



***FAMILY MEDICAL LEAVE ACT (FMLA)***

***And***

***CALIFORNIA FAMILY RIGHTS ACT (CFRA)***

***EMPLOYEE  
INFORMATION PACKET***

October 2015

## **RIGHTS AND RESPONSIBILITIES UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA) AND THE CALIFORNIA FAMILY RIGHTS ACT (CFRA)**

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

### **Reasons for Leave**

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

### **Eligibility for Leave**

If you have at least 12 months of service and if you have worked at least 1,250 hours during the 12 months immediately preceding the requested leave, you are covered by the provisions of FMLA and CFRA. If not eligible for FMLA and/or CFRA, employees may still be eligible for leaves of absence in accordance with collective bargaining agreements or disability plans. Requests for FMLA/CFRA can be made by completing the form below. Requests can also be made verbally.

[https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA\\_request.pdf](https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA_request.pdf)

### **Amount of Leave**

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

In the event of a disability due to pregnancy, childbirth, or related medical condition, and even if you are not eligible for CFRA, you are entitled to a period of four months pregnancy disability leave (PDL) under the State's Department of Fair Employment & Housing (FEHA). An additional brochure is available with details regarding this law

### **Minimum Duration of Leave**

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for less than two weeks duration on any two occasions.

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

### **Medical Certification**

Employees who request leave for their own serious health condition or to care for a child, parent, registered domestic partner, or spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City of Escondido. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to

work at all or is unable to perform any one or more of the essential functions of his/her position, due to the serious health condition.

Employees who request leave to care for a covered service member who is a son, daughter, spouse, parent, or “next of kin” of the employee must provide written certification from a health care provider regarding the injured service member’s serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, the City of Escondido may require the employee to provide a copy of the military member’s active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member’s active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.

Medical Certification for Self

[https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA\\_Certification\\_Self\\_revision\\_2015.pdf](https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA_Certification_Self_revision_2015.pdf)

Medical Certification for Family Member

[https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA\\_Certification\\_Fam\\_revision\\_2015.pdf](https://intranet.escondido.org/Data/Sites/8/media/pdfs/Benefits/FMLA_Certification_Fam_revision_2015.pdf)

### **Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an inpatient stay in a medical care facility, continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two treatments by a health care provider, within 30 days of the first day of incapacity, one treatment resulting in a regimen of continuing treatment, incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### **Advance Notice**

Although the City of Escondido recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give notice of their need for leave as soon as it is practicable. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days’ notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. the birth of a child or a planned medical treatment), the employee shall inform his/her supervisor as soon as possible that such leave will be needed.

Failure to provide a completed and signed certification within 15 calendar days from date the notice is received may result in delay or denial of leave until the certification is provided. Employees should inform the City of Escondido if the requested leave is for a reason for which FMLA/CFRA leave was previously taken or certified.

### **Intermittent Leave or Leave on a Reduced Leave Schedule**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule because of the employee’s own serious health condition, to care for an immediate family member with a serious health condition, or to care for a service member with a serious illness or injury, the employee must provide medical certification that such leave is medically necessary. “Medically necessary” means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

### **Pay**

FMLA/CFRA is unpaid leave. You may request, or you may be required by your department, to substitute paid leave (accrued sick leave, vacation, compensatory time off or floating holiday) for all or a portion of the unpaid leave. Approval of the use of paid leave will be in accordance with the appropriate policies and collective bargaining agreements and with your department’s approval.

If you have requested family and medical leave for your own serious health condition, you may qualify for wage replacement under a disability plan. Contact the Benefits Division for more information.

### **Health Benefits**

Coverage under any group health plan (medical and dental) will be maintained during any leave covered by FMLA and/or CFRA (up to a maximum of 12 weeks) and military leave (up to a maximum of 26 weeks). You are responsible for arranging with Benefits for the payment of the employee portion of any premiums that are not fully covered by a City contribution. Failure to pay the employee portion of any premiums within 30 days of the due date may result in cancellation of your enrollment in that plan.

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

### **Reinstatement**

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

The City's responsibility to continue your health plan coverage ends (except for COBRA continuation coverage) upon notice that you do not intend to return to work at the end of the approved leave, even though you are able to work at that time.

If the FMLA/CFRA leave you have requested is for your own serious health condition, you shall be required to present medical certification upon your return stating that you are able to return to work to perform the essential functions of your job.

### **City Designated FMLA/CFRA Leave**

The City may designate leave as FMLA and/or CFRA leave if the leave meets the requirements listed above, even when an employee does not specifically request FMLA/CFRA leave.

### **City Personnel Policies and Collective Bargaining Agreements**

Additional information regarding family and medical leave and related leaves may be found in the City of Escondido Personnel Rules and Regulations, as well as the Memoranda of Understanding for the specific collective bargaining groups. Questions regarding FMLA/CFRA and other leaves should be directed to the Benefits Division.

