her father dies in New York. The employee is entitled to up to five days bereavement leave, which may not be deducted from her extended sick leave.*

E. The Education Code generally defines its leave of absence benefits in terms of a "school year." A "school year" is defined as the period that begins on July 1 and ends on June 30 of the following year. (Ed. Code § 37200.)

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[1] Refer to additional Education Code sections for certificated employee leaves of absence that are not discussed in these materials, including leaves of absence for travel and study (Ed. Code §§ 44966 et seq); to serve as an officer in a public employee organization (Ed. Code § 44987); to serve on certain boards, commissions, committees, or groups (Ed. Code § 44987.3); to serve as an elected member of the Legislature (Ed. Code § 44801); and compulsory leave of absence when the employee has been charged with certain sex and drug crimes (Ed. Code § 44940.5).

2. Specific Education Code Leaves for Certificated Employees:

A. Bereavement Leave (Education Code section 44985): A certificated employee is entitled to up to three days paid leave, or five days if out-of-state travel is required, on account of the death of any member of his or her immediate family. There is no limit on the number of bereavement leaves an employee can take. No deduction for a substitute can be made from the employee's salary, and bereavement leave may not be deducted from any other leave granted by the Education Code or the governing board.

Note*: "Immediate family" is defined in the bereavement leave statute as:*

Mother, father, grandmother, grandfather, or grandchild of the employee or of the spouse of the employee; and spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister of the employee, or any relative living in the immediate household of the employee.

Districts are free to expand the class of relatives considered to be "immediate family."

In addition, the term "spouse" must include registered domestic partners and couples in same-sex marriages recognized in California.

B. Pregnancy Leave (Education Code section 44965):

Under this nearly 40-year old provision of the Education Code, a pregnant employee who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom is entitled to a leave of absence. The length of the leave, including the date when the leave is to commence and the date on which the employee resumes her duties is to be determined by the employee and the employee's physician. The section specifies that a district is to grant pregnancy leave with pay only when it is necessary to do so in order that pregnancy leave be treated the same as leaves for illness, injury, or disability.

These provisions of the Education Code must be read in conjunction with more recent and controlling California law, ("PDL"), which must be followed by school districts. PDL prohibits discrimination based on pregnancy or pregnancy disability, and mandates that all pregnant employees are entitled to up to four months of pregnancy leave and more in some circumstances. In addition, if the employee meets CFRA/FMLA eligibility requirements on the first day of her PDL leave, she is entitled up to 12 additional weeks of child-bonding leave. PDL is discussed in detail elsewhere in these materials.

C. Industrial Accident Leave (Education Code section 44984):

1) Employees who are absent on account of industrial accident or illness, must be provided at least 60 working days of allowable leave in any one fiscal year for the same accident. A governing board may, by policy or CBA provisions, provide for additional leave for industrial accident or illness.

2) The leave commences on the first day of absence and shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.

3) Allowable leave shall not be accumulated from year to year. If the leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him or her for the same illness or injury.

4) During the industrial accident or illness leave, the employee is entitled to be paid such portion of the salary due him or her for any month in which the absence occurs as when added to his temporary disability indemnity payments will result in a payment of not more than his or her full salary. The employee may also endorse to the district the temporary disability indemnity checks received on account of his or her industrial accident or illness. The district then must issue the employee appropriate salary warrants for payment of the employee's salary with normally required deductions for retirement and other authorized deductions.

5) If the employee remains absent on account of industrial accident or illness, upon termination of the 60-day industrial accident or illness leave, the employee shall be entitled to sick leave and extended sick leave at either differential pay or half-pay, depending on the District's policy or CBA provisions. (See further below at paragraph E.)

D. Personal Necessity Leave (Education Code section 44981): Employees are entitled to use up to seven days of paid sick leave every school year for reasons of personal necessity, but cannot take more than seven days unless a collective bargaining agreement so specifies. The manner of proof of personal necessity may be determined by district rules and regulations. Personal necessity leave can be used for days off for religious observances.

A district cannot require advance permission in two situations:

1) A death or illness of a member of the employee's immediate family;

2) Accident involving the employee's person or property, or the person or property of a member of the employee's immediate family.

Note: *This statute does not define the term "immediate family," so virtually all districts either use the same definition used for bereavement leave, or have defined the term in their collective bargaining agreements, policies and procedures, or past practices.*

Additionally, districts are required to treat registered domestic partners and their immediate family members the same as spouses and their immediate family

members. This rule applies to same-sex married couples and their immediate family members, if the marriage is recognized in California.

E. Sick Leave (Education Code section 44978):

1) *Minimum of ten paid days per school year:* During each school year of service, a certificated employee employed five school days a week is entitled to a minimum of ten days of sick leave with full pay for "illness or injury." Districts have the authority to allow more than the minimum ten days of sick leave per school year, usually by a collective bargaining agreement. A certificated employee employed for less than five school days a week is entitled, at a minimum, to a proportionate part of the ten days of sick leave.

Note: *The Education Code does not define "illness or injury," thus the ordinary meaning of those words apply.*

"Illness" is defined in Webster's Dictionary as "an unhealthy condition of body or mind." This definition includes both serious health conditions, as well as conditions that are not considered serious, such as a cold or flu.

"Injury" is defined in Webster's Dictionary as "an act that damages or hurts." This definition includes injuries that would be considered serious health conditions, such as a depressed skull fracture resulting from a fall, and injuries that would not be considered a serious health condition, such as a sprained finger caused by a fall.

2) A district may allow an employee to take sick leave at any time during the school year, even before it has been accrued.

EXAMPLE: *A district may allow a teacher who is on the payroll on July 1 to immediately use the sick leave he or she will accrue during the school year that began on July 1.*

3) The Education Code entitles the employee to take sick leave for the illness or injury of the *employee*, which includes the employee's pregnancy and pregnancy-related conditions.

Except for personal necessity leave, there is no Education Code provision entitling the employee to use sick leave for child bonding leave or to care for a family member. However, an employee may still have a right to use sick leave for other purposes under other state or federal laws discussed elsewhere in these materials, such as Kin-Care Leave, or because the district offers sick leave benefits greater than required by the Education Code.

4) Employees are entitled to accumulate their unused sick leave from year-to-year, including any additional sick leave days allowed by the board.

5) Employees are entitled to transfer their accumulated sick leave if the employee goes to work for another school district, community college district or county office of education.

F. Extended Sick Leave (Education Code sections 44977; 44983):

1) *Sub-dock leave*. Education Code section 44977 provides for what is commonly referred to as "sub-dock" or "differential leave." The requirements are as follows.

a) Each school year, a certificated employee who has exhausted all available sick leave and accumulated sick leave, and continues to be absent on account of industrial or nonindustrial illness or accident, is entitled to sub-dock leave for an additional period of five school months.

NOTE: *The language "each school year" means that a certificated employee gets at least one five-month leave every school year. (See Assembly Committee on Education Analysis, SB 1019 as amended 01/20/98.)*

NOTE: *Sub-dock leave applies to absences caused by "illness or accident," while sick leave applies to absences caused by "illness or injury." For all practical purposes, the difference in wording between the two statutes is not legally significant: an employee does not have to have a serious health condition in order to get sub-dock leave.*

b) An employee is entitled to use sub-dock leave for absences necessitated by *the employee's* pregnancy, miscarriage, childbirth, and recovery therefrom. (Ed. Code § 44978.)

NOTE*: Just as with sick leave, the statutory language does not entitle an employee to use sub-dock leave for child bonding or to care for a family member who is temporarily disabled due to pregnancy or other medical or mental condition.*

c) Sub-dock leave must run consecutive to sick leave and accumulated sick leave. (Ed. Code § 44977(b)(1).)

d) The five school-month period does not have to be "continuous," meaning that it does not need to be taken for the same reason sick leave was taken and exhausted. (*Jefferson Classroom Teachers v. Jefferson Elementary School Dist.* (1982) 137 Cal.App.3d 993.)

e) Contrary to classified employees, a certificated employee shall not be provided with more than one five-month period per illness or accident. (Ed. Code § 44977(b)(2).) However, if a school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.

In some circumstances, an employee will be entitled to take more than five months sub-dock leave in a single school year.

EXAMPLE:

In school year 1, an employee is diagnosed with cancer, takes 3 months off, and returns to work before the end of the year.

In school year 2, the employee will be entitled to 2 months sub-dock leave related to his cancer, and an additional 5 months sub-dock for an illness or accident that is not related to cancer.

The statute does not say how a district may determine the nature of the employee's illness or accident. Districts should seek legal counsel before requiring a diagnosis or a fitness-for-duty examination.

f) During the five school-month period, if a substitute is hired to fill the absent employee's position, the district shall deduct from the absent employee's paycheck the amount actually paid to the substitute.

g) If no substitute is hired, the district shall deduct from the absent employee's paycheck the sum a substitute would have been paid pursuant to a substitute salary schedule adopted by the governing board.

2. *Half Pay Alternative (Ed. Code § 44983).*

a) *In lieu of* Section 44977, a district may adopt a policy or CBA provision that provides that an employee is entitled to 50 percent or more of his or her regular salary during a period of absence on account of illness or accident for a period of five school months or less. (Ed. Code § 44983.) If a district adopts the half-pay alternative, Section 44977 would not apply.

Often, districts refer to (and implement) this alternative as meaning "50 percent of the employee's regular salary for 100 days." However, the statutory language is "five school months," not "100 days."

The term "school month" is not defined in the leave statutes, but is defined as a four-week period for ADA accounting, (Ed. Code § 37201.) If district past practice has been to use five calendar months rather than five school months for computing certificated differential pay, we recommend that you continue this practice. The use of school months instead of calendar months may result in a shorter block of available leave time.

In districts adopting the half-pay alternative, all other leave issues are left to the district's policy or CBA, including such things as:

Whether the employee is limited to one leave a year; whether the employee is limited to one leave per illness or injury; whether the leave runs consecutive or concurrent to sick leave and accumulated sick leave.

G. Placement on Reemployment List (Education Code section 44978.1):

1) Once a certificated employee has exhausted all annual and accumulated sick leave and continues to be absent on account of illness or accident and is not medically able to resume the duties of his or her position, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 24 months if the employee is on probationary status, or for a period of 39 months if the employee is on permanent status. While the statute provides that an employee will automatically be placed on the medical reemployment list immediately upon exhaustion of all annual and accumulated sick leave, many districts prudently engage in the interactive process with an employee prior to placing the employee on the reemployment list. This may serve as an important step towards defending against any FEHA/ADA claims that a district failed to reasonably accommodate an employee's disability.

2) In contrast to the statutory provisions covering classified employees, a district is not required by statute to notify a certificated employee in writing that available paid leave has been exhausted or that the employee may petition the board for an extension of the employee's leave period, either paid or unpaid.

However, a governing board has the express authority to grant more leave of absence than is required by the Education Code, with or without pay. (Ed. Code § 44963.)

In our view, the better practice is to give the employee written notice prior to the exhaustion of available paid leave, and inform the employee that if

the employee wishes to petition the board, the board has the authority to grant greater leave than is required by the Education Code, paid or unpaid.

This procedure may help defeat a claim that the board's action in placing the employee on a reemployment list deprived the employee to a leave of absence to which he or she was entitled by law, such as FEHA/ADA accommodation leave.

3) The 24-month or 39-month period commences at the expiration of the employee's five-month extended sick leave, or at the end of any extension granted by the board.

4) If the employee becomes medically able during the 24- or 39-month period, the employee must be returned to employment in a position for which he or she is credentialed and qualified, *even if there is no existing vacancy*.

NOTE: Frequent questions, usually answered by CBA provisions, policy language, or past practice:

1. *Does the employee return at the pay rate he or she would have received if the employee had remained on the payroll?*
2. *What is the returning employee's seniority date?*

SELECTED EDUCATION CODE LEAVES — CLASSIFIED EMPLOYEES[1]

1. General Provisions of the Education Code:

A. A district may grant its classified employees leaves of absence and vacations, with or without pay. (Ed. Code § 45190.)

