

**SAN BERNARDINO COUNTY FIRE DEPARTMENT  
SPECIAL DISTRICTS DEPARTMENT**

**LEAVE POLICY UNDER THE FAMILY & MEDICAL LEAVE ACT (FMLA)**

**Employee Eligibility**

All employees, including employees in regular, extra help/recurrent or contract positions, who have been employed by the San Bernardino County Special Districts/County Fire Department for at least 12 months **and** have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, are eligible for leave under FMLA.

Whenever possible, an employee must provide advance notification of a request for leave under FMLA as described in, "Notification Rules."

An employee must satisfy medical certification requirements where leave is requested due to a serious health condition of the employee, a child, spouse, or parent as described in, "Medical Certification Requirements."

**Eligible Reasons for Leave**

- a. To care for the newborn child by the employee.
- b. For the placement of a child with the employee for adoption or foster care (documentation must be provided, e.g. Adoption Order)
- c. To care for a child, spouse, or parent with serious health condition.
- d. For a serious health condition that prevents the employee from performing the functions of their position.

Entitlement to leave described in (a) or (b), above, expires twelve 12 months from date of birth or placement for adoption or foster care.

Entitlement to leave for care of a child is not limited to biological parents or legal guardians, but also includes grandparents or other relatives or adults who have "day-to-day" responsibility for a child.

**Length of Leave**

Eligible employees may take up to twelve (12) weeks of leave during a twelve (12)-month period. The twelve (12)-month period is computed on a twelve (12)-month rolling period measured backwards from the date leave is used.

FOR EXAMPLE: An employee submits a request to take a twelve (12)-week qualifying FMLA leave that is scheduled to begin March 20, 2002, and continue through June 20, 2002. The employee previously was on FMLA leave for twelve (12)-weeks from January 3, 2001, through April 1, 2001. As such, the employee is not eligible for a second FMLA leave until April 2, 2002, and the employee's leave between March 20, 2002 and April 1, 2002, will not be considered FMLA leave. The employee's leave beginning April 2, 2002, would be covered by FMLA with a maximum limit of twelve (12) weeks.

Leave taken to care for a newborn child or child placed for adoption or foster care may be taken intermittently or on a "reduced leave" schedule at the request of the employee and with approval of the employee's supervisor. Such schedules are encouraged, however, it is recognized that in seven (7) day, twenty-four (24) hour departments, intermittent or reduced leave schedules may create a hardship for the department and for the other employees, and may not be approved if either or both of these conditions exist.

Leave required due to the serious health condition of the employee or the employee's child, spouse, or parent can be taken intermittently or on a reduced leave basis when medically necessary. If the leave is foreseeable, an employee will be expected to schedule the leave, whenever possible, so as not to unduly disrupt the operations of their department.

California's Pregnancy Disability Leave law allows female employees to take off up to four (4) months of leave provided the employee is medically disabled from performing work. FMLA runs concurrently with Pregnancy Disability Leave. Once the employee has given birth and is no longer disabled due to her pregnancy, she is no longer eligible for FMLA or Pregnancy Disability Leave, but is eligible for twelve (12) weeks of California Family Rights Act (CFRA) leave to bond with the new baby.

Only the time actually taken off work as FMLA leave may be charged against the employee's maximum twelve (12) weeks within a twelve (12)-month period.

Employees who have exempt status under the Fair Labor Standards Act (FLSA) may record absences of less than one (1) full day to approved FMLA leave without affecting their exempt status under FLSA.

### **Use of Paid Leave Benefits**

FMLA leave can be provided on a paid or unpaid basis depending upon the employee's leave balances and in accordance with the employee's applicable Memorandum of Understanding (MOU) or compensation plan.

An employee's use of paid sick leave for his/her own serious health condition will be treated as FMLA leave and will be counted towards the employee's maximum twelve (12) weeks of FMLA leave in a twelve (12) month period.

FOR EXAMPLE: An employee submits a written sick leave with pay request for a six (6) week-period due to scheduled surgery and provides his/her supervisor with an appropriately completed doctor's certification for the requested period of time. The six (6) weeks of paid sick leave qualifies as FMLA leave.

Employees with vacation/holiday/administrative leave balances may use these leave balances for any qualified FMLA leave. No limitations on substituting these leave balances for unpaid FMLA leave may be made by the Appointing Authority or designee.

### **Notification Rules**

When the necessity for FMLA leave is foreseeable, the employee must provide at least thirty (30) days advance notice before the leave is to begin, e.g., an expected birth, placement for adoption or foster care, or the planned medical treatment for a serious health condition of the employee or of a family member.