### **FMLA/CFRA Law**

The City may not interfere with, restrain, or deny the exercise of any right provided under FMLA/CFRA. The City may not discharge or discriminate against any person for opposing any practice made unlawful by FMLA/CFRA or for involvement in any proceeding under or relating to FMLA/CFRA. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

Worksite FMLA posters are available for reference. For additional FMLA information you may contact the Department of Labor:

U.S. Dept. of Labor, Wage and Hour Division  
5675 Ruffin Rd.; San Diego, CA 92123  
(619) 557-5606  
[www.wagehour.dol.gov](http://www.wagehour.dol.gov)

## **FAMILY MEDICAL LEAVE ACT (FMLA) and CALIFORNIA FAMILY RIGHTS ACT (CFRA) QUESTIONS AND ANSWERS**

1. **Q:** *What are the differences between the Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA)?*

**A:** FMLA is a federal law while CFRA is a state law. Provisions under both are generally the same except that CFRA does not apply to pregnancy leaves. CFRA does apply as parental leave after the FMLA pregnancy leave allowances have been completed. Parental leave is for the care of the child.
2. **Q:** *What is a "qualifying exigency" under the military family leave provision?*

**A:** A qualifying exigency exists when a family member in the regular Armed Forces, National Guard or reserves is on covered active duty during deployment to a foreign country or for contingency operations. A qualifying exigency may include addressing issues arising from an impending call to active duty within seven days of deployment, attending certain military events, providing for and arranging alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, fifteen days of rest and recuperation with a military member on short-term leave from active duty, arranging for parental care of a military member and attending post-deployment reintegration briefings.
3. **Q:** *How are the 1,250 hours counted?*

**A:** In determining whether an employee has 1,250 hours of service, the FMLA/CFRA acts require that all hours worked by the employee be counted as under the Fair Labor Standards Act, including overtime hours worked by non-exempt employees.
4. **Q:** *For the 1,250 hours, is overtime counted as straight hours worked, or credited at the 1-1/2 rate?*

**A:** Overtime is counted as actual straight time hours worked.
5. **Q:** *Is a probationary employee eligible for FMLA and/or CFRA covered leave?*

**A:** The FMLA/CFRA acts do not differentiate between probationary and permanent employees. However, the employee must meet the requirement to have worked for at least 12 months with the city and at least 1,250 hours worked during the prior 12 months. But newly hired probationary employees are unlikely to meet the required length and hours of employment criteria.
6. **Q:** *What if the new employee had worked in another capacity (hourly, professional staff, etc.)?*

**A:** FMLA/CFRA acts do not distinguish between the kinds of work or job titles that must comprise the 12 months and 1,250 hours of employment. FMLA states "all hours which an employer...permits an employee to work are counted towards hours of service".
7. **Q:** *The American with Disabilities Act requires that medical statements regarding an employee or an employee's related medical conditions be considered confidential. How will medical documentation needed for family or personal medical leave requests be handled?*

**A:** Any medical information related to requests for leaves of absence or reasonable accommodation will be maintained in the Human Resources department and treated as confidential information.
8. **Q:** *Does FMLA and/or CFRA covered leave have to be taken all at once, or can it be taken in parts?*

**A:** **For parental leave**, the employee may request and the employer has the option to approve an employee's request to take parental FMLA and/or CFRA covered leave intermittently or by working a reduced work schedule. Basic duration of the leave shall be two weeks. However, leave may be granted for a duration of less than two weeks on any two occasions. Leave taken for parental leave shall be concluded within one year of the child's birth or placement in the employee's home.

**For family or personal medical leave due to a serious health condition**, FMLA/CFRA covered leave may be taken whenever "medically necessary". This can include requirements to take intermittent periods of leave, as well as, to work a reduced work schedule.

9. **Q.** *What does it mean that an employee is "needed to care for" a family member?*
  - A. An eligible employee may take FMLA and/or CFRA covered leave in order to care for the employee's spouse, child, or parent (or next of kin, in the case of military caregiver leave) as defined by FMLA and CFRA with a serious health condition. The health care provider must either certify that third party care is required or that the employee's presence would be beneficial to the patient. Certification will be sufficient to satisfy this requirement and entitle the employee to FMLA and/or CFRA covered leave. This provision is intended to accommodate needs for leave to provide psychological comfort for a seriously ill eligible family member, and to arrange "third party" care for an eligible family member.
  
10. **Q.** *What level of health insurance benefits is the employer required to provide during the 12 weeks of FMLA and/or CFRA covered leave?*
  - A. The City is required to maintain the employee's existing employer-paid health insurance coverage (medical and dental) during the period of leave covered by FMLA and/or CFRA, with no change in cost to the employee. The combined obligation extends to a maximum of 12 weeks of coverage for FMLA and CFRA and 26 weeks for military leave.
  
11. **Q.** *Who would not be considered a family member for purposes of a leave?*
  - A. Grandparents, grandchildren, in-laws or other persons who are not related, but who are residing in the employee's household are not covered by FMLA and/or CFRA. The only exceptions are for a next of kin (nearest blood relative) whose illness or injury is incurred in the line of duty while on active duty in the Armed Forces, and a child for whom the employee stands in loco parentis or a person who stood in loco parentis for the employee as a child. "In loco parentis" means having day-to-day responsibilities to care for and financially support a child. There may be provisions in the city's Sick Leave policies which allow for use of sick leave to provide care for persons who are not covered by FMLA and/or CFRA. Check your respective memorandum of understanding or benefits plan.