

## Lewis Center for Educational Research

**BP 4361 PERSONNEL  
FAMILY CARE & MEDICAL LEAVE**

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### Family Care and Medical Leave

This policy explains how the Lewis Center for Educational Research ("LCER") complies with the federal Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA"), both of which require LCER to permit each eligible employee to take up to 12 workweeks of FMLA leave in any 12-month period for the birth/adoption of a child, the employee's own serious illness or to care for certain family members who have a serious illness. For purposes of this policy, all leave taken under FMLA or CFRA will be referred to as "FMLA leave."

#### Employee Eligibility Criteria

- To be eligible for FMLA leave, the employee must have been employed by LCER for the last 12 months and must have worked at least 1,250 hours during the 12-month period immediately preceding commencement of the FMLA leave.

#### Events That May Entitle An Employee To FMLA Leave

- The 12-week FMLA allowance includes any time taken (with or without pay) for any of the following reasons:
  1. To care for the employee's newborn child or a child placed with the employee for adoption or foster care (FMLA/CFRA or CFRA only).

Leaves for this purpose must conclude 12 months after the birth, adoption, or placement. If both parents are employed by LCER, they will be entitled to a combined total of 12 weeks of leave for this purpose.
  2. Because of the employee's own serious health condition (including a serious health condition resulting from an on-the-job illness or injury) that makes the employee unable to perform any one or more of the essential functions of his or her job - other than a disability caused by pregnancy, childbirth, or related medical conditions, which is covered by LCER's separate pregnancy disability policy (FMLA/CFRA).
  3. To care for the employee's spouse, child, or parent with a serious health condition (FMLA/CFRA).
  4. To care for the employee's registered domestic partner with a serious health condition (CFRA only).

5. For any “qualifying exigency” (as defined by federal regulation) because the employee is the spouse, child, or parent of an individual on active military duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation (FMLA only).
6. An employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for an ill or injured servicemember with a serious injury or illness(FMLA only).

#### Serious Health Condition Defined

- A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or (2) continuing treatment by a health care provider.

#### Amount of FMLA Leave Which May Be Taken

- FMLA leave can be taken in one or more periods, but may not exceed 12 workweeks total for any purpose in any 12-month period, as described below, for any one, or combination of the above-described situations. “Twelve workweeks” means the equivalent of twelve of the employee’s normally scheduled workweeks. For a full-time employee who works five eight-hour days per week, “twelve workweeks” means 60 working and/or paid eight-hour days.
- Under most circumstances, the 12 weeks of FMLA under federal and state law will run at the same time. The “12 month period” in which 12 weeks of FMLA leave may be taken is the 12 month period immediately preceding the commencement of any FMLA Leave. For purposes of calculating the 12-month period during which 12 weeks of leave may be taken, the LCER uses the 12-month period measured forward from the date your first leave begins. Under most circumstances, leave under federal and state law will run at the same time and the eligible employee will be entitled to a total of 12 weeks of family and medical leave in the designated 12-month period.
- For qualifying exigency or leave to care for a covered servicemember, the 12-month period begins on the first day of the leave, regardless of how the 12-month period is calculated for other leaves. Leave to care for a covered servicemember is for a maximum of 26 workweeks during a 12-month period.

#### Pay During FMLA Leave

- An employee on FMLA leave because of his or her own serious health condition must use all accrued paid sick leave at the beginning of any otherwise unpaid FMLA leave period.
- An employee on FMLA leave for child care or to care for a spouse, parent, or child with a serious health condition may use any or all accrued paid sick leave at the beginning of any otherwise unpaid FMLA leave.

- All other FMLA leaves are unpaid leaves.
- The receipt of sick leave pay or State Disability Insurance benefits will not extend the length of the FMLA leave. Vacation pay and sick pay accrues during any period of unpaid FMLA leave only until the end of the month in which unpaid leave began.

#### Health Benefits

- The provisions of LCER's various employee benefit plans govern continuing eligibility during FMLA leave, and these provisions may change from time to time. The health benefits of employees on FMLA leave will be paid by LCER during the leave at the same level and under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period. When a request for FMLA leave is granted, LCER will give the employee written confirmation of the arrangements made for the payment of insurance premiums during the leave period.
- In some instances, the LCER can recover from an employee premiums paid to maintain health coverage if the employee fails to return following PDL.

#### Service Time

- An employee on FMLA leave remains an employee and the leave will not constitute a break in service. An employee who returns from FMLA leave will return with the same service time he or she had when the leave commenced.

#### Medical Certifications

- An employee requesting FMLA leave because of his or her own or a relative's serious health condition must provide medical certification from the appropriate health care provider on a form supplied by LCER. Failure to provide the required certification in a timely manner (within 15 days of the leave request) may result in denial of the leave request until such certification is provided.
- If LCER has reason to doubt the medical certification supporting a leave because of the employee's own serious health condition, LCER may request a second opinion by a health care provider of its choice (paid for by LCER). If the second opinion differs from the first one, LCER will pay for a third, mutually agreeable, health care provider to provide a final and binding opinion.
- Recertification is required if leave is sought after expiration of the time estimated by the health care provider. Failure to submit required recertifications can result in termination of the leave.

