



REGIONAL
GOVERNMENT
SERVICES

SERVING PUBLIC AGENCIES SINCE 2002

2023 CFRA GUIDEBOOK

Protected Medical Leave for Small Public Agencies

A row of dark blue silhouettes representing a diverse group of people. From left to right: a small child, a man in a hat, a man in a wheelchair, a woman holding a baby, a man with a cane, a woman, a man and woman holding hands, a man with a cane, and a pregnant woman.

CALIFORNIA FAMILY RIGHTS ACT

CONTENTS

GETTING STARTED	1
HOW THIS GUIDEBOOK IS ORGANIZED	2
RELATED MATTERS THIS GUIDEBOOK DOESN'T COVER.....	3
FOUNDATIONAL INFORMATION	4
PROTECTED LEAVE FUNDAMENTALS FOR EVERYONE	5
OVERVIEW	5
IMPORTANT CONSIDERATIONS FOR USING PROTECTED LEAVE	5
CFRA AND PDL	7
PROTECTED LEAVE FLOWCHARTS	8
CFRA LEAVE PROCESS.....	8
PDL LEAVE PROCESS.....	9
CFRA BONDING LEAVE PROCESS	10
CFRA LEAVE FOR MILITARY FAMILIES	11
BENEFITS DURING PROTECTED LEAVE.....	13
COMMUNICATION & PROBLEM-SOLVING FOR ALL SUPERVISORS.....	16
UNDERSTANDING THE JOB AND PLANNING AHEAD	16
WORK NEEDS DURING EMPLOYEE LEAVES	16
IDENTIFYING AND TALKING ABOUT CFRA NEEDS	17
WHEN SHOULD EMPLOYERS NOTIFY EMPLOYEES OF CFRA ELIGIBILITY?.....	18
TALKING TO EMPLOYEES ABOUT PROTECTED MEDICAL LEAVE	19
INFORMATION FOR LEAVE ADMINISTRATORS	25
PROTECTED LEAVE POLICY - REVIEW AND UPDATE	25
FAQ'S ABOUT PROTECTED LEAVE POLICY.....	26
OTHER POLICIES - REVIEW AND UPDATE.....	27
EMPLOYER-PROVIDED PAID LEAVE BENEFITS	28
HEALTH AND WELLNESS INSURANCE BENEFITS PROGRAMS	28
INCOME REPLACEMENT PROGRAMS	28
IMPACTS OF OTHER ORGANIZATIONAL ISSUES	29
RGS' BEST PRACTICE RECOMMENDATIONS FOR LEAVE ADMINISTRATORS.....	30
GETTING READY: A TO-DO LIST	32

GETTING STARTED

If your agency has had 5 or more employees for at least 20 calendar weeks in the current or preceding calendar year, we welcome you to the world of California Family Rights Act (CFRA) leave. CFRA provides eligible employees with the right to take up to 12 weeks of unpaid leave from work to care for themselves or their family members with a serious health condition, to respond to a “qualifying exigency” for a military family member, or to bond with a new child. If you have never administered CFRA leave, this guidebook will help you understand the basic process.

In this guidebook, you will find a road map to the requirements associated with protected leaves, and links to templates and other resources to help you comply with legal requirements for administering leaves. You will also find guidance on: 1) the organizational practices, policy reviews and problem-solving conversations that will be needed to correctly integrate this new law into your existing systems; 2) help understanding what benefits to maintain and how employees may get paid during an unpaid leave; and 3) useful messaging and communications tools you can use to help your whole organization understand CFRA leave.

This guidebook is intended to provide you with a basic toolkit and does not address all the potential variation and complexity that occurs when the need for leave is encountered. ALWAYS seek legal advice from your agency’s employment counsel before adopting employment policies and programs.

This guidebook will also provide you with information and tools about Pregnancy Disability Leave (PDL). Public agencies have been required to provide this protected leave for employees disabled by pregnancy since 2012, as specifically and separately described in California’s Fair Employment and Housing Act. If you have been administering PDL already, this guidebook provides information on added CFRA rights and responsibilities in this situation. If you have not, this guidebook will help you navigate the administration of both leaves.

Effective leave management requires an informed and equipped administrator, supervisory communication and problem-solving tools, and educated and engaged employees. Leave management is a group activity. This is a challenging issue—and like most challenges, if handled with good communication, good faith, and collaborative effort, can result in win-win outcomes.

RGS recommends that each agency handle this process centrally, with a single administrator responsible for leave management. This will allow for as much consistency as possible in a highly variable and dynamic process. Consistency is important for fairness and equity for all employees, as well as for avoiding inadvertent discrimination. It is important, however, to understand that you cannot treat employees identically. Medical situations vary, as do family needs. Every situation is unique; and it is essential that you follow a thorough and consistent process in which you:

- Ask appropriate questions and collect adequate and relevant information.
- Analyze and plan the interaction of leave, benefits, pay and more.
- Problem solve with the employee, benefit providers, claims adjusters, and possibly medical providers too.

There are some **BASIC PRINCIPLES** that will help you successfully navigate these requirements.

1. Treat employees with respect and kindness. Many of the situations you will encounter are sensitive and difficult for the employee to handle.
2. Maintain confidentiality to the greatest extent possible.
3. Assume the good intentions of the employee in each situation. Life happened to them and they are generally trying to cope as best as they can. Remember that people with an illness, their own or a family member's, are under great stress.
4. Make this process a partnership between the employer and the employee.

It's also important to understand, define and integrate your organizational approach. CFRA is an unpaid leave, with benefits maintenance and equivalent job return requirements. Your agency has a unique set of fringe benefits, paid leave programs, income replacement insurances, unpaid leave policies, bargaining agreements, job descriptions and more—all of which are relevant to properly meeting the law's requirements. You will undoubtedly need to review many of these elements to ensure that they connect appropriately with each other, and that your policies are not contradictory and do not discriminate against employees who request CFRA leave.

HOW THIS GUIDEBOOK IS ORGANIZED

Protected leave administration is complex. To keep it as simple as possible, much of the information is presented in a series of "infographics", a concise and coherent map guiding you to effective CFRA implementation. Added narrative will connect the infographics—and detailed administrator templates and resources are provided through linked documents for the use of the Agency's Designated Leave Administrator. Each infographic can also be used as a handout, informational posting, and/or training resource in your organization—mix and match to meet your agency's needs.