B. A district may grant more leave than the law requires, but not less. (Ed. Code § 45198.)

C. Unlike Education Code provisions governing certificated employees, there is no express statutory provision requiring that a classified employee returning from a leave be returned to the same position held by the employee at the time the leave of absence was granted.

Nevertheless, districts should consult with legal counsel before requiring a change in position or duties as a condition to the granting of, or return from, a leave of absence. As discussed elsewhere in these materials, state or federal leave of absence statutes like PDL require all employers, including school districts, to guarantee the same or similar position to an employee returning from a leave of absence.

D. A permanent classified employee can go from vacation to another type of paid leave, without returning to active service, if allowed by district policy or CBA. (Ed. Code § 45200.)

EXAMPLE: *A permanent classified employee is on vacation when her father dies in New York. The employee is entitled to up to five days bereavement leave.*

E. All part-time probationary and permanent classified employees are entitled to sick leave and all other benefits conferred by law on a prorated basis. (Ed. Code § 45136.)

F. The Education Code generally defines its leave of absence benefits in terms of a "school year." A "school year" is defined as the period that begins on July 1 and ends on June 30 of the following year. (Ed. Code § 37200.)

2. Specific Education Code Leaves for Classified Employees:

A. Vacation (Education Code section 45197):

1) Regular classified employees are entitled to an annual vacation at the regular rate of pay earned at the time the vacation is commenced, consisting of a *minimum* of 10 days every year for 12-month, 40 hour per week employees. Part-time

[1]Refer to the Education Code for any additional classified employee leaves of absence that are not discussed in these materials, such as service as elected officer of public employee organization (Ed. Code § 45210.)

classified employees are entitled to prorated vacation as specified in the Education Code.

2) Vacation may be taken at any time during the school year, with the approval of the district. A district may grant an employee vacation during the school year even though it has not been earned at the time the vacation is taken.

3) If an employee is not permitted to take his full vacation in any given year, the amount not taken shall accumulate for use in the *next year*, or be paid in cash at the district's option. Thus, vacation that an employee is not permitted to take carries over for just one year. (Ed. Code § 45197(d); *Seymour v. Christiansen* (1991) 235 Cal. App. 3d 1168, 1177.)

4) On termination from the district, the employee is entitled to be paid a lump sum for all earned and unused vacation. (See *Seymour v. Christiansen* (1991) 235 Cal. App. 3d 1168 [holding classified employee was not entitled to payment for unused vacation over a period of 21 years since Ed. Code § 4197 (d) permitted the employee to carry over unused vacation "for just one year."]) However, employees who have not completed six months of employment in regular status are not entitled to such compensation.

B. Bereavement Leave (Education Code section 45194): A classified employee is entitled to up to three days paid leave, or five days if out-of-state travel is required, on account of the death of any member of his or her immediate family. The statute sets no limit on the number of bereavement leaves an employee can take. Bereavement leave may not be deducted from any other leave granted by the Education Code or the governing board.

NOTE: *"Immediate family" is defined in the statute as:*

Mother, father, grandmother, grandfather, or grandchild of the employee or of the spouse of the employee; and spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister of the employee, or any relative living in the immediate household of the employee.

Districts are free to expand the class of relatives considered to be "immediate family."

In addition, the term "spouse" must include registered domestic partners and couples in same-sex marriages recognized in California.

C. Pregnancy Leave (Education Code section 45193): Under this nearly 40-year old provision of the Education Code, a district may provide for a leave of absence "as it deems appropriate" to female classified employees who are required to be absent from duty because of pregnancy or convalescence therefrom, and may adopt rules and regulations prescribing the

manner of proof of pregnancy, the time during pregnancy at which the leave of absence shall be taken, and the length of time for which the leave of absence shall continue after the birth of the child.

A pregnancy leave under the Education Code may be with or without pay, and if with pay, the amount, if any, to be deducted from the salary due to the employee for the period in which the absence is up to the district.

These provisions of the Education Code must be read in conjunction with more recent and controlling California law, ("PDL"), which must be followed by school districts. PDL prohibits discrimination based on pregnancy or pregnancy disability, and mandates that all pregnant employees are entitled to up to four months of pregnancy leave and more in some circumstances. In addition, if the employee meets CFRA/FMLA eligibility requirements on the first day of her PDL leave, she is entitled up to 12 additional weeks of child-bonding leave. PDL is discussed in detail elsewhere in these materials.

D. Industrial Accident and Illness Leave (Education Code section 45192):

1) Employees who are absent on account of industrial accident or illness, must be provided at least 60 working days of allowable leave in any one fiscal year for the same accident. A governing board may, by policy or CBA provisions, provide for additional leave for industrial accident or illness.

2) The leave commences on the first day of absence and shall be reduced by one day for each day of authorized absence regardless of a compensation award made under workers' compensation.

3) If the leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him or her for the same illness or injury.

4) Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation award laws of California, exceed the normal wage for the day. The employee shall endorse to the district any and all wage loss benefit checks received under the workers' compensation laws of California and the district shall then issue the employee appropriate warrants for payment of wages or salary, after deducting normal retirement and other authorized contributions.

5) Industrial accident or illness leave of absence is to be used in lieu of sick leave entitlement. When entitlement to industrial accident or illness leave has been exhausted, sick leave and extended sick leave will then be used. But, if an

employee is continuing to receive workers' compensation the employee shall be entitled to use only so much of the person's accumulated or available sick leave, accumulated compensating time, vacation or other available leave which, when added to the worker's compensation award, provide for a full day's wage or salary.

E. Personal Necessity Leave - Education Code section 45207: A classified employee is entitled to use up to seven days of paid sick leave every school year for reasons of personal necessity, and more than seven days if specified in a collective bargaining agreement or board resolution or policy covering non-union employees. The manner of proof of personal necessity may be determined by district rules and regulations. In contrast to the law governing certificated employees, there is no restriction on a district's authority to require a classified employee to give advance notice of the need for personal necessity leave.

A classified employee may use personal necessity leave for the following purposes:

1) A death of the employee's immediate family when additional leave is required beyond that provided for bereavement leave;

The statute expressly adopts the same definition of the "immediate family" as is used for bereavement leave.

Additionally, districts are required to treat registered domestic partners and their immediate family members the same as spouses and their immediate family members.

This rule applies to same-sex married couples and their immediate family members, if the marriage is recognized in California.

2) Accident involving the employee's person or property or the person or property of a member of the employee's immediate family;

3) The employee's appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or court order;

4) Such other reasons as may be prescribed by the governing board.

5) Days off for religious observances.

F. Sick Leave (Education Code section 45191):

1) During each fiscal year of service, a classified employee who is employed five days a week, 12 months per year, is entitled to a minimum of 12 days of sick leave with full pay for "illness or injury." Districts have the authority to grant more than the minimum 12 days of sick leave per fiscal year. A part-time classified employee is entitled to a prorated amount of sick leave.

NOTE: *The Education Code does not define "illness or injury," thus the ordinary meaning of those words apply.*

"Illness" is defined in Webster's Dictionary as "an unhealthy condition of body or mind." This definition includes both serious health conditions, as well as conditions that are not considered serious, such as a cold or flu.

"Injury" is defined in Webster's Dictionary as "an act that damages or hurts." This definition includes injuries that are considered to be serious health conditions, such as a depressed skull fracture resulting from a fall, and injuries that would not be considered a serious health condition, such as a sprained finger caused by a fall.

2) Sick leave can be taken at any time during the fiscal year, even before it has been accrued, however, a new employee is not eligible to take more than six days until he or she has completed six months of active service with the district.

3) A classified employee is entitled to use sick leave for absences due to illness or injury resulting from pregnancy. (Ed. Code § 45193.)

NOTE: *The statutory language does NOT entitle an employee to use sick leave for child-bonding or to care for a family member.*

4) Classified employees are entitled to accumulate their unused sick leave from year-to-year, including any additional days allowed by the board.

5) Classified employees are entitled to transfer their accumulated sick leave to a subsequent employing district, community college or county office of education under the conditions described in the Education Code. (Ed. Code § 45202.)

F. Extended Sick Leave (Education Code section 45196):

1) *Sub-dock leave:* A classified employee who is absent from duty on account of industrial or nonindustrial illness or accident for five months or less is entitled to extended sick leave ("ESL") beginning with the first day of absence.

NOTE: *Classified employees, unlike certificated employees, are entitled to a <u>total</u> of five months of illness or accident leave. A classified employee is not entitled to an <u>additional</u> five months of leave above and beyond annual and accumulated sick leave. He or she is entitled to use full pay sick leave for as much of the five months as he or she has available and then the remainder of the five months will be deemed extended sick leave.*

a) A classified employee gets *at least one* 5-month period every school year. (See *CTA v. Gustine USD* (1983) 145 Cal.App.3d 735 [construing language in prior version of Education Code section 44977 that is virtually identical to language in the current version of Education Code section 45196].)

b) The statutory language does not limit classified employees to one five-month period for a single illness or injury.

NOTE: *Depending on how the statutory language is interpreted, a classified employee may get more than one five-month period every school year. Some believe that for classified employees, the five-month period resets if the employee returns to work after an absence of less than five months. (See 43 Ops.Cal.Atty.Gen. 282, 283 [interpreting language virtually identical to language in section 45196 to mean that five-month leave period is renewed if employee returns to work].)*

c) A classified employee is entitled to use extended sick leave for absences due to illness or injury resulting from pregnancy. (Ed. Code § 45193.) But, the statutory language does not entitle an employee to use sub-dock leave for child-bonding or to care for a family member.

d) If no substitute is hired to fill the employee's position during the employee's absence, the district must pay the employee his or her regular salary during extended sick leave.

e) If an *outside* substitute is hired to fill the absent employee's position, the district may deduct from the absent employee's paycheck the amount actually paid to the substitute. If the district has not adopted a substitute salary schedule, the amount paid to the substitute must be less than the absent employee's regular salary. (Ed. Code § 45196.)

NOTE: *In CSEA v. Tustin Unified School District (2007) 148 Cal.App.4th 510, the Fourth District Court of Appeal held that a district may deduct only the*

cost of an outside substitute employee, not the cost of an existing employee working extra hours to fill the position during the absence.

2) *100-day half-pay leave:*

a) As an alternative to the substitute-deduction rules described in paragraphs d and e above, a district may adopt a rule that provides that the employee is entitled each year to a total of not less than 100 working days of paid sick leave to be compensated at not less than fifty-percent of the employee's regular salary.

b) This alternative must be adopted by board policy or bargaining agreement.

c) The employee gets a total of at least 100 *working days* of extended sick leave each year if the district has adopted this alternative.

Note *the difference between 100 days and five months. Five months refers to a block of time on a calendar rather than a number of days of leave. By contrast, 100 days refers to the number of days of absence, regardless of how many months it takes to use up that number.*

d) The first day of absence is charged against the 100 days. All annual and accumulated sick leave days are used to provide full pay. After annual and accumulated sick leave is exhausted, the employee receives (at least) half pay for the remainder of the 100 days.

e) The half-pay days are "exclusive of any other paid leave, holidays, vacation, or compensation to which the employee may be entitled." "Other paid leave" means leave other than sick leave. Once the employee has used all available annual and accumulated sick leave and is in half-pay status, the employee has the option of using vacation or compensatory time to supplement the half pay, on an hour-for-hour basis.

NOTE: *In districts with 100 day, half pay leave under Education Code section 45196, a district cannot deduct vacation and "differential" leave concurrently under the express provisions of the statute. (CSEA v. Colton Joint Unified School District (2009) 170 Cal.App.4th 857.)*

f) The half-pay alternative allows districts to chose a different method of compensation than sub-dock pay. The alternative does not permit a district to ignore other minimum statutory requirements of ESL that are not related

to compensation, such as the requirement that an employee is entitled to use ESL for absences due to illness or injuries resulting from pregnancy.

