**FMLA-CFRA Questions and Answers**

**Examples of Questions from an Employee:**

1) How do I receive the protections of FMLA?

A: Most importantly, the employee needs to provide, either verbally or in writing to the supervisor or designee, sufficient information pertaining to the reason for the absence that indicates that the employee’s absence would qualify for one of the pathways under FMLA or CFRA.

   Second, an employee requesting FMLA Leave should complete a Certification/Request of Absence for Illness, Family Illness, New Child form (60.Ill.07/01/05) and answer questions #5a, 5b, and 6. These questions are FMLA questions. Then submit this form to the employee’s Administrator, Supervisor or designee.

   Note that these protections are important for an employee. The protections include the right to take and return from absence or leave without discouragement or criticism, and the right to have District-paid health benefits even if on unpaid leave.

2) What if I don’t want to take FMLA, but I’m eligible?

A: If an absence meets the FMLA criteria, the employee will be provided the protections of FMLA regardless of the employee’s wishes. It is the responsibility of supervisors and/or managers to detect, inquire, and designate qualifying absences as FMLA. The employee does not have an option to refuse FMLA.

   The eligibility requirements for FMLA/CFRA are two-fold: a) 12 months of working for LAUSD; and b) 130 workdays or 1250 work hours in the last 365 days prior to the absence or leave starting.

3) What happens if I run out of FMLA?

A: If an employee’s absence consumes the 12 weeks of designated FMLA-protected absences or leave, an employee may request to extend the leave of absence. However, the time off will be unprotected by FMLA/CFRA.

4) Will I be protected if my health condition would be FMLA-qualifying, but I call in and only say I’m ill or sick?

A: No. FMLA/CFRA protects an employee only if the employee provides clear and sufficient information that the supervisor would be able to recognize the absence as qualifying under FMLA/CFRA. An employee does not need to reveal the diagnosis, but must indicate information that would meet one or more of the pathways of FMLA.

5) As discussed in Question #4, what if I provide more information to my supervisor at a later date about the reasons for my absence?

   There are notice obligations and requirements for the employee to follow. Where the need for the leave is foreseeable based upon an expected birth, or planned medical treatment for a serious health condition of the employee or of a covered family
member, an employee is required to provide the District 30 days advance notice before FMLA/CFRA leave is to begin. If 30 days notice is not possible (such as a sudden illness), notice should be given with as much advance notice as possible.

In some situations, an employee is not able to provide the reason for absence before or during the leave. The employee may, upon returning from leave, provide within two (2) business days (the so-called "2-day rule") new and sufficiently clear information that the reason for the recent absence or leave falls under FMLA and/or CFRA, which would mean that the employee’s otherwise qualifying leave shall be designated as FMLA/CFRA. If the employee does not provide this information within two business days (or provides this information after two business days from the date of return to work), the District has the right to deny and not designate the absence/leave as FMLA/CFRA, and the time off will not be protected under FMLA/CFRA.

6) Does FMLA-CFRA add extra sick days or vacation days to my existing balance?
A: No. FMLA-CFRA is not a paid benefit; it provides only protection. Although FMLA provides no extra pay, FMLA can be a paid leave. FMLA normally will be run concurrently with whatever paid benefits the employee is eligible for, based on the employee’s benefit balance and the reason for the absence or leave.

7) I have just taken another job with the District and am now on probation. Will taking FMLA absence result in my being assigned back to my prior job?
A: No. An employee will return with the same seniority and to the same probationary position or an equivalent/comparable position to the previous assignment, unless the employee would not have kept the position if the employee had not taken any absence.

8) Can I receive FMLA protections for taking a short absence since I do not need to take a formal leave of absence?
A: Yes. Although FMLA stands for Family and Medical “Leave” Act, the law could have just as accurately been entitled the "Family and Medical Absence Act". Protection is provided for either intermittent days off (or partial days off) or consecutive leave, but only if the reason for absence is FMLA/CFRA qualifying and the employee is eligible with the work-time requirements.

9) What do I need to do when it’s time to return to work after my FMLA leave?
A: An employee should have the medical provider complete the return to work form, contact the supervisor to provide the information that the employee will be returning to work. Under FMLA, a two-day return-to-work notice is required. The employee should submit the return form to the employee’s worksite or the appropriate HR personnel office, depending what instructions have been given to the employee.

10) Can I collect state disability insurance (SDI) while on FMLA leave?
A: Yes and No. It depends upon what job classification the employee is assigned. If an employee pays into SDI State Disability (see the pay stub). Some Classified positions pay into this program. Certificated positions do not pay into this program.
11) We are adopting a baby and need to leave the Country for the arrangements. Does FMLA cover my absence?

A: Yes. If an employee meets the FMLA/CFRA eligibility requirements, adoption is part of the FMLA/CFRA Bonding. Arrangements also would qualify. Protected bonding may not be taken after the first year that the child arrives into the family.

12) Is FMLA for my family member only?

A: No. FMLA is for the employee’s absence/leave as well when the absence/leave is a serious health condition and meets the eligibility requirements.

**Examples of Questions from an Administrator/Supervisor:**

1) Now that I as a Manager know about FMLA, how do I go about designating an employee’s absence/leave?

A: It’s the employer’s responsibility to detect an FMLA qualifying event and to determine if the employee’s absence should be designated as FMLA/CFRA leave. Also the Manager must make sure to check the PTRS screen to verify if employee is eligible. The employee should receive a letter of designation (typically FMLA – 1) notifying the employee of being on FMLA/CFRA leave. The employer can simultaneously request medical certification from the employee’s health care provider.

