

APPENDIX T1 FAMILY MEDICAL LEAVE ACT CALIFORNIA FAMILY RIGHTS ACT

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
Board of Trustees, Policy 4205, Approved September, 1995, Revised April, 2002

POLICY:

In compliance with the Family Medical Leave Act (FMLA) and the California Family Rights Act, eligible District employees may take unpaid leave of up to 12 weeks for qualified medical and family reasons. The purpose of the FMLA is to provide employees reasonable leave to care for an eligible family member, or the employee themselves in the event of a serious medical condition, or to enable the employee to care for a child within one year of the child's adoption or receipt into foster care. While on FMLA leave, employees are entitled to District paid benefits.

NOTE:

Family Medical Leave runs concurrently with other applicable leaves. This means that the leave is granted only to ensure a total of 12 weeks of leave with benefits for certain qualifying events (see below). For example, if an employee has paid personal necessity leave of one week available, the unpaid portion of Family Medical Leave will be for an additional 11 weeks, making a total of 12 weeks of FMLA leave in any 12-month period.

ELIGIBILITY:

A full-time or part-time employee is eligible for this leave if the employee has been employed for more than 12 months with the District and has worked at least 1,250 hours in the 12-month period prior to the date the leave begins.

QUALIFYING EVENTS FOR PURPOSE OF FAMILY MEDICAL LEAVE:

The conditions for which Family Medical Leave may be taken are:

1. birth or adoption of a child, or the receipt of a child into foster care, within one year of such birth or placement, or
2. the employee's own serious health condition that makes the employee unable to work at all or unable to perform essential job functions, or
3. a serious health condition of an employee's child, spouse, parent or member of the immediate household, which requires the employee to care for the family member.

A serious health condition means an illness, injury, impairment, or physical or mental condition which involves either inpatient care or continuing treatment or supervision by a health care provider.

ELIGIBLE CHILD:

An eligible child is defined as:

1. a biological, adopted or foster child under the age of 18, or

2. an adult dependent child over the age of 18 who is incapable of self-help due to a mental or physical disability, or
3. a child under 18 who is treated as the employee's child or for whom the employee has been “in loco parentis.”

APPLICATION FOR LEAVE:

A request for Family Medical Leave must be made in writing by completing the Family Medical Leave application form. The application must be submitted to the District Office of Human Resources at least thirty days before the requested start of the leave unless the reason for the leave is due to an emergency, in which case the request must be made immediately. The completed application must state the reason for the leave and the beginning and ending dates of the leave.

CONDITIONS OF LEAVE:

1. An employee who requests medical leave for their own serious health condition is required to use all accrued paid leave, including vacation time, sick leave and extended sick leave if applicable concurrently with the Family Medical Leave Act leave. Because Family Medical Leave is limited to twelve work weeks, it is unlikely that an employee will run out of extended sick leave within the duration of this leave.
2. An employee who requests Family Medical Leave to care for their spouse, child, parent or member of the immediate household with a serious medical condition must first use all available paid leave, including vacation time and personal necessity and then sick leave to the extent allowed in the employee's relevant bargaining unit agreement for care of family members. At the exhaustion of all paid leaves, the remainder of the leave - up to a maximum of twelve weeks - will be unpaid.
3. Leave taken because of the serious health condition of an employee, spouse, child, parent or member of the immediate household may be taken intermittently or on a reduced medical schedule when medically necessary. Leave may be counted in full or partial days or full or partial weeks. Such intermittent or reduced time schedule leave may require the employee to transfer temporarily to another position. Leave taken because of the birth or placement of a child may not be taken intermittently or on a reduced schedule leave unless expressly approved by the Vice Chancellor or Director of Human Resources.
4. While in unpaid status under Family Medical Leave, an employee will not accrue additional benefits such as sick leave, vacation, or seniority. However, Family Medical Leave is counted as active work status for the purposes of pension vesting or eligibility in pension plans.
5. If both a husband and wife work for the District, their leave is limited to a combination of twelve weeks for the qualifying event of a birth, adoption, or foster care placement.

MEDICAL CERTIFICATION STATEMENT:

An application for leave based on the serious health condition of the employee or the employee's spouse, child, parent or member of the immediate household must be

accompanied by a Medical Certification Statement completed by a health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If leave is for the care of a family member, it should also estimate the amount of time that the employee will be needed to care for the patient. If leave is for the employee's own health condition, certification should also state that the employee is unable to perform the functions of their own position. The District may require the employee to obtain a second medical opinion at District expense. If the two medical opinions conflict, the opinion of a third medical provider, approved jointly by the employee and the District, may be required at District expense, and the third opinion will be final and binding. If additional leave is requested beyond the period stated in the certification, the District may require re-certification in accordance with these procedures.

RETURN FROM OR FAILURE TO RETURN FROM LEAVE:

The employee is expected to return to work on the date stated in the application for leave. If the employee wishes to return earlier, both the employee's administrator and the District Office of Human Resources should be notified at least 5 days before the employee's planned return. Failure to return from leave without notification may be construed as an abandonment of the employee's position. The District will require a certification that the employee is physically able to return to work upon return from leave due to the employee's own serious health condition. However, if an employee returning from Family Medical Leave due to their own serious medical condition is unable to perform the essential functions of their job because of a physical or mental condition, the American's with Disabilities Act may govern.

REINSTATEMENT RIGHTS:

Unless considered a "key" employee, an employee on Family Medical Leave is entitled to be returned to the same position held prior to the leave, if still available, or to a comparable position with equivalent pay, benefits, if applicable, and other terms and conditions of employment, subject to provisions of the contract with the relevant bargaining unit. A "key" employee is one who is among the highest paid 10% of the district's employees whose reinstatement would cause substantial economic injury to the district's operations. An employee on Family Medical Leave will not suffer the loss of any other employment benefit that the employee earned or was entitled to before using the leave.

HEALTHCARE BENEFITS (if applicable):

District paid benefits will continue during the period of Family Medical Leave. If the employee does not return from leave for a reason other than continuation or recurrence of the serious health condition that entitled the employee to leave in the first place and employment is terminated, the District can recover the cost of the health care premiums from the employee.

COORDINATION WITH PREGNANCY DISABILITY LEAVE:

Family Medical Leave is separate and distinct from temporary medical disability leave due to pregnancy, childbirth or related medical condition(s). Pregnant employees may be entitled to a temporary medical disability leave in addition to the Family Medical Leave. An eligible employee may be entitled to take a pregnancy disability leave of up to four months and a Family Medical Leave of up to twelve weeks for a combination of approximately seven months.

REFERENCE:

The Family Medical Leave Act became effective on August 5, 1993.

The California Family Rights Act was amended by AB 1460 to conform the state law to the federal Family Medical Leave Act. These amendments were effective on October 5, 1993.