RELATED MATTERS THIS GUIDEBOOK DOESN'T COVER

This guidebook focuses on the basic processes associated with CFRA and PDL compliance. There are many related laws which may also impact your policies and leave administration. Consult with employment counsel about your agency's additional obligations. Here are some of the related laws:

- **Family Medical Leave Act:** Although agencies with fewer than 50 employees do not have compliance requirements, CFRA was designed to use many of the concepts and definitions in this federal law, so you may find it (and associated guidance documents) a useful resource. And if your agency is anticipating growth to a 50+ employee count, you will need to prepare for significant additional protected leave obligations.
- **Healthy Workplaces, Healthy Families Act of 2014:** A minimum amount of paid sick leave is required, and this leave can be used for many purposes—some CFRA-qualifying, some not. If you have not yet clarified your policies around this mandatory sick leave, and any additional paid sick leave benefit your agency may provide, now is a good time to do so. Use of paid sick leave for family (not personal) illness is also mandated by CA Labor Code 233, "Kin Care".
- **Other protected leaves,** which may involve use of paid sick leave and/or CFRA protections, include domestic violence leave, organ donor leave, and leave as a disability accommodation.
- **State Disability Insurance/Paid Family Leave:** While these programs are not mandatory for public agencies, agencies who choose to participate are subject to any additional laws specific to these programs.
- **Workers' Compensation Absences:** Except for public safety employees (RGS recommends you consult employment counsel if you have employees covered by Labor Code 4850), workers' compensation leave under CFRA is generally treated as an "employee health condition", with wage replacement mandated via insurance. Please note that the administration of the insurance claim through your third-party administrator does not fulfill your employer obligations under CFRA or any other law; nor does it necessarily meet your policy or MOU obligations. The TPA is managing an insurance claim for medical treatment costs and wage loss—the employer must manage the protected leave.
- **COVID-specific paid leaves,** either state or federal. It is unclear what will happen with these special leave laws as the pandemic continues. RGS also reminds you to check local ordinances that may provide paid leave for COVID. The Department of Industrial Relations provides up to date information on leave provisions here: <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

FOUNDATIONAL INFORMATION

Good leave management practices rely on four foundational sources of information:

1. Job descriptions. Effective job descriptions are essential for medical providers to adequately evaluate the intersection of an employee's medical needs with the demands of a job. They are equally important for supervisors to use to determine how to cross-train employees, hire temporary staff, and/or otherwise build workforce resilience to enable operational continuity during leave.
2. Policies. Clear and complete policy language will guide both employees and leave administrators through this complex process, ensuring fair treatment, responsible participation, and a process that is solution focused.
3. Medical provider information guides all parties in understanding the employee's needs in the medical leave situation. Supervisors and managers must rely on the input of a qualified provider, not on the employee's or their own assessment of needs. Obviously, this information cannot be pre-planned, and will vary in each situation.
 - a. When medical information is needed, it is important to understand the difference between a *certification* request and a *clarification* request. Certification is a legally-controlled process in which the medical provider verifies the medically-based need of an employee for leave or other workplace modifications, and the duration of such need.
 - b. If information about the need described is incomplete or vague—requests for clarification are appropriate. Clarification should be related to the ability to manage workplace impacts, such as anticipated frequency/duration of intermittent absences.
 - c. It is important to have a single leave administrator seek medical provider input in order to ensure the appropriateness of the request. Note that sometimes managerial clarity cannot be obtained—the qualifying medical situations may not be clear. It is not appropriate or lawful for employers to challenge the certified need.
 - d. Employers should always immediately consult legal counsel if there are questions about the validity of a medical certification or evidence-based concerns about fraud or abuse.
 - e. CFRA leave is also available for “qualifying exigencies” for military families. Military orders are analogous to medical provider information for this situation.
4. Ongoing communication between the employer and the employee about the employee's evolving need for leave and/or modified work AND the employer's responses to expressed needs. Ideally, this communication is not limited to emails but is genuinely interactive and focused on obtaining clarity and resolving issues.

PROTECTED LEAVE FUNDAMENTALS FOR EVERYONE

OVERVIEW

The following one-page overview provides essential information on BOTH CFRA and PDL protected leave: WHO is covered, WHY leave may be taken, and WHAT must be protected during the leave.

In addition, three separate flowcharts are included to help you map the process, make appropriate decisions and identify correct documentation for CFRA medical leave, PDL and CFRA bonding leave. Templates for the notices and certifications described in the flowcharts are provided for you [HERE](#).

CFRA also provides for employee leave associated with a military family member's "qualifying exigency". No flowchart is provided for "qualifying exigency" leave for military families—a chart listing key reasons for "exigency" is provided. This process follows the same sequence as bonding leave, except that military orders rather than medical certifications are the key document an employee should provide.

- This leave does not apply when the employee is the military serviceperson. Employment rights of employees participating in military duties are defined in California's Military and Veterans Code 389 et seq., and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).
- California's definition of "qualifying exigencies" can be found in the Unemployment Insurance code, Section 3302.2:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=UI§ionNum=3302.2
- Because these situations are so variable, the code allows for a mutual agreement on issues not listed. Be sure to document any such mutual agreements!

IMPORTANT CONSIDERATIONS FOR USING PROTECTED LEAVE

1. For CFRA, an agency with 5 or more employees is a covered employer. In addition, individual employees must be eligible. An eligible employee has:
 - a. Worked for the agency for at least 12 total months; AND has
 - b. Worked for at least 1,250 hours in the 12 months prior to taking leave.
2. Leave is "contingent", meaning employees must demonstrate that they are experiencing the situations and/or family relationships described. Failure to do so

means that leave can properly be denied; or that leave granted by an employer is at the employer's discretion and not subject to the protections provided by law.

