



**ALAMEDA  
COUNTY**

**FAMILY AND MEDICAL LEAVE  
HANDBOOK**



**Human Resource Services**

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## SECTION 1

# General Information

### Introduction

The purpose of this handbook is to provide you with information concerning federal and state family and medical leave provisions, specifically the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA) and Pregnancy Disability Leave (PDL). These statutes provide employees with reasonable job-protected and unpaid leave for medical reasons and specified family care. The intent of these laws is to afford employees the ability to balance the demands of the workplace with the needs of families.

Incorporated within this handbook is information regarding leave eligibility, entitlement, certification, benefits, rights and obligations, and general information regarding the County's administration of these leaves.

This handbook is not intended to be the sole source of information due to the complexities of these leave provisions. Their inter-relationship and overlap with Alameda County's leaves of absences, along with the integration of California's State Disability Insurance (SDI) and Paid Family Leave (PFL) programs as well as the County's voluntary short/long term disability insurance programs can be difficult to navigate.

It is the policy of Alameda County to afford its employees the benefits provided by these federal and state leave provisions. FMLA, CFRA and PDL are now known as Family and Medical Leaves (FML). Employees seeking an FML leave of absence should obtain a copy of the Family and Medical Leave Procedures and are strongly encouraged to consult with their Agency's Human Resources Office/Disability or FML Coordinator or the County's Disability Programs Division before taking a leave of absence. Additionally, the County's Employee Benefits Center (EBC) can provide employees with benefit information regarding the County's voluntary short/long term disability insurance programs.

*Note: Information on the County's various disability/FML related policies, procedures, forms and notices can be retrieved from the internet at [www.acgov.org/hrs/divisions/dp](http://www.acgov.org/hrs/divisions/dp) or the County's Document Center at <http://dsmain.acgov.org/docushare/dsweb/View/Collection-2189>*

## **Family and Medical Leave Act (FMLA)**

The federal Family and Medical Leave Act requires employers to provide unpaid, job-protected leave, job restoration and continuation of health benefits in the event an employee or an employee's covered family member has a qualifying health condition or specific family need. In 2009, the amended FMLA regulations included two (2) military family leaves known as "Caregiver Leave" and "Qualifying Exigency Leave." These leave provisions are to care for a covered servicemember with a serious injury or illness, and/or any qualifying exigency for a covered military member. Alameda County's "applicable" leaves of absence will run concurrent with an FMLA leave of absence.

## **California Family Rights Act (CFRA)**

The California legislature established the California Family Rights Act which contains family care and medical leave provisions for California employees. Similar to the FMLA, the act was established to ensure secure leave rights, and provides eligible employees with unpaid, job-protected leave, job restoration and continuation of health benefits in the event an employee/covered family member has a qualifying medical condition or specific family need. Unlike the FMLA, CFRA does not provide leave for disabilities or related medical conditions due solely to pregnancy or childbirth. Alameda County's "applicable" leaves of absence will run concurrent with CFRA leaves and, in most cases, CFRA and FMLA leaves will run concurrently.

## **Pregnancy Disability Leave (PDL)**

California's Pregnancy Disability Act, contained within the Fair Employment and Housing Act, has a provision related to pregnancy disability leave. PDL provides employees with unpaid, job-protected leave, job restoration and continuation of health benefits when disabled due to pregnancy, childbirth, or a related medical condition. Alameda County's "applicable" leaves of absence will run concurrent with PDL. Additionally, PDL will run concurrent with an FMLA leave (if eligible). Employees are entitled to take PDL in addition to any leave entitlement they may have under CFRA. Employees affected by pregnancy/child birth or a related medical condition, are also eligible to transfer to a less strenuous or hazardous position or duties (temporary modified work assignment/reasonable accommodation), if medically advisable.

## **Reasonable Accommodation**

Pursuant to the Americans With Disabilities, and California's Fair Employment and Housing and Pregnancy Disability Acts, employees may request a reasonable accommodation for temporary disabilities and/or short-term impairments of short duration (i.e., less than six months if "substantially

limiting” and thus disabling) and/or conditions related to pregnancy, childbirth/or related medical conditions with the advice of their health care provider.

*Note: Should you have questions regarding the County’s Reasonable Accommodation or Temporary Modified Work Policies/Procedures, contact your Agency/Department Human Resources Office, Disability Coordinator or the County’s Disability Programs Division located in the Human Resource Services Department.*

## SECTION 2

### Eligibility/Qualifying Reasons/Leave Entitlement

#### Family Medical Leave Act/California Family Rights Act

##### **Eligible Employees**

To be an “eligible employee” for a leave of absence under the FMLA/CFRA, you must:

- be employed as a full time, part-time, services as needed or intermittent employee with Alameda County;
- have worked at least 12 months for the County; and,
- have worked at least 1,250 hours (work hours) during the 12-month period immediately preceding commencement of the leave.

*Note: Work hours are defined by the Fair Labor Standards Act (FLSA). In some circumstances, eligibility requirements may be met if previous work for the County was provided through a vendor. Also, employees are not required to re-qualify with 1,250 work hours for additional leave if the leave is for the same qualifying reason within the 12-month period or when leave is taken for child bonding immediately following pregnancy disability. (See example)*

Example: If Jane qualified for an FMLA/PDL leave due to her pregnancy disability, she does not have to re-qualify with an additional 1,250 work hours to be eligible for leave under CFRA to bond with her newborn child.

##### **Qualifying Reasons for Leave**

Circumstances qualifying for leave under the FMLA/CFRA are any one, or more, of the following reasons:

1. Your own serious health condition that makes you unable to perform the functions of the job;
2. To care for your child, parent, spouse or domestic partner with a serious health condition;
3. Your disability due to pregnancy, child birth or related medical condition (FMLA only);
4. To care for your newborn child, within one (1) year of the birth (also known as child/baby bonding), or for the placement of a son or daughter for adoption or foster care, within one year of placement;

5. For any qualifying exigency arising out of the fact that your spouse, son, daughter, or parent, is a covered military member on covered active duty status (FMLA only);
6. To care for your spouse, son, daughter, parent, or next of kin who is a covered servicemember (including certain veterans) with a serious injury or illness (FMLA only).

*Note: Section 565 of the National Defense Authorization Act of 2010 (2010 NDAA) amended the military family leave provisions of the Family and Medical Leave Act (FMLA). These amended leave provisions have been incorporated in this handbook. (See Section 12, Definitions/Key Terms)*

### **Amount of Leave Entitlement**

Full time employees: An eligible employee's leave entitlement is limited to a total of up to 12 workweeks of unpaid leave during any 12-month period. The 12-month period is measured forward from the date the FMLA/CFRA leave begins.

