

# LEAVE FOR MY MILITARY SERVICE

The provisions of the Military and Veterans Code of the State of California and the federal Uniformed Services Employment and Reemployment Rights Act shall govern military leave of County employees. In addition to these laws, the County provides some added benefits for employees on certain types of military leave. The parameters of military leave under the state and federal law are broad and varied. The following policy highlights some of the most common questions and scenarios as well as County specific benefits that go beyond the requirements of state and federal law. The policy is not intended to cover every aspect of state and federal military leave law. If you have any questions about your specific circumstances you should contact Leila Totah in Risk Management/Human Resources at [ltotah@smcgov.org](mailto:ltotah@smcgov.org) or (650)363-7882

## What is military leave?

Job protected leave for employees who take time off for certain types of active or inactive duty in the Armed Forces, Reserves, National Guard or Naval Militia.

## Who is Eligible?

All employees who qualify for such military related leave pursuant to state or federal law. Typically this includes employees who are members of the Armed Forces including Reservists and National Guard members, who are ordered to report for military duty, such as training and periods of active military service.

## How Long is the Leave?

The length of the leave is determined by the employee's military orders. Employees on military leave for more than 5 years (cumulative during employment) may lose the right to reinstatement. Exceptions are available to this rule and employees who require more than 5 years should consult with Human Resources in order to determine if they qualify for an exception.

- In order to qualify for reinstatement, employees must return to work within the time frame described above. However, an employee is not required to immediately return to work upon the completion of their military orders. Depending on the type of duty or the length of service, the employee may have somewhere between 1 business day (less than 30 days of service) and 6 months (active duty during war or national emergency) to return to work. Please consult with Human Resources and have your orders available in order to determine your specific length of time to report to work after completion of military service.
- Upon return from military leave within the appropriate timeframe, employees will be reinstated to their position. If the employee's position no longer exists, the County will make all reasonable efforts to place the employee in a similar position for which the employee is qualified.

## Is it paid?

Generally, employees who have worked for the County for at least 1 year will be entitled to pay for the first 30 days of military leave.

Note: In some circumstances, such as active duty in the National Guard, even employees with less than 1 year of County service may be entitled to the 30 days of pay. Please check with Human Resources regarding your specific circumstances.

- Employees called to active duty in support of the Global War on Terrorism, in connection with military operations in Iraq and Afghanistan and in response to COVID 19 may be entitled to additional compensation. In addition to the first 30 days of full pay, the employees will receive the difference between the employee's total military compensation (including allowances) and the employee's base pay from the County for the duration of the applicable active duty assignment, if applicable.

NOTE: This benefit is provided by Resolution of the Board of Supervisors and is subject to change or revocation.

- Employees who are not receiving pay may use accrued leave such as vacation, holiday or compensatory time.

## Benefits?

Employees who are receiving pay from the County will continue to participate in the County's benefit programs as if they were continuously employed by the County. The employee's share of benefit premiums will be deducted from such pay.

Employees who are not receiving pay may continue benefits coverage but will be required to pay for the full amount of premiums, including the employee share and the employer's share.

## How Do I request the Leave?

Employees should notify their supervisors or managers of the need for leave as soon as possible and request the leave in Workday. To find out how to request a leave in Workday, visit the [Leave of Absence Quick Reference Card \(QRC\)](#) on the [Workday Connect](#) resource site.

# LEAVE FOR MILITARY EXIGENCY

## What is it?

Job protected leave for certain service-related activities covered under the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). This leave counts towards an employee's 12 workweek entitlement for FMLA and/or CFRA leave. The leave may be used to address exigent circumstances associated with the employee's spouse, child or parent who is on or has been notified of an impending call to covered active duty in the Armed Forces.

Covered active duty occurs when a member in the regular Armed Forces is on active duty and deployed to a foreign country or when a member in the National Guard or reserves is deployed into contingency operations.