3. Leave is unpaid. The legal right is to absence from work with benefit and job retention protections—not to pay. Income during a CFRA leave is based on local paid leave policies, and eligibility for income replacement insurances.
 - a. Employers are not typically required to provide a range of paid leaves; except that all employees should accrue some paid sick leave, as employers are required by California law to provide minimal amounts.
 - b. CFRA defers to local leave paid policy; as does PDL with the exception of *not* mandating the use of certain personal leave, if provided.
 - c. Compensatory time off is actually earned overtime, not an employer-provided leave bank. This distinction may limit an employer's abilities to direct the use of this resource.
4. Medical leaves are guided by medical evidence, not by the preferences of either the employer or the employee. If medical guidance is unclear as to whether or how an employee should participate in work activities, more medical guidance should be sought.
5. Unless an employee is subject to Labor Code 4850 (public safety), both industrial and non-industrial illness/injury are CFRA-qualifying. Temporary Total Disability (TTD) payments are a form of income replacement insurance, and the management of a worker's compensation claim does not replace either the employer or the employee's responsibilities under CFRA.
6. Even if an employee is ineligible for protected leave, employers may be required to consider granting leaves as a form of accommodation required by state and federal disability laws. Consult legal employment counsel for guidance on setting the terms of such leaves.
7. Maintenance of benefits in a "group health plan" is required. A chart showing the types of benefits which may be maintained follows this section. The definition of what is/isn't in a group health plan may vary; input from benefit brokers and legal counsel is advised to determine each agency's set of benefits to maintain during protected leave.
8. Beginning with identification of a need for leave, and throughout the leave process, both employees and employers should expect to have an honest, sensitive and interactive dialog about the leave plan, return to work plan, and associated pay and benefit issues.

RGS CFRA and PDL

protected medical leave for small employers

WHICH EMPLOYEES ARE ELIGIBLE?

CFRA:

- Individuals employed by an employer with 5 or more employees, for 12 months within the past 7 years, who have worked 1,250 hours in the 12 months prior to taking the leave.



PDL:

- All individuals with a pregnancy disability, regardless of length of service or hours worked in the past year.

WHAT IS THE ENTITLEMENT?

CFRA:

- Up to 12 weeks of unpaid family and medical leave in a 12-month period.
- Continuation of "group health plan" benefits.
- Right to reinstatement to the same or comparable job.



PDL:

- Up to 17 1/3 weeks of unpaid pregnancy disability leave.
- Continuation of "group health plan" benefits.
- Right to reinstatement to the same or comparable job.

FOR WHAT REASONS MAY EMPLOYEES TAKE LEAVE?

CFRA:

- Own serious health condition. A family member or designated person's serious health condition.
- Birth or placement of a child (bonding leave).
- Family member's needs related military deployment.



PDL:

- When disabled by pregnancy, including: prenatal or postnatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, loss or end of pregnancy, or any other related medical condition.

WHEN CAN EMPLOYEES TAKE BONDING LEAVE?

CFRA:

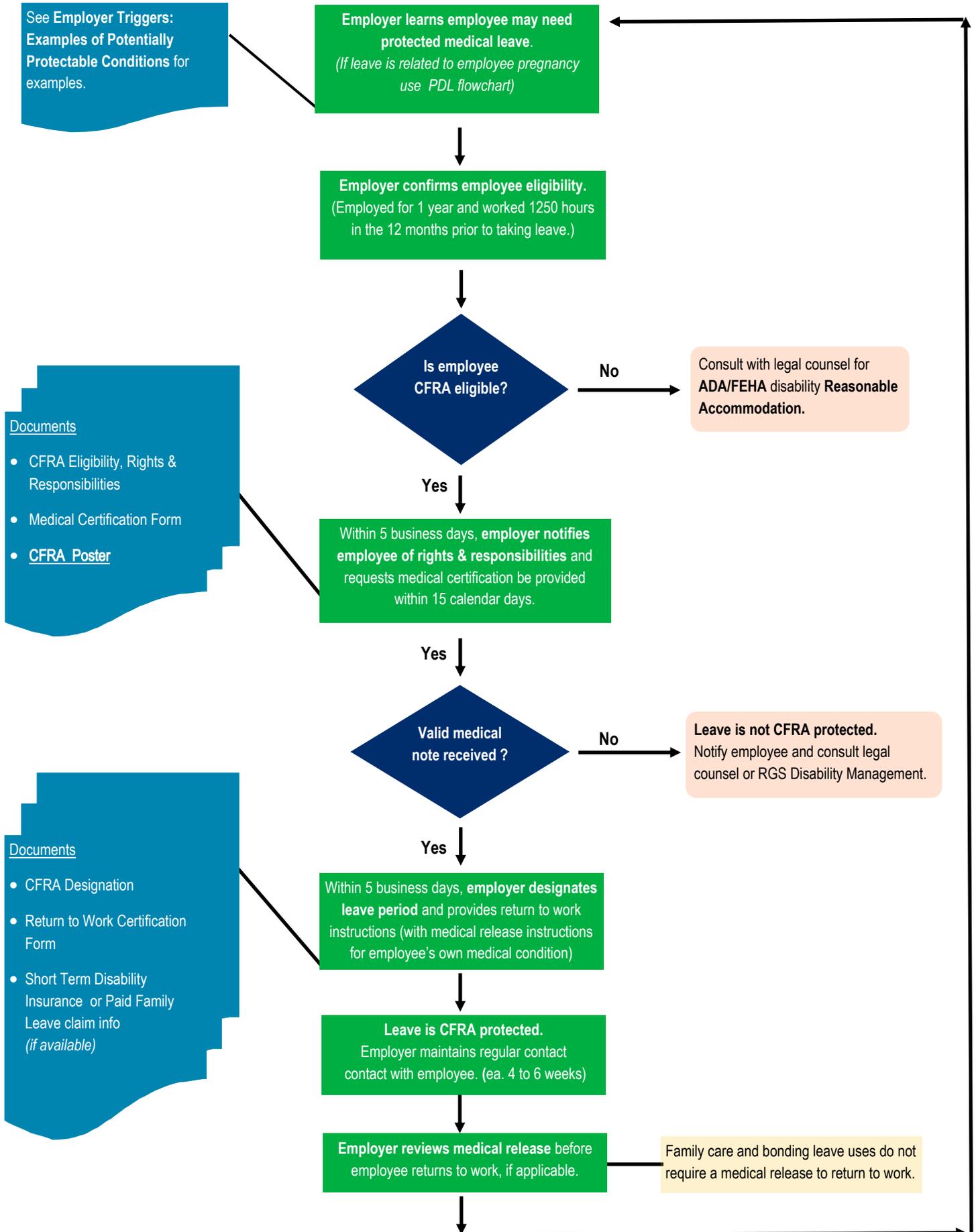
- Both parents may request Bonding Leave within the first year of the child's birth or placement.



