

Kings Community Action Organization

Administrative policy

AP 3220

Human Resources: Leaves

FAMILY CARE AND MEDICAL LEAVE

Purpose: Kings Community Action Organization (“KCAO”) shall grant family care and medical leave to eligible employees in accordance with current state and federal law, and in accordance with this Policy.

Federal law allows for family care and medical leave under the Family and Medical Leave Act (“FMLA”) for the following reasons:

1. Because of the birth of the employee’s child, and in order to care for the child;
2. Because of the placement of a child with the employee for foster care or in connection with the employee’s adoption of the child;
3. To care for the employee’s child, sibling, parent, or spouse (including registered domestic partner and same sex spouse) - with a serious health condition;
4. Because of the employee’s own serious health condition that makes the employee unable to perform the functions of his/her position (including disability related to the employee’s pregnancy);
5. Because of any qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty);
6. To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin, as defined, of the service member.

California law allows for family and medical leave under the California Family Rights Act (“CFRA”) for the following reasons:

1. Because of the birth of the employee’s child, and in order to care for the child;
2. Because of the placement of a child with the employee for foster care or in connection with the employee’s adoption of the child;
3. To care for the employee’s child, sibling, parent, or spouse (including registered domestic partner and same sex spouse) with a serious health condition;
4. Because of the employee’s own serious health condition that makes the employee unable to perform the functions of his/her position (not including an employee’s disability related to pregnancy); and
5. To care for a designated person with a serious health condition. KCAO may limit an employee to one designated person per 12-month period.

In addition to leave for disability on account of a pregnancy, childbirth, or related medical conditions above, a female employee disabled by pregnancy, childbirth, or related medical

conditions may be entitled to take leave for a reasonable period of time, not to exceed four months. (Government Code 12945).

Kings Community Action Organization shall not interfere with, restrain or deny the exercise of any right provided to an eligible employee under the law. Also, Kings Community Action Organization shall not discharge or discriminate against any employee for opposing any practice made unlawful by state or federal law, or because of his/her involvement in any proceedings related to the family care and medical leave. (Government Code 12945.2; 29 USC 2615).

Definitions:

- “Child” means a biological, adopted or foster child, a stepchild; a legal ward or a child of a person standing in loco parentis, who is either under the age of 18 or age 18 or older and incapable of self-care because of mental or physical disability. (29 USC 2611; Government Code 12945.2; CFR 825.110). Includes grandchild.
- “Eligible employee” means an employee who has at least 12 months of service with KCAO, and who has at least 1,250 hours of service with the employer during the previous 12-month period. (29 USC 2611; Government Code 12945.2).
- “Parent” means a biological, foster or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to an employee when the employee was a child (29 USC 2611; Government Code 12945.2; 2 CCR 7297.0). Includes parents-in-law and grandparents.
- “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves any of the following:
 - a. Inpatient care in a hospital, hospice or residential health care facility;
 - b. Continuing treatment or continuing supervision by a health care provider;
 - c. For purposes of leave under the FMLA, any period of incapacity due to pregnancy or for prenatal care;
 - d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective; or
 - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider.
- “Spouse” means a partner in marriage as defined in Family Code 300 or 1 USC 7. In addition, for purposes of rights under the CFRA, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse’s child shall also apply to a child of a registered domestic partner. (1 USC 7; 29 CFR 825.122; Family Code 297.5, 300; 2 CCR 7297.0).
- “Baby Bonding” is defined as leave for an employee, either male or female, to bond with his or her own child or with his or her adopted child or foster child. All leave for baby bonding must conclude within one year of the birth of the child, or one year from the date the child was placed with the employee for adoption or foster care.
- “Medical Leave” is defined as an employee’s own serious health condition that makes the employee either unable to work at all, or unable to perform one or more of the essential functions of his/her job.

- “Family care” is defined as care of a child, parent or spouse with a serious health condition.
- “Designated person” is defined as an individual related by blood or whose association with the employee is the equivalent of a family relationship

Rights to Reinstatement and Maintenance of Benefits:

Upon granting an employee’s request for family care and medical leave, the Executive Director or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (29 USC 2614; Government Code 12945.2).

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If KCAO reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement, provided KCAO has no continuing obligations under a collective bargaining agreement or otherwise. (29 CFR 825.216).

During the period when an employee is on family care and medical leave, he/she shall maintain his/her status with KCAO and the leave shall not constitute a break in service for purposes of longevity, seniority or any employee benefit plan.

KCAO shall continue to provide an employee on family care and medical leave the group health plan coverage that was in place before he/she took the leave. Any employee share of the health care premiums shall be paid to the agency on a monthly basis during the term of the leave. If the employee fails to return to Agency employment after the expiration of the leave, for any reason other than the continuation, recurrence or onset of a serious health condition, or other circumstances beyond his/her control, he/she shall reimburse KCAO for premiums paid during the family care and medical leave. (cf. 4154/4254/4354 - Health and Welfare Benefits).