Part-time, Intermittent/Services as Needed employees: An eligible employee's leave entitlement is on a proportional basis. The amount of leave entitlement is based on the number of hours worked during the 12 months preceding commencement of the leave.

Exception for Military "Caregiver Leave" (FMLA only): An eligible employee's leave entitlement under this provision extends job-protected leave to a total of up to 26 workweeks to care for a covered servicemember with a serious injury or illness.

*Note: If both mother and father work for the County, each is eligible for up to 12 workweeks of unpaid leave for the birth of a child or to care for the child within one (1) year of birth (child bonding), or for the placement of a son or daughter for adoption or foster care within one (1) year of placement. Your Agency/Department Human Resources Office can calculate and determine your amount of leave entitlement. Additionally, employees are only entitled to a combined total of up to 26 workweeks for all types of FMLA leave during a single 12-month period. (See examples)*

Example 1: If Sam previously used 5 weeks of FMLA/CFRA for his own serious health condition, he would only be entitled to up to an additional 21 weeks of FMLA (within the same 12-month period) to care for his family member who is a covered servicemember.

Example 2: While Doris continues to be disabled and unable to work following the exhaustion of her FMLA/CFRA entitlement (12 workweeks), she may become eligible for another leave entitlement (12 workweeks) upon the beginning of a new 12-month period, as long as she meets the FMLA/CFRA eligibility requirements.

## **Pregnancy Disability Leave**

### **Eligible Employees**

There are no eligibility requirements for a leave of absence under California's Pregnancy Disability Leave (PDL).

### **Qualifying Reasons for Leave**

You must be disabled due to pregnancy, child birth or related medical conditions. Receipt of medical certification/documentation is required.

### **Amount of Leave Entitlement**

An employee's leave entitlement is limited to up to a total of 4 months (16 weeks) of unpaid leave. Part-time or Services as Needed/Intermittent employees may take PDL leave on a proportional basis. The proportional leave entitlement is based on the number of hours worked during the 12 months preceding commencement of the leave.

PDL will run concurrent with an FMLA leave (if eligible). Employees are entitled to take PDL in addition to any leave entitlement they may have under CFRA. Employees affected by pregnancy/child birth or a related medical condition, are also eligible to transfer to a less strenuous or hazardous position or duties (temporary modified work assignment/reasonable accommodation), if medically advisable.

*Note: Your Agency/ Department Human Resources Office can calculate and determine your amount of leave entitlement if you are a part-time, intermittent or services as needed employee.*

## SECTION 3

### Leave Usage

In most cases, an FMLA/CFRA/PDL leave is usually taken for a period of consecutive days, weeks or months. However, there may be medical reasons that require leave to be taken periodically.

#### **Intermittent Leave and Reduced Work Schedule**

Under some circumstances, employees may need to take an FMLA/CFRA/PDL leave intermittently or on a reduced work schedule. Intermittent leave is taking leave in separate periods of time for a single qualifying reason, on an as needed basis. A reduced work schedule can be taken by reducing your daily or weekly work hours. There must be a medical necessity for these types of leaves and such medical need can be best accommodated through intermittent leave or reduced work schedule (e.g. temporary modified work assignment).

*For more information on the County's Temporary Modified Work Policy/Procedure, contact your Agency/Department Human Resources Office, Workers' Compensation Liaison/Disability Coordinator or the County's Disability Programs Division located in the Human Resource Services Department.*

#### **Medical Treatments/Appointments**

When leave is needed for planned medical treatments/appointments, a reasonable effort should be made to schedule treatments/appointments so as not to unduly disrupt the department operations.

#### **Child Bonding, Placement for Adoption/Foster Care**

Leave taken for child bonding, adoption or foster care placement of a child does not have to be taken in one continuous period of time. The basic minimum duration of leave, provided for under CFRA, shall be two (2) weeks. However, you may take a leave of less than two (2) weeks' duration on any two (2) occasions.

Any additional requests for intermittent leave or a reduced work schedule for child bonding, adoption or foster care placement of a child is subject to approval by your department.

## **Transfer to an Alternate Position While on Intermittent Leave/Reduced Work Schedule**

Your department may temporarily transfer you to an alternative position (for which you are qualified) during the period of your intermittent leave or reduced work schedule to better accommodate recurring periods of leave.

## **Returning From Leave**

### **Temporary Modified Work Assignments**

Time spent performing “modified work” in a temporary modified work assignment does not count against your FML (FMLA/CFRA/PDL) leave entitlement. Additionally, you will continue to occupy your regular position while performing temporary modified work.

*Note: If you are on industrial sick leave (Workers’ Compensation) and choose not to accept an available temporary modified work assignment (based on work restrictions provided by your health care provider), you may lose your Workers’ Compensation benefits. However, you may continue to remain on your FMLA/CFRA leave, if eligible.*

*An employee may be entitled to a reasonable accommodation if his/her temporary disability and/or short-term impairment is of short duration (i.e., less than six months) and “substantially limiting” pursuant to the expanded definition of “disability” under the Americans with Disabilities Act final regulations (3/25/11). Employees who fall within this category should refer to the County’s Reasonable Accommodation and/or Temporary Modified Work Policies and Procedures.*

*For more information on the County’s disability management policies/procedures, contact your Agency/Department Human Resources Office, Workers’ Compensation Liaison/Disability Coordinator or the County’s Disability Programs Division located in the Human Resource Services Department.*

### **Reinstatement Following Leave**

Upon return from an FMLA/CFRA/PDL leave, you will be restored to your regular job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

The use of an FMLA/CFRA/PDL leave will not result in the loss of any employment benefit that you earned or were entitled to before using FMLA/CFRA/PDL leave. However, you have no greater right to restoration or to other benefits and conditions of employment than if you had been continuously employed.

## SECTION 4

### Required Certification

Depending on the nature of the requested leave, employees are required to submit a certification supporting the need for an FMLA/CFRA qualifying leave. Generally, there are three (3) types of certifications: an initial certification, a re-certification, and a return to work (fitness for duty) certification. Additionally, employees are responsible for providing a timely, completed and sufficient certification within 15 calendar days of receiving a Notification of Leave (FML Form 5) from your Agency/Department Human Resources Office.

#### **Employee's/Family Member's - Serious Health Condition**

You are required to provide medical certification from your health care provider for your own serious health condition or from your family member's health care provider, as appropriate. The health care provider should complete the Certification of Health Care Provider (Employee/Family Member) (FML Form 2).