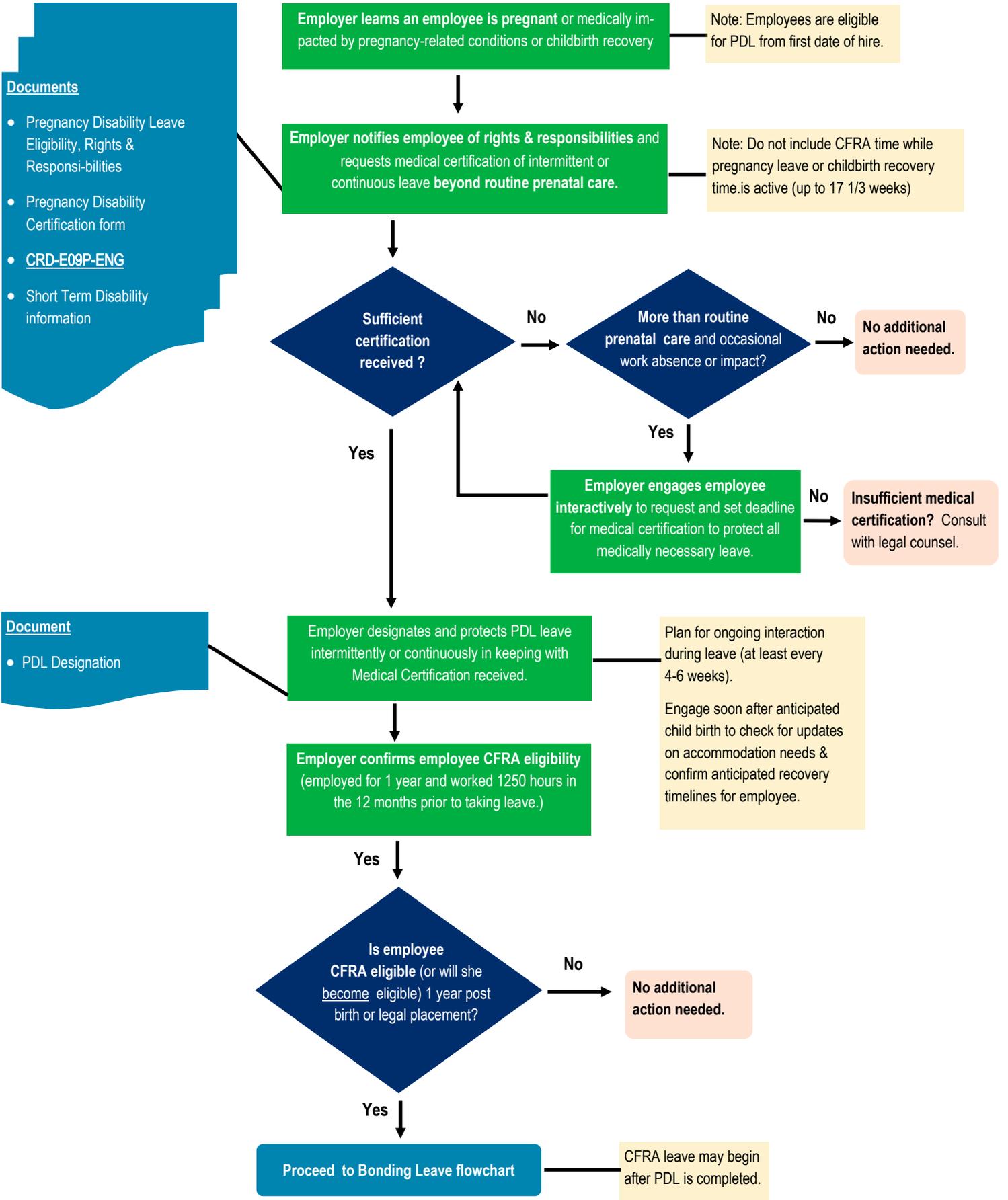
PDL:

- After Pregnancy Disability Leave has been completed, and if they are eligible for CFRA, employees may request Bonding Leave.