G. Placement on Reemployment List - Education Code section 45195:

a) Once a *permanent* classified employee, who is absent because of *nonindustrial* accident or illness, has exhausted all entitlement to sick leave, vacation, compensatory time off, and all other available paid leave, a district may, but is not required to, grant additional paid or unpaid leave, not to exceed six months.

Note: *The statutory language does not apply to a probationary classified employee, or a classified employee absent due to industrial injury. However, though not required by statute, most districts, by practice, policy or collective bargaining agreement, place probationary employees, or those absent for industrial illness or injury, on the reemployment list.*

b) Before placing the employee on the reemployment list, the district *must notify the employee in writing* that available paid leave has been exhausted, and that the employee has the right to apply to the governing board for additional leave, paid or unpaid.

c) If additional leave is granted, the board may renew it for two additional periods of up to six months each.

d) If additional leave is granted, the employee must be returned to "a position within the class" to which he or she was assigned, or if at all possible, to his or her position at any time that he or she is able to resume those duties before the end of the additional leave period.

e) If the employee does not apply for additional leave, or the employee applies and no additional leave is granted, or additional leave is granted but the employee is unable to return to work when the additional leave has been exhausted, the employee shall be placed on a reemployment list for 39 months. While the statute provides that an employee will automatically be placed on the medical reemployment list immediately upon exhaustion of all annual and accumulated sick leave, many districts prudently engage in the interactive process with an employee prior to placing the employee on the reemployment list. This may serve as an important step towards defending against any FEHA/ADA claims that a district failed to reasonably accommodate an employee's disability.

f) If the employee is able to return to work before the expiration of the 39-month period, he or she must be reemployed in the first vacancy in his or her class. He or she shall be granted a preference over all other applicants except employees who are rehired from a layoff list.

PREGNANCY DISABILITY LEAVE ("PDL")

Under California's pregnancy disability leave law ("PDL") (Government Code Section 12945; C.C.R., Title 2, Section 7291.2, et seq.), a female employee who is disabled or medically affected by pregnancy, or a pregnancy-related condition, has rights to a leave of absence, a job transfer, reinstatement, continuation of benefits, and seniority accrual as set forth in the statute and implementing regulations. The statute and regulations also prohibit discrimination or retaliation against applicants or employees on the basis of pregnancy or a pregnancy-related condition.

1. ARE ALL CALIFORNIA SCHOOL DISTRICTS SUBJECT TO PDL REGARDLESS OF THEIR SIZE?

YES PDL applies to the State of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. (2 C.C.R. § 7291.2(h). Inasmuch as school districts are political subdivisions of the state, they are subject to PDL even if they only have a few employees.

2. WHO IS ELIGIBLE FOR PDL LEAVE? (2 C.C.R. §§ 7291.2(h); 7291.9(a), (c).)

Any female employee is entitled to a leave of absence if she is disabled due to pregnancy or a pregnancy-related medical condition, regardless of the length of time the employee has been on the payroll; regardless of whether the employee is probationary, permanent, or a temporary employee who works on a regular basis; regardless of whether the employee is full-time or part-time; and regardless of whether the employee is married. Districts should consult with counsel if they receive PDL requests from temporary employees who do not work on a regular basis.

3. WHAT IS THE DEFINITION OF "DISABILITY DUE TO PREGNANCY OR A PREGNANCY- RELATED CONDITION"?

PDL leave will apply to conditions arising from pregnancy, childbirth, morning sickness, miscarriage, abortion, postpartum depression, and any other medically-recognized condition related to pregnancy or childbirth.

A. *"Disabled by pregnancy"* means that, in the opinion of a woman's health care provider, the woman is unable because of pregnancy to work at all or is unable to perform any one or more of the essential functions of her job or to perform these functions without undue risk to herself, the successful completion of her pregnancy, or to other persons. A woman is also considered to be "disabled by pregnancy" if she is suffering from severe morning sickness or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension,

preeclampsia, post-partum depression, childbirth, loss or end of pregnancy, or recovery from childbirth. This list of conditions is non-exclusive and illustrative only. (2 C.C.R. § 7291.2(f).)

This language means that with the possible exception of cases involving suspected fraud, a district cannot second-guess a health care provider's statement that the employee is disabled due to pregnancy, provided that the health care provider submits a written statement that contains the information specified in the statute. See Question 11 concerning requirements for health care provider statements.

Districts which suspect fraud should contact their legal counsel for advice.

B. *"Related medical condition"* means any medically recognized physical or mental condition that is related to pregnancy or recovery from pregnancy or childbirth. (2 C.C.R. § 7291.2(u).) Generally, the term means physical or mental medical conditions directly related to pregnancy, the termination of a pregnancy, or childbirth. Medical conditions related to pregnancy include, but are not limited to, lactation-related medical conditions such as mastitis, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, loss or end of pregnancy, or recovery from loss or end of pregnancy.

4. HOW MUCH LEAVE CAN THE EMPLOYEE TAKE? (2 C.C.R. § 7291.9.)

A. Up to four months per pregnancy (not year), even if an employer has a policy or practice which provides less than four months leave for other similarly situated temporarily disabled employees.

1. *Normal pregnancy:* Six weeks PDL is typically taken for normal pregnancy, childbirth, or related medical condition.

2. *Complicated pregnancy:* Up to a total of four months PDL can be taken for complicated pregnancy, childbirth, or related medical condition.

B. More than four months, as follows:

1. If an employer has a more generous leave policy for other temporary disabilities than is required by PDL, the employer must provide such leave to employees temporarily disabled by pregnancy.

2. In our opinion, a pregnancy or a pregnancy-related disability qualifies as an illness or injury for the purposes of statutory five-month sub-dock or differential leave. This means that a school employee who is eligible for five-month sub-dock leave, will be entitled to take up to five months pregnancy disability leave.

C. The duration of the disability is determined by the employee's health care provider and not by the district. The employer may require medical certification for the medical advisability of the leave. (2 C.C.R. § § 7291.16 (a), (b) and 7291.17 (b).)

EXAMPLE: Employee Jane Doe gives the district a legally-sufficient written statement from her health care provider that says Jane is disabled for 12 weeks due to a pregnancy-related condition. The district learns that Jane has had a miscarriage at five months into her pregnancy. District officials think 12 weeks of disability is too long for a miscarriage. However, under California PDL law, Jane is legally entitled to 12 weeks leave because the length of her disability is determined by her health care provider, and not by district officials.

5. WHAT HAPPENS IF A CLASSIFIED OR CERTIFICATED EMPLOYEE HAS ALREADY USED UP ALL OF HER EDUCATION CODE PAID LEAVES FOR THE YEAR, INCLUDING HER SUB-DOCK LEAVE? IS SHE STILL ENTITLED TO UNPAID PDL WITH BENEFITS?

Contact the District's lawyer for an opinion based on the actual facts of the case, and the District's practices and policies concerning sub-dock leave. Note though that it is an unlawful employment practice for an employer to refuse to grant pregnancy disability leave to an employee disabled by pregnancy if the employee has provided the employer with reasonable advance notice of the medical need fo the leave and if her health care provider has advised that the employee is disabled by pregnancy.

6. DOES THE EMPLOYEE HAVE TO TAKE PDL ALL AT ONE TIME?

NO

A. *Intermittent or Reduced Work Schedules:* PDL may be taken intermittently or on a reduced work schedule when medically advisable, as determined by the employee's physician or health care provider. An employer may account for increments of intermittent leave using the shortest period of time that the employer's payroll system uses to account for other forms of leave, provided it is not greater than one hour. (2 C.C.R. §§ 7291.9 (a)(4).)

B. Although all pregnant employees are eligible for up to four months of leave, if that leave is taken in one period of time, taking intermittent leave or a reduced work schedule throughout an employee's pregnancy will differentially affect the number of hours remaining that an employee is entitled to take pregnancy disability leave leading up to and after childbirth, depending on the employee's regular work schedule.

EXAMPLE: A full-time employee who normally works a 40-hour work week is entitled to 693 working hours of leave. If that employee takes 180 hours of intermittent leave throughout

her pregnancy, she would still be entitled to take 513 hours, or approximately three months leading up to and after her childbirth. (2 C.C.R. § 7291.9(3)(A).)

7. HOW IS THE FOUR MONTH LEAVE ENTITLEMENT CALCULATED? (2 C.C.R. § 7291.9 (a) (1)-(2).)

A. *"Four months" defined:* A "four month leave" means time off for the number of days or hours an employee would normally work within four calendar months (one-third of a year or 17 1/3 weeks).

EXAMPLES:

For a full-time employee who works 40 hours per week, "four months" means a leave entitlement of 693 hours of leave entitlement, based on 40 hours per week times 17 1/3 weeks.

For an employee who works more or less than 40 hours per week, or who works on variable work schedules, the number of working days that constitutes "four months" is calculated on a pro rata or proportional basis. For example, for an employee who works 20 hours per week normally, "four months" means 346.5 hours of leave entitlement. For an employee who normally works 48 hours per week, "four months" means 832 hours of leave entitlement.

B. *Holidays*: If a holiday falls within a week taken as a pregnancy disability leave, the week is nevertheless counted as a week of pregnancy disability leave. If however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation), the days the employer's activities have ceased do not count against the employee's pregnancy disability leave entitlement. (2 C.C.R. § 7291.9 (a)(C).)

8. IS THE EMPLOYEE ENTITLED TO PAID PDL LEAVE? HOW ABOUT PAID BENEFITS OR SENIORITY ACCRUAL DURING A PDL LEAVE? (2 C.C.R. § 7291.11.)

A. *Paid leave?*:

An employer is not required to pay an employee during PDL unless the employer pays for other temporary disability leaves. An employee may be entitled to receive state disability insurance for a period of disability because of pregnancy and may contact the California Employment Development Department for more information.

An employee, solely at her option, is entitled to use her accrued sick leave, vacation time, or other accrued personal time that she would otherwise be eligible to take during the normally unpaid portion of PDL. However, if the district has adopted a written policy or collective bargaining agreement, it can require the employee to use her accrued sick leave for PDL. In any event, by law, an employer cannot require an employee to use her vacation or other accrued personal time off.

B. *Paid benefits or seniority accrual?:* (2 C.C.R. § 7291.11(c)-(d)):

During PDL, the employee is entitled to accrue seniority and participate in employee benefit plans to the same extent and under the same conditions as would apply to any other unpaid disability leave granted by the employer for any reason other than pregnancy disability. The employer shall maintain and pay for coverage for an eligible female employee who takes pregnancy disability leave for the duration of the leave, at the same level and under the same conditions as would have been provided if the employee had continued in employment continuously for the duration of the leave.

If the employer allows seniority to accrue when employees are on an unpaid leave or on a paid leave, such as paid sick or vacation time, then seniority will accrue during any part of a paid and/or unpaid PDL consistent with the employer's policy.

An employee returning from a PDL shall return with no less seniority than the employee had when the employee commenced for the purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

9. IS AN EMPLOYEE ENTITLED TO REASONABLE ACCOMMODATION DUE TO PREGNANCY OR A PREGNANCY-RELATED CONDITION? (2 C.C.R. §§ 7291.2(s) and 7291.7.)

YES subject to the following requirements:

A. A female employee affected by pregnancy is entitled to reasonable accommodation if:

1. The employee's request is based on the advice of her health care provider that reasonable accommodation is medically advisable; and

2. The requested accommodation is reasonable.

Whether an accommodation is reasonable is a factual determination to be made on a case-by-case basis, taking into consideration such factors, including but not limited to, the employee's medical needs, the duration of the needed accommodation, the

employer's legally permissible past and current practices, and other such factors, under the totality of the circumstances.

The employee and the employer must engage in a good faith interactive process to identify and implement the employee's request for reasonable accommodation.

B. When a reasonable accommodation, such as a change of work duties or job restructuring, is granted, it cannot affect the employee's right to take PDL leave. If the reasonable accommodation, however, involves a reduction in hours worked such as a reduced work schedule, or intermittent leave, the employer may consider this as a form of PDL leave and deduct the hours from the employee's PDL leave entitlement.

