

What is The Family and Medical Leave Act (FMLA)?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave for the same time period. Eligible employees are entitled to:

- Up to Twelve workweeks of leave in a rolling 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Up to Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

What is the California Family Rights Act (CFRA)?

The California Family Rights Act (CFRA) authorizes eligible employees to take up to a total of 12 weeks of paid or unpaid job-protected leave during a 12-month period. While on qualified leave, employees keep the same employer-paid health benefits they had while working. Eligible employees can take the leave for one or more of the following reasons:

- The birth of a child or adoption or foster care placement of a child.
- To care for an immediate family member (spouse, child or parent) with a serious health condition.
- When the employee is unable to work because of a serious health condition (SHC).

A serious health condition is an illness, injury, impairment, or physical or mental condition that causes or requires:

- Any period of incapacity or treatment in connection with, or after inpatient care
- Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 consecutive calendar days
- Ongoing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable
- Restorative dental or plastic surgery after an accident or injury

What's different between FMLA and CFRA?

The City of Cupertino provides family and medical care leave for eligible employees as required by State and Federal law. Unless otherwise prohibited by law, the City of Cupertino will run each employee's FMLA and CFRA leaves concurrently.

California CFRA generally mirrors the Federal FMLA. Similar to the FMLA, the CFRA allows eligible employees up to 12 weeks of leave in a 12-month period for the birth of a child, the adoption of a child or the placement of a child in foster care. It also allows leave to care for a seriously ill family member or for the employee's own health condition, other than pregnancy-related disability.¹ Although both the FMLA and the CFRA include same-sex spouses in the definition of a family member, the CFRA also allows for leave for a registered domestic partner.

What is the Emergency Family and Medical Leave Expansion Act (FFCRA)?

On March 18, 2020, the Families First Coronavirus Response Act (HR 6201) was signed into law. Among other things, the **Emergency Family and Medical Leave Expansion Act** provides for up to 12 weeks of job-protected Public Health Emergency Leave if an employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency, while the **Emergency Paid Sick Leave Act** provides for up to 80 hours of paid leave for eligible coronavirus related reasons as provided for under the law. Protected Health Emergency Leave is a form of FMLA leave and is not in addition to any other FMLA leave, meaning that employees who have already taken a portion or all of their 12 weeks of FMLA leave entitlement will not receive additional leave under the Act.

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

Emergency Family and Medical Leave Expansion Act Eligibility:

Employees are eligible for up to 12 weeks of job-protected Public Health Emergency Leave if the following requirements are met:

- The employee has worked for the City of Cupertino for at least 30 calendar days
- The employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency; and
- The employee provided reasonable notice of the need for the leave.

The first 10 days of Emergency Family Medical Leave may consist of unpaid leave unless the employee elects to utilize accumulated leaves, including Emergency Paid Sick Leave (see below). For the remaining 10 weeks, an employee is entitled to paid leave at two-thirds of the employee's regular rate of pay. However, paid leave is subject to a cap of \$200 per day and \$10,000 total.

Emergency Paid Sick Leave Act Eligibility:

Additionally, from April 1, 2020 through December 31, 2020, employees are entitled to Emergency Paid Sick Leave at their **regular rate of pay** (subject to the following caps) if they are unable to work or telework for the following reasons:

- \$511/Day and \$5,110 in the Aggregate for the Following Employee-Related COVID-19 Absence Reasons:
 - The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19

¹ Pregnancy Disability Leave may be available for disabilities relating to pregnancy, childbirth or related medical conditions. Check with Human Resources for additional details.

- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- \$200/Day and \$2,000 in the Aggregate for the Following Reasons
 - The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions;
 - The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
 - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

An employee is eligible for Emergency Paid Sick Leave regardless of how long the employee has been employed by the City.

What else do I need to know?

- A full-time employee may take up to two weeks (or 80 hours) of paid sick leave for any combination of qualifying reasons above. For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week. For part-time employees, the Emergency Paid Sick Leave allowed is prorated to the average number of work hours in a two-week period.
- Unused leave does not carryover beyond December 31, 2020 for any employee, nor can it be cashed out.
- An employee using Emergency Paid Sick Leave **must** certify the reason for the leave and provide appropriate documentation to support such use of leaves.
- Employees may supplement the two-thirds pay with their accrued leaves to achieve 100% of their regular rate of pay.

Restoration to Prior Position

Employees out on Emergency Family and Medical Leave are entitled to reinstatement to their prior position or to an equivalent position, but the employee is not guaranteed the actual job held prior to the leave. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.