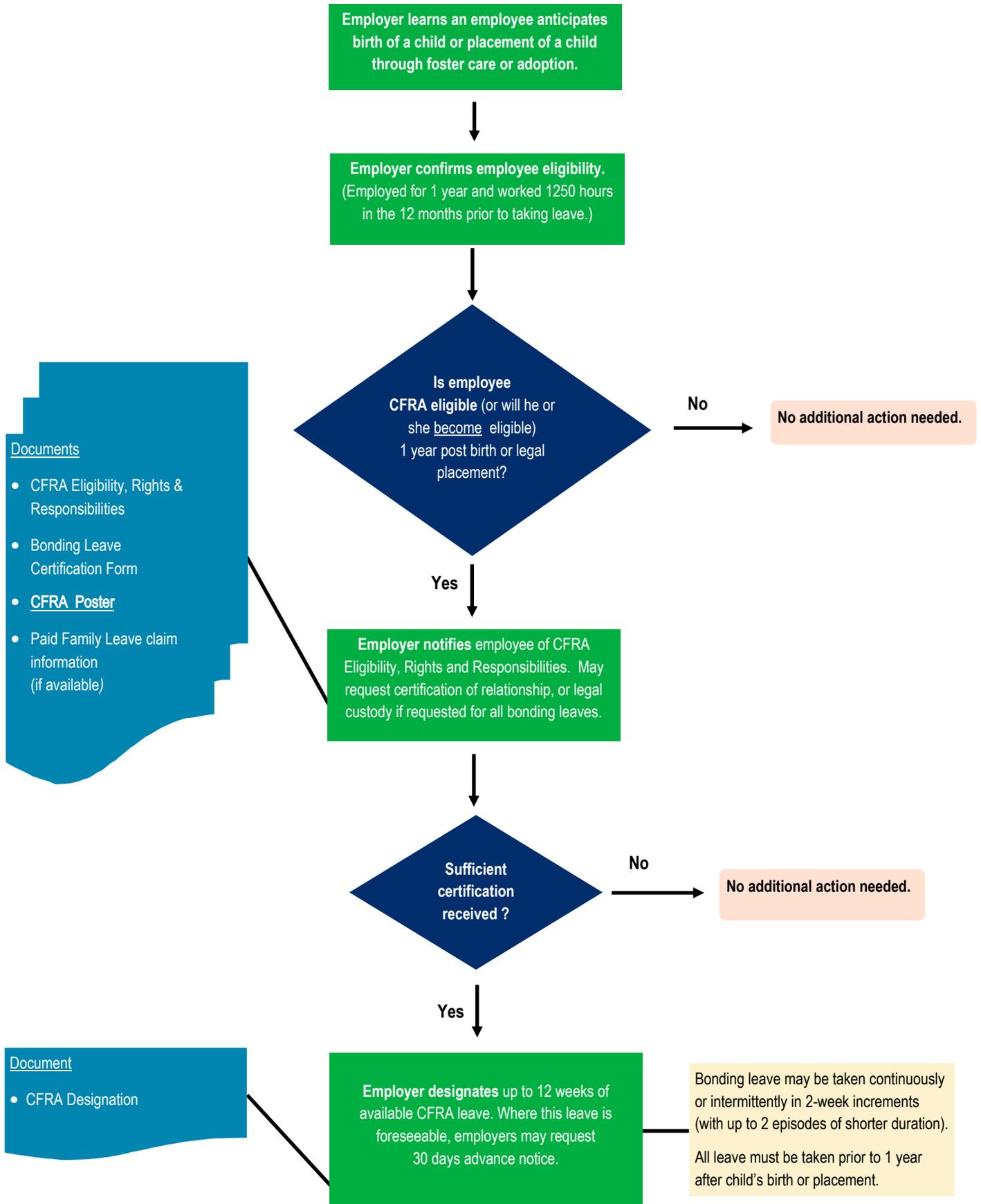
CFRA LEAVE PROCESS



PREGNANCY DISABILITY (PDL) LEAVE PROCESS



CFRA BONDING LEAVE PROCESS



CFRA LEAVE FOR MILITARY FAMILIES

Employees with a **spouse, domestic partner, child, or parent** serving in the US Military are **eligible for CFRA** protected leave **when:**



ADDRESSING ISSUES AROUND AN IMPENDING CALL OR ORDER TO COVERED ACTIVE DUTY THAT WILL OCCUR IN 7 CALENDAR DAYS OR LESS. THIS ALSO INCLUDES THE FULL TIME WHILE DEPLOYED AND 90 DAYS AFTER RETURN.



ATTENDING AN OFFICIAL CEREMONY, PROGRAM, OR EVENT SPONSORED BY THE MILITARY THAT IS RELATED TO COVERED ACTIVE DUTY.



ATTENDING FAMILY SUPPORT OR ASSISTANCE PROGRAMS SPONSORED BY THE MILITARY OR MILITARY SERVICE ORGANIZATIONS RELATED TO COVERED ACTIVE DUTY.



MAKING FINANCIAL AND LEGAL ARRANGEMENTS.



PARTICIPATING IN ACTIVITIES RELATED TO A PARENT, MINOR, OR ADULT DISABLED CHILD OF THE SERVICE MEMBER, SUCH AS PROVIDING CHILDCARE, ATTENDING MEETINGS, TRANSPORTATION, ETC.



ATTENDING COUNSELING.



ACCOMPANYING THE SERVICE MEMBER ON TEMPORARY (UP TO 15 DAYS) R&R LEAVE WHILE DEPLOYED IN A FOREIGN COUNTRY.



ATTENDING EVENTS OR OFFICIAL CEREMONIES WITHIN 90 DAYS OF THE TERMINATION OF ACTIVE DUTY.



ADDRESSING ISSUES THAT ARISE FROM THE DEATH OF SERVICE MEMBER WHILE ON ACTIVE DUTY.

NOTE: For members of the Regular Armed Forces "covered active duty" is duty during the deployment of the member with the Armed Forces to a foreign country. For members of the Reserve components of the Armed Forces, "covered active duty" is duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.



BENEFITS DURING PROTECTED LEAVE

AGENCY PAYS

Employer-Paid Benefit Contributions Must be Maintained Under CFRA Leave.

EMPLOYEE PAYS

If an Employee Shares Benefit Costs, They are Required to Continue to Pay Their Part. It is the Employer's Responsibility to Notify Employee About Benefit Payments Required.

BENEFIT PLANS

CFRA

PDL

MEDICAL



DENTAL



VISION



EAP



FSA-MEDICAL



HSA



VEBA



OTHER



*GROUP HEALTH PLAN

COBRA ELIGIBLE

COBRA ELIGIBLE

**All group health plan items are COBRA eligible, see your COBRA administrator for details.*



WHICH BENEFITS ARE MAINTAINED?



RETIREMENT BENEFITS

CalPERS

Social Security

457

401(a)

Continue in accordance with current regulations.

Employer contributions continue in accordance with MOU and/or current policy. Employee contributions may be waived during period of disability.

LIFE/DISABILITY

Basic Life

Dependent Life

Short-Term Disability

Long-Term Disability

SDI

Premiums may be waived during period of disability. Review contract to clarify, and contact insurance broker or plan representative.

SUPPLEMENTAL INSURANCES

Accident Policy

Cancer Policy

Critical Illness Policy

Hospital Policy

Voluntary Life

Voluntary Dependent Life

Same amount as when working. If employee does not have a paycheck while on leave, must be notified of amount owed and procedure for payment. Note: There are tax consequences associated with these plans, contact your Section 125 Plan Administrator for details.



ACCRUALS/LEAVES

- Sick Leave
- Vacation Leave
- Management Leave
- Personal Leave
- Holiday Pay
- Floating Holiday

Review Contract, MOU's, Past Practices, Personnel Rules, and Policies & Procedures. Use of accruals should be coordinated with the amount of Disability Payments. Please contact your HR or Payroll Advisor for guidance.

ALLOWANCES

- Car Allowance
- Cell Allowance
- Tools Allowance
- Uniform Allowance
- Longevity Pay
- Special Assignment Pay

Review Contract, MOU's, Past Practices, Personnel Rules, and Policies & Procedures. Contact your HR Advisor and/or Employment Law Attorney for guidance.

REMEMBER:
EACH DISABILITY LEAVE SITUATION IS UNIQUE AND MUST BE EVALUATED ON A CASE BY CASE BASIS. CONTACT YOUR HR ADVISOR OR EMPLOYMENT LAW ATTORNEY FOR FURTHER ASSISTANCE.