C. A employee may, but need not, require a medical certification substantiating the employee's need for reasonable accommodation. (See Question 11 for further information on medical certification.)

D. Reasonable accommodation is any change in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential function of a job.

Examples include:

1. Modifying work practices or policies;

2. Modifying work duties;

3. Modifying work schedules to permit earlier or later hours, or to permit more frequent breaks (e.g., to use the restroom);

4. Providing furniture (e.g., stools or chairs) or acquiring or modifying equipment or devices; or

5. Providing a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private per Labor Code section 1030.

10. IS AN EMPLOYEE ENTITLED TO A JOB TRANSFER OR A REDUCTION IN DUTIES DUE TO PREGNANCY OR A PREGNANCY-RELATED CONDITION? (2 C.C.R. § 7291.8.)

YES subject to the following requirements.

A. A female employee is entitled to transfer to a less strenuous or hazardous position or duties if:

1. Her health care provider certifies that it is medically advisable for her to transfer because of pregnancy or a pregnancy-related condition; and

2. The transfer can be reasonably accommodated by the employer.

B. However, an employer is not required to:

1. Create additional employment the employer would not otherwise have created;

2. Discharge another employee;

3. Violate the terms of a collective bargaining agreement;

4. Transfer another employee with more seniority;

5. Promote or transfer any employee who is not qualified to perform the new job.

6. Accommodate a transfer request by transferring another employee.

C. The employer bears the burden of proving, by a preponderance of evidence, that a transfer could not be reasonably accommodated for one of the reasons set out in preceding paragraph B.

D. There is no length of service requirement before an employee affected or disabled by pregnancy is eligible for a reasonable accommodation, transfer, or PDL leave. (2 C.C.R. § 7291.4.)

E. If an employee's health care provider certifies that the employee has a medical need to take intermittent leave or leave on a reduced work schedule because of pregnancy, the employer may require the employee to transfer temporarily to an available alternative position that meets the needs of the employee.

1. The employee must meet the qualifications of the alternative position.

2. The alternative position must have the equivalent rate of pay and benefits, and must better accommodate the employee's leave requirement than her regular job, but does not have to have equivalent duties.

E. When the employee's health care provider certifies that there is no further need for the transfer, intermittent leave, or leave on a reduced work schedule, the employee must be reinstated to the same or comparable position.

11. IS AN EMPLOYEE REQUIRED TO GIVE A DISTRICT ADEQUATE ADVANCE NOTICE OF HER NEED FOR REASONABLE ACCOMMODATION, TRANSFER, OR PDL LEAVE? (2 C.C.R. § 7291.17.)

YES as follows, but districts should consult with their legal counsel before denying a PDL leave, transfer, or reasonable accommodation based on the employee's failure to give advance notice:

A. Verbal or Written Advance Notice:

An employee must provide timely oral or written notice sufficient to make the employer aware that the employee needs reasonable accommodation, transfer, or PDL lave, and the anticipated timing and duration of the reasonable accommodation, transfer, or PDL leave.

B. 30 Days Advance Notice:

1. If the need for reasonable accommodation, transfer, or PDL leave is foreseeable, the employee must provide at least 30 days advance notice to the employer of her need for the reasonable accommodation, transfer, or PDL leave.

2. The employee must consult with the employer and make a reasonable effort to schedule any planned appointment or medical treatment, so as to minimize disruption to the employer's operations.

3. Any such scheduling, however, shall be subject to the approval of the employee's health care provider.

C. When 30 Days Advance Notice is Not Practicable:

Notice must be given as soon as practicable when the giving of 30 days notice is not practicable because it is not known when reasonable accommodation, transfer, or leave will be required to begin, there has been a change in circumstances, a medical emergency occurs, or other good cause.

D. Employers are prohibited from denying a request for reasonable accommodation, transfer, or PDL leave in an emergency or otherwise unforeseeable circumstance, on the basis that the employee did not provide advance notice.

E. If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the employer may delay the reasonable accommodation or transfer until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. But, the employer may not delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her co-workers.

F. Direct notice to the employer from the employee rather than from a third party regarding the employee's need for reasonable accommodation, transfer, or PDL is preferred, but not required.

12. CAN A DISTRICT REQUIRE MEDICAL DOCUMENTATION OF THE EMPLOYEE'S NEED FOR REASONABLE ACCOMMODATION, TRANSFER, OR PDL LEAVE? (2 C.C.R. §§ 7291.2(p); 7291.17(b).)

YES as follows:

A. As a condition of granting a reasonable accommodation, transfer, or PDL leave, an employer may require written medical certification. The employer must notify the employee of the need to provide medical certification, the deadline for providing certification, what constitutes sufficient certification, and the consequences for failing to provide medical certification.

1. An employer must notify the employee of the medical certification requirement each time a certification is required and provide the employee with any employer-required medical certification form for the employee's health care provider to complete. If the employee is already out on PDL because the need for the leave was unforeseeable, the notice to the employee of the need for medical certification may be oral. The employer must thereafter send via mail, fax, or e-mail, a copy of the medial certification form to the employee or to her health care provider, at the employee's election.

2. An employer may use the form provided in 2 C.C.R. § 7291.17(e) or may develop its own form. (See form attached to these materials.)

3. When the need for reasonable accommodation, transfer, or PDL leave is foreseeable, an employer may delay granting the request until medical certification is provided if the employee failed to provide timely certification after the employer requested the employee furnish such certification. When the need for reasonable accommodation, transfer, or PDL leave is not foreseeable, or in the case of recertification, an employee must provide certification within the time frame requested by the employee, which must be at least 15 days after the employer's request, or as soon as reasonably possible under the circumstances. If the employee fails to timely provide a medical certification, the employer

may delay the employee's continuation of the reasonable accommodation, transfer, or PDL leave.

4. When the employer requires medical certification, the employer shall request that the employee furnish medical certification from a health care provider at the time the employee gives notice of the need for reasonable accommodation, transfer or PDL leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences.

5. If the employer later has reason to question the appropriateness of the reasonable accommodation, transfer, or PDL leave or its duration, the employer can request medical certification.

Note: Seek the advice of legal counsel prior to requesting subsequent medical certification. Strong evidence of fraud or other inappropriate conduct should be available before pursing this option.

6. At the time the employee requests medical certification, the employer must also advise the employee of the consequences of her failure to provide adequate medical certification.

7. If a medical certification is inadequate or incomplete, the employer must so advise the employee and provide a reasonable opportunity to cure any deficiency. This means the employer should contact the employee as soon as possible, preferably in writing to explain what additional information is needed and ask the employee to provide another certification. Reasonable accommodations, transfers, or PDL leaves may be implemented before a fully sufficient medical certification has been received by the district.

8. If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the medical certification requirements discussed above, and the employee or employer elects to substitute sick, vacation, personal or family leave for unpaid PDL leave, only the employer's less stringent leave certification requirements may be imposed.

B. A medical certification for a reasonable accommodation or transfer is sufficient if it contains:

1. A description of the requested reasonable accommodation or transfer;

2. A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy; and

3. The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer.

C. A medical certification for a PDL leave is sufficient if it satisfies the requirements of 2 C.C.R. § 7291.17(b) or if it contains:

1. A statement by the employee's health care provider that the employee is disabled due to pregnancy, childbirth, or a related medical condition;

2. The date on which the woman became disabled due to pregnancy; and

3. The probable duration of the leave.

D. An employer may not ask for any additional information beyond what is authorized by regulations.

E. Upon expiration of the time period that the health care provider originally estimate the employee would need reasonable accommodation, transfer, or PDL leave, the employer may require the employee to obtain recertification if additional time is requested.

Note: Employers are not permitted to request periodic medical certification from an employee during PDL leaves. The provision above is the only time when a recertification is permitted.

F. The employer is responsible for complying with all applicable laws regarding the confidentiality of any medical information received during the medical certification process.

G. As a practical consequence of the PDL regulations, employers must accept, and cannot second-guess, the opinion of the employee's health care provider that she needs a reasonable accommodation, transfer to less strenuous or hazardous duties or position, or PDL leave. Unlike FMLA and CFRA, PDL contains no authorization for employers to obtain a second opinion.

13. DOES THE EMPLOYEE'S HEALTH CARE PROVIDER HAVE TO BE A PHYSICIAN? (2 C.C.R. § 7291.2(n).)

NO An employee's health care provider includes a marriage and family therapist or acupuncturist, nurse practitioner, nurse midwife, licensed midwife, clinical psychologist, clinical social worker, chiropractor, and a physician assistant.

14. ARE THERE ANY REGULATIONS COVERING AN EMPLOYER'S RESPONSE TO AN EMPLOYEE REQUEST FOR PDL LEAVE OR TRANSFER? (2 C.C.R. §§ 7291.17(a)(5).)

YES

A. The employer must respond as soon as possible, but no later than ten calendar days after receiving a request for reasonable accommodation, transfer, or PDL leave.

B. The employer must attempt to respond to a leave request before the date the leave is due to begin.

C. Once given, approval of a leave request shall be deemed retroactive to the date of the first day of the leave.

15. WHAT ARE THE EMPLOYEE'S REINSTATEMENT RIGHTS? (2 C.C.R. §§ 7291.2(i)-(j); 7291.10.)

A. Districts should consult with their lawyers before refusing to return an employee to her same position following a PDL leave or transfer.

B. Under PDL, an employer must, at the time it grants a PDL transfer or leave, guarantee to reinstate the employee to the same position when the transfer or leave is over, unless reinstatement to the same position is excused, in which case the employer must reinstate the employee to a comparable position as defined in 2 C.C.R. § 7291.2(j).

C. The guarantee must be given in writing if the employee requests it, but the better practice is for the district to give the guarantee in writing in all instances.

D. Under PDL, the employer's obligation to reinstate an employee to the same position is excused only if an employer proves by a preponderance of the evidence that the employee would not otherwise have been employed in her same position at the time reinstatement is requested for legitimate business reasons unrelated to the employee asking a pregnancy disability leave or transfer (such as a layoff pursuant to a plant closure).

16. IS AN EMPLOYEE ENTITLED TO EARLY REINSTATEMENT FROM A PDL LEAVE OR TRANSFER? (2 C.C.R. § 7291.10(b)(2).)

YES An employer must reinstate an employee within two business days, or as soon as possible, after the employee notifies the employer of her readiness to return from a PDL leave or transfer.

17. CAN A DISTRICT REQUIRE AN EMPLOYEE TO PROVIDE A MEDICAL RELEASE PRIOR TO THE EMPLOYEE'S REINSTATEMENT AFTER PDL LEAVE OR TRANSFER? (2 C.C.R. § 7291.17(c).)

YES An employer may require a medical "return-to-work" release stating that the employee is able to resume her original duties, but only if the employer has a uniformly applied practice or policy of requiring such releases from similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

18. DOES PDL INVOLVE ANY NOTICE POSTING REQUIREMENTS? (2 C.C.R. § § 7291.16 and 7291.18.)

YES California regulations require employers to provide their employees with written notice of their rights under PDL and/or FMLA/CFRA, as follows:

A. Employers must post the notices in a conspicuous place or places where employees tend to congregate. Electronic posting is sufficient to meet this requirement as long as it otherwise meets the requirements of the regulations.

B. Employers must also give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of her pregnancy or sooner if the employee inquires about reasonable accommodation, transfer, or PDL leaves.

C. If the employer publishes an employee handbook which describes other kinds of reasonable accommodations, transfers, or temporary disability leaves available to its employees, the employer is encouraged to include a description of reasonable accommodation, transfer, and PDL leave in the next edition of its handbook. In the alternative, the employer may distribute to its employees a copy of its Notice at least annually (distribution may be by electronic mail.)

C. FEHA has developed two notice forms, Notice A and Notice B, the English and Spanish versions of which are attached to these materials. School districts should post both notices; personally provide both notices to an employee at the time the employee requests or inquires about pregnancy disability leave or transfer; and document in writing that both notices were personally provided to the employee.