The medical certification shall include (where appropriate):

- the date on which your/family member's serious health condition commenced and duration of the medical condition;
- the estimated period of time you will be unable to perform the essential functions of your job;
- it is medically necessary for you to provide care for your family member;
- that your medical condition is due to pregnancy/child birth or related condition;
- that you have been hospitalized overnight or that you or your family member is under the continuing care of a health care provider;
- if intermittent leave, a reduced work schedule or follow-up visits are medically necessary;
- the duration and frequency for absences/flare-ups or follow-up medical visits

*Note: Employees requesting a PDL leave only (ineligible for FMLA) are required to submit timely, completed and acceptable supporting medical documentation/certification from their health care provider. If your FMLA/CFRA/PDL leave is foreseeable and you have provided a 30-day advance notice, you must provide any requested medical documentation prior to the commencement of your leave.*

## **Certification Following Pregnancy Leave**

Medical documentation which certifies that you are no longer disabled due to pregnancy/childbirth/related medical condition is needed to begin the “child bonding” leave as provided for under CFRA.

## **Certification for Military Family Leaves**

Under the FMLA’s military family leave provisions, you are required to provide a military family leave certification in the case of a leave taken to (1) care for your family member who is a covered servicemember and has a serious injury or illness or (2) for any qualifying exigency arising out of the fact that your family member, is a covered military member on covered active duty.

Employees requesting a military family leave must submit the applicable *Certification for Health Care Provider (Servicemember) (FML Form 3)* or *Certification for Military Family Leave (Qualifying Exigency) (FML Form 4)*.

## **Recertification**

If the duration of the incapacity (need for leave) is unable to be determined by your health care provider, your Agency/Department may request a recertification no more often than every 30 days. When the duration of the medical condition is described as “lifetime/permanent,” your Agency/Department may request a recertification for an ongoing condition every *six months* in conjunction with your FMLA absence.

Employees with medical conditions lasting longer than one year will require a yearly certification for their FMLA/CFRA leave and must meet eligibility requirements.

*Note: As part of the FMLA recertification process, an Agency/Department may provide your health care provider with a record of your absences and ask if such absences are consistent with the serious health condition and need for leave. Additionally, your health care provider may be asked to review a *Description of Employee’s Essential Job Functions (Form EF5)* for your position to determine your ability to return to work and perform the essential job duties.*

## **Authentication/Clarification of Certification**

In order to authenticate or clarify a certification, your human resources administrator/disability coordinator may contact your health care provider after you have been given an opportunity to cure any deficiencies. Under no circumstances will your direct supervisor contact your health care provider.

- *Authentication:* Providing the health care provider with a copy of the certification submitted and requesting verification that the information contained in the certification was completed and/or authorized by the health care provider who signed the certification.

- *Clarification:* Contacting the health care provider to further clarify the handwriting on the certification and/or the meaning of what is written, only after you have had an opportunity to cure the deficiency. In order to provide the necessary clarification, your health care provider may request that you sign a release of medical information form or your Agency/Department can provide the health care provider with your signed Alameda County Consent to Release Medical Information (CRMI Form).

*Note: You have an obligation to cooperate in the certification process. Additionally, you are responsible for providing clarification of the certification, if necessary, within a specified period of time (seven calendar days). No additional medical information may be requested in the authentication and clarification process.*

## **Second/Third Medical Opinions**

If a second or third medical opinion is required (at the Agency/Department's expense) you or your family member must authorize the health care provider to release relevant medical information requested by the second/third opinion health care provider. Your medical information will not be released to your Agency/Department. Your Agency/Department may deny your request for an FMLA/CFRA leave if you or your family member refuses to release relevant medical information requested by the second/third opinion health care provider. You may receive a copy of the second/third medical opinion upon request.

## **Fitness for Duty Certification**

Under certain circumstances (e.g., reasonable safety concerns) you may be notified that a fitness for duty certification is necessary for your return to work from an FMLA/CFRA leave of absence.

If requested, you will be required to provide medical certification confirming your ability to return to work to perform the essential functions of your position with or without reasonable accommodation. There may be a delay in your return to work until you provide this certification.

*Note: Information on the various FML forms and notices can be retrieved from the County's Document Center at <http://dsmain.acgov.org/docushare/dsweb/View/Collection-2189> or [www.acgov.org/hrs/divisions/dp](http://www.acgov.org/hrs/divisions/dp)*

## SECTION 5

### Integrating County Leaves & Insurance Programs

There are advantages for employees to integrate their accrued County leaves during an FMLA leave of absence. Employees on “paid leave status” continue to accrue sick leave and vacation, earn County seniority and seniority towards salary step increases.

#### **Alameda County Leaves of Absence**

You are **required** to use (run concurrently/at the same time) applicable County MOU/Administrative Code leave(s), when eligible, during your FMLA/CFRA and/or PDL. Applicable County MOU/Administrative Code leaves can include, but are not limited to: sick leave, family sick leave, industrial sick leave (Workers’ Compensation), personal disability leave and pregnancy/child bonding leave.

**IMPORTANT:** Other accrued paid leave balances (including vacation leave, compensating time off, vacation buy, floating holidays), when eligible, will be applied during your FMLA leave **unless you provide written notification** to limit the integration to your accrued sick leave only. This written notification must be provided to your payroll clerk/FMLA Coordinator with a copy to your immediate supervisor. A leave without pay status may affect your group health insurance benefits (e.g., following the exhaustion of your FMLA/CFRA/PDL entitlement).

*Note: Examples on how County leaves of absences coordinate with FMLA leaves are located in Section 8 of this handbook.*

#### **Alameda County Catastrophic Sick Leave Program**

If your leave of absence is due to a catastrophic illness or injury (a critical medical condition considered as terminal or a long-term major physical impairment or disability), you may be eligible to receive donations of paid leave. Contact the Employee Benefits Center at (510) 891-8991 for more information regarding this program.

#### **California Insurance Benefit Programs**

You may also want to consider applying for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefit programs which are administered through California’s Employment Development Department (EDD). These state

programs are designed to provide eligible employees with partial wage replacement for a specified period of time for family and medical reasons allowing you to use your paid leave(s) on a pro-rated basis. Both programs require a seven (7) day unpaid waiting period.

Should you elect to participate in these programs, all of your County paid leaves (including sick leave, vacation leave, compensating time off, floating holidays), when eligible, will be integrated with the SDI/PFL supplemental benefit, **unless you provide written notification** to limit the integration to your accrued sick leave only. This written notification must be provided to your payroll clerk/FML Coordinator with a copy to your immediate supervisor.

### **State Disability Insurance (SDI)**

The State Disability Insurance program (absence due to your disability/medical condition) benefit amount is based on wages paid to you during a specific 12-month base period, which is determined by the date your claim begins. The date you start your claim may affect your benefit amount, your maximum amount payable and the period of your benefit eligibility.

### **Paid Family Leave Program (PFL)**

The Paid Family Leave program provides approximately 55 percent of your wages when leave is needed to provide care for your parent, child, spouse, registered domestic partner and to bond with a new minor child, up to six weeks in a 12-month period.

