

Family And Medical Leave (FML) Policy

Attachment A

Revised May 1999

All California State University (CSU) employees are entitled to Family Care and Medical Leave (FML) in accordance with state and federal laws, CSU policy and collective bargaining agreements for represented employees. It is important to note that CSU policy in some circumstances is more generous than required under state and federal laws. For represented employees, the respective collective bargaining agreement may supercede some provisions of the CSU FML policy.

1. What is the purpose of Family Care and Medical Leave?

Congress enacted The Family and Medical Leave Act (FMLA) (20 United States Code section 2601) to provide workers with up to 12 weeks of leave time without risking the loss of their jobs. The FMLA mandates leave for eligible employees: to cover childbirth and newborn child care, for placement of a child with the employee for adoption or foster care, for those who become seriously ill, OR who have to be away from work to care for a sick relative. CSU employees are also covered by the California Family Rights Act (CFRA - Govt. Code 12945 (b)(2)) which mirrors the FMLA except in regards to pregnancy disability leaves.

2. Who is an eligible employee?

Under this CSU policy, all full-time and part-time employees (excluding student employees) employed for at least one academic year or 12 months (not necessarily continuously) preceding the leave are eligible. Note: CSU eliminated the 1,250 work hour requirement for full-time and part-time employees provided for under statute.

Please note: the definition of "employment" includes employment at all CSU campuses as well as other California state employment.

3. Are student employees eligible?

Yes. Student employees are eligible but have different eligibility criteria. Under the CSU policy, student employees must be employed at least one year (not necessarily continuously) **AND** must have worked at least 1,250 hours in the 12 months preceding the leave. Only Teaching Associates have any benefits for which the CSU pays premiums. Other student employees are entitled only to the unpaid leave and reinstatement rights under the law.

4. In what circumstances must leave be granted?

Employees are entitled to FML leave under a variety of circumstances:

- to care for a child following birth or placement with the employee for adoption or foster care,
- to care for the employee's spouse, child, or parent who has a serious health condition, and
- if the employee is unable to perform the essential functions of his/her own job due to a serious health condition.

The employee must initiate FML within twelve months of the date of birth or placement of a child.

A "*child*" includes a biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee stands in loco parentis. Normally, a child must be under age 18, but there is no age limit if s/he is incapable of self care because of a mental or physical disability as defined under the Americans with Disabilities Act.

A "*parent*" includes the employee's parent or parent in loco parentis, but not a parent-in-law.

A "*spouse*" includes a husband or wife as defined or recognized under state law. California does not currently recognize domestic partners or common law spouses.

A "*health care provider*" is defined very broadly to include doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, and Christian Science practitioners. Christian Science practitioners must be listed with the First Church of Christ in Boston, Massachusetts. All other providers must be authorized to practice under state law and must be performing within the scope of their practice. In addition, chiropractors are considered a health care provider only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.

A "*serious health condition*" is an illness, injury, impairment, or physical or mental condition that includes any one of the following: (1) any period of incapacity or treatment in connection with inpatient care in a hospital, hospice, or residential medical care facility; or (2) incapacity requiring absence from work, school, or other regular daily activities and requiring continuing treatment by a health care provider.

5. What is the length of FML leave permitted under the CSU policy?

The maximum leave is 12 weeks in a 12-month period. The CSU calculates the 12-month period on a forward rolling basis: the period is measured forward from the date the employee's first FML leave begins.

Family and Medical Leave entitlements under both federal and state regulations run concurrently **except** for pregnancy disability leave which is addressed later,

All rights to FML terminate upon separation from employment (e.g., expiration of temporary appointment, resignation, layoff, etc.).

6. Under the CSU policy, do any special FML rules apply if both spouses are employed by the same campus?

No. The CSU offers a more generous benefit than that provided for under the law. It offers both employees full FML eligibility.

7. Is Family Medical Leave compensated under the CSU policy?

No. However, consistent with state and federal laws, the CSU requires employees to exhaust their personal holiday and any accumulated vacation and CTO leave credits prior to beginning unpaid leave. Refer to the appropriate MOU, as treatment of vacation for represented employees may differ.

8. How does the use of sick leave affect FML?

Sick leave is considered paid leave. For an employee who accrues sick leave and charges sick leave for his/her own illness that meets the definition for FML coverage, the sick leave should be designated as and tracked against the FML 12-week entitlement. As appropriate, the use of sick leave to care for a family member may be mutually agreed to by the employee and the appropriate administrator and charged against the FML entitlement. Refer to the appropriate MOU as use of sick leave to care for family members may differ.