Duration of Leave:

Family care and medical leave shall not exceed twelve (12) normally scheduled workweeks during any twelve (12) month period. For eligible employees working more or less than five (5) days a week or working an alternative work schedule, the number of working days constituting twelve (12) weeks is calculated on a pro rata or proportional basis. The twelve (12) month period in which the twelve (12) weeks of leave entitlement occurs shall commence on the date the employee’s first family care or medical leave begins. The twelve (12) weeks of family care and medical leave to which an employee is entitled under state law shall run concurrently with the twelve (12) weeks of family care and medical leave to which an employee is entitled under federal law, except for any leave taken under federal law for disability on account of pregnancy, childbirth, or related medical condition. Leave taken for a birth, or placement for adoption or foster care must be initiated within one year of the birth or placement. Such leave does not need to be taken in one continuous period of time. The basic minimum duration of the leave for birth or placement of a child shall be two weeks. However, KCAO shall grant a request for leave of less than two weeks’ duration on any two occasions. (29 USC 2612; 2 CCR 7297.3) This

restriction shall apply whether or not the parents are married, not married, or registered domestic partners. (29 USC 2612; Government Code 12945.2).

Terms of Leave:

Except when the family or medical leave qualifies as a pregnancy disability leave, or when the family and medical leave is taken to care for a registered domestic partner, leave taken pursuant to the CFRA shall run concurrently with leave taken pursuant to the FMLA. The 12 month period of family care or medical leave shall coincide with the fiscal year. (29 CFR 825.200). During the period of family care or medical leave, the employee may use his/her accrued vacation leave, other accrued time off, or any other paid or unpaid time off negotiated with KCAO. Accrued sick leave may be used when the purpose of the family care and medical leave is one for which sick leave may be taken pursuant to collective bargaining agreements. (Government code 12945.2). If an employee takes a leave because of the employee's own serious health condition, the employee may substitute accrued sick leave during the period of the leave taken pursuant to this Administrative Policy.

Intermittent Leave/Reduced Leave Schedule:

Leave related to serious health condition of the employee or his/her child, parent or spouse may be taken intermittently or on a reduced leave schedule when medically necessary. In such a case, KCAO may require the employee to transfer temporarily to a different position for which he/she is qualified, with equivalent pay and benefits, and that could better accommodate recurring periods of leave. The alternate position need not consist of equivalent duties. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced leave schedule. (2 CCR 7297.3). Where the employee involved is an instructional employee and would be on leave for greater than 20 percent of the total number of working days in the leave period, the employee shall have the option of temporarily transferring to an available alternative position or taking leave for periods of a particular duration, not to exceed duration of the planned medical treatment. (29 USC 2618).

Advance Notice and Certifications:

If an employee learns of the need for family care or medical leave more than thirty (30) days before the leave is to begin, he/she shall give KCAO at least thirty (30) days advance notice. If the employee learns of the need for family care or medical leave fewer than thirty (30) days in advance, he/she shall provide such notice as soon as practicable. If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of KCAO. This scheduling shall be subject to the health care provider's approval.

Certifications:

An employee's request for leave to care for a child, spouse or parent of the employee who has a serious health condition or to care for a child, spouse or parent who has a serious health condition shall be supported by a certification from the health care provider of the person requiring care. This certification shall include:

- The date, if known, on which the serious health condition began; and
- The probable duration of the condition.
- In addition, if the request for leave is to care for a family member or designated person, the certification shall include an estimate of the amount of time the employee needs to care for the person requiring care, and a statement that the serious health condition warrants the participation of a family member to provide care during the period of the leave.
- If the request for leave is based on the employee's own serious health condition, the certification shall include a statement that, due to the serious health condition, the employee is unable to perform one or more essential functions of his/her job.
- If the employee is requesting leave for intermittent treatment or leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of the treatment and the expected duration of the leave.

KCAO shall not request any genetic information, as defined in 42 USC 2000ff, from any employee or his/her family member except as necessary to comply with a certification requirement for FMLA/CFRA leave purposes or with the prior written authorization of the employee. Any such genetic information received by the county office shall be kept confidential in accordance with the law. (42 USC 2000ff-1, 2000ff-5).

When an employee has provided sufficient medical certification to enable KCAO to determine whether the employee's leave request is FMLA-eligible, the Executive Director or designee shall notify the employee within five business days whether the leave is FMLA eligible. The Executive Director or designee may also retroactively designate leave as FMLA/CFRA as long as there is no individualized harm to the employee. (29 CFR 825.301). In any case in which KCAO has reason to doubt the validity of the certification provided to support an employee's request to take leave because of the employee's own serious health condition, KCAO may require that the employee obtain the opinion of a second and third health care provider consistent with state and federal law. If additional leave is needed when the time estimated by the health care provider expires, KCAO may require the employee to provide recertification in the manner specified in the preceding paragraph. (29 USC 2613; Government Code 12945.2). Employees who take family care and medical leave for their own serious health conditions shall present certification from their health care provider to the effect that they are able to resume work. The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.

KCAO may use a designated third party administrator at their discretion to assist with determining eligibility and the management of leaves.

Reinstatement/Non-Discrimination:

Upon granting an employee's request for family care or medical leave, KCAO shall guarantee to reinstate the employee in the same or a comparable position when the leave ends to the extent required by law.