COMMUNICATION & PROBLEM-SOLVING FOR ALL SUPERVISORS

Extended leaves in a small workforce can create serious operational issues. Supervisors can equip themselves and their work teams to adapt effectively in several proactive ways.

UNDERSTANDING THE JOB AND PLANNING AHEAD

For supervisors, a foundational tool for both communication and problem solving is a complete and current job description. This will help you:

- Understand the physical and mental capacity needed to perform the job, so that a medical provider can usefully provide guidance on work restrictions, and so that you can have productive conversations about job modification if needed to return an employee to work.
- Be able to reassign work easily to competent others when an employee is absent on leave.

Many agencies don't have complete job descriptions. Tasks statements are vague and essential vs non-essential functions are not distinguished clearly. Often, descriptions of the physical and mental demands of the work and the context of such work are missing.

- RGS' guidance on what your job descriptions should include is provided for you [HERE](#), along with a sample of the County of Sonoma's Essential Functions Worksheet detailing how to identify physical and mental demands of a job.

Job descriptions should be reviewed on a schedule. A good rule of thumb is for supervisors and incumbents to review and update information at least once every two years. When an employee has asked for protected leave or disability accommodation, it is NOT the time to begin the update of a job description. Although updating job descriptions is a good thing, such timing is almost always perceived by the ill or injured employee as being to their disadvantage.

WORK NEEDS DURING EMPLOYEE LEAVES

Extended leaves of absence can create significant hardships for a work group; however, resisting legitimate requests for leave only creates more difficulties. Instead, supervisors and managers should plan ahead for flexible and resilient workforce practices, considering the organization's policies and resources in the following areas:

- Employee cross-training programs for essential work

- Contracting policies and practices for on-call temporary employees and key consultants
 - Establish authorized funding and contractual relationships in advance, so that a call for help is all that is needed
- Hiring policies and practices for acquiring and using extra-help and annuitant employees
- Flexible job classification and compensation structures for moving tasks within the workforce
- Process mapping and desk manuals to document workflows and task details

IDENTIFYING AND TALKING ABOUT CFRA NEEDS

Supervisors should be proactive in identifying CFRA needs. Engage immediately with employees and the agency's leave administrator when potential needs are perceived. Twelve weeks of potential absence is a long time; and late notifications about this protected leave will only lengthen that time frame. Some common "triggers" for a proactive conversation are provided in the following pages.

Please note that these conversations are not always easy. Medical privacy, discrimination protections, and the complex interweaving of your local pay and benefit policies with the leave all create conversational hazards. Supervisors need to keep discussions work-focused and "need to know"—both with and about the employee on leave.

In addition, workplace developments during an employee's absence as well as return to work issues can trip up the unwary. And sometimes even our best-intended good wishes don't translate well! RGS has rounded up a sampling of "do's and don'ts" to help you have early and effective conversations which are also respectful and safe for everyone.

Conversations about the details of leave documentation, pay and benefits, and modified returns to work should always be referred to your agency's Designated Leave Administrator to ensure objective and consistent practices.

WHEN SHOULD EMPLOYERS NOTIFY EMPLOYEES OF CFRA ELIGIBILITY?

Employer Triggers :
Examples of Potentially Protectable Conditions



1 EMPLOYEE DISCLOSES HEALTH CONDITION REQUIRING ONGOING TREATMENT

- Lab Work, Prescriptions, Follow Up Appointments, Referrals
- Pregnancy, Chronic Illnesses, Treatable Diseases
- Surgery, Hospitalization



2 EMPLOYEE COMES TO WORK WITH NEW MEDICAL DEVICE

- Wrist Splint, Knee Brace, Back Support
- Casts, Crutches, Cane, Wheelchair
- Prescription Medications



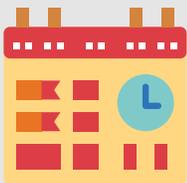
3 EMPLOYEE DISCLOSES MEDICAL CONDITION POSSIBLY IMPACTING WORK

- Schedule Change Request
- Modified Duty Request (I can't do this for awhile...)
- Handicapped Parking Request or Placard



4 EMPLOYEE RETURNS TO WORK DISCLOSING AN INJURY

- Car Accident Requiring Physical Therapy
- ER Visit Over the Weekend With Follow Up Medical
- Weekend Warrior Activity Needing Chiropractic Care



5 EMPLOYEE SICK LEAVE USE IS UNUSUAL

- More Than a Few Hours for a Medical Appointment
- More Than One Appointment in a Month
- More Than 3 Days of Unplanned Sick Leave in a Row (Including Partial Days)



6 EMPLOYEE DISCLOSES A PROTECTED FAMILY MEMBER WITH A PROTECTABLE CONDITION

- Spouse, Child, Domestic Partner
- Parent, Parent-in-law, Sibling
- Grandparent, Grandchild
- Designated Person



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TALKING TO EMPLOYEES ABOUT PROTECTED MEDICAL LEAVE

Continued communication between supervisor and employee is **essential** during protected leave. However, when discussing a medical condition with staff, it is important to remember there are strict guidelines protecting the **employee's right to privacy and confidentiality**. Here are some tips on how to navigate this communication effectively and avoid **potential liability**.

DON'T SAY...

DO SAY...



IF AN EMPLOYEE ASKS FOR A LEAVE OF ABSENCE IN ADVANCE FOR THEIR OWN, OR A FAMILY MEMBER'S ILLNESS

What's wrong with you?

No, you can't take time off now. We're too busy.

What is your / family member's medical condition?

Are you ever going to get better?

How are you doing? How are you feeling?

Thanks for letting me know.

Do you have any idea how long you might need to be off work?

You may be eligible for an unpaid leave of absence. Please check with our Leave Administrator.

Please fill out this "Leave of Absence Request Form" and return it to me with certification.

I'm calling to check on you. Have there been any changes to your accommodation needs since your last doctor's note, or since we last spoke?



DON'T SAY...

We may not be able to give you your job back if you take a leave right now.

I heard you were sick. Why do you need medical leave?

I don't know if we can let you be gone for that long.

How are you being treated?

You can only be gone for 12 weeks for medical leave.

You're pregnant. I can't let you do that kind of work while you're pregnant.

Since you don't have a doctor's note, I need you to stay at work and finish XYZ before you take leave.

You will have to pay for your enrolled benefits while you are off without pay, so we don't have to cancel your benefits.

DO SAY...



If you are eligible for CFRA or PDL leave and provide appropriate documentation, your job will be protected.