#### Procedures for Requesting and Scheduling FMLA Leave

- An employee should request FMLA leave by completing an Application for Family Care Leave and submitting it to his/her immediate supervisor. An employee asking for an Application for

Family Care Leave will be given a copy of LCER's then-current FMLA leave policy and Medical Certification form.

- Employees should provide not less than 30 days' notice or such shorter notice as is practicable, for foreseeable childbirth, placement, or any planned medical treatment for the employee or his/her spouse, child, or parent. Failure to provide such notice is grounds for denial of a leave request, except if the need for FMLA leave was an emergency or was otherwise unforeseeable.
- Where possible, employees must make a reasonable effort to schedule foreseeable planned medical treatments so as not to unduly disrupt LCER's operations.
- If FMLA leave is taken because of the employee's own serious health condition or the serious health condition of the employee's spouse, parent or child, the leave may be taken intermittently or on a reduced leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition.
- If FMLA leave is taken because of the birth of the employee's child or the placement of a child with the employee for adoption or foster care, the minimum duration of leave is two weeks, except that LCER will grant a request for FMLA leave for this purpose of at least one day but less than two weeks' duration on any two occasions.
- If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, the employee may be transferred temporarily to an available alternative position for which he or she is qualified that has equivalent pay and benefits and that better accommodates recurring periods of leave than the employee's regular position.
- In most cases, LCER will respond to a FMLA leave request within five business days of acquiring knowledge that the leave is being taken for an FMLA-qualifying reason and, in any event, within 10 days of receiving the request. If an FMLA leave request is granted, LCER will notify the employee in writing that the leave will be counted against the employee's FMLA leave entitlement. This notice will explain the employee's obligations and the consequences of failing to satisfy them.

#### Return to Work

- Upon timely return at the expiration of the FMLA leave period, an employee (other than a "key" employee whose reinstatement would cause serious and grievous injury to LCER's operations) is entitled to the same or a comparable position with the same or similar duties and virtually identical pay, benefits, and other terms and conditions of employment unless the same position and any comparable position(s) have ceased to exist because of legitimate business reasons unrelated to the employee's FMLA leave.
- When a request for FMLA leave is granted to an employee (other than a "key" employee), LCER will give the employee a written guarantee of reinstatement at the termination of the leave (with the limitations explained above).

- Before an employee will be permitted to return from FMLA leave taken because of his or her own serious health condition, the employee must obtain a certification from his or her health care provider that he or she is able to resume work.
- If an employee can return to work with limitations, LCER will evaluate those limitations and, if possible, will accommodate the employee as required by law. If accommodation cannot be made, the employee will be medically separated from LCER.

#### Limitations on Reinstatement

- LCER may refuse to reinstate a “key” employee if the refusal is necessary to prevent substantial and grievous injury to LCER’s operations. A “key” employee is an exempt salaried employee who is among the highest paid 10% of LCER’s employees within 75 miles of the employee’s worksite.
- A “key” employee will be advised in writing at the time of a request for, or if earlier, at the time of commencement of, FMLA leave, that he/she qualifies as a “key” employee and the potential consequences with respect to reinstatement and maintenance of health benefits if LCER determines that substantial and grievous injury to LCER’s operations will result if the employee is reinstated from FMLA leave. At the time it determines that refusal is necessary, LCER will notify the “key” employee in writing (by certified mail) of its intent to refuse reinstatement and will explain the basis for finding that the employee’s reinstatement would cause LCER to suffer substantial and grievous injury. If LCER realizes after the leave has commenced that refusal of reinstatement is necessary, it will give the employee at least ten (10) days to return to work following the notice of its intent to refuse reinstatement.

#### Employment During Leave

- An employee on FMLA leave may not accept employment with any other employer without LCER’s written permission. An employee who accepts such employment will be deemed to have resigned from employment at LCER.

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

This policy explains how LCER complies with the California Pregnancy Disability Act, which requires LCER to give each female employee an unpaid leave of absence of up to four (4) months, as needed, for the period(s) of time a woman is actually disabled by pregnancy, childbirth, or related medical conditions.

#### Employee Eligibility Criteria

- To be eligible for PDL, the employee must be disabled by pregnancy, childbirth, or a related medical condition and must provide appropriate medical certification concerning the disability.

#### Events That May Entitle An Employee to PDL

- The four-month pregnancy disability leave allowance includes any time taken (with or without pay) for any of the following reasons:

1. The employee is unable to work at all or is unable to perform any one or more of the essential functions of her job without undue risk to herself, the successful completion of her pregnancy, or to other persons because of pregnancy or childbirth, or because of any medically recognized physical or mental condition that is related to pregnancy or childbirth (including severe morning sickness); or
2. The employee needs to take time off for prenatal care.