The following is a summary of exigent circumstances for which the leave may be used:

- Short notice deployment: The leave can be taken to address issues that arise due to the covered family member's impending call to covered active duty. The leave can be used for a maximum of seven days beginning on the date the covered military family member is notified of the impending call to duty.
- Military events and related activities: The leave can be taken to attend any official ceremony, program or event sponsored by the military relating to a covered military family member's active duty or call to active duty. It can also be taken to attend family support or assistance programs and informational briefings sponsored by the military, military service organizations or the American Red cross that are related to the covered active duty of the covered military family member.
- Childcare and school activities: The leave may be taken to provide or arrange for childcare when a covered military family member's covered active duty or call to active duty necessitates it. The leave may also be taken to enroll the child in a new school or daycare facility due to the call to covered active duty.
- Financial and legal arrangements: Leave may be taken to make financial or legal arrangements to address a covered military family member's absence while on covered active duty or to act as the covered military family member's representative before a government agency to obtain benefits.
- Family counseling: Leave may be taken to attend counseling where the employee, the covered military family member or their child requires counseling due to the covered active duty.
- Rest and recuperation: Leave may be taken to spend time with a covered military family member who is on a short term leave for rest and recuperation. This leave is for a maximum of 15 days.
- Post-deployment activities: Leave may be taken to attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military family member's active duty status. It may also be taken to address issues that arise from the death of a covered military family member while on covered active duty.
- Parental care: Leave may be taken to arrange for or provide care for a covered military family member's parent who is incapable of self-care.

For more information please see 29 Code of Federal Regulations section 825.126 and California Unemployment Insurance Code section 3302.2.

## Who is Eligible?

Employees who:

- Have been employed by the County for 12 months in the preceding 7 years (need not be continuous); AND
- Have worked at least 1,250 hours during the 12 months immediately preceding the requested start of leave date; AND
- Have a spouse, domestic partner (CFRA only), parent, or child who is on or has been notified of an impending call to covered active duty in the Armed Forces.

- [Covered active duty occurs when a member in the regular Armed Forces is on active duty and deployed to a foreign country or when a member in the National Guard or reserves is deployed into contingency operations.]
- Can provide a copy of the covered military family member's covered active duty orders or other similar documentation.

## How long is the leave?

The length of leave varies based on the type of exigency. The total amount of leave for FMLA and CFRA cannot exceed 12 weeks in a calendar year. If the leave is taken intermittently, the hours used will be tracked and employees will have a maximum number of hours to use per year based on the average number of hours the employee works per week multiplied by 12 weeks. FMLA and CFRA military exigency leave will run concurrently when both leaves apply, which is usually the case.

## Is it paid?

The leave is unpaid.

However, employees may elect to use accrued vacation, compensatory leave and/or floating holidays.

Please note: Some employees have approved Voluntary Time Off ("VTO"). VTO may be used during Military Exigency Leave. However, if the employee goes into an unpaid status while receiving VTO, there are specific parameters that surround the use of VTO and reimbursement to the County for the VTO hours. Employees should consult the County's VTO [web page](#) and the employee's VTO acknowledgment form in Workday.

If you wish to use any of these accrued paid hours during your leave, you must inform your supervisor as soon as possible and indicate the type of hours you would like to use and in what order. If possible, you should inform your supervisor well in advance of your anticipated leave in case your need for leave comes sooner than expected.

Please be aware: If you choose not to use any form of accrued paid hours you will likely owe certain costs such as the employee's share of health insurance benefits.

Beginning in **January of 2021**, State law will provide for Paid Family Leave through State Disability Insurance for employees on Military Exigency Leave.

## What happens to my benefits while I'm on leave?

While Using Accrued Paid Leave Hours

- If the employee is receiving any pay through the use of accrued paid leave hours (such as vacation or compensatory time), the Employee portion of Benefits will continue to be deducted from the employee's bi-weekly pay in the same manner that it is deducted while the employee is working.
- The Employer portion of Benefits will continue to be paid by the County, which includes the employee's health, dental, life, AD&D and vision insurance.

Not Using Accrued Paid Leave Hours

- If the employee is not using accrued paid leave hours during an FMLA/CFRA Military Exigency Leave, the employee is entitled to continue to participate in the County's group health insurance plans on the same basis as active employees.
- Therefore, if an employee wishes to continue the coverage, the County will continue to pay the Employer portion of the employee's health, dental, life, AD&D and vision insurance as if the employee were still working.
- However, since the County cannot deduct the employee's portion from the employee's pay, the County will send the employee a bill on a bi-weekly basis for their contribution. Failure to provide timely payment will result in cancellation of the employee's benefits.

## How do I request the leave?

Employees should notify their supervisors or managers of the need for leave as soon as possible and request the leave in Workday.

An FMLA/CFRA covered leave of absence for a block of continuous time away from work can be requested in Workday. To find out how to request a leave in Workday, visit the [Leave of Absence Quick Reference Card \(QRC\)](#) on the [Workday Connect](#) resource site.

Intermittent leaves of absence are not entered in Workday. The following two forms must be completed by the employee and submitted to their department for signature. The forms should then be forwarded to Risk Management for processing.

- <https://hr.smcgov.org/sites/hr.smcgov.org/files/documents/files/IntermittentLeaveRequestForm.pdf>
- <https://hr.smcgov.org/sites/hr.smcgov.org/files/MedicalCertificationIntermittentLeaveForm.pdf>

Employees must provide sufficient information and/or documentation to allow the County to determine if the leave qualifies for Military Exigency leave, and the anticipated timing and duration of the leave. Employees will be required to provide a copy of the military member's active duty orders or other documentation issued by the military indicating the military member is on active duty.

Although the County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as practicable of their need for leave. Where the need for leave is foreseeable, employees must provide at least 30 days notice. In addition, if an employee knows that employee will need leave in the future, but does not know the exact date(s), the employee must inform their supervisor as soon as possible that such leave is needed. If the County determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the County may delay the granting of the leave until it can adequately cover the position.

## Reinstatement after leave?

At the end of leave, an employee is entitled to reinstatement to the position the employee held when they went out on leave, or to an equivalent position. However, if an employee remains on leave beyond their entitlement under the FMLA/CFRA the employee forfeits the right to reinstatement. In addition, employees have no greater rights to reinstatement, benefits and other conditions of employment than if

the employee had been continuously employed during the FMLA/CFRA Military Exigency Leave period. (e.g. no right to reinstatement if position was eliminated through layoff.)

If an employee is ready to return from leave earlier than the original date set for return, the employee must notify the County as soon as possible and will be reinstated, where feasible, within two business days after receipt of notification.

## LEAVE TO CARE FOR MILITARY FAMILY MEMBER'S HEALTH CONDITION

### What is it?

The Family Medical Leave Act (FMLA) provides up to 26 weeks to provide care to a family member who is a covered service member who suffered a serious injury or illness that was incurred or aggravated in the line of duty.

### Who is eligible?

Employees who:

- Have been employed by the County for 12 months in the preceding 7 years (need not be continuous); AND
- Have worked at least 1,250 hours during the 12 months immediately preceding the requested start of leave date; AND
  - Need time off to provide care for a spouse, parent, child or next of kin who is a covered servicemember with a serious injury or illness.
  - Covered servicemember includes current servicemembers or veterans (who have been a member of the Armed Forces sometime in the last 5 years) who are undergoing medical treatment, recuperation, or therapy.
- Serious injury or illness means an injury or illness incurred or aggravated in the line of duty that may render the service member unfit for duty.
- Can provide appropriate certification as detailed below.

### How long is the leave?

The length of leave varies based on the need for leave. The total amount of leave cannot exceed 26 weeks within a single 12 month period. If the leave is taken intermittently, the hours used will be tracked and employees will have a maximum number of hours to use per year based on the average number of hours the employee works per week multiplied by 26 weeks.

### Is it paid?

The leave is unpaid.

However, employees may elect to use accrued sick leave, vacation, compensatory leave and/or floating holidays.

- Please note: Some employees have approved Voluntary Time Off (“VTO”). VTO may be used during FMLA Military Caregiver Leave. However, if the employee goes into an unpaid status while receiving VTO, there are specific parameters that surround the use of VTO and reimbursement to the County for the VTO hours. Employees should consult the County’s VTO [web page](#) and the employee’s VTO acknowledgment form in Workday.

If you wish to use any of these accrued paid hours during your leave, you must inform your supervisor as soon as possible and indicate the type of hours you would like to use and in what order. If possible, you should inform your supervisor well in advance of your anticipated leave in case your need for leave comes sooner than expected.

Please be aware: If you choose not to use any form of accrued paid hours you will likely owe certain costs such as the employee’s share of health insurance benefits.