*Note: For specific information on the SDI or PFL programs, contact your Agency/Department Human Resources Office or California's Employment Development Department at [www.edd.ca.gov](http://www.edd.ca.gov) or 1-800-480-3287.*

## **Alameda County Voluntary Disability Insurance Programs**

If you are enrolled in the County's voluntary short term (STD) and/or long term (LTD) disability insurance plan, you may wish to utilize these benefits while on a medical leave of absence.

**Short Term Disability Insurance (STD)** benefits begin on the 8<sup>th</sup> day following the day of your injury/commencement of your disability. You are required to contact your STD carrier directly to file a claim.

**Long Term Disability Insurance (LTD)** benefits begin 180 days following the day of your injury/commencement of your disability. If you are *only* enrolled in

the LTD Insurance plan, you need to contact the Employee Benefits Center to obtain a LTD claim form.

*Note: If you are enrolled in both the STD and LTD disability insurance plans, and you are receiving STD benefits, your claim will automatically transition into a LTD claim should your disability leave go beyond 180 days. For more information regarding your STD/LTD disability insurance benefits, contact the Employee Benefits Center at (510) 891-8991 or your insurance carrier. You may also go to <http://alcoweb/hrs/ebc/benefits/evidence.htm> or [www.acgov.org/hrs/divisions/ebc](http://www.acgov.org/hrs/divisions/ebc) to obtain a copy of the Evidence of Coverage.*

## SECTION 6

### Benefits Coverage

#### **Maintenance of Benefits While on Leave**

Your group health insurance coverage will be maintained while you are on an FMLA/CFRA/PDL leave of absence under the same terms and conditions as if you had continued to work. Employees who contribute towards their group health insurance ***will be required*** to continue their bi-weekly contribution while on leave.

#### **Ineligible/Unpaid Leave Status**

If you are ineligible for an FMLA/CFRA leave or you remain out on leave beyond your FMLA/CFRA/PDL leave entitlement in an “unpaid” leave status (e.g., leave without pay), you ***must*** make special payment arrangements to continue your group health insurance premiums. It is essential that you contact the Employee Benefits Center to make arrangements to continue your health insurance premiums.

#### **Re-enrolling in Health Insurance Coverage**

If your group health insurance coverage *lapses* during your leave of absence and you wish to reinstate your coverage, you ***must*** re-enroll for health insurance coverage upon your return to work. In order to re-enroll, contact the Employee Benefits Center and complete the re-enrollment documents ***within 30 days*** of your return to work.

*Note: Should you fail to return from leave, you may be required to reimburse the County for the share of health insurance premiums paid on your behalf during your leave of absence. For more information regarding your health insurance coverage, contact the Employee Benefits Center at (510) 891-8991.*

## SECTION 7

### Employee/Employer Obligations

#### Employee Responsibilities

##### Providing Notice/Requesting Leave

You must promptly inform your supervisor of your need for an FMLA/CFRA/PDL leave and the duration of such leave, if known. You may do this by requesting an FML leave specifically and completing an *Employee's Request for Leave (FML Form 1)* or by providing sufficient information which allows your Agency/Department to determine that your absence may be due to an FML qualifying reason.

*Note: Employees have an obligation to respond to their Agency/Department's questions designed to determine whether the requested leave is for a qualified reason under FMLA/CFRA and/or PDL. An Agency/Department may deny an FML leave if it is unable to make this determination because of failure to respond to the Agency/Department's questions.*

##### Foreseeable Leave

When seeking to use an FMLA/CFRA/PDL leave, you are responsible for providing a 30-day advance notice of the need to take leave to your supervisor when the need is foreseeable (e.g., expected birth, child bonding, placement for adoption/foster care, planned medical treatment) and such notice is practicable. Failure to provide a 30-day notice for foreseeable leave may result in the FMLA/CFRA leave being delayed or denied.

##### Unforeseeable Leave

If your FMLA/CFRA/PDL leave is unforeseeable, you must provide notice to your supervisor as soon as practicable (same day or next business day) when 30-days notice is not foreseeable.

##### Absences Following a Leave

Should you have subsequent absences (due to the same reason/medical condition) following your return from a FMLA/CFRA/PDL leave, you **must** specifically advise your supervisor and reference that the reason for your absence is due to your qualifying FMLA/CFRA or PDL condition. Simply calling in "sick" without providing a reason for the needed absence will not be sufficient notice for an FML leave. (See following example)

Example: Jenny's time off work for 3 weeks in March was designated as an FMLA/CFRA leave. In July, Jenny was absent for 2 days and 5 additional days in August. Jenny advised her supervisor on both occasions that her inability to work was due to the same qualifying reason (medical condition) for which she was previously approved. As such, these 7 days were counted against Jenny's 12-week FMLA/CFRA leave entitlement.

## **Reporting Leave Time**

You must always comply with your Agency/Department's "call-in" and leave of absence request guidelines.

There are specific Time Reporting Codes (TRC's) related to FML/PDL leaves of absence. Be sure you discuss your leave and how your leave should be coded with your supervisor. **IMPORTANT: Incorrect coding of your timesheet while on an FML/PDL leave can result in the cancellation of your health insurance premiums and cause undue financial hardship (out-of-pocket expense) for you.**

*Note: The appropriate TRC for your specific FML/PDL leave of absence can be provided by your payroll office or in Alcolink HRMS (Time and Labor). If applicable, employees may want to consider completing their timesheet(s) prior to the commencement of their leave. Self Service Time Entry users are limited to completing time entry up to two (2) pay periods in advance.*

## **Employer Responsibilities**

### **Eligibility Notification and Designation of Leave**

The County is required to provide notice and information about Family and Medical leaves to its employees upon hire. Additionally, FMLA, CFRA and PDL posters are displayed in designated areas within each Agency/Department.

Employees requesting an FMLA/CFRA leave are entitled to receive written notice of:

- Leave eligibility within five (5) business days of receipt of your request for leave or knowledge that your absence may be for a qualifying reason; and, if not eligible, a reason as to why you are not eligible (e.g., required work hours not met)
- The certification/documentation required to designate/approve the leave
- Your rights and responsibilities in connection with your leave

Additionally, employees are entitled to receive written notice of:

- Leave status (e.g., approval) within 5 business days of receipt of the required certification/documentation; and, if not approved, a reason for the delay (e.g., certification deficiencies) or denial.

*Note: A certification can be deemed incomplete or insufficient if the information is vague, ambiguous, or non-responsive. Deficiencies not cured within the specified period of time allowed may result in the denial of the leave. (See Required Certification, page 11)*

### **Retroactive Designation of Leave**

An absence may be retroactively designated as an FMLA/CFRA and/or PDL leave when your department has enough information that your leave is due to a qualifying FMLA/CFRA and/or PDL reason/medical condition. If applicable and with appropriate written notice to you, your absence will be retroactively designated and counted against your FMLA/CFRA and/or PDL leave entitlement. (See example)

Example: While Mary is on vacation, she advises her supervisor that she has been hospitalized since the first day of her vacation. Following proper written notification (Notification of Leave, FML Form 5) and receipt of a complete and sufficient certification, Mary's Agency/Department may retroactively designate her leave as an FMLA/CFRA and/or PDL leave.