Note: If 10 percent or more of a district's employees speak language(s) other than English, the notices must be translated into that language or languages.

19. WHAT IS THE RELATIONSHIP OF PDL LEAVE TO FMLA/CFRA LEAVE? (2 C.C.R. §§ 7297.12; 7297.13.)

A pregnancy disability is a "serious health condition" under FMLA. Accordingly, a FMLA leave and PDL leave will often be used by the employee concurrently and the amount of leave taken for PDL, up to a maximum of 12 weeks, can be counted against FMLA leave. However, an employee's own disability due to pregnancy, childbirth, or related medical conditions, is not included as a "serious health condition" under CFRA. Thus, the rights to take PDL leave and CFRA leave are separate and distinct.

Under CFRA, a pregnant employee is entitled to take PDL leave, and if the employee is eligible for CFRA leave, up to an additional 12 weeks of CFRA leave for child-bonding. Therefore, a school employee could be on protected leave for 8 months (or more, if certificated) related to pregnancy, child birth, and child-bonding.

CFRA/FMLA leave is covered in more detail elsewhere in these materials.

CERTIFICATION OF HEALTH CARE PROVIDER FOR PREGNANCY DISABILITY LEAVE, TRANSFER AND/OR REASONABLE ACCOMMODATION

Employee's Name:

_____

Please certify that, because of this patient's pregnancy, childbirth, or a related medical condition (including, but not limited to, recovery from pregnancy, childbirth, loss or end of pregnancy, or post-partum depression), this patient needs (check all appropriate category boxes):

☐ Time off for medical appointments.
Specify when and for what duration:
_____
_____

☐ A disability leave. [Because of a patient's pregnancy, childbirth or a related medical condition, she cannot perform one or more of the essential functions of her job or cannot perform any of these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons.]
Beginning (Estimate): _____
Ending (Estimate): _____

☐ Intermittent leave. Specify medically advisable intermittent leave schedule:
_____
_____
Beginning (Estimate): _____
Ending (Estimate): _____

☐ Reduced work schedule. [Specify medically advisable reduced work schedule.]
_____
_____
Beginning (Estimate): _____
Ending (Estimate): _____

☐ Transfer to a less strenuous or hazardous position or to be assigned to less strenuous or hazardous duties [specify what would be a medically advisable position/duties].
_____
_____
Beginning (Estimate): _____
Ending (Estimate): _____

☐ Reasonable accommodation(s). [Specify medically advisable needed accommodation(s). These could include, but are not limited to, modifying lifting requirements, or providing more frequent breaks, or providing a stool or chair.]
_____

_____
Beginning (Estimate): _____
Ending (Estimate): _____

Name, license number and medical/health care specialty [printed] of health care provider.

_____
_____
_____

Signature of health care provider:

_____
Date:

_____

Authority Cited: Government Code sections 12935, subd. (a), and 12945.

Reference: Government Code sections 12940, 12945; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 C.F.R. § 825.

"NOTICE A"

YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE

If you are pregnant, have a related medical condition, or are recovering from childbirth, **PLEASE READ THIS NOTICE**.

- California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy"). California also law prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.

- Your employer has an obligation to:

    - reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);
    - transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
    - provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17⅓ weeks) and return you to your same job when you are no longer disabled by your pregnancy or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from nonleave related employment actions, such as a layoff.
    - provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in Labor Code section 1030, et seq.

- For pregnancy disability leave:

    - PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.
    - Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position if you request a written guarantee. Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.
    - PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, "severe morning sickness," gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.

- PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.
- Your leave will be paid or unpaid depending on your employer's policy for other medical leaves. You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.
- At your discretion, you can use any vacation or other paid time off during your PDL.
- Your employer may require or you may choose to use any available sick leave during your PDL.
- Your employer is required to continue your group health coverage during your PDL at the level and under the conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.
- Taking PDL may impact certain of your benefits and your seniority date; please contact your employer for details.

Notice obligations as an Employee:

- Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans – 30 days advance notice if the need for the reasonable accommodation, transfer or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.
- Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, your employer may require you to supply a written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer or PDL. If the need is an emergency or unforeseeable, you must provide this certification within the time frame your employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification. See your employer for a copy of a medical certification form to give to your health care provider to complete.
- PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact your employer, visit the Department of Fair Employment and Housing's Web site at www.dfeh.ca.gov, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

###

"NOTICE B"

FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE

- Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.

- Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take pregnancy disability leave (PDL) of up to four months, or the working days in one-third of a year or 17⅓ weeks, depending on your period(s) of actual disability. Time off needed for prenatal or postnatal care; doctor-ordered bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; childbirth; postpartum depression; loss or end of pregnancy; or recovery from childbirth or loss or end of pregnancy would all be covered by your PDL.

- Your employer also has an obligation to reasonably accommodate your medical needs (such as allowing more frequent breaks) and to transfer you to a less strenuous or hazardous position if it is medically advisable because of your pregnancy.

- If you are CFRA-eligible, you have certain rights to take BOTH PDL and a separate CFRA leave for reason of the birth of your child. Both leaves guarantee reinstatement to the same or a comparable position at the end of the leave, subject to any defense allowed under the law. If possible, you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or a family member). For events that are unforeseeable, you must to notify your employer, at least verbally, as soon as you learn of the need for the leave.

- Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

- Your employer may require medical certification from your health care provider before allowing you a leave for:

    - your pregnancy;
    - your own serious health condition; or
    - to care for your child, parent, or spouse who has a serious health condition.

- See your employer for a copy of a medical certification form to give to your health care provider to complete.

- When medically necessary, leave may be taken on an intermittent or a reduced work schedule. If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

- Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. Contact your employer for more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). The FEHA prohibits employers from denying, interfering with, or restraining your exercise of these rights. For more information about your rights and obligations, contact your employer, visit the Department of Fair Employment and Housing's Web site at www.dfeh.ca.gov, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Department's Web site.

###

"AVISO A"
SUS DERECHOS Y OBLIGACIONES COMO EMPLEADA EMBARAZADA

Si usted está embarazada, tiene un problema de salud relacionado con el embarazo o se está recuperando de un parto, **POR FAVOR LEA ESTE AVISO.**

- La ley de California protege a los empleados contra la discriminación o acoso debido al embarazo de la empleada, parto o cualquier otra condición médica relacionada (de aquí en adelante "a causa de embarazo"). La ley de California también prohíbe a los empleadores negar o interferir con los derechos laborales de relacionados con el embarazo de una empleada.

- Su empleador tiene la obligación de:

  - Acomodar razonablemente sus necesidades médicas relacionadas al embarazo, el parto o condiciones relacionados (por ejemplo, modificar temporalmente sus deberes laborales, proporcionar un taburete o una silla, o permitir descansos más frecuentes);
  - transferirla a un puesto menos extenuante o peligroso (donde uno está disponible) o de sus deberes laborales si son médicamente necesarios debido a su embarazo;
  - darle permiso de incapacidad por embarazo (PDL) de hasta cuatro meses (los días de trabajo que usted normalmente trabajaría en una tercera parte de un año o 17⅓ semanas) y regresarla a su mismo puesto de trabajo cuando usted ya no este incapacitada por su embarazo o, en ciertos casos, a un trabajo comparable. Sin embargo, el tomar PDL, no lo protege de acciones relacionadas con el empleo, como un despido; y
  - permitirle una cantidad razonable de tiempo de descanso y el uso de una habitación u otro lugar en las proximidades de la zona de trabajo de la empleada para extraer la leche materna en privado como se establece en el Código Laboral sección 1030.

- Ausencia de incapacidad por embarazo (PDL):

  - PDL no es por un período de tiempo automático, pero para el período de tiempo que usted este incapacitada por el embarazo. El médico determina la cantidad de tiempo que usted necesita.
  - Una vez que su empleador ha sido informado de que usted necesita tomar PDL, su empleador debe garantizar por escrito que usted puede volver a trabajar en la misma posición si usted solicita esa garantía por escrito. Su empleador puede requerir una certificación médica escrita de su proveedor de cuidados médicos que justifique la necesidad de su ausencia.
  - PDL pueden incluir, pero no está limitado a, descansos adicionales o más frecuentes, el tiempo para las citas médicas prenatales o postnatales, reposo en cama bajo órdenes médicas, "náuseas matutinas severas," diabetes gestacional, hipertensión inducida por el embarazo, preeclampsia, la recuperación del parto o la pérdida o el final del embarazo, y/o depresión post-parto.

- No es necesario tomar la ausencia de incapacidad por embarazo (PDL) en un solo periodo de tiempo continuo pero se pueden tomar según sea necesario como lo requiera su proveedor médico, incluyendo permiso intermitente o un horario reducido de trabajo, todo esto se toma en cuenta en su derecho a tomar un permiso de cuatro meses.
- Su ausencia será remunerado o no dependiendo de las pólizas de su empleador de otras licencias médicas. Usted también puede ser elegible para el seguro de discapacidad del estado o del Permiso Familiar Pagado (PFL), administrado por el Departamento del Desarrollo del Empleo de California.
- A su discreción, usted puede utilizar cualquier tipo de vacaciones o cualquier otro tipo de tiempo pagado durante su PDL.
- Su empleador puede requerir o puede usted optar por utilizar cualquier ausencia de enfermedad disponible durante su PDL.
- Su empleador está obligado a continuar su cobertura de salud grupal durante su PDL en el mismo nivel y condiciones que se le hubiera cubierto si usted hubiera continuado en el empleo de forma continua durante la duración de su ausencia.
- El tomar PDL puede afectar algunos de sus beneficios y su fecha de antigüedad, comuníquese con su empleador para más información.

- Aviso de sus obligaciones como empleada:

  - Darle a su empleador un aviso razonable: para recibir acomodamiento razonables, obtener un traslado o tomar PDL, usted deberá darle a su empleador suficiente notificación para que su empleador pueda hacer planes adecuados - 30 días de anticipación si se necesita acomodamiento razonable, transferencia o si PDL es previsible, de otro modo, tan pronto como sea posible si la necesidad es una emergencia o imprevisto.
  - Proporcionar una Certificación Médica Escrita del Proveedor del Cuidado de la Salud. Excepto en una emergencia médica donde no hay tiempo para obtenerla, su empleador puede requerir que proporcione una certificación médica escrita de su proveedor de atención médica de la necesidad médica para su acomodamiento razonable, transferencia o PDL. Si la necesidad es una urgencia o imprevisto, debe proporcionar esta certificación dentro del plazo que su empleador lo solicita, a menos que no sea posible que lo haga bajo las circunstancias a pesar de sus esfuerzos diligentes y de buena fe. Su empleador debe darle por lo menos 15 días para que usted pueda presentar la certificación. Vea a su empleador para la copia de la forma de certificación médica para debe entregar a su proveedor médico para completar.
  - POR FAVOR NOTE que si usted falla de dar a su empleador aviso previo razonable, o, si su empleador lo requiere, la certificación médica escrita de su necesidad médica, será justificado si su empleador demora su acomodamiento razonable, transferencia o PDL.

Este aviso es un resumen de sus derechos y obligaciones bajo La Ley de Igualdad en el Empleo y la Vivienda (FEHA.) Para más información sobre sus derechos y obligaciones como empleada embarazada, comuníquese con su empleador o visite el sitio web del Departamento de Igualdad en el Empleo y la Vivienda en www.dfeh.ca.gov, o comuníquese con el Departamento al (800) 884-1684. El texto de la FEHA y las regulaciones que la interpretan están disponibles en el sitio web del departamento.

"AVISO B"
AUSENCIA MÉDICA O POR CUIDADOS FAMILIARES (CFRA, POR SUS SIGLAS EN INGLÉS) Y AUSENCIA DE INCAPACIDAD POR EMBARAZO

- Bajo la Ley de Derechos de Familia de California de 1993 (CFRA), si tiene más de 12 meses de servicio con su empleador y ha trabajado por lo menos 1,250 horas en el período de 12 meses antes de la fecha en la que quiera empezar su ausencia, usted podría tener derecho a una ausencia médica o de cuidados familiares sin goce de sueldo (ausencia CFRA). Esta ausencia puede ser de hasta 12 semanas laborales en un período de 12 meses por el nacimiento, adopción o por cuidado tutelar de un niño, o por problemas graves de su salud o la de su hijo, padre/madre o cónyuge.

