

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

819

LAW AND RULES

December 2, 2009

819 FAMILY CARE AND MEDICAL LEAVE/ABSENCE

The following provisions are based on applicable State and federal family and medical leave laws and regulations. The provisions are not intended to be all inclusive due to the volume of the laws and regulations. It may be necessary to refer to the laws and regulations in some instances.

A. An unpaid Family Care and Medical Leave/Absence shall be granted, to the extent of and subject to the restrictions as set forth below, to a regular employee who has been employed for 12 months and who has served 130 working days (furlough days and days worked during off-basis time count as working days served) during the 12 months immediately preceding the effective date of the leave. The Family Care and Medical Leave/Absence may be granted for the reason of the

1. birth of a child of the employee,
2. placement of a child with an employee in connection with the adoption or foster care of the child by the employee,
3. serious health condition of a child of an employee,
4. employee's own serious health condition,
5. employee's care of a parent or spouse/registered domestic partner who has a serious health problem, or the
6. employee's care of a spouse/registered domestic partner, child, parent, or next of kin who is a covered service member; or qualifying exigency for a spouse, child, or parent of a member of the Reserves or the National Guard (PC Rule 821).

Family Care and Medical Leave/Absence granted for the birth or adoption of a child or placement of a child for foster care shall be concluded within 12 months of that birth or adoption or placement for foster care.

CHANGE:

To allow qualifying employees to take the new service member family caregiver and service member family exigency leaves.

Remove: July 28, 1999, page 1 of 3. Add: December 2, 2009, page 1 of 4.

819

Page 1 of 4

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

819

LAW AND RULES

December 2, 2009

B. Definitions

For purposes of this Rule, the following definitions shall apply: (1) "Child" means a biological, adopted or foster child; a stepchild; a legal ward; or a child of a person standing "in loco parentis", such child being either under 18 years of age or an adult dependent who is incapable of self care due to a mental or physical disability. (2) "Spouse" means a husband or wife. (3) "Registered Domestic Partners" are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring and who have both filed a Declaration of Domestic Partnerships with the California Secretary of State. (4) "Parent" means a biological, foster, or adoptive parent; a person who stood "in loco parentis" to the employee when the employee was a child; a stepparent; or a legal guardian; and does not include a grandparent or parent-in-law. (5) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either in-patient care in a hospital, hospice or residential health care facility, or continuing treatment or supervision by a health care provider. (6) "Health care provider" means an individual holding either a physician's or surgeon's certificate or an osteopathic physician's or surgeon's certificate issued pursuant to Chapter 5 of Division 2 of the California Business and Professions Code, who directly treats or supervises the treatment of the serious health condition, or any other individual duly licensed to practice medicine in another state or jurisdiction or any other person determined by the Secretary of Labor to be capable of providing health care services. The definition includes podiatrists, dentist, clinical psychologists, optometrists, chiropractors (limited in scope), nurse practitioners (limited in scope), nurse midwives (limited in scope) and Christian Science practitioners.

C. Length of Leave

The leave, together with any renewal thereof, shall not exceed the number of days equivalent to a total of 12 normally scheduled work weeks in an FMLA year, which is defined as a twelve (12) month period measured forward from the beginning date of the employee' first FMLA absence or leave. An employee will be entitled to the equivalent of 12 weeks of leave during the 12-month period beginning on the first date FMLA is taken; the next 12-month period would begin the first time an FMLA absence is taken after completion of any previous 12-month period.

Leave may be taken in one or more periods. An employee who takes leave for the birth, adoption or placement for foster care of a child will be allowed to take leave of at least one hour (can be less than one hour, if necessary) within one year of the birth, adoption or placement for foster care of the child.

Leaves of at least one hour (can be less than one hour, if necessary) shall be granted for health care provider-certified recurring medical treatment or supervision to care for a seriously ill family member; or because of the employee's own serious health condition.

CHANGE:

To allow qualifying employees to take the new service member family caregiver and service member family exigency leaves.

Remove: May 9, 2007, page 2 of 3. Add: December 2, 2009, page 2 of 4.