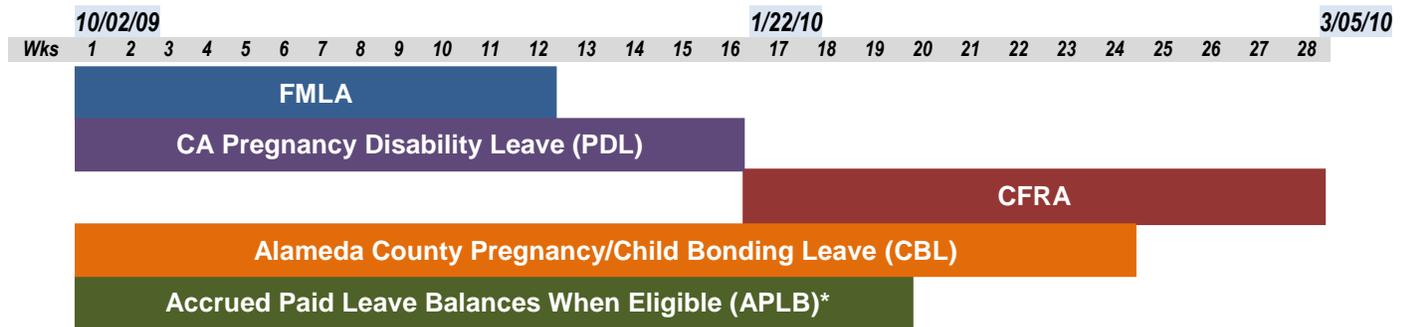
## SECTION 8

### Coordination of Overlapping Leaves of Absences

#### Comparisons and Illustrations

Below are some examples of how Alameda County’s MOU/Administrative Code leaves of absence run concurrently (at the same time) and/or overlap with federal and state family and medical leave provisions.

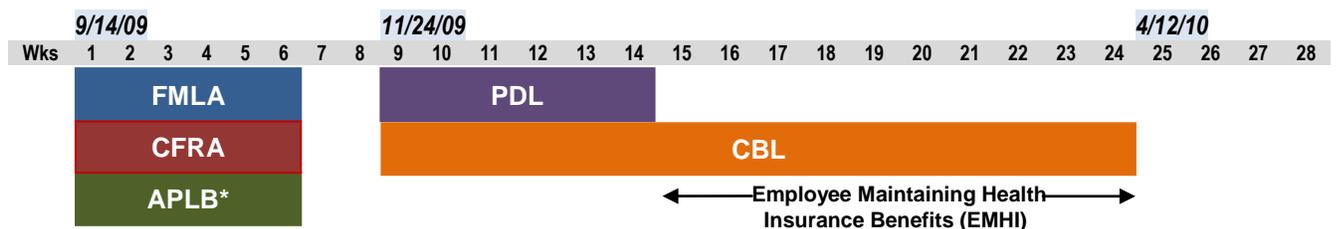
**Example 1: Jenny becomes disabled and unable to work due to her pregnancy on 10/02/09. Jenny’s baby was born on 1/22/10. Jenny returns to work on 3/5/10. Note: Jenny’s group health insurance coverage was maintained during her leave.**



*Note: Employees can take up to seven (7) months of leave when combining PDL (4 months) immediately followed by CFRA (child bonding) leave.*

**Example 2: Carol became disabled (not related to pregnancy) on 9/14/09 and returned to work on 10/23/09. Carol’s baby was born on 11/24/09. Carol returned to work on 4/12/10. Note: Carol was responsible for maintaining her group health insurance during the period she was no longer eligible for FMLA/CFRA or PDL leave and had exhausted her accrual leave balances.**

*(Prior to 9/14/09, Carol used 6 weeks of FMLA/CFRA leave to care for her mother)*



**Example 3:** Paula became disabled due to her pregnancy on 10/05/09. Paula’s baby was born on 10/30/09 and she returned to work on 3/22/10. Note: Paula was responsible for maintaining her group health insurance during the period she was no longer eligible for FMLA/CFRA leave and had exhausted her accrued leave balances.



**Example 4:** Ken was unable to work due to his serious health condition from 6/02/09 – 7/20/09 (6 weeks). Ken was off work caring for his child with a serious health condition from 8/18/09 – 9/9/09 (3 weeks). Ken took time off work to bond with his newborn son from 10/7/09 – 12/2/09 (9 weeks). Note: Ken was responsible for maintaining his group health insurance benefits during the period he was no longer eligible for FMLA/CFRA leave and had exhausted his accrual leave balances.



Note: Employees who are (1) ineligible for FMLA/CFRA leave or (2) remain absent following the exhaustion of their FMLA/CFRA/PDL leave entitlement, and in an unpaid leave status, will be responsible for maintaining their group health/dental insurance coverage (see examples which include EMHI). Additionally, sick leave/family sick leave **is not permitted** during an FMLA/CFRA Child Bonding Leave unless otherwise eligible (employee/family member is ill) for sick leave/family sick leave pursuant to your Alameda County MOU/Administrate Code.

## SECTION 9

### Frequently Asked Questions

#### 1. Am I eligible to take an FMLA/CFRA leave?

A: You are eligible to take an FMLA/CFRA unpaid leave if you have worked for Alameda County for at least 12 months in the past seven years, and have worked at least 1,250 hours during the 12-month period prior to the commencement of the leave. Work hours are defined by the Fair Labor Standards Act (FLSA). Paid County leaves (e.g., vacation, floating holiday) and unpaid leaves (e.g., Personal Disability Leave), including FMLA/CFRA/PDL leave, are not included.

#### 2. Can I choose not to exhaust my own paid leave prior to beginning or during my FMLA/CFRA or PDL leave? Can I choose not to have my leave designated as an FMLA/CFRA leave?

A: Yes and No. You must exhaust your “applicable” paid leaves (e.g., sick leave, family sick leave, industrial sick leave) or an “applicable” unpaid leave (e.g., personal disability leave, pregnancy & child bonding leave) and these leaves **will** run concurrently with your FMLA/CFRA and PDL leave. However, **upon receipt of your written notice**, you **can** choose to limit the integration to accrued sick leave/family sick leave only while on an FML leave. Without your written notice your other paid leaves (e.g., vacation time, floating holidays and compensatory time), when eligible, will be automatically integrated.