Remember, if the employee has clearly provided the information qualifying the employee for FMLA, it cannot be required that the employee also mention or request FMLA.

2) Do I as the Supervisor wait to get the medical forms back before I designate the absence/leave?

A: No. As soon as the employer detect that there is sufficient information from the employee that the absence is FMLA/CFRA qualifying (at this point you assume the information is true), the employer is to designate. Under typical circumstances, the employer has a two-business-day grace period to either verbally tell, or in writing inform, the employee. The employee has 15 calendar days to return the health care provider form an extension can be provided if we know of any problems. If the employee does not return the proper paper work within the time frame, or if the employee does not request a reasonable extension, FMLA/CFRA protections will be revoked.

3) What do I do with the Certification of Health Care Provider form now that I as the Supervisor have gotten it back?

A: The Supervisor or Administrator should first review it for completion, consistency, and concurrence with the actual facts known about the absence. If the Supervisor or Administrator has any questions or concerns, the FMLA Leaves Section should be contacted.

Additionally, when the absence is 20 days or less, keep in your confidential files at the worksite. When the absence will be more than 20 consecutive working days, the
supervisor should retain a copy and forward the form to the appropriate HR personnel office.

4) What forms do I give to the employee for FMLA/CFRA?

A: The Supervisor or the supervisor’s designee should provide the Certification of Health Care Provider Form (FMLA – 3.2) and the Certification/Request of Absence for Illness, Family Illness, New Child Form (60.III.07/01/05). When the absence/leave is more than 20 consecutive working days, the formal leave of absence paperwork is required. Check with appropriate HR Classified or HR Certificated office.

7) As a supervisor, I am very strict. Since conferencing with an employee is not discipline, can I discuss the problems that an employee’s FMLA absences are causing our work site?

A: No. In accordance with FMLA/CFRA requirements, the employer may not conference, warn, discipline, or terminate an employee because of taking a qualifying FMLA/CFRA leave.

6) Can a staff member from the FMLA Leaves Section come out to our location and present FMLA/CFRA training?

A: Yes. Contact the office of the FMLA Leaves Section at (213) 241-3954 to schedule a date and time. An administrator, supervisor, office manager, timekeeper, secretary, or anyone who has HR responsibilities can contact the FMLA Leaves Section for any questions that might arise. Employees may also call our offices directly. The full set of phone numbers are: (213) 241-3954; (213) 241-1619; (213) 241-2210; (213) 241-2820; and (213) 241-7631.

7) How do I get the FMLA forms? Are they on-line?

A: Yes. The FMLA forms are on-line at LAUSD.net under Office of Risk Management & Insurance Services. The supervisor, administrative assistant, and/or the timekeeper should be familiar with the use of these forms.

8) Can all absences, including FMLA-related absences, be put on the attendance grids on the Performance Evaluations, as long as the FMLA-related absences are not used against the employee?

A: Yes. This inclusion on the attendance grid is permissible. It is important to note that not only shall the FMLA absences not be used at all for the ratings, but that the supervisor should initiate two important steps: separately mark these absences as “FMLA” (or “protected”) on the grid in some differentiating manner, and most importantly, make a written statement that these protected absences are protected and were not used in the evaluation.

9) I have heard of something called “PDL” for pregnancy. What is that?

A: Pregnancy Disability Leave is part of the California Fair Employment and Housing Act, Government Code Section 12945 (b)(2). It provides employees with the right to take up to four months (equivalent to 18 workweeks) of leave for pregnancy disability for only as long as the employee’s doctor certifies that the employee is disabled due to pregnancy, childbirth, or related medical conditions. While this absence due to
pregnancy usually will not extend to the full 4 months, the leave will be for as long as the employee’s doctor certifies that the employee is disabled due to pregnancy, childbirth, or related medical conditions (provided that the time is 4 months or less).

10) I understand that there are work-time requirements for being eligible for FMLA/CFRA. Are there similar work-time requirements for PDL?

A: Under this California law called PDL, there is no minimum amount of work time that an employee needs to have worked. For instance, an employee does not need to have worked 12 months for the District, and the employee does not need to have worked 130 workdays in the year immediately preceding the first date of absence. Under FMLA and CFRA, the employee does need to meet these work-time thresholds.

11) After PDL, can an employee continue to be protected for bonding with the new child? How long would this protection need to be provided?

A: Yes. Rights to bond with a new-born child after pregnancy may be used under CFRA, for those employees who are eligible under CFRA (130 workdays and 12 months). Bonding will run concurrently with whatever FMLA time remained. Leave based on a pregnancy-related disability does not subtract from an employee’s 12 weeks of available time for the use of CFRA, assuming the employee’s request for later leave meets CFRA’s qualifying criteria. Thus, pregnant employees who take a pregnancy disability absence/leave may be able to use an additional 12 weeks of CFRA, provided that 12 weeks in the fiscal year is still available.

12) How does eligibility for CFRA-bonding work for an employee who recently delivered her baby?

A: If an employee’s bonding leave for a new child starts the next business day after the employee is no longer disabled due to pregnancy, the employee’s eligibility reference date for bonding leave is considered to be the first day of pregnancy disability leave. For this type of “connected” bonding leave, this fact is important for qualifying purposes toward counting 130 workdays from the first day of the leave. As stated above, the effective first day is starting date of the pregnancy disability leave, not the first day of the bonding leave. If the bonding leave is not “connected” in dates and time to the pregnancy disability leave, then the eligibility reference date for the CFRA leave would be the starting date of the bonding leave.