- Incluso cuando no es elegible a la ausencia CFRA, si esta incapacitada por el embarazo, parto, o condiciones médicas relacionadas, usted tiene derecho a tomar una ausencia de incapacidad por embarazo (PDL) hasta un máximo de cuatro meses, o los días trabajados en un tercio de año, o 17⅓ semanas, dependiendo en su periodo(s) de incapacidad real. El tiempo de ausencia necesario para cuidado prenatal y postnatal, reposo bajo orden de su médico, diabetes gestacional, hipertensión inducida por el embarazo, preclampsia, parto, depresión postparto, perdida del embarazo estarán cubiertos bajo la Ausencia de Incapacidad por Embarazo.

- Su empleador tiene la obligación a acomodar razonablemente sus necesidades médicas (tales como permitir descansos más frecuentes) y ser trasladada a un puesto menos extenuante o peligroso si es medicamente aconsejable debido a su embarazo.

- Si es elegible al CFRA, tiene ciertos derechos para tomar AMBAS ausencias, la ausencia PDL y la ausencia CFRA por el motivo del nacimiento de su hijo. Las dos ausencias garantizan la reincorporación al mismo puesto o a un puesto comparable al final de su ausencia, sujeto a cualquier defensa permitida bajo la ley. Si es posible deberá notificar con 30 días de anticipación, en el caso de sucesos predecibles, (como es el caso del nacimiento de un niño o un tratamiento médico planificado para usted o para un miembro de su familia). Para casos impredecibles, necesita notificar a su empleador, por lo menos verbalmente, tan pronto como sepa que va necesitar una ausencia.

- El incumplimiento de estas normas sobre notificaciones será razón suficiente, y puede resultar en el aplazamiento de la ausencia solicitada hasta que se cumpla con esta política de notificación.

- Su empleador puede requerir un certificado de su proveedor de cuidados médicos antes de autorizarle la ausencia por:

  - su embarazo;
  - su propio estado grave de salud; o
  - para cuidar a su hijo, padre/madre, o cónyuge que tenga una condición grave de salud.

- Vea a su empleador para recibir una copia de un formulario de certificación médica para darle a su proveedor de atención médica para completar.

- Cuando sea medicamente necesario, la ausencia puede ser tomada en un período intermitente o en un horario de trabajo reducido. Si está tomando ausencia debido al nacimiento de su hijo, adopción o por cuidado tutelar de un niño, la duración mínima básica de la ausencia es de dos semanas y deberá concluir la ausencia en el año posterior al nacimiento o de la adopción o cuidado tutelar.

- El tomar una ausencia por cuidado familiar o de incapacidad por embarazo puede tener cierto impacto en sus beneficios/prestaciones y en su fecha de antigüedad. Contacte a su empleador para más información sobre su elegibilidad para una ausencia y/o el impacto de la ausencia en su antigüedad y beneficios.

Este aviso es un resumen de sus derechos y obligaciones bajo La Ley de Igualdad en el Empleo y la Vivienda (FEHA por sus siglas en Ingles.) La FEHA prohíbe a los empleadores negar, restringir, o interferir con el ejercicio de estos derechos. Para más información sobre sus derechos y obligaciones contacte al Departamento de Igualdad en el Empleo y la Vivienda. El texto de la FEHA y las regulaciones que la interpretan están disponibles en el sitio web del departamento.

FAMILY MEDICAL LEAVE
("CFRA/FMLA")

Government Code § 12945.2; Title 2, C.C.R. §§ 7297.0, et seq.
and 29 U.S.C. §§ 2601, et seq.; 29 C.F.R. §§ 825.100, et seq.

I.
INTRODUCTION

This section addresses CFRA/FMLA child bonding leave and medical leaves due to the serious health condition of the employee or the employee's covered family member. In addition, under certain circumstances, most employers, including school districts, are required to grant Family Military Leave to eligible employees with family members in military service. (See the FMLA Military Family Leave section in these materials.)

1. WHAT IS CFRA/FMLA FAMILY CARE AND MEDICAL LEAVE?

CFRA is a state law; the California Family Rights Act of 1993. FMLA is a federal law; the Family Medical Leave Act of 1993 and its implementing regulations. Generally, school districts should follow CFRA because it usually provides employees with leave protections that are equal to or greater than FMLA. (29 C.F.R. 825.701 [FMLA does not supercede any state or local law that provides greater family or medical leave rights than FMLA].)

As outlined in this section, CFRA and FMLA are substantially similar laws that obligate most employers, including school districts, to give a leave of absence to eligible employees that:

A. Allows eligible employees to take unpaid leave for up to a total of 12 work weeks in a 12-month period, as follows:

1) Child Bonding Leave to bond and care for a newborn child of the employee, or a child placed with the employee for adoption or foster care; or

2) Family Medical Leave because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition; or

3) Employee Medical Leave because the employee's own serious health condition makes the employee unable to work at all or perform any one or more of the essential functions of his or her job.

Note: Employees are not entitled to 12 work weeks of leave for each of the above types of leave, but instead are limited to a total of 12 work weeks for all three types. For example, if an employee uses all 12 work weeks to bond with a newborn child, they are not entitled to take an additional 12 work weeks of leave

in the same 12-month period for their own medical leave or a family member's medical leave.

B. In some circumstances, the employee is allowed to use other earned or accrued paid leave concurrent with CFRA/FMLA leave;

C. Maintains the employee's group health plan coverage during the leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

D. Permits the employee to accrue seniority during an CFRA/FMLA leave to the same extent and under the same conditions as would apply to any other leave granted by the employer for any reason other than CFRA/FMLA leave. (2 C.C.R. 7297.5(d).)

E. Guarantees reinstatement at the end of the leave to the same position held when the leave commenced, or to a comparable position which is virtually an identical position with the same pay, benefits and terms and conditions of employment, unless the employer can demonstrate the employee would not have been employed at the time of reinstatement, such as when the employee would have been laid off. (2 C.C.R. 7297.2(c).)

F. Protects employees against retaliation for exercising their CFRA/FMLA leave rights or for participating in an inquiry or proceeding regarding their own leave rights or the leave rights of other employees.

2. WHY DO SCHOOL DISTRICTS NEED TO BE CONCERNED ABOUT CFRA/FMLA MEDICAL LEAVE WHEN CLASSIFIED AND CERTIFICATED EMPLOYEES ALREADY GET MORE THAN 12 WEEKS LEAVE FOR INJURY OR ILLNESS UNDER THE EDUCATION CODE?

CFRA/FMLA leaves are enforced by state or federal regulatory agencies. CFRA is regulated by the California Department of Fair Housing and Employment. FMLA is regulated by the United States Department of Labor. Any employee can file a complaint with the appropriate agency alleging a violation of CFRA or FMLA, and the agency will initiate an investigation that could result in legal action against the district. In some circumstances, the employee may file a lawsuit against the employer in state or federal court, without first filing a complaint with the regulatory agency.

Because of the potential exposure to legal liability, it is important for school administrators to understand the differences between CFRA/FMLA and Education Code leaves. Those differences include, but are not limited to, the following three examples:

1) CFRA/FMLA leave provides for child bonding and family care medical leaves, but the Education Code does not provide for an equivalent leave.

2) The Education Code provides a comprehensive scheme of paid or partially paid leaves due to the medical conditions of classified and certificated employees, but

there are differences between those Education Code leaves and CFRA/FMLA employee medical leave.

3) CFRA/FMLA leaves can apply to employees who have no statutory entitlement to Education Code leaves because they are neither classified nor certificated employees, such as the short term, substitute, or temporary employees described in Education Code section 45103(b).

3. ARE ALL CALIFORNIA SCHOOL DISTRICTS REQUIRED TO FOLLOW CFRA/FMLA LEAVE LAWS, REGARDLESS OF THE SIZE OF THE DISTRICT OR THE NUMBER OF EMPLOYEES WORKING AT THE SAME LOCATION AS THE EMPLOYEE TAKING THE LEAVE? (2 C.C.R. § 7297.0(d).)

YES FMLA applies to all public agencies without regard to the number of employees employed, including public elementary and secondary schools. (29 C.F.R. 825.104(a).) However, under FMLA, even if otherwise eligible, a public employee is entitled to take FMLA leave only if the public employer has 50 or more employees working within 75 miles of the worksite of the employee who needs the leave. (29 C.F.R. 825.108(d).)

In contrast, California's CFRA regulations provide greater protections to public employees, including public school employees. CFRA covers all political subdivisions of the state, including school districts, regardless of the number or geographic dispersion of their employees:

> "'Covered employer' means any person or individual engaged in any business or enterprise in California who directly employs 50 or more persons within any state of the United States, the District of Columbia or any Territory or possession of the United States to perform services for a wage or salary. It also includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. There is no requirement that the 50 employees work at the same location or work full time." (2 C.C.R. § 7297.0(d) [emphasis added].)

Where, as here, a state law grants greater leave rights to an employee for a purpose covered by FMLA, then the state leave that is used by the employee counts as the employee's leave entitlement under both FMLA and the state law. (29 C.F.R. 825.701(a).)

4. I HAVE ATTENDED SEMINARS THAT OUTLINED SPECIAL RESTRICTIONS ON THE TAKING OF FMLA MEDICAL LEAVE BY PUBLIC SCHOOL EMPLOYEES, PARTICULARLY TEACHERS. DO THOSE RULES APPLY IN CALIFORNIA? (2 C.C.R. § 7297.3(e)(2).)

NO FMLA's special rules for local educational agencies do not apply in California.

FMLA places special restrictions on employees of local educational agencies, and particularly for instructional personnel, which diminish the employee's reinstatement rights, and limit an employee's right to take intermittent leave for planned medical treatment and leave requested near the end of an academic term. (29 C.F.R. § 825.600, et seq.)

The FMLA restrictions do not apply in California, which has chosen to give the employees of local educational agencies, including instructional personnel, the same CFRA leave rights as are given to all other California employees:

> "CFRA leave, including intermittent leave and/or reduced work schedules, is available to instructional employees of educational establishments and institutions under the same conditions as apply to all other eligible employees." (2 C.C.R. § 7297.3(e)(2).)

II.
THE BASICS
ELIGIBILITY/PAY & BENEFITS/INTERMITTENT LEAVE/ DURATION/PROCESS/REINSTATEMENT RIGHTS

1. ELIGIBILITY FOR CFRA/FMLA LEAVE

A. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR TAKING CFRA/FMLA CHILD BONDING AND MEDICAL LEAVES? (2 C.C.R. § 7297.0(e).)

Although some special additional rules apply to child bonding leave eligibility as discussed in Section III, the basic eligibility requirements for taking all three types of family and medical care leave are:

ANY employee, (including temporary, probationary, permanent, full-time, or part-time), who has, on the date the leave is to commence:

1) 12 or more months of service with the employer <u>at any time</u>, (the months do not have to be consecutive), AND

FMLA:	employed at least 12 months
CFRA:	employed more than 12 months

2) Who has actually worked for the employer *AT LEAST* 1,250 hours of service during the 12-month period immediately prior to the date the FMLA/CRFA leave is to commence.

Full-time teachers are presumed to meet the 1,250 hour test. (29 C.F.R. § 825.110(c).)

Under new FMLA eligibility regulations, the employee is required to have worked more than 12 months of service with the employer within the seven-year period immediately prior to the commencement of the leave. (29 C.F.R. 825.110(b).) However, the CFRA eligibility requirement - more than 12 months at any time — is more favorable to the employee and should be followed.