You **cannot** choose to be on an FMLA/CFRA or PDL leave. If the reason for your absence is due to an FMLA/CFRA or PDL qualifying condition/reason, your Agency/Department will properly notify you and designate your absence as an FMLA/CFRA or PDL leave with receipt of an acceptable certification/document from your health care provider. Under certain circumstances, your Agency/Department may designate your absence as an FMLA/CFRA/PDL leave upon knowledge that you are/have been hospitalized. Failure to cooperate with the certification process may result in a leave without pay status.

#### 3. How much leave am I entitled to under the FMLA/CFRA?

A: Eligible employees are entitled to up to 12 workweeks of FMLA/CFRA leave for certain qualifying family and medical reasons during a 12-month period. It may also be used for different and separate medical conditions. However, an employee may not be granted more than 12 workweeks of FMLA/CFRA leave in one 12-month period.

Exceptions:

- Employees may receive up to 26 workweeks when approved for FMLA military caregiver leave

- Employees may receive up to a total of 24 workweeks (combination of both FMLA and CFRA for pregnancy disability and child bonding leave)

**4. How is the 12-month period calculated under FMLA/CFRA?**

A: Alameda County uses a 12-month period measured forward from the date you use FMLA/CFRA leave (e.g., 4/1/2010 through 3/31/2011).

**5. How does an FMLA/CFRA leave benefit me?**

A: The following benefits will apply if you qualify for leave under FMLA/CFRA:

- Up to 12 weeks of unpaid, job-protected leave per 12-month period, maintenance of health care benefits and job restoration upon return from an FMLA/CFRA leave. Employees on PDL leave can receive up to 4 months (16 weeks) of unpaid, job-protected leave, job restoration including maintenance of health care benefits. PDL leave runs concurrent with FMLA leave (if eligible).

*Note: Employees on an unpaid leave status and ineligible for an FMLA/CFRA leave (i.e. on PDL leave only) or who remain out on leave beyond their FMLA/CFRA/PDL leave entitlement **must** make special payment arrangements with the Employee Benefits Center to continue their group health insurance premiums.*

**6. Does industrial sick leave (workers' compensation) count against my FMLA/CFRA leave entitlement?**

A: Yes. FMLA/CFRA leave and industrial sick leave run concurrently, provided that the reason for your absence is due to a qualifying serious illness or injury.

*Note CFRA exception: CFRA is not applicable if you are receiving 4850 benefits (e.g., safety classifications).*

**7. Do I have to qualify for Pregnancy Disability Leave (PDL)?**

A: No. If you are a County employee and disabled due to pregnancy, child birth or a related medical condition, you qualify for up to 4 months (16 weeks) of unpaid, job-protected leave, job restoration including maintenance of health care benefits under PDL.

**8. Can the County count my leave taken due to pregnancy disability (PDL) against my 12 workweeks of FMLA entitlement?**

A: Yes. If you are eligible for an FMLA leave and are absent due to pregnancy, childbirth or related medical condition, your PDL leave will run concurrently with your FMLA leave and be subtracted from your 12 week FMLA entitlement.

**9. Can I use FMLA leave after the birth of my child? How is PDL applied? How and when is CFRA applied?**

A: Yes. You may use FMLA (if eligible) and PDL leave during the period of your disability due to pregnancy/child birth up until the time you are released from medical care by your health care provider or you have exhausted your FMLA/PDL leave entitlement.

You can continue your FMLA leave (if available) and begin using CFRA leave (if available) to child bond when medical documentation is received releasing you from your pregnancy disability/child birth (approximately 6-8 weeks post partum). Child bonding leave under FMLA/CFRA can be taken within one (1) year of the child's birth.

FMLA/CFRA leave (if eligible) can be taken to care for your spouse (FMLA)/domestic partner (CFRA) who is disabled due to pregnancy/child birth/related medical condition and for the birth of the child (child bonding) within one (1) year of the child's birth.

**10. If my Agency/Department fails to tell me that my leave is a qualifying family medical leave, can they count the time I have already been off against the 12 workweeks of FMLA/CFRA and/or 4 months (16 weeks) of PDL retroactively?**

A: Yes, in some situations. If your Agency/Department was unaware that the reason for your absence was an FMLA/CFRA or PDL reason and/or subsequently acquires information from you (such as when you request additional or extensions of absence); your absence may be designated as an FMLA/CFRA or PDL leave retroactively. This can occur while you are on leave, or upon knowledge that the reason for the absence was an FMLA/CFRA/PDL condition/reason and with proper notification.

**11. Are my periodic flare-ups, related medical appointments and/or visits to a physical therapist, considered as FMLA/CFRA?**

A: Yes. The FMLA/CFRA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay or for treatment of your medical condition.

**12. How much notice do I have to provide before taking FMLA/CFRA leave?**

A: When the need for leave is foreseeable (e.g., based on an expected birth, placement for adoption or foster care, planned medical treatments), you must give at least 30-days notice. If a 30-day notice is not possible, you are required to provide notice "as soon as practicable." This also applies to employees seeking a leave due to a qualifying exigency (military family leave), regardless of how far in advance such leave is foreseeable.

**13. If I am a full-time employee and can return to work four (4) hours per day (temporary modified work assignment), can the remainder of the day be considered as an FMLA/CFRA leave?**

A: Yes, provided the reason for the temporary modified work assignment/shortened workday is due to your qualifying FMLA/CFRA condition.

*Note: An employee may be entitled to a reasonable accommodation if his/her temporary disability and/or short-term impairment is of short duration (i.e., less than six months) and “substantially limiting” pursuant to the expanded definition of “disability” under the Americans with Disabilities Act (final regulations effective March 25, 2011). Employees who fall within this category should refer to the County’s Reasonable Accommodation and/or Temporary Modified Work Policies and Procedures. For more information on these County Policies/Procedures, contact your Agency/Department Human Resources Office, Workers’ Compensation Liaison/Disability Coordinator or the County’s Disability Programs Division located in the Human Resource Services Department.*

**14. What happens if the County says my medical certification is incomplete or insufficient?**

A: You will receive written notification and be allowed a reasonable opportunity (seven calendar days unless seven days is not practicable) to correct the deficiency.

**15. May my Agency/Department contact my health care provider about my serious health condition?**

A: Yes, under certain circumstances. Your health care provider can be contacted for authentication or clarification of the medical certification by a human resource professional (FML/Disability Coordinator or Personnel Officer). In no case may your direct supervisor contact your health care provider. In order to address your privacy concerns, the FMLA/CFRA provides that in order for an employee’s HIPAA-covered health care provider to provide an employer with individually-identifiable health information, you must first provide authorization to your health care provider (i.e. release of medical information form) allowing disclosure of such information. A completed and signed Alameda County’s Consent to Release Medical Information form can also be provided to your health care provider.