If the FMLA leave must begin in less than thirty (30) calendar days, the employee is to provide as much advance notice as possible. If the leave is for a planned medical treatment, the employee is to make a reasonable effort to schedule the treatment to avoid undue disruption of the employing department's operations (subject to the approval of the health care provider).

If the necessity for FMLA leave is not foreseeable, notice is to be given as soon as possible, which ordinarily means at least verbal notification to the employee's supervisor within one (1) or two (2) days from the time the employee becomes aware of his/her need for the leave, except in extraordinary circumstances. The employee's supervisor may not require advance notice for FMLA leave in the case of a medical emergency requiring leave due to a serious health condition of the employee or eligible family member. The employee's spouse or other family member may make notification to the supervisor for such leave if the employee is unable to do so due to a serious health condition.

## **Medical Certification Requirements**

An employee requesting leave for his/her own serious health condition, or to care for a child, spouse, or parent with a serious health condition (as defined in the following paragraph) must provide a "Health Care Provider Certification" within 15 days of the request for leave. Failure to provide the Certification on time may impact the employee's ability to take leave, as requested.

"Serious health condition" means an illness, injury, or physical/mental condition that requires: hospitalization; any period of incapacity of more than three consecutive calendar days that involves continuing treatment by a health care provider; treatment two (2) or more times by a health care provider; treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment; and any incapacity due to pregnancy or for prenatal care.

The employee's department may pay for a second (or third) medical opinion if it has reason to doubt the validity of the original certification.

The employee's department may request re-certification as often as every 30 days during the employee's FMLA leave.

## **Employee Benefits**

Employees on approved, unpaid FMLA who are otherwise eligible for their respective Flexible Benefit Plan dollars, will continue to receive their Flexible Benefit Plan dollars up to the maximum of twelve (12) weeks for FMLA leave in a twelve (12) month period. All other employee benefits will be discontinued during unpaid FMLA leave.

When an employee is on FMLA leave and his/her pay warrant does not have enough earnings to collect the full amount of the premium, the payroll system will make a partial deduction automatically without bringing about a negative pay warrant.

**FOR EXAMPLE:** If you were on an approved, unpaid leave and was receiving \$175 per pay period in Flexible Benefit Plan Dollars, and your premiums were \$301.32 for medical and \$55.83 for dental, the District would deduct the full dental premium of \$55.83, leaving a balance of \$119.17 in Flexible Benefit Plan dollars. From this balance, the County would deduct \$118.17 and apply that toward the medical premium, leaving a balance of \$183.15 in unpaid premiums.

Health/dental insurance premiums for coverage that exceeds an employee's benefit plan will be billed to the employee who is on unpaid FMLA leave. If the employee does not remit payment within 30 days from date of billing, the health and/or dental coverage for dependents will be cancelled. When an employee

returns to work, his/her dependents health coverage will be reinstated without a break in coverage and previously unpaid premium amounts will be deducted from the employee's pay.

The San Bernardino County Fire/Special Districts Department reserves the right to recover its share of the health insurance premiums paid during a period of unpaid FMLA leave if an employee fails to return to work after the expiration of his/her FMLA leave due to the serious medical condition of an eligible family member.

### **Limitations on FMLA Leave**

Where both husband and wife are employed by the San Bernardino County Fire/Special Districts Department and the reason for FMLA is due to either the birth or adoption of a child or the need to care for a sick parent, the FMLA leave for both spouses will be limited to the combined total of twelve (12) weeks during any twelve (12) month period.

### **Employment Protection**

Employees who return from an approved FMLA leave must be returned to the same position or equivalent position with equivalent employment, benefits, pay, and all other terms and conditions of employment.

Exception: If the employee would have been subject to layoff, shift elimination, reduction or elimination of overtime hours if they had been at work during their FMLA leave, the employee is not entitled to return to the same position, or to work overtime hours not available to other employees. If, however, another employee has replaced the employee on the day or night shift, the supervisor/appointing authority may not deny the employee the opportunity to return to the same shift.

### **Preemption**

The FMLA does not supersede any state or local law or collective bargaining agreement or any employee benefit program that provides **greater** family or medical leave rights.

**SAN BERNARDINO COUNTY SPECIAL DISTRICTS & FIRE DEPARTMENT**

**FAMILY MEDICAL LEAVE (FMLA) POLICY**

I acknowledge that I have received a copy of Family Medical Leave Policy.

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Signature

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Date