B. DOES TIME OFF ON A PRIOR PAID OR UNPAID LEAVE COUNT TOWARDS THE 1,250 HOURS?

No, unless it is military leave. A prior military leave cannot be deducted from the 1,250 hours:

"Reserve and National Guard troops are entitled to have their active duty military time counted as time worked to establish eligibility for family or medical leave under the

Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C.A. 4301-4330; DOL Memorandum, July 26, 2002)."

C. HOW IS OVERTIME CREDITED TOWARDS THE 1,250-HOUR REQUIREMENT?

Only the actual time worked is credited towards the 1,250-hour requirement.

Example: An employee works two hours overtime paid at time-and-one half and thus is paid for three hours. Only the two hours actually worked is credited towards the 1,250- hour requirement.

D. CAN AN EMPLOYEE BECOME ELIGIBLE FOR FMLA LEAVE WHILE ON A NON-FMLA LEAVE?

YES Under a recent revision to FMLA, an employee on non-FMLA leave can become eligible for FMLA leave while on the non-FMLA leave. (29 C.F.R. 825.110.) If that occurs, the leave period after the employee becomes eligible is FMLA leave, and the leave period before the employee became eligible is non-FMLA leave.

Example: An employee who meets the 1,250 hour requirement but has only 11 months of service goes on Education Code leave due to a heart attack, and is absent three continuous months. On his 12-month anniversary date, the employee will become eligible for FMLA leave, which can run concurrent with his Education Code leave and CFRA leave.

Once an employee meets the 12-month/1,250 hour eligibility criteria and takes a leave for a qualifying event, the employee does not have to requalify, in terms of the numbers of hours worked, in order to take additional leave for the same qualifying event during the employee's 12-month leave period. (2 C.C.R. 7297(e)(1).)

2. PAY AND BENEFITS DURING CFRA/FMLA LEAVE

A. DOES CFRA/FMLA REQUIRE DISTRICTS TO GIVE AN EMPLOYEE PAID LEAVE? (2 C.C.R. § 7297.5(b).)

NO CFRA/FMLA is an unpaid leave with group benefit coverage. However, in some circumstances, during a CFRA/FMLA leave an employee may concurrently use *other* paid leaves, such as vacation, personal necessity leave, or sick leave.

Example: A classified or certificated employee eligible for CFRA/FMLA is unable to work due to a serious health condition. The employee is entitled to take up to 12 weeks of unpaid CFRA/FMLA leave at the same time as the employee's available paid leaves under the Education Code, including sick leave, accumulated sick leave, and extended sick leave (sub-dock, differential pay leave.) In this example, the employee

basically is taking two leaves at the same time: an unpaid CFRA/FMLA leave and paid Education Code leaves.

The circumstances under which an employee can use other paid leaves during unpaid CFRA/FMLA leave are discussed in further detail in Section III (child bonding); Section V (family medical leave); and Section VI (employee medical leave).

B. IS A DISTRICT REQUIRED TO CONTINUE AN EMPLOYEE'S HEALTH CARE BENEFITS DURING A CFRA/FMLA LEAVE?

YES Under CFRA/FMLA, an employer must maintain an employee's group health plan benefits at the same level and on the same basis as if the employee were working.

In districts where employees pay all or part of their medical premium, districts should consult with the county office payroll departments and/or their medical plan administrators for information on the process to be followed for collecting those payments when the employee is on an unpaid CFRA/FMLA leave.

3. DURATION OF CFRA/FMLA LEAVE

A. HOW MUCH FMLA/CFRA LEAVE IS AN ELIGIBLE EMPLOYEE ENTITLED TO? (2 C.C.R. § 7297.3.)

An eligible employee is entitled to:

1) Up to 12 work weeks total leave;

2) Within a 12-month period identified by the employer, such as fiscal year or calendar year.

Under CFRA, in cases where both parents are employed by the same employer, an employer may limit child-bonding leave only to a TOTAL of 12 aggregate workweeks. (2 C.C.R. § 7297.1(c).)

B. IS AN EMPLOYEE EVER ENTITLED TO MORE THAN 12 WEEKS OF CFRA/FMLA LEAVE PER YEAR?

No. The CFRA/FMLA leave entitlement is a maximum of 12 weeks per year, any portion of which can be used for child-bonding leave, employee medical leave, or family care medical leave.

C. HOW ARE THE 12 WORK WEEKS CALCULATED? (2 C.C.R. § 7297.3.)

The term "12 work weeks" means 12 of the employee's normally scheduled work weeks.

Example: A year-round employee who works 25 hours a week would be eligible for up to 12 weeks leave, at 25 hours per week.

If a holiday falls within a week taken as FMLA/CFRA leave, the week still counts as one week of FMLA/CFRA leave, unless the business is closed for the week (i.e., Christmas break for schools). (2 C.C.R. § 7297.3(c)(3).)

D. HOW DOES A DISTRICT DETERMINE WHAT CONSTITUTES THE 12-MONTH PERIOD IN WHICH THE 12 WORK WEEKS OF FMLA/CFRA LEAVE CAN BE TAKEN? (2 C.C.R. § 7397.3(b); 29 C.F.R. § 825.200(b).)

If the leave is common to both CFRA and FMLA, the 12-month period under CFRA will run concurrently with the 12-month period under FMLA. California employers have a choice of one of four methods for measuring the 12-month period in which the 12 work weeks of CFRA/FMLA leave may be taken. A school district must apply its chosen method consistently and uniformly to all employees, and should designate the selection in writing, preferably in a district policy.

Note: Because of the uniformity requirement, and the possible effect on the terms and conditions of employment, districts should consult with their labor counsel before adopting or changing the definition of the 12-month period.

If a district fails to make a choice, enforcement agencies and courts will use the method most favorable to the individual employee whose case is being considered by the enforcement agency or court.

The four methods available for calculating the 12-month period are as follows:

1) A calendar year; or

2) Any fixed 12-month leave year, such as a fiscal year or a year starting on an employee's anniversary date; or

3) The 12-month period measured forward from the date an employee's first FMLA/CFRA leave begins; or

4) A rolling 12-month period measured backward from the date an employee first takes a family and medical leave.

For California school districts, the method most advantageous for recordkeeping is the fiscal-year method because it permits easier coordination with the Education Code.

4. INTERMITTENT OR REDUCED-WORK SCHEDULE LEAVE

A. CAN AN EMPLOYEE TAKE MEDICAL LEAVE INCREMENTALLY OR IN BLOCKS OF TIME LESS THAN ONE WORK DAY?

YES Both employee medical leave and family medical leave can be taken on an intermittent or reduced work schedule but only when medically necessary, as determined by the health care provider of the person with the serious health condition.

An employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave. (2 C.C.R. § 7297.3(e).)

This rule applies to public schools:

> "CFRA leave, including intermittent leave and/or reduced work schedules, is available to instructional employees of educational establishments and institutions under the same condition as apply to all other employees." (2 C.C.R. § 7297.3(e)(2) [emphasis added].)

Due to the difficulty, (or impossibility in some instances), of finding substitute teachers to cover for only an hour or so a day, many districts have historically required classroom personnel to take medical leave only in full-day increments. Districts should consult with their attorneys before denying a request to take family or medical leave on an intermittent or reduced work schedule.

B. IS THE RULE DIFFERENT IF THE EMPLOYEE IS REQUESTING INTERMITTENT OR REDUCED-WORK SCHEDULE LEAVE DUE TO PLANNED MEDICAL TREATMENTS?

Not in California.

When planned medical treatment of the employee or the employee's family member requires intermittent or reduced-schedule leave, FMLA regulations require the employee to consult with the employer, and the employee must make a reasonable effort to reschedule treatment when it may unduly disrupt the employer's operations, subject to the approval of the health care provider of the person with the serious health condition. (29 C.F.R. § 825.302(e).) However, California regulations place no similar conditions on CFRA leave and, thus, on this issue, CFRA appears to offer the employee greater protections than FMLA.

C. HOW MUCH TIME IS CHARGED TO LEAVE WHEN AN EMPLOYEE TAKES IT ON AN INTERMITTENT OR REDUCED WORK SCHEDULE?

If an employee takes leave on an intermittent or reduced work schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which the employee is entitled. (2 C.C.R. § 7197.3(c)((2).) For example, if an employee needs physical therapy requiring

an absence from work of two hours a week, only those two hours can be charged against the employee's 12-week leave entitlement.

D. CAN AN EMPLOYER ASK AN EMPLOYEE TO TRANSFER TO A DIFFERENT JOB TO BETTER ACCOMMODATE A REQUEST FOR INTERMITTENT OR REDUCED WORK SCHEDULE LEAVE?

Maybe. Both CFRA and FMLA regulations authorize an employer to require an employee to transfer temporarily to an available alternative position with equivalent pay and benefits that accommodates recurring periods of leave better than the regular position of the employee. (2 C.C.R. § 7297.3(e).)

However, that general authorization for employee transfers may not be viable for California public school districts in view of specific and comprehensive California Education Code provisions (such as Ed. Code § 45101(d)) and collective bargaining agreements, which grant school employees significant protections against involuntary transfer to a different position. Therefore, districts should consult with counsel before requiring an employee transfer or reassignment as a condition of family or medical leave on an intermittent or reduced work schedule.

5. PROCESS FOR REQUESTING AND AUTHORIZING CFRA/FMLA LEAVE (2 C.C.R. § 7297.4.)

A. HOW MUCH NOTICE, IF ANY, DOES THE EMPLOYEE HAVE TO GIVE BEFORE TAKING CFRA/FMLA LEAVE? (2 C.C.R. § 7297.4; 29 C.F.R. § 825.203.)

If the need for the leave is foreseeable, an employer can require an employee to give at least 30-days advance notice for a child bonding leave, employee medical leave, or family care medical leave. In addition, the employee also must consult with the employer and make a reasonable effort to schedule planned medical treatment or necessary medical supervision so as to minimize any disruption to the operations of the employer, subject to the approval of the health care provider. (2 C.C.R. § 7297.4(a)(2); 29 C.F.R. § 825.203.)

If the need for the leave is not foreseeable, the employee is required to give at least verbal notice of the need for the leave as soon as practicable.

If the need for the leave is due to an emergency or otherwise unforeseeable, an employer cannot deny CFRA leave to an employee on the basis that the employee did not provide advance notice. (2 CCR 7297.4(a)(4).)

However, to enforce advance notice requirements, the employer's requirements related to notice from the employee must be in writing, distributed to all employees. (2 C.C.R. § 7297.4(a)(5).) If the employer fails to give or post notice to employees of its requirements, the employer is barred from taking any adverse action against the employee, including denying the CFRA leave.

B. DOES THE EMPLOYEE HAVE TO SUBMIT A WRITTEN REQUEST FOR CFRA/FMLA LEAVE? (2 C.C.R. § 7297.4(a)(1).)

NO The employee just has to provide at least verbal notice sufficient to make the employer aware that the employee needs CFRA-qualifying leave. To meet the notice requirement, the employee does not have to even mention CFRA or FMLA, or expressly assert his or her rights under those leave statutes. (2 C.C.R. § 7297.4(a)(1).) However, the employee must state the estimated duration of the leave and in general terms the reason the leave is needed: the expected birth, adoption, or foster placement of the employee's child; family care medical leave; or employee medical leave.

C. WHAT IF THE EMPLOYER NEEDS MORE INFORMATION?

The burden is on the employer to: (a) inquire further of the employee if the employer needs more information about whether CFRA leave is being sought, and (b) to obtain the necessary details of the leave to be taken.

However, the employer should not contact the employee's health care provider or ask the employee or his or her health care provider about medical information, absent legal advice to the contrary. Although new FMLA regulations authorize those actions in some circumstances, CFRA regulations prohibit California employers from inquiring about medical information. (2 C.C.R. § 7297.4(b)(1)-(2)(A)(1).)

The information permitted by CFRA regulations for medical certifications is:

* commencement date of the serious health condition, if known;
* probable duration of the condition;
* for employee medical leave, a statement that the employee has a serious health condition that makes the employee unable to work at all, or unable to perform his or her essential job functions;
* for family care medical leave, an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent or spouse and a statement that the covered family member has a serious health condition warranting the participation of the employee in providing care to the covered family member.