An employee on FMLA Military Caregiver Leave to care for a qualifying family member might be eligible for certain forms of salary replacement, including but not limited to:

- Paid Family Leave: PFL provides up to 8 weeks of partial salary replacement for employees who need to take time off work to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner. PFL is a part of the State Disability Insurance (SDI) program which is funded through payroll deductions and administered by the State Employment Development Department (EDD). Most but not all, County employees are covered.
- Some employees such as Extra Help Employees and members of DSA, OSS, and PDA do not participate in SDI.

How do I know if I am covered?

- You can check your paycheck in Workday to see if you are paying into CASDI. The EDD requires that you have been paying into CASDI for a certain period of time in order to qualify for benefits. You may have satisfied this requirement at a prior job if you have not satisfied the requirement while employed with the County. Contact EDD with questions on this issue.

Additional information on PFL can be found at the following EDD links:

- Paid Family Leave page on the EDD’s website  
[https://www.edd.ca.gov/disability/paid\\_family\\_leave.htm](https://www.edd.ca.gov/disability/paid_family_leave.htm)
- Other Questions? – Ask EDD  
<https://askedd.edd.ca.gov/asp/frmEDDCOMM.aspx>

## What happens to my benefits while I’m on leave?

### While Using Accrued Paid Leave Hours

- If the employee is receiving any pay through the use of accrued paid leave hours (such as sick leave, vacation or compensatory time), the Employee portion of Benefits will continue to be deducted from the employee’s bi-weekly pay in the same manner that it is deducted while the employee is working.

- The Employer portion of Benefits will continue to be paid by the County, which includes the employee's health, dental, life, AD&D and vision insurance.

#### **Not Using Accrued Paid Leave Hours**

- If the employee is not using accrued paid leave hours during an FMLA Leave, the employee is entitled to continue to participate in the County's group health insurance plans on the same basis as active employees.
- Therefore, if an employee wishes to continue the coverage, the County will continue to pay the Employer portion of the employee's health, dental, life, AD&D and vision insurance as if the employee were still working. However, since the County cannot deduct the employee's portion from the employee's pay, the County will send the employee a bill on a bi-weekly basis for their contribution. Failure to provide timely payment will result in cancellation of the employee's benefits.

## **How do I request the leave?**

Employees should notify their supervisors or managers of the need for leave as soon as possible and request the leave in Workday.

An FMLA covered leave of absence for a block of continuous time away from work can be requested in Workday. To find out how to request a leave in Workday, visit [the Leave of Absence Quick Reference Card \(QRC\)](#) on the [Workday Connect](#) resource site.

Intermittent leaves of absence are not entered in Workday. The following two forms must be completed by the employee and submitted to their department for signature. <https://hr.smcgov.org/sites/hr.smcgov.org/files/documents/files/IntermittentLeaveRequestForm.pdf>  
<https://hr.smcgov.org/sites/hr.smcgov.org/files/MedicalCertificationIntermittentLeaveForm.pdf>

The forms should then be forwarded to Risk Management for processing. The Medical Certification form should provide information from the healthcare provider about the frequency and duration of the intermittent leave.

Employees must provide sufficient information and/or documentation to allow the County to determine if the leave qualifies for FMLA protection, and the anticipated timing and duration of the leave.

Although the County recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as practicable of their need for leave. Where the need for leave is foreseeable, employees must provide at least 30 days notice. In addition, if an employee knows that employee will need leave in the future, but does not know the exact date(s) (e.g. a surgery tentatively scheduled for some time within a certain month depending on doctor availability), the employee must inform their supervisor as soon as possible that such leave is needed. If the County determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the County may delay the granting of the leave until it can adequately cover the position.

## **Reinstatement after leave?**



At the end of leave, an employee is entitled to reinstatement to the position the employee held when they went out on leave, or to an equivalent position. However, if an employee remains on leave beyond their entitlement under the FMLA the employee forfeits the right to reinstatement. In addition, employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA period. (e.g. no right to reinstatement if position was eliminated through layoff.)

If an employee is ready to return from leave earlier than the original date set for return, the employee must notify the County as soon as possible and will be reinstated, where feasible, within two business days after receipt of notification.

Effective 1/1/2021