

San José State University provides family care and medical leave to eligible employees in accordance with the federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA). This document sets forth employee rights and obligations under the FMLA. If you are eligible, and the leave you requested qualifies as family care and medical leave, up to 12 workweeks will be counted against your annual entitlement of 12 workweeks in a 12-month period. For more information about family care and medical leave and related leaves, please call Benefits Services at 408-924-2250.

### **I. Eligibility for Leave**

To be covered by the provisions of FMLA/CFRA, you must have at least 12 months of service (all prior University service counts) prior to the requested leave. Student employees must have at least 12 months of service and have worked at least 1,250 hours during the 12 months prior to the requested leave.

### **II. Purpose of Leave**

Unpaid leave must be granted for *any* of the following reasons:

- to care for your child after birth, or placement for adoption or foster care
- to care for your spouse, domestic partner, child, or parent who has a serious health condition
- for your own serious health condition

### **III. Length of Leave Under FMLA/CFRA**

You are entitled to a maximum of 12 workweeks of family care and medical leave during a 12-month period. FMLA leave on an intermittent basis or on a reduced work schedule may be requested when medically necessary for a serious health condition. When possible, you should attempt to schedule medical treatments to minimize disruption to your department. Additional leave beyond 12 workweeks may be requested pursuant to State law if you take pregnancy disability leave.

### **IV. Pay**

Family care and medical leave is normally unpaid leave; however, you may request or be required to substitute paid leave (i.e., accrued vacation, sick leave) for all or a portion of the unpaid leave, in accordance with appropriate policies and collective bargaining agreements. If you have requested family care and medical leave for your own serious health condition, you may be eligible during the unpaid portion of your leave for temporary disability payments from Non-Industrial Disability Insurance or workers' compensation.

### **V. Advance Notice**

Thirty (30) days advance notice is required if your need for family care and medical leave is foreseeable (e.g., the birth of a child or a planned medical treatment). If you fail to provide 30-days notice for a foreseeable leave, your department may deny leave until 30 days after the date you provide notice. If

your need is not foreseeable, you should provide notice within a reasonable time after learning of the need for leave. Written notice is recommended.

## **VI. Medical Certification**

Written certification from a health care provider may be required (see the applicable personnel policy or collective bargaining agreement) of either your own serious health condition or the serious health condition of your family member. Failure to provide required certification within 14 calendar days of the date you receive this notice may result in delay or denial of leave until the certification is provided. Recertification of your own serious health condition or the serious health condition of your family member may be required periodically. If medical certification is required, your department will provide you with a form. If the leave you have requested is for your own serious health condition, you will be asked to authorize your health care provider to provide your diagnosis. If your health care provider does not disclose the diagnosis of your serious health condition, the department/university, at its own expense, may require you to obtain the opinion of a second health care provider. If the second opinion differs from the original certification, the opinion of a third health care provider may be required. The opinion of the third health care provider shall be final and binding.

Under federal regulations, a "health care provider" is defined as a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a clinical social worker who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner. A health care provider also is any provider from whom the University or the employee's group health plan will accept medical certification to substantiate a claim for benefits.

## **VII. Health Benefits**

Coverage under any group health plan (medical, dental, vision) will be maintained during any leave covered by FMLA (up to 12 workweeks) to the extent coverage would be maintained if you had been actively at work during the leave period. You are responsible for arranging with Benefits Services for the payment of the employee portion of any premiums that are not fully covered by a University contribution. Failure to pay the employee portion of the premiums within 30 days of the due date will result in cancellation of your enrollment in that plan.

If you do not return to work at the conclusion of your approved family care and medical leave, you will be liable for payment of the health plan premiums (medical, dental, vision) paid by the University during any unpaid portion of your leave. The University may recover its share of health plan premiums by taking deductions, to the extent permitted by law, from your unpaid wages, if any, vacation pay, or other pay due you, or by initiating legal action. However, you will not be liable for the premiums if your failure to return to work is due to continuation of your own serious health condition or other reasons beyond your control. You will be considered to have returned to work if you work for at least 30 calendar days commencing with your scheduled return date.

The University's responsibility to continue your health plan coverage ends (except Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage) upon notice that you do not intend to return to work at the end of the approved leave, even though you are able to work at that time.

## **VIII. Reinstatement**

Under federal law (FMLA), you must be reinstated to the same position you had prior to taking the leave, or to an equivalent position, provided that you return to work immediately following the conclusion of family care and medical leave. The use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave. If your position is unavailable (due to, for example, a temporary or indefinite layoff), you have no greater right to reinstatement than had you been continually employed during the FMLA leave period. You are not entitled to reinstatement if your appointment end date occurs before your scheduled return date from family care and medical leave. The university may require periodic notice of your intent to return to work following family care and medical leave.

#### **IX. University Designated FMLA Leave**

The University may designate leave as FMLA leave if the leave meets the requirements listed above, even when an employee does not specifically request FMLA or family care and medical leave.