(2 C.C.R § 7297.0(a)(1),(2).)

It is important to note that in California, the CFRA regulations do not authorize an employer to obtain medical information, including diagnosis and treatment. (2 C.C.R. § 7297.0(a)(1)-(2).) If the employer does obtain confidential medical information, such as when volunteered by the employee, the employer must appropriately safeguard and store that information in compliance with law. (2 C.C.R. § 7297.4(b)(2)(A)(2).)

D. DOES THE EMPLOYER HAVE ANY RESPONSIBILITIES IN RESPONDING TO A REQUEST FOR CFRA/FMLA LEAVE?

YES Under both CFRA and FMLA, it is the employer's responsibility to: (a) designate leave, paid or unpaid, as CFRA or FMLA leave, based on information provided by the employee, or the employee's spokesperson, (such as a health care provider); and (b) to give notice of the designation to the employee. (2 C.C.R. § 7297.4(a)(1)(A); 29 C.F.R. § 825.300(b), (c), (d).)

CFRA regulations simply require the employer to respond to a leave request within 10 calendar days after receipt. In contrast, new FMLA regulations require the employer to respond to a leave request within five business days after receipt, and impose detailed requirements on the content of the response.[1] The new FMLA regulations on employer responses give the employee greater protections and should be followed.

E. HOW CAN AN EMPLOYER RESPOND TO A LEAVE REQUEST IN A WAY THAT PROTECTS MEDICAL INFORMATION AS REQUIRED BY CFRA, BUT GIVES THE EMPLOYEE THE DETAILED RESPONSE REQUIRED BY FMLA?

One simple method for complying with the very different requirements is to give written notice, using the forms attached to this section which have been developed from the prototype CFRA care provider certification forms and the prototype FMLA eligibility/designation forms.

6. REINSTATEMENT RIGHTS

A. WHAT ARE AN EMPLOYEE'S REINSTATEMENT RIGHTS?

Under both CFRA and FMLA, an employer must reinstate an employee returning from child-bonding, and employee and family medical leave, to the same or to a comparable position, unless the employee is a "key employee" as defined in the statutes. (Gov't Code § 12945.2(a); 29 C.F.R. § 825.214(a); 2 C.C.R. § 7297.0(g).) Under some circumstances, an employer can terminate an employee who fails to return to work at the conclusion of FMLA/CFRA leave. (*Santrizos v. Aramark Corp.* (N.D. Ill. 1998) WL 704114.)

However, California public school employees enjoy specific statutory job protections granted by the Education Code which generally: 1) prohibit districts from changing an employee's job duties or terminating employees without notice and a hearing; and 2) provide that an employee who is medically unable to work after exhaustion of all available leave is to be placed on a reemployment list. Districts should not unilaterally change an employee's job, or terminate the employee, before consulting with legal counsel.

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[1] CFRA response requirements are found at 2 C.C.R. § 7297.4(6).
FMLA response requirements are found at 29 C.F.R. § 825.200(b), (c) and (d).

NOTICE OF ELIGIBILITY AND RIGHTS AND RESPONSIBILITIES

FAMILY AND MEDICAL LEAVE ACT (FMLA) AND CALIFORNIA FAMILY RIGHTS ACT (CFRA)

TO: **[_____]**

FROM: **[_____]**

DATE: **[_____]**

Part A - Notice of Eligibility

On _____, you informed us that you needed leave beginning on _____ for:

☐ The birth of a child, or placement of a child with you for adoption or foster care (within 12 months of the birth or placement of the child);

☐ Your own serious health condition;

☐ Because you are needed to care for your ☐ spouse; ☐ child; ☐ parent;
☐ registered domestic partner (CFRA leave only) due to his/her serious health condition.

☐ Because of a qualifying exigency arising out of the fact that your ☐ spouse;
☐ son or daughter; ☐ parent is on covered active duty or call to covered active duty status with the Armed Forces.

☐ Because you are the ☐ spouse; ☐ son or daughter; ☐ parent; ☐ next of kin of a covered service member with a serious injury or illness.

This Notice is to inform you that you:

☐ Are eligible for FMLA and/or CFRA leave (See Part B for Rights and Responsibilities)

☐ Are not eligible for FMLA and/or CFRA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

- ☐ You have not met the FMLA's and/or CFRA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months toward this requirement.
- ☐ You have not met the FMLA's and/or CFRA's 1,250-hours-worked requirement.

If you have any questions, contact [_____] or view the FMLA/CFRA poster located _____.

Part B - Rights and Responsibilities for Taking FMLA and/or CFRA Leave

As explained in Part A, you meet the eligibility requirements for taking FMLA and/or CFRA leave and still have FMLA and/or CFRA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA and/or CFRA leave, you must return the following requested information to us by _____.** (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances. If none of the boxes are checked, no additional information is requested at this time.) If sufficient information is not provided in a timely manner, your leave may be denied.

☐ Sufficient certification to support your request for FMLA and/or CFRA leave. A certification form that sets forth the information necessary to support your request is enclosed.

☐ Sufficient documentation to establish the required relationship between you and your family member.

☐ Other information needed (such as documentation for military family leave):
_____
_____

If your leave qualifies as FMLA and/or CFRA leave, you will have the following responsibilities while on FMLA and/or CFRA leave (only checked boxes apply):

☐ Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day [or indicate longer period if applicable] grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA and/or CFRA leave, and recover these payments from you upon your return to work.

☐ You will be required to use your available paid ☐ sick, ☐ extended sick leave, ☐ vacation, and/or ☐ other leave during your FMLA and/or CFRA absence. This means that you will receive your paid leave and any FMLA and/or CFRA leave will also be considered protected leave and counted against your FMLA and/or CFRA leave entitlement.

☐ Due to your status within the District, you are considered a “key employee” as defined in

the FMLA and/or CFRA. As a "key employee," restoration to employment may be denied following FMLA and/or CFRA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We ☐ have ☐ have not determined that restoring you to employment at the conclusion of FMLA and/or CFRA leave will cause substantial and grievous economic harm to us.

☐ While on leave, you will be required to furnish us with periodic reports of your status and intent to return to work every _____. [Indicate interval of periodic reports, as appropriate for the particular leave situation.]

☐ If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave qualifies as FMLA and/or CFRA leave, you will have the following rights while on FMLA and/or CFRA leave:

☐ You have a right under the FMLA and/or CFRA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

- ☐ the calendar year (January - December).
- ☐ a fixed leave year based on a fiscal year (July 1 through June 30, inclusive).
- ☐ the 12-month period measured forward from the date of your first FMLA and/or CFRA leave usage.
- ☐ a "rolling" 12-month period measured backward from the date of any FMLA and/or CFRA leave usage.

☐ You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered service member with a serious injury or illness. This single 12-month period commenced on _____.

☐ Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

☐ You must be reinstated to the same or an equivalent job with the same pay benefits, and terms and conditions of employment on your return from FMLA and/or CFRA-protected leave. (However, if your leave extends beyond the end of your FMLA and/or CFRA entitlement, you do not have return rights under FMLA and/or CFRA.)

☐ If you do not return to work following FMLA and/or CFRA leave for a reason other than

1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA and/or CFRA leave; 2) the continuation, recurrence or onset of a covered service member's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA and/or CFRA leave.

☐ If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA and/or CFRA leave entitlement, you have the right to have ☐ sick leave, ☐extended sick leave, ☐ vacation, and/or ☐other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the District's leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA and/or CFRA leave.

☐ For a copy of conditions applicable to sick leave, extended sick leave, vacation and/or other leave usage please refer to _____ available at:_____.

☐ Applicable conditions for use of paid leave:

_____

_____

Once we obtain the information from you as specified above, we will inform you, within five (5) business days, whether your leave will be designated as FMLA and/or CFRA leave and count toward your FMLA and/or CFRA leave entitlement. If you have any questions, please do not hesitate to contact: [District Representative] at [District Phone Number].

CERTIFICATION OF HEALTH CARE PROVIDER

Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA)

[To Be Completed By The Patient's Healthcare Provider]

1. **Employee's Name:**

_____

2. **Patient's Name (If other than employee):**

_____

3. **Date medical condition or need for treatment commenced:**

[NOTE: The health care provider is not to disclose the underlying diagnosis without the consent of the patient]:

_____

4. **Probable duration of medical condition or need for treatment:**

_____

5. **Attachment A describes what is meant by a "serious health condition" under both the Federal Family and Medical Leave Act (FMLA) and the California Family rights Act (CFRA). Does the patient's condition qualify under any of the categories described? If so, please check the appropriate category.**

1 ☐ **2** ☐ **3** ☐ **4** ☐ **5** ☐ **6** ☐

6. **If the certification is for the serious health condition of the employee, please answer the following:**

   a. Is employee able to perform work of any kind:

   ☐ Yes ☐ No

   b. Is employee unable to perform any one or more of the essential functions of employee's position: (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

   ☐ Yes ☐ No

   If yes to either a or b, please provide proposed or recommended accommodations:

   _____

7. **If the certification is for the care of the employee's family member, please answer the**

following:

Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?

☐ Yes ☐ No

After review of the employee's signed Employee's Statement Regarding Seriously Ill Family Member, does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

☐ Yes ☐ No

8. Estimate the period of time care is needed or during which the employee's presence would be beneficial:

_____

9. Please answer the following question only if the employee is asking for intermittent leave or a reduced work schedule.

Is it medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal work schedule in order to deal with the serious health condition of the employee or a family member?

☐ Yes ☐ No

If the answer to item 9 is yes, please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment, either by the health care practitioner or another provider of health services, upon referral from the health care provider.

_____
_____
_____

HEALTH CARE PROVIDER:

_____ _____
Signature Date

_____ _____
Printed Name Phone Number

ATTACHMENT A: SERIOUS HEALTH CONDITION

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) 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

(2) 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.

3. Pregnancy [NOTE: An Employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA.]

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatment

A chronic condition which:

(1) 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;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-Term Conditions Requiring Supervision

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.

6. Multiple Treatments (Non-Chronic Conditions)

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).

EMPLOYEE'S STATEMENT REGARDING SERIOUSLY ILL FAMILY MEMBER

(To be completed and signed by employee requesting Family Leave to care for a seriously ill family member. Please provide this information to the healthcare provider.)

When family care leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced work schedule.

_____

_____

_____

_____ _____

Signature of Employee Date

DESIGNATION NOTICE

FAMILY AND MEDICAL LEAVE ACT (FMLA) AND CALIFORNIA FAMILY RIGHTS ACT (CFRA)

TO: **[Employee]**

FROM: **[District Representative]**

DATE:

We have reviewed your request for leave under the FMLA and/or CFRA and any supporting documentation that you have provided.

We received your most recent information on _____ and decided:

1. ☐ **Your FMLA and/or CFRA leave request is approved. All leave taken for this reason will be designated as FMLA and/or CFRA leave.**

The FMLA and/or CFRA require that you notify us as soon as practicable if dates of your scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement.

☐ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement:

_____

_____

☐ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA and/or CFRA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

☐ You have requested to use paid leave during your FMLA and/or CFRA leave. A paid leave taken for this reason will count against your FMLA and/or CFRA leave entitlement.

☐ We are requiring you to substitute or use paid leave during your FMLA and/or CFRA leave.

☐ If the leave is for your own serious health condition, you will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position ☐ is ☐ is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

2. ☐ Additional information is needed to determine if your FMLA and/or CFRA leave request can be approved.

☐ The certification you have provided is not complete and sufficient to determine whether the FMLA and/or CFRA apply to your leave request. You must provide the following information no later than _____, [provide at least seven calendar days] unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

_____

_____

[Specify information needed to make the certification complete and sufficient.]

☐ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

3. ☐ Your FMLA and/or CFRA Leave request is Not Approved.

☐ The FMLA and/or CFRA do not apply to your leave request.

☐ You have exhausted your FMLA and/or CFRA leave entitlement in the applicable 12-month period.