Additionally, your Agency/Department may not ask your health care provider for additional information beyond that contained on the medical certification form. Should your Agency/Department wish to obtain another medical opinion, you may be required to obtain additional medical certification at the County’s expense, or recertification (as allowed) during a period of FMLA/CFRA leave.

Accordingly, your Agency/Department may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA/CFRA/PDL purposes, and may require periodic reports on your status and intent to return to work.

**16. Will I be paid while on an FMLA military family leave?**

A: It depends. The FMLA only requires employers to provide eligible employees with an unpaid, job-protected leave. You are **required** to use applicable County MOU/Administrative Code leaves (e.g., family sick leave), when eligible, during your FMLA military family leave. Other accrued paid leave balances (including vacation leave, compensating time off, vacation buy, floating holidays), when eligible, will be applied during your FMLA military family leave **unless you provide written notification** to limit the integration to your family sick leave only. This written notification must be provided to your payroll clerk/FML Coordinator with a copy to your immediate supervisor. A leave without pay status may affect your group health insurance benefits (e.g., following the exhaustion of your FML entitlement).

**17. Who is considered a covered military member? What is an FMLA “qualifying exigency” leave?**

A: A covered military member is your spouse, son, daughter, or parent who is on covered active duty or call to active duty status. (See Section 12, Definitions/Key Terms)

“Qualifying Exigency” is a leave taken for various reasons while your covered military member is on covered active duty or call to active duty status. The FMLA regulations include a broad list of activities that are considered qualifying exigencies which permit eligible employees to take leave to address common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

**18. Are the 12 workweeks of qualifying exigency leave a one-time entitlement?**

A: No. If a covered military member’s covered active duty or call to active duty status spans more than one FMLA leave year, an eligible employee would be entitled to take qualifying exigency leave in each FMLA leave year. Moreover, an eligible employee could take qualifying exigency leave in a subsequent FMLA leave year for a different covered military member. Finally, if the same covered military member returns from deployment and is subsequently redeployed, an eligible employee would again be entitled to qualifying exigency leave.

**19. What is “military caregiver leave”? Who is eligible to take military caregiver leave?**

A: “Military Caregiver Leave” is a leave taken to care for a covered servicemember (including certain veterans) with a serious injury or illness. (See Section 12, Definitions/Key Terms)

If you are the spouse, son, daughter, parent, or next of kin of the covered servicemember, you may take up to 26 workweeks of job-protected FMLA leave (in a 12-month period) to provide care to the servicemember.

**20. Can I carry-over unused weeks of military caregiver leave from one 12-month period to another?**

A: No. If you do not use your entire 26-workweek leave entitlement during the “single 12-month period” of leave, the remaining workweeks of leave are forfeited. After the end of the “single 12-month period” for military caregiver leave, however, you may be entitled to take FMLA leave to care for the covered servicemember if the member is a qualifying family member under non-military FMLA and he or she has a serious health condition.

**21. Can I take military caregiver leave for more than one seriously injured or ill covered servicemember, or more than once for the same covered servicemember if he or she has a subsequent serious injury or illness?**

A: Yes. By regulation, military caregiver leave is a “per-covered servicemember, per-injury” entitlement. Accordingly, an eligible employee may take up to 26 workweeks of leave to care for one covered servicemember in a “single 12-month period,” and then take another 26 workweeks of leave in a different “single 12-month period” to care for another covered servicemember. An eligible employee may also take 26 workweeks of leave to care for a covered servicemember in a “single 12-month period,” and then take another 26 workweeks of leave in a different “single 12-month period” to care for the same covered servicemember with a subsequent serious injury or illness (e.g., if the servicemember is returned to active duty and suffers another injury).

**22. Are private health care providers, as well as military health care providers, permitted to complete a certification for military caregiver leave?**

A: Yes. A private health care provider can complete certifications for military caregiver leave if the health care provider is either a Department of Defense (DOD) TRICARE network authorized private health care provider or a DOD non-network TRICARE authorized private health care provider. The DOD health care providers and Veterans Affairs (VA) health care providers can also complete a certification for military caregiver leave.

**23. Will I lose my job if I take FMLA/CFRA or PDL leave?**

A: No. It is unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under the FMLA, CFRA and/or PDL; nor can the taking of such leave result as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. However, if your employment status would have been impacted had you not been on a FMLA/CFRA and/or PDL (e.g. through a reduction in force or a pending disciplinary action), your being on a FMLA/CFRA and/or PDL leave will not protect your job.

**24. Are there other circumstances in which the County can deny me reinstatement to my job?**

A: Employees who are unable to return to work following their FMLA/CFRA or PDL covered leave period, no longer have job protection under these federal/state leaves.

However, employees may continue off work utilizing leave(s) as provided for under their County MOU/Administrative Code. Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA/CFRA.

## SECTION 10

### Forms, Notices and Procedures

Family and Medical Leave forms and procedures can be easily obtained from your Agency/Department Human Resources Office, the County's Document Center at <http://dsmain.acgov.org/docushare/dsweb/View/Collection-2189> or Human Resource Services' internet at [www.acgov.org/hrs/divisions/dp](http://www.acgov.org/hrs/divisions/dp).

**1. Employee's Request for Leave (FML Form 1)**

To be completed by an employee requesting a foreseeable FMLA/CFRA/PDL leave of absence and submitted to his/her supervisor or Agency/Department Human Resources Office/FML/Disability Coordinator.

**2. Certification of Health Care Provider (Employee/Family Member) (FML Form 2)**

To be completed by the employee's health care provider and submitted to your supervisor or Agency/Department Human Resources Office to verify a serious health condition as defined under the FMLA/CFRA or for disability due to pregnancy, child birth/related condition under PDL.

**3. Certification of Health Care Provider (Servicemember) (FML Form 3)**

To be completed by the servicemember's health care provider and submitted to your supervisor or Agency/Department Human Resources Office to verify a serious health condition as defined under the FMLA.

**4. Certification for Military Family Leave (Qualifying Exigency) (FML Form 4)**

To be completed by an employee requesting a Qualifying Exigency leave, as defined under the FMLA, and submitted to your supervisor or Agency/Department Human Resources Office.

**5. Notification of Leave (FML Form 5- HR Use Only)**

Provided to employees who have; a) requested an FMLA/CFRA/PDL leave of absence; or b) when an Agency/Department has knowledge that an employee's absence may be related to an FMLA/CFRA/PDL qualifying leave. This notification advises employees of their eligibility, certification requirements and rights and responsibilities under the FMLA/CFRA and/or PDL.

**6. Designation of Leave (FML Form 6- HR Use Only)**

Notification provided to eligible employees advising of their leave status (approved/denied), and/or additional information is required on the certification.

**7. Leave Status (FML Form 7- HR Use Only)**

Notification provided to employees when circumstances of their leave changes.

## SECTION 11

### Resources

#### **Agency/Department Human Resources Office**

Always contact your Disability Coordinator/Personnel Officer located in your Human Resources Department for information on FMLA/CFRA/PDL leaves of absences or other disability related matters.

#### **Alameda County's Disability Programs Division**

Located in the Human Resource Services Department, the Disability Programs Division provides administrative support to County agencies/departments and employees regarding FMLA/CFRA/PDL leaves of absences and other disability related matters.

#### **Alameda County's Employee Benefits Center**

The Employee Benefits Center can advise you of the impact (if any) your leave of absence will have on your health/dental benefits and/or provide you with information regarding your short/long term disability insurance plan(s).

#### **Alameda County's Memorandum of Understanding/Administrative Code**

Employees are strongly encouraged to review their specific Memorandum of Understanding (MOU) for important information regarding specific leaves of absences.

#### **Department of Fair Employment and Housing (DFEH)**

For specific information/provisions regarding the California Family Rights Act (CFRA) or Pregnancy Disability Leave (PDL), visit the Department of Fair Employment and Housing at [www.dfeh.gov](http://www.dfeh.gov).

#### **Department of Labor (DOL)**

For specific information/regulations regarding the federal Family Medical Leave Act (FMLA), visit the Department of Labor at [www.dol.gov](http://www.dol.gov).

## SECTION 12

### Definitions/Key Terms

**Adoption:** legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for a leave.

**Certification:** documentation or medical documentation (written communication) issued by the employee's/family member's health care provider to support an employee's leave request.

**CFRA:** the Moore-Brown-Roberti California Family Rights Act of 1993. (California Code of Regulations, Sections 12945.1 and 12945.2, Title 2; Division 4 – Fair Employment and Housing Commission, Subchapter 12).

**Child:** a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing “in loco parentis,” who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that leave is to commence.

- (1) “Incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (ADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
- (2) “Physical or mental disability” means a physical or mental impairment that limits one or more of the major life activities of an individual as defined in the federal Americans with Disabilities Act and state Fair Employment and Housing Act.
- (3) Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

*Note: Verification of a person standing “in loco parentis” would include documentation of any nature that demonstrates that an “in loco parentis” relationship, as defined by law, existed (e.g., between grandmother while employee was a child.)*

**Concurrent County Leave:** any applicable County leave (e.g., sick leave, family sick leave, industrial sick leave, pregnancy & child bonding leave, personal disability leave, etc.) that will be applied to an employee's FMLA/CFRA/PDL leave and counted towards their leave entitlement.

**Covered active duty (Qualifying Exigency Leave):** for military members of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country. For military members of the reserve components of the Armed Forces (members of the U.S. National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

**Covered military member (Qualifying Exigency Leave):** an employee's spouse, son, daughter, or parent who is on covered active duty in the Armed Forces.

**Covered servicemember (Caregiver Leave):** an employee's spouse, son, daughter, parent or next of kin who is a current member of the Armed Forces (including regular components and National Guard or Reserves) and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness incurred in the line of duty on active duty.

For a veteran, an employee's spouse, son, daughter, parent or next of kin who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, if the veteran was a member of the Armed Forces at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**Domestic Partner:** the person named on the employee's Affidavit of Domestic Partnership on file in the employee's Agency/Department Human Resources Office.

**Eligible Employee:** a full or part-time/services as needed employee with more than 12 months of Alameda County service and who has worked (within the meaning of the Fair Labor Standards Act, 29 CFR Part 785) at least 1,250 hours during the 12-month period immediately preceding the date the FMLA/CFRA leave is to commence. An employee disabled by pregnancy, child birth or related condition is eligible for leave under California's Pregnancy Disability Act/Leave.

**FMLA:** the Family and Medical Leave Act of 1993, as amended. (Public Law 103-3, 107 Stat. 6; Title 29, Chapter V, United States Code of Federal Regulations, Part 825).

**Foster care:** a 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

**Health Care Provider:** a “health care provider” is defined as:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
2. Any other person determined by the Secretary (FMLA regulations) to be capable of providing health care services.

Others “capable of providing health care services” include only:

- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;
  - Nurse practitioners, nurse midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
3. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;
  4. Any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
  5. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

Note: The phrase “authorized to practice in the State” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

**Next of kin of a covered servicemember (Caregiver Leave):** the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave. When no such designation is made and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin and may take a leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember’s only next of kin.

**Parent:** a biological, adoptive, step or foster father or mother, legal guardian or any other individual who stood “in loco parentis” to the employee when the employee was a child. This term does not include parents “in law.”

**PDL:** Leave due to pregnancy, child birth or related condition pursuant to California’s Pregnancy Disability Act, (California Code of Regulations, Section 12926, Subdivision (f), Title 2; Division 4 – Fair Employment and Housing Commission, Subchapter 6A).

**Parent of a covered servicemember:** a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

**Qualifying Exigency:** circumstances arising out of the fact that an employee’s spouse, son, daughter, or parent is a covered military member on covered active duty in the Armed Forces including:

- Issues arising from a covered military member’s short notice deployment (i.e. deployment on seven or less days of notice) for a period of *seven* days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;

- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to *five* (5) days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

**Reasonable Accommodation:** under the federal Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA), an employee may need an accommodation to perform the essential functions of the job. Reasonable accommodation may include, but is not limited to making existing facilities readily accessible, job restructuring, modifying work schedules, re-assignment to a vacant position, acquiring or modifying equipment or devices.

Note: The final regulations (March 2011) of the ADAAA expanded the definition of a disability to include temporary and short-term impairments which are "substantially limiting," and thus disabling.

**Serious Health Condition (FMLA/CFRA):** a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e. inability to work or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider, this includes:
  - (a) A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, which *also* includes:
  - (b) treatment two (2) or more times by or under the supervision of a health care provider (i.e. in-person visits, the first within seven (7) days and both within 30 days of the first day of incapacity); *or*
  - (c) one (1) treatment by a health care provider (i.e. an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
3. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
4. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or and
6. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

*Note: Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA/CFRA leave.*

***Serious Injury or Illness (FMLA-Servicemember):*** as defined in Section 565(a)(18) of the National Defense Authorization Act of 2010, a 1) serious injury or illness that was incurred by a current member of the Armed Forces, in the line of duty on active duty or 2) a serious injury or illness that 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 that may render the member

medically unfit to perform the duties of the member's office, grade, rank, or rating.

For a veteran, a serious (qualifying) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**Son or daughter of a covered servicemember:** the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

**Son or daughter on active duty or call to active duty status:** an employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to active duty status, and who is of any age.

**Spouse:** a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

**Twelve workweeks:** the equivalent of twelve (12) of an employee's normally scheduled workweeks.