#### Duration Of PDL

- PDL may be taken in one or more periods, but not to exceed four months total. “Four months” means the number of days the employee would normally work within four months. For a full-time employee who works five eight hour days per week, four months means 88 working and/or paid eight hour days of leave entitlement based on an average of 22 working days per month for four months.
- PDL does not count against the leave which may be available as Family Care and Medical Leave.

#### Pay During PDL

- An employee on pregnancy disability leave must use all accrued paid sick leave at the beginning of any otherwise unpaid leave period.
- The receipt of sick leave pay or state disability insurance benefits will not extend the length of pregnancy disability leave.
- Vacation pay and sick pay accrues during any period of unpaid pregnancy disability leave only until the end of the month in which the unpaid leave began.

#### Health Benefits

The provisions of LCER’s various employee benefit plans govern continued eligibility during PDL, and these provisions may change from time to time. The health benefits of employees on PDL will be paid by the LCER during the leave at the same level and under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period. When a request for PDL leave is granted, LCER will give the employee written confirmation of the arrangements made for the payment of insurance premiums during the leave period.

- In some instances, the LCER can recover from an employee premiums paid to maintain health coverage if the employee fails to return following PDL.

#### Service Time

- An employee on PDL remains an employee of LCER and a leave will not constitute a break in service. When an employee returns from PDL, he or she will return with the same service time he or she had when the leave commenced.

## Medical Certifications

- An employee requesting a PDL must provide medical certification from her healthcare provider on a form supplied by LCER. Failure to provide the required certification in a timely manner (within fifteen (15) days of the leave request) may result in a denial of the leave request until such certification is provided.
- Recertification is required if leave is sought after expiration of the time estimated by the healthcare provider. Failure to submit required recertifications can result in termination of the leave.

## Requesting And Scheduling PDL

- An employee should request PDL by completing a Application for Family Care Leave and submitting it to her supervisor. An employee asking for an Application for Family Care Leave will be referred to LCER's then current pregnancy disability leave policy and Medical Certification form.
- Employee should provide not less than thirty (30) days or as short of notice as is practicable, if the need for the leave is foreseeable. Failure to provide such notice is grounds for denial of the leave request, except if the need for PDL was an emergency and was otherwise unforeseeable.
- Where possible, employees must make a reasonable effort to schedule foreseeable planned medical treatments so as not to unduly disrupt LCER's operations.
- PDL may be taken intermittently or on a reduced leave schedule when medically advisable, as determined by the employee's healthcare provider
- If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the employee may be transferred temporarily to an available alternative position for which he or she is qualified that has equivalent pay and benefits that better accommodates recurring periods of leave than the employee's regular position.
- In most cases, LCER will respond to a PDL request within two (2) days of acquiring knowledge that the leave qualifies as pregnancy disability and, in any event, within ten (10) days of receiving the request. If a pregnancy disability leave request is granted, LCER will notify the employee in writing and leave will be counted against the employee's PDL entitlement. This notice will explain the employee's obligations and the consequences of failing to satisfy them.

## Return To Work

- Upon timely return at the expiration of the PDL period, an employee is entitled to the same position unless the employee would not otherwise have been employed in the same position (at the time reinstatement is requested). If the employee is not reinstated to the same position, she must be reinstated to a comparable position unless there is no comparable position available,

but filling that position with the returning employee would substantially undermine LCER's ability to operate the business safely and efficiently. A "comparable" position is a position that involves the same or similar duties and responsibilities and is virtually identical to the employee's original position in terms of pay, benefits, and working conditions.

- When a request for PDL is granted to an employee, LCER will give the employee a written guarantee of reinstatement at the end of the leave (with the limitations explained above).
- Before an employee will be permitted to return from a PDL of three days or more, the employee must obtain a certification from her healthcare provider that she is able to resume work.
- If the employee can return to work with limitations, LCER will evaluate those limitations and, if possible, will accommodate the employee as required by law. If accommodation cannot be made, the employee will be medically separated from LCER.

#### Employment During Leave

- An employee on PDL may not accept employment with any other employer without LCER's written permission. An employee who accepts such employment will be deemed to have resigned from employment.

#### **Paid Family Leave**

Paid Family Leave ("PFL") does not create the right to a leave of absence but is part of the State Disability Insurance program which provides wage replacement benefits for eligible employees. Under PFL, employees can receive partial wage replacement for up to six (6) weeks in any twelve-month period while on leave from work to care for a seriously ill or injured family member or to bond with a minor child. Leave for bonding with a child must occur within one (1) year of the birth of the child or placement of a child in the home for foster care or adoption. An employee who is entitled to family leave under FMLA and the CFRA can apply for PFL benefits concurrent with those leaves.