9. How are other leaves and disability benefits integrated with FML?

FML runs concurrently with most leave programs. For example, an employee who takes 12 months of maternity leave under Education Code Section 89519 would not be eligible for any additional FML leave. However, an employee eligible for 10 weeks of Nonindustrial Disability Insurance (NDI) leave due to a heart attack would be eligible for two more weeks of FML within that year. Industrial Disability Leave (IDL) and Temporary Disability (TD) due to a serious work-related health condition would be treated similarly. All of these examples count against the employee's FML entitlement.

However, state law requires special treatment for pregnancy disability leave under Government Code Section 12945(b)(2). In California, FML does not track against pregnancy disability leave. As a result, if the employee takes all or part of the maximum four months under the Government Code Section 12945(b)(2) entitlement, she will also be entitled to 12 weeks of FML leave for the birth of her child or for her own serious health condition under the FML entitlement.

10. Can FML leave be taken on an intermittent or reduced work schedule basis?

Leave for a serious health condition must be permitted on either an intermittent or reduced work schedule when medically necessary. State law permits leave on an intermittent basis for the birth/placement and/or care of a child. Although not mandated by law, requests for a reduced work schedule due to the birth or placement of a child may be approved at the discretion of the campus.

For intermittent leave or leave on a reduced work schedule, there must be a medical requirement for that type of leave (as distinguished from voluntary treatments and procedures) and such medical need must best be accommodated through an intermittent or reduced work schedule. Employees needing intermittent FML or a reduced work schedule must try to schedule leave to avoid disrupting campus operations. (See question #12 for issues specific to Fair Labor Standards Act (FLSA) exempt employees.)

Subject to applicable bargaining agreements and laws such as the Americans with Disabilities Act, the campus may temporarily transfer an employee needing intermittent or reduced schedule leave to an "alternative position" to better accommodate the reduced leave schedule. The alternative position must have equivalent pay and benefits (including accumulation of seniority points), but does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced work schedule leave. However, the campus may not require the employee to take more leave than is medically necessary. For example, an employee requiring a half-time work schedule may not be forced to accept an alternative position with fewer work hours.

11. How is the intermittent or reduced work schedule processed for FML?

With an intermittent or reduced work schedule, only the amount of leave actually taken may be counted against the maximum leave entitlement. For example, if a full-time employee who normally works eight hours per day is medically required to work only four hours per day, then the employee would be using only half a week of FML during each reduced work schedule week. In this example, the 12-week FML entitlement would become 24 weeks at half-time.

12. Are exempt employees able to use intermittent or reduced work schedule FML?

Yes, and there is no conflict with FLSA when the campus is required by law to grant the FML. In such a case, there is a special exception to FLSA rules for family and medical leave. Under the law, an exempt employee may use intermittent or reduced work schedule leave during FML only if s/he has worked at least 1,250 hours in the year prior to the leave.

However, CSU policy is more generous than required by law and may grant FML to an employee for whom we are not mandated to grant it (for example, a person with less than 1,250 hours worked in the preceding 12 months).

FLSA allows for partial day docks or use of leave credits for absences under the FMLA. In order to standardize our attendance-reporting procedures under CSU policy, partial day absences while on FML are to be charged against an exempt employee's accrued leave credits. However, if an exempt employee exhausts his/her accrued leave and still has FML time, the employee is to receive regular pay.

Please note: There is no change in CSU attendance policy for exempt employees not on FML. Exempt employees continue to report regular absences in full work day increments.

13. What benefits must continue during FML?

If an employee has benefits, all benefits automatically continue during any paid leave. During any unpaid remainder of the 12 weeks of the FML entitlement, the CSU pays its normal share of any medical premiums pursuant to law. In addition, CSU will continue to pay its normal share of any premiums for dental insurance and vision coverage. An account receivable will be set up for the employee's share of the premium, if any. If the employee wishes to discontinue medical coverage during the unpaid leave, the CSU will also suspend its medical premium payments but dental and vision will be continued. Suspended medical coverage will be reinstated upon return to active status.

If the employee does not return from FML, the CSU may recover premiums paid during the unpaid portion of the leave, unless the reason the employee is not returning is due to a serious health condition of the employee, spouse, child or parent, or is due to some other reason beyond the employee's control. Each case must be reviewed on an individual basis. Recovery of premiums will also be waived if the employee retires at the end of the leave.

14. How does FML affect seniority?

Permanent employees earn seniority points during both the paid and unpaid portions of FML.

15. Is the employee required to notify the campus of an impending FML?

The following are general guidelines, but please refer to the appropriate MOU for represented employees as timeframes may vary:

An employee expecting a new child (either by birth or placement) should provide at least 30 days notice to the campus before commencement of the leave. However, if the leave must begin in less than 30 days, the employee must provide as much notice as possible.

An employee who takes a foreseeable leave based on planned medical treatment must make a reasonable effort to schedule the treatment, subject to the health care provider's approval, so as not to unduly disrupt campus operations. The employee should provide at least 30 days advance notice; if that is not possible, the employee must provide as much notice as possible.

If the FML is not foreseeable, the employee should inform the campus within five days of learning of the need for the leave.

16. When can the employer ask about the circumstances of an employee's time off to determine whether it should be designated as leave time under FMLA?

When the employer becomes aware that an employee has taken, or intends to take, three or more days away from work for illness, or to care for a family member who is ill, inquiry can be made about the circumstances to determine whether the time off should be designated as FML.

17. Is medical certification required for leave?

General guidelines are provided below, but please refer to the appropriate MOU for represented employees. The MOU supersedes this policy if it is more protective of employee rights.

The campus may require a medical certification from an employee seeking leave for the serious health condition of either the employee or family member. Certification may be required to be submitted within 15 calendar days of requesting the information. If the employee does not comply, the campus may delay approval of the leave until the requirement is met, unless it is not practicable for the employee to comply. Subsequent recertifications may be required on a reasonable basis but not more frequently than every 30 days except under unusual circumstances.

The campus can require the certification from a health care provider to include the date on which the condition commenced, the probable duration of the condition, and appropriate medical facts regarding the condition. The campus may also require a statement that the employee is needed to care for the family member, or if the employee is sick, a statement that the employee is unable to perform his/her job. If the employee requests an intermittent leave or a reduced work schedule, the campus may require that the certification include a statement of the medical necessity for the intermittent or reduced work schedule. The campus may also require an estimate of the employee's modified work schedule and the expected dates and duration of treatment.

If the campus doubts the certification, regulations permit the campus to require the employee to obtain a second opinion from another health care provider (at campus expense) prior to granting FML. If the first and second opinions differ, the campus may require a third (campus-paid) opinion from a health care provider selected jointly by the employer and the employee. The third opinion is final and binding.

18. Who designates the time off as FML?

An employee can make a request for FML but it is the campus' responsibility to determine whether the leave qualifies as FML, to designate it as such, and to provide the employee with notice of its decision.

19. What type of notice must be given to the employee informing him/her that leave is being counted as FML?

Notice to the employee that the leave time will be counted against the 12 weeks of FML entitlement can be given orally or in writing by the campus. If the notice is oral, it must be confirmed in writing no later than the next pay period. However, if the end of the pay period is less than a week after the oral notice, the written notice may be given in the subsequent pay period. The written notice is to include all of the specific expectations and obligations of the employee and any consequences for failing to satisfy these obligations. FML related forms and policy statements should accompany the notice. Attachment D is a sample notice and leave request that can be modified to meet campus needs.

20. When does the FML time begin to run?

FML time begins to run after the employee has requested and is granted a FML, OR the first day after the campus notifies the employee that the time off is being designated as FML.

21. Can a campus apply FML retroactively to time already taken?

No, unless the employer did not learn of the FML qualifying reason for the leave until after the employee is already off work. In that case, the campus has two days from learning of the qualifying reason in which to notify the employee that the leave is being considered as FML.

22. Must an employee report to the campus during FML?

The campus may request that an employee report periodically on his/her status and intent to return to work. However, current law does not permit imposition of any penalties if the employee fails to comply.

23. What are the employee's rights to reemployment?

An employee on FML is entitled to return to the same position or another position with equivalent benefits, pay, and conditions of employment. The employee on leave has no different rights than if he/she were actively at work; therefore, the campus may be able to deny reinstatement if the job is eliminated due to layoff. Benefits accrued prior to the leave cannot be taken away and the leave does not constitute a break in service for seniority or benefits.

If the employee cannot perform the essential functions of the job, the campus has no obligation under FMLA to create or find another position for the employee. However, other laws such as workers' compensation and the Americans with Disabilities Act must be considered prior to taking any personnel action.

24. Can an employer fill the empty position while the employee is out on FML?

Yes. However, the person hired to fill the empty position must be hired on a temporary basis, so that the job is available to be reclaimed by the absent employee.