Records:

The Administrative Services Director or designee shall maintain records pertaining to individual employees' use of family care and medical leave.

Service Member Family Leaves:

1. KCAO shall grant up to a total of 26 work weeks of leave during a single 12- month period to an employee to care for a covered service member who is his/her spouse, child, parent, or next of kin. (29 USC 2611, 4612). If the employee does not take the entire 26 weeks of leave entitlement within the 12 month period, the remaining amount of leave available is forfeited. The 12 month period begins on the first day of leave, regardless of how the 12 month period for other FMLA or CFRA leave is calculated.
2. Covered service member means a member of the Armed Forces, including a member of the National Guard or Reserves, who has suffered a serious injury or illness and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for that injury or illness. (29 USC 2611, 2612).
3. Next of kin means the nearest blood relative to that individual. (29 USC 2611, 2612).
4. Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611).
5. Serious injury or illness means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. (29 USC 2611).
6. The employee shall provide reasonable and practicable notice of the need for the leave when the necessity for the leave is foreseeable. (29 USC 2612).
7. The leave can be taken intermittently or on a reduced schedule when medically necessary.
8. When both spouses work for KCAO and both wish to take such a leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612).
9. During the period of service member leave, KCAO shall require the employee to use his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the county office. (29 USC 2612).
10. The first 12 weeks of this leave runs concurrently with CFRA leave if the injured service member is a spouse, parent or child of the eligible employee, but shall not run concurrently with CFRA if the service member is next of kin.

Military Family Leave Resulting from Qualifying Exigencies:

An eligible employee may take up to 12 work weeks of unpaid leave during the 12-month period established by KCAO while a covered military member is on covered active duty or call to covered active duty status for one or more qualifying exigencies. (29 USC 2612). Covered military member means an employee's spouse, registered domestic partner, son, daughter, or parent on covered active duty or call to covered active duty status. (29 CFR 825.126). Covered

active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or order to active duty. (29 USC 2611). Qualifying exigencies include time needed to: (29 CFR 825.126).

1. Address issues arising from short notice deployment (up to seven calendar days from the date of receipt of call or order of short notice deployment);
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the active duty or call to active duty status;
3. Arrange childcare or attend school activities arising from the active duty or call to active duty, such as arranging for alternative childcare, enrolling or transferring a child to a new school, or attending meetings;
4. Make or update financial and legal arrangements to address a covered military member's absence;
5. Attend counseling provided by someone other than a health care provider;
6. Spend time (up to five days of leave per instance) with a covered military member who is on short-term temporary rest and recuperation leave during deployment;
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings; or
8. Address any other event that the employee and KCAO agree is a qualifying exigency. The employee shall provide the Executive Director or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302).

An employee who is requesting such leave for the first time shall provide the Executive Director or designee with a copy of the covered military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Executive Director or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309. The employee's qualifying exigency leave may be taken on an intermittent or reduced leave schedule basis. (29 CFR 825.302).

Notifications:

The Executive Director or designee shall provide the following notifications about state and federal law related to FMLA/CFRA:

1. General Notice: Information explaining the provisions of the FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on KCAO premises, or electronically, and shall be included in employee handbooks. (29 USC 2619; 2 CCR 7297.9). The general notice shall also explain an employee's obligation to provide the Executive Director or designee with at least 30 days' notice of the need for the leave, when the need for the leave is reasonably foreseeable. (2 CCR 7297.4).
2. Eligibility Notice: When an employee requests leave or when the Executive Director or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Executive Director or designee shall, within five business days,

provide notification to the employee of his/her eligibility to take such leave. (29 CFR 825.300).

3. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Executive Director or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as appropriate: (29 CFR 825.300).
 - a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period if qualifying;
 - b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification;
 - c. The employee's right to substitute paid leave, whether KCAO will require substitution of paid leave, conditions related to any substitution, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave;
 - d. Any requirements for the employee to make any premium payments to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis;
 - e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave; or
 - f. The employee's potential liability for health insurance premiums paid by KCAO during the employee's unpaid FMLA leave should the employee not return to service after the leave.

Any time the information provided in the above notice changes, the Executive Director or Designee shall, within five (5) business days of his/her receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300).

4. Designation Notice: When the Executive Director or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, he/she shall, within five (5) business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (29 CFR 825.300). If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300).
5. If KCAO requires paid leave to be substituted for unpaid family care and medical leave, the notice shall so specify. If KCAO requires an employee to present a fitness-for-duty

certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. Any time the information provided in the designation notice changes, the Executive Director or designee shall, within five (5) business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300).

References:

FAMILY CODE

297-297.5 Rights, protections and benefits under law; registered domestic partners

300 Validity of marriage

GOVERNMENT CODE

12940 Unlawful employment practices

12945 Pregnancy; childbirth or related medical condition; unlawful practice

12945.1-12945.2 California Family Rights Act

CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 Sex discrimination: pregnancy and related medical conditions

7297.0-7297.11 Family care leave

UNITED STATES CODE, TITLE 1

7 Definition of marriage, spouse

UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993, as amended

UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 Family and Medical Leave Act of 1993

COURT DECISIONS

Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864

Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045

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