If you think you might need to miss work, or change the way you do work related to an illness we have medical forms you can use to get accommodation without needing to disclose medically private details like diagnosis or treatment.

I'll check on that and get back to you.

Will your medical needs impact your ability to perform any of your work routine or essential work?

Let's take this a step at a time. We'll evaluate the situation together as it unfolds.

During pregnancy, you have the option of requesting accommodation related to any tasks you feel may put you or your baby at risk.

Since you do not have a medical note available now, do you have any idea how long it might take to obtain a medical note from your healthcare provider for the leave you are describing?

If you are eligible, your group health insurance will be continued.



DON'T SAY...

We will just spend down your vacation leave after your sick leave runs out.

How long are you expecting for us to let you be off work?

You get 12 weeks of unpaid medical leave.

We can't do 'XYZ' without you. Can you do it from home?

DO SAY...



Please talk to our leave administrator about options for using your paid leave balances.

Do you have any idea when you might be medically ready to return to work?

Have you thought about how you might want to supplement your unpaid CFRA leave with any available leave accruals?

We are willing and able to offer modified work to you with the concurrence of your medical provider.

IF YOU KNOW AN EMPLOYEE IS NOT ELIGIBLE FOR LEAVE

What are you going to do?

I'm sorry. You're not eligible for leave because you haven't worked here long enough. You will have to quit your job if you want unpaid time off for your illness.

What do you want me to do about it?

You may be eligible for a finite leave of absence as a reasonable accommodation. Please ask your health care provider for a summary of the medical needs that impact work and we will engage in an interactive dialogue.

We'll need to work together on reasonable accommodation under a different set of legal provisions. Let me get back to you with a reasonable accommodation questionnaire (which will ask more questions as permitted by your FEHA rights).

How can I help you with that?



DON'T SAY...

DO SAY...



IF YOU NEED TO CALL AN EMPLOYEE'S EMERGENCY CONTACT, RATHER THAN THE EMPLOYEE

What happened? Was it his or her fault?

Is he /she ever going to be able to work again?

Do you know what's wrong with them?

I hope this message finds you well. The employer has learned that it might be helpful for you to be aware of your rights and responsibilities related to medical leave and workplace accommodation.

I'm sorry to hear that _____. It sounds like he/she needs an extended time off. I'll be sending over a "Leave of Absence Request Form." Please have the employee sign it and return it to me.

We'll be in touch. Please let _____ know we are sending our best wishes for a speedy recovery.

IF YOU ARE RESPONSIBLE FOR OBTAINING CERTIFICATION FROM THE EMPLOYEE

Since you've been absent a lot, I'll need you to get certification for this request for leave.

I don't believe you. We'll need a second opinion.

Since you have enough accrued time off, you don't have to get us a medical note.

If your agency policies require medical certification, ask for certification from all employees. Be consistent with your agency's policies.

We require medical notes for all employees taking time off related to medical issues. We prefer to get medical notes before the impact on work whenever possible, and if foreseeable, with a 30-day advance request.

Protected leave, although unpaid, protects your job. Leave accruals, in many cases, can be combined with leave to protect your income. Let's talk more about your specific needs and options with our leave administrator to ensure you get the best job and income protection for your unique needs.

**DON'T SAY...****DO SAY...****CHECKING IN WITH EMPLOYEE DURING LEAVE**

How is the baby? (If the baby is not well or is deceased, the employee may not want to talk about it.)

How is your family member? (If the person for whom the employee took the leave is not well or is deceased, the employee may not want to talk about it.)

Do you still expect to return to work on the date on your request?

If they ask for an extension, explain that they will need medical certification.

TALKING ABOUT AN EMPLOYEE'S RETURN TO WORK

The temp is doing a better job than you did, so we've decided to let you go.

I can't let you come back until you are cleared for full duty.

We are going to put you in a different position when you get back to work (without a reason vetted by legal counsel).

Just let us know if you need any light duty after you get back to work.

I do not care when you have to go to the Dr. or physical therapy. I'll just remove those times from your work hours.

Welcome back!

What type of accommodation do you think you need? You will not be required to disclose the medical diagnosis, or treatment.

Do you have any idea whether your accommodation needs are permanent or temporary (if temporary how long they will last)?

Can you describe any ideas of accommodation you might have that might allow you to be able to continue working rather than being off work?

Since you'll be off more than two weeks, two days before you plan to return to work, please turn in a release clearing you to work from your healthcare provider who has evaluated you in the last two weeks of your medical leave.



DON'T SAY...

I cannot let you go to the doctor's appointments all the time.

DO SAY...



Since medical leave, continuing time off for intermittent leave or follow up medical appointments or treatments are each forms of additional accommodation, please make a point to have the healthcare provider document these accommodation needs when getting medical notes.

IF AN EMPLOYEE REQUESTS MORE LEAVE WHEN THE PROTECTED LEAVE PERIOD ENDS

You need to come back to work now!

You have taken 12 weeks of leave and you still cannot return to work. Your disability may be subject to the ADA/FEHA. Please ask your health care provider for documentation of your requirements for future accommodation.

You took 12 weeks of leave so your leave is all used up. We are going to terminate your employment.

You've exhausted all leave available to you under PDL and CFRA. We have reached out to some reasonable accommodation experts to help us explore any disability accommodations that we may be able to provide to you related to the FEHA accommodation rights still available to you.



INFORMATION FOR LEAVE ADMINISTRATORS

This is a critical role, and making yourself familiar and proactive with the policy issues listed will help you (and everyone else involved!) when CFRA leave is requested and approved. A “to-do” checklist is provided in this section to help you get ready to implement CFRA.

PROTECTED LEAVE POLICY - REVIEW AND UPDATE

Many small agencies may not have a policy specifying how protected leaves such as CFRA and PDL will be administered. Or your policy may contain well-meaning but confusing language offering employees leave “comparable” to both state and federal requirements. Either way, this is the time to craft a user-friendly CFRA administration policy. Remember, small agencies (fewer than 50 employees) do not have federal FMLA obligations—and need not take on any additional administrative burdens by attempting to administer federal family medical leave law. California’s CFRA and PDL will provide a generous amount of protected leave for your employees.