25. What happens when the FML entitlement is exhausted but the employee is not able to return to work?

Under the law, an employer is obligated to hold an employee's job open for a "reasonable time" after the FMLA time is exhausted. Thereafter, the employee can be medically terminated or retired with disability benefits, if eligible. The determination of what is "reasonable" must be reached with reference to the circumstances of each particular case - e.g., whether the employer has reason to believe that the employee will actually be capable of returning to work, whether the employee has any remaining paid benefits, etc.

26. What are the campus' FML communication requirements?

Campuses are required to post in conspicuous places where employees are employed a notice explaining the FMLA's provisions and provide information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division, Department of Labor. Rights under FMLA and CSU FML policy should also be included in any employee handbook or other guidelines outlining leave programs. FMLA notices may be obtained from local offices of the Wage and Hour Division.

Because CSU policy in some circumstances is more generous than required under state and federal law, it is suggested that campuses make reference to this fact in their written materials.

**DEFINITIONS
FROM THE FEDERAL FAMILY AND
MEDICAL LEAVE ACT
REGULATIONS**

ADA means the Americans With Disabilities Act (42 USC 12101 et seq.)

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, As Amended (Pub.L. 99-272, tide X, section 10002; 100 Stat 227; 29 U.S.C. 1161-1168).

Commerce and *industry or activity affecting commerce* mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce" as defined in sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142(1) and (3).

Continuing treatment means: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

Subpart H - Definitions

§ 825.800 Definitions.

For purposes of this part:

Act or *FMLA* means the Family and Medical Leave Act of 1993, Public Law 103-3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.)

§ 825.800

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Eligible employee means:

(1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence; and

(2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250 hours of service with such employer during the previous 12-month period; and

(3) Who is employed in any State of the United States, the District of Columbia or any Territories or possession of the United States.

(4) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; and

(5) Excludes any employee of the U.S. Senate or the U.S. House of Representatives covered under title V of the FMLA; and

(6) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees

is also fewer than 50.

(7) Excludes any employee employed in any country other than the United States or any Territory or possession of the United States.

Employ means to suffer or permit to work.

Employee has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

(1) The term "employee" means any individual employed by an employer;

(2) In the case of an individual employed by a public agency, "employee" means-

(i) Any individual employed by the Government of the United States-

(A) As a civilian in the military departments (as defined in section 102 of Title 5, United States Code),

(B) In any executive agency (as defined in section 105 of Title 5, United States Code), excluding any Federal officer or employee covered under subchapter V of chapter 63 of Title 5, United States Code,

(C) In any unit of the legislative or judicial branch of the Government which has positions in the competitive service, excluding any employee of the U.S. Senate or U.S. House of Representatives who is covered under Title V of FMLA,

(D) In a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(ii) Any individual employed by the United States Postal Service or the Postal Rate Commission; and

(iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual-

(A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and

(B) who-

(1) Holds a public elective office of that State, political subdivision, or agency,

(2) Is selected by the holder of such an office to be a member of his personal staff,

(3) Is appointed by such an officeholder to serve on a policymaking level,

(4) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or

(5) Is an employee in the legislative branch or legislative body of that State, political subdivision, or

§ 825.800

agency and is not employed by the legislative library of such State, political subdivision, or agency.

Employee employed in an instructional capacity.
See Teacher.

Employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes-

- (1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;
- (2) Any successor in interest of an employer; and
- (3) Any public agency.

Employment benefits means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan" as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees. For purposes of FMLA the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

- (1) no contributions are made by the employer;
- (2) participation in the program is completely voluntary for employees;
- (3) the sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll

deductions and to remit them to the insurer;

(4) the employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

§ 825.800

Instructional employee: See *Teacher*.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See *Physical or mental disability*.

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

Person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Part 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

Public agency means the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency. Under section 101(5)(B) of the Act, a public agency is considered to be a "person" engaged in commerce or in an industry or activity affecting commerce within the meaning of the Act.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition entitling an employee to FMLA leave means:

(1) an illness, injury, impairment, or physical or mental condition that involves:

(i) **Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of *incapacity* (for purposes of this section, defined to mean inability to work-, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(ii) **Continuing treatment** by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:

(A) A period of *incapacity* (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, *etc.*).

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but

§ 825.800

(4) Substance abuse may be a serious health condition

need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of paragraph (1) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (1)(ii)(A)(2) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.*, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.*, oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.*, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under paragraphs (1)(ii)(B) or (C) of this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parents*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or **employee employed in an instructional capacity**, or **instructional employee**) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

Your Rights Under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Reasons for Taking Leave:

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

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification. To support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any

practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

WH Publication 1420
June 1993

SAMPLE

Family And Medical Leave (FML) Notice And Request Form

Notice to the Employee: If the leave you are requesting meets federal and state Family and Medical Leave (FML) requirements, you should be aware of the following rights and obligations:

- The period of this leave will be counted as federal/state Family and Medical Leave in determining your future eligibility for additional FML.
- If your leave is due to a serious health condition (either your own, your spouse's, parent's or child's), you must provide medical certification within 15 days. Approval of your leave may be withheld until you comply with certification requirements. Prior to returning to work, you will be required to present a "fitness-for-duty" certificate if the leave is due to your own health condition.
- Unless you are covered by a bargaining agreement which states otherwise, your personal holiday and any accumulated vacation and CTO leave credits will be used prior to placing you on unpaid leave of absence. If appropriate, accumulated sick leave may be used as mutually agreed upon by you and the appropriate administrator.
- For the period of unpaid FML, the CSU will continue to pay its portion of your medical, dental and vision premiums. An accounts receivable will be established for any employee premiums required during unpaid leave. If you wish to discontinue medical coverage during the unpaid leave, you may reinstate it upon return.
- If you do not return from FML, the CSU will require you to reimburse it for medical, dental and vision premiums paid on your behalf during the unpaid portion of your leave. However, no reimbursement will be required if you do not return because of a serious health condition or if you are unable to return due to circumstances which are outside of your control.
- Upon your return to work, you have the right to reinstatement to the same position or to another position with equivalent benefits, pay and conditions of employment. However, you will have no different rights than if you were actively at work rather than on leave; this exception could affect your reinstatement in the case of layoffs, for example.

Employee Leave Request: I request FML for the following reason (check one):

- Birth, adoption, foster care placement Date of action: _____
- Care for family member Relationship _____
- Own illness

Last day worked: _____ Expected return to work date: _____

Continue these insurance (circle yes or no for each plan):
Medical (Yes/No) Dental (Yes/No) Vision (Yes/No)

Employee Name
(Please print): _____

Signature: _____ Date: _____

Family And Medical Leave (FML)

Recordkeeping and Processing Instructions

Recordkeeping Requirements:

Each campus must keep records of compliance with Family Medical Leave (FML) leave requirements. The Department of Labor may request such records annually or more frequently if there is reasonable cause to believe a campus is violating the requirements.

At a minimum, campuses need to track the following types of data: employee payroll data; the dates leave is taken; information on intermittent or reduced work schedule leaves; copies of any written notices, policies or practices; benefit premium payments; and records of any dispute regarding designation of an employee's leave as FML.

Please note that payroll and employment history records will require supplementation in order to determine complete dates and duration of leave because most employees will use accrued paid leave credits for part of the leave. Such paid leave is not reflected on the employment history database but does count against the maximum allowable FML.

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members must be treated as confidential medical records. Like all other medical records obtained by the campus, they must be maintained in separate files.

Payroll Processing:

When the duration of the *unpaid* leave requires a leave of absence, process an S45 transaction. This transaction is used for parental and/or family and medical leave. Indicate "**FML**" in Item 215.

For reduced work schedule leaves, process an S43 transaction with a detailed transaction code of 76. Indicate "**FML**" in Item 215. Refer to the CSU PIMS manual for additional information regarding these transactions.

Special Processing for Benefits:

To continue CSU-paid medical, dental and vision benefits during unpaid portions of the 12 weeks maximum leave under the FML law, the campus must process a Payroll Adjustment Notice Form STD. 674 for each pay period. Please be sure that the employee has not or will not have these deductions withheld for the pay period involved via a partial payment or a disability payment. If an employee medical contribution exists, the SCO will establish an agency collection account receivable to recover the employee's share of the medical premium.

Family Medical Leave Act Policy

California State University, Fresno

May 7, 1999

Policy No. G-42.18

If no employee contribution exists, the SCO will process the premiums with a non-pay transaction. Under certain circumstances, if an employee fails to return from leave, the campus may recover CSU premiums paid during unpaid periods of FML. Complete a form 674 document for each pay period involved in order to change the account receivable to collect the full premium, rather than just the employee's share.

Refer to the State Controller's Payroll Letter #93-27, CSU Only, for processing instructions.