



SAN DIEGO STATE  
UNIVERSITY

## The Center for Human Resources

### EMPLOYEE RIGHTS AND OBLIGATIONS UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993

San Diego State University provides family care and medical leave to eligible employees in accordance with the Federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA). This document sets forth employee rights and obligations under the FMLA. If eligible, and the leave requested qualifies as family care and medical leave, up to 12 work weeks will be counted towards the annual entitlement of 12 work weeks in a 12-month period. For more information about family care and medical leave and related leaves, please contact a Benefits Specialist in Human Resources at (619) 594 -1144.

#### I. Eligibility for Leave

To be covered by the provisions of FMLA/CFRA, an employee must have at least 12 months of service (all prior CSU service counts and service does not necessarily need to be continuous) prior to the requested leave. Student employees must have at least 12 months of service and have worked at least 1,250 hours during the 12 months prior to the requested leave.

#### II. Purpose of Leave

An employee may be eligible for FMLA for *any* of the following reasons:

- To care for a child after birth, or placement with the employee for adoption or foster care
- To care for the employee's spouse, domestic partner, child, or parent who has a serious health condition
- If the employee is unable to perform the essential functions of his/her job due to a serious health condition

#### III. Length of Leave under FMLA/CFRA

Eligible employees are entitled to a maximum of 12 work weeks of family care and medical leave during a 12-month period. FMLA leave on an intermittent basis or on a reduced work schedule may be requested when medically necessary for a serious health condition. When possible, employees should attempt to schedule medical treatments to minimize disruption to their department. Additional leave beyond 12 work weeks may be requested pursuant to State law if you take pregnancy disability leave.

#### **IV. Pay**

Family care and medical leave is normally unpaid leave; however, an employee may request or be required to substitute paid leave (i.e., accrued vacation, sick leave) for all or a portion of the unpaid leave, in accordance with appropriate policies and collective bargaining agreements. If an employee has requested family care and medical leave for his/her own serious health condition, he/she may be eligible during the unpaid portion of the leave for temporary disability payments from Non-Industrial Disability Insurance or Workers' Compensation.

#### **V. Advance Notice**

Thirty (30) days advance notice is required if the need for family care and medical leave is foreseeable (e.g., the birth of a child or a planned medical treatment). If an employee fails to provide 30-days notice for a foreseeable leave, the department may deny leave until 30 days after the date notice was provided. If the need is not foreseeable, notice should be provided within a reasonable time after learning of the need for leave. Written notice is recommended.

#### **VI. Medical Certification**

Written certification from a health care provider may be required (see the applicable personnel policy or collective bargaining agreement) for either an employee's own serious health condition or the serious health condition of an employee's family member. Failure to provide such certification within 15 calendar days of the date an employee is noticed of this requirement may result in delay or denial of leave until the certification is provided. Recertification for an employee's own serious health condition or the serious health condition of a family member may be required periodically. If medical certification is required, Human Resources will provide you with a form.

Under federal regulations, a "health care provider" is defined as a: doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a clinical social worker who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner. A health care provider also is any provider from whom the University or the employee's group health plan will accept medical certification to substantiate a claim for benefits.

#### **VII. Health Benefits**

Coverage under any CSU group health plan (medical, dental, vision) will be maintained during any leave covered by FMLA (up to 12 work weeks) to the extent coverage would be maintained had the employee been actively at work during the leave period. The employee is responsible for arranging with Human Resources for the payment of the employee portion of any premiums that are not fully covered by a University contribution. Failure to pay the employee portion of the premiums within 30 days of the due date may result in cancellation of enrollment in that plan.

If an employee does not return to work at the conclusion of his/her approved family care and medical leave, he/she may be liable for payment of the health plan premiums (medical, dental, vision) paid by the University during any unpaid portion of the leave. The University may recover its share of health plan premiums by taking deductions, to the extent permitted by law, from unpaid wages, if any, vacation pay, or other pay due the employee, or by initiating legal action. However, an employee will not be liable for the premiums if the failure to return to work is due to continuation of the employee's own serious health condition or other reasons beyond his/her control. An employee will be considered to have returned to work if he/she works for at least 30 calendar days commencing with the scheduled return date.

The University's responsibility to continue an employee's health plan coverage ends (except Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage) upon notice that the employee does not intend to return to work at the end of the approved leave, even though he/she is able to work at that time.

#### **VIII. Reinstatement**

Under federal law (FMLA), an employee must be reinstated to the same position he/she had prior to taking the leave, or to an equivalent position, provided that the employee returns to work immediately following the conclusion of family care and medical leave. The use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave. If an employee's position is unavailable (due to, for example, a temporary or indefinite layoff), the employee will have no greater right to reinstatement than had he/she been continually employed during the FMLA leave period. An employee is not entitled to reinstatement if his/her appointment end date occurs before the scheduled return date from family care and medical leave. The University may require periodic notice of an employee's intent to return to work following family care and medical leave.

#### **IX. University Designated FMLA Leave**

The University may designate leave as FMLA leave if the leave meets the requirements listed above, even when an employee does not specifically request FMLA or family care and medical leave.