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

819

LAW AND RULES

December 2, 2009

Family Care Leave absences of 20 consecutive workdays or less may be granted by the immediate administrator. Leaves of more than 20 consecutive workdays may be granted after submission of a formal leave application.

Leave caused by pregnancy, childbirth or related medical conditions under Section 12945 of the Government Code is separate and apart from the provisions of Family Care Leave/Absence herein. Employees are entitled to the leave allowed under Section 12945 and, in addition, up to the full 12 weeks of family care leave if eligible for such leave.

D. Notification

If the need for the Family Care Leave/Absence is foreseeable more than 30 calendar days prior to the employee's need for leave, the employee shall give at least 30 days notice. If less than 30 days, the employee must provide the immediate supervisor with as much advance notice as possible but, at the least, five working days prior to the start of the leave. These advance notice requirements shall not be applicable in the event of unforeseeable circumstances or emergencies. Whenever possible, if the need for leave is foreseeable due to a planned medical treatment or supervision, the employee must make a reasonable effort, subject to the approval of the health care provider, to schedule the treatment or supervision to avoid disruption to the District's operations.

E. Medical Certification

For leaves/absences to care for a child, spouse/registered domestic partner, or parent who has a serious health condition, the employee must submit to the immediate administrator or, if applying for a formal leave, must attach to the leave application, certification from the health care provider which includes (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, (3) an estimate of the time that the health care provider believes the employee needs to care for the individual, and (4) a statement that the serious health condition warrants the participation of the family member to provide care. If the leave is for the serious health condition of the employee, the employee must submit to the immediate administrator and/or, if applying for a formal leave, must attach to the leave application certification as specified in (1) and (2), above, plus a statement that, due to the serious health condition, the employee is unable to perform the functions of the employee's position.

In the case of the serious health condition of the employee, the District may require, at the District's expense, that the employee obtain the opinion of a second or even third health care provider designated by the District but not employed on a regular basis by the District.

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Remove: July 28, 1999, page 3 of 3. Add: December 2, 2009, page 3 of 4.

LOS ANGELES UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

819

LAW AND RULES

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If the employee's medical provider and the medical provider selected by the District do not agree, the District may require, at the District's expense, that the employee obtain the opinion of a third health care provider, who will be jointly designed or approved by the District and the employee. Such a third health care provider's determination shall be binding on the District and the employee.

If additional leave beyond that provided in the certification is required, the employee must submit recertification by the health care provider and be eligible for additional requested leave.

F. Restrictions

In the event that parents who are both District employees each wish to take Family Care Leave/Absence for the birth, placement for adoption, or foster care of a child during the same time period, the combined total amount of leave that will be granted such employees will be 12 weeks during a FMLA year, as defined in Section C. above. These employees will still be eligible to take the remainder of their individual 12 week allotment for family care leave for a purpose other than the birth, placement for adoption, or foster care of a child.

G. Compensation

Family Care Leave/Absence shall be unpaid and for all purposes treated comparably to other unpaid leaves except that the District will continue to provide the health benefits package to an employee who is otherwise eligible for health benefits. However, an employee who does not return from such leave will be required to reimburse the District for the cost of the benefits package, unless the employee's failure to return from leave is due to the continuation, recurrence, or onset of a serious health condition which would otherwise entitle the employee to Family Care Leave/Absence, or is due to other circumstances beyond the control of the employee.

An employee who takes Family Care Leave for any qualifying purpose may elect, or the immediate administrator may require the employee to utilize accrued vacation leave for this purpose, in lieu of unpaid status. An employee who takes leave for the employee's own serious health condition which prevents the employee from performing the employee's own duties may elect, or the District may require the employee to utilize accumulated and credited illness leave for the leave.

H. Seniority

An employee returning from Family Care Leave/Absence shall return with no less seniority than when the leave began for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation. Additional seniority may be earned during the leave as provided in pertinent rules.

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Remove: May 9, 2007, page 4 of 4. Add: December 2, 2009, page 4 of 4.