Here is what the protected leave (CFRA + PDL) policy should address:

- Employees' eligibility criteria (in the law);
- The reasons leave may be granted (in the law);
- Method for determining the 12-month period in which the 12 weeks of leave can occur (employer choice of how to determine)
- The employee’s obligation to fill out a request for leave form (employer choice on what the obligation is and what the form is);
- The employee’s obligation to provide a medical certification (law permits but does not require—employer choice to require; but be consistent);
- An employer notice procedure (law requires but does not specify methods—employer choice on notice methods);
- The employee’s obligation to provide a medical release to return to work for employee’s on leave for their own serious health condition (law permits but does not require this certification from an employee’s medical provider— employer choice to require; but be consistent);
- Whether (and which) accrued leaves must be used in connection with leave (employer choice to require; but be consistent);
- Requirements for the employee to make premium payments to maintain insurance benefits; potential liability for failure to pay premiums; and premium recovery efforts that will occur if the employee does not return to work after leave (employer choice to require; but be consistent).

Any policy content that involves “employer choice” may also involve meet and confer obligations with employee bargaining groups. Please note that consistency of administration is essential to successful protected leave management—policies which

defer procedural requirements to the situationally-exercised discretion of a supervisor or manager do not provide such consistency, and may cause well-founded concerns about fair treatment of employees. Here are some common questions that may arise as you are crafting a policy for your agency:

FAQ'S ABOUT PROTECTED LEAVE POLICIES

How do I find out more about the methods of determining a 12 month period during which the 12 weeks can be used?

CFRA conforms to the same options as federal FMLA. You may read about the FMLA options, described at:

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28h.pdf>.

You may also read an attorney's blog on pros/cons at:

<https://www.fmlainsights.com/using-rolling-method-to-calculate-fmla-leave-almost-always-the-best-choice-for-employers/>.

Should my policy define the use of intermittent leave?

Including information that this is permissible is appropriate; but the need for and parameters of intermittent leave will be based on the medical provider's information. Each situation will be unique, and for that reason it is unlikely that you can create a compliant and specific policy about how intermittent leaves may be administered. Procedurally, intermittent leaves are extremely complex and you should seek expert guidance if this type of leave is needed on how best to clarify specific needs and designate and calculate leave use.

How much should my policy say about modified work, either temporary or permanent?

This is a protected leave policy, not an accommodation policy. As part of managing the situation, it is desirable to offer modified work and return an employee from leave to productive engagement if possible. But as the employee is then NOT on leave, the protected leave policy no longer applies. A separate accommodation policy to describe the agency's "at work" practices is appropriate.

Who determines what defines a domestic partner?

The state of California does, through specific legislation and a registration process.

What is meant by CFRA's designated person?

Beginning January 1, 2023, CFRA leave will be available for an employee's "designated person" who has a serious health condition. "Designated person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave under CFRA.

Why do we have to be so formal about making people use forms and certifications?

RGS strongly endorses using carefully-designed forms so you get all of the information you need in one spot and hopefully at one time; and you do NOT get information you don't want and should not have. In addition, consistency and completeness is key in demonstrating compliance with both CFRA and anti-discrimination laws. Forms--completely filled out, and properly filed--will serve you well.

What if an employee doesn't provide the certification requested?

Leave may ultimately be denied for failure to provide certification. Keep in mind that employees may be seriously ill and unable to respond—and may not have a family representative to help them meet your documentation needs. Also keep in mind that certification relies on the medical provider—the employee may be making good faith efforts to obtain what you have required. Adequate certification may also require some iterative process between all parties—medical providers vary widely in what they may choose to provide, and additional requests may be necessary. Make sure your policy allows some flexibility around good faith efforts and offers appropriate alternative paths to compliance with requirements.

OTHER POLICIES - REVIEW AND UPDATE

The ability to receive pay (or an income replacement insurance) and benefits maintenance during leave is very important to employees. Your policies, MOU's and insurance contracts will also control this critical resource.

Review and update your policies and MOU's as soon as possible, so that you are clear on what is available to employees during a protected leave. There are MANY policies which can impact how your agency provides pay and benefits during an employee's protected leave. Policies and practices should be reviewed for 1) compliance with the law, 2) creating consistent benefit programs and fair administration of them, 3) understanding and managing benefit costs. Policies should be clear and complete as well as complementing one another and leaving no gaps. The list of common policies below will get you started. Please be aware that if you have other relevant policies—or don't have policies that address these issues!—you will need to add to this list.

EMPLOYER-PROVIDED PAID LEAVE BENEFITS

Review these issues:

- Requirements to use available paid leave banks when absent from work.
- Actual requirements vs. optional use, increments of use, possible order of use, when accruals stop/start/are capped.
- What occurs when no paid leave bank is available/during unpaid leaves of absence?
- Use of “fixed date” paid days off, such as holidays.
- Legal constraints around mandating use of vacation leave for employees on PDL; and appropriate use of earned overtime bank (i.e., compensatory time) should be understood and accounted for.

Many agencies tie use of paid leave balances to benefits maintenance. This may be administratively easy, but it is not legally correct. Nor does creating a contingent relationship between accrued leave benefits and health and wellness benefit programs help your budgeting, as unlimited leave accrual programs may extend policy-based benefits maintenance obligations well beyond legal expectations. Your administration of leave, as well as your operational capabilities, are most effective if you plan strategically and systematically for policy impacts through the whole organization.

HEALTH AND WELLNESS INSURANCE BENEFITS PROGRAMS

Review your insurance program documents to understand these issues. Involve your broker in clarification, if you have one.

- What is actually included in our group health plan?
- Who is paying insurance premiums and what are the terms?
- Under what conditions does insurance coverage stop?
- What programs are provided on a basis other than payment of insurance premiums (i.e., reimbursement, allowances etc.), and who is responsible for what under such arrangements?
- What arrangements exist for an employee to make direct premium payments either to the insurance organization or to the employer or both?

INCOME REPLACEMENT PROGRAMS

These are premium-based programs that provide at least partial income to ill or injured employees, and include short- and long-term disability insurance; workers’ compensation insurance (temporary total disability payments); and—if your agency has chosen to participate (generally not mandatory for public agencies!)—State Disability Insurance/Paid Family Leave. Each program has specific requirements, and some may integrate with

supplemental use of paid leave banks to fully replace income. Leave Administrators should work closely with payroll and benefit providers to ensure that paid leave balances and income replacement insurance work together, and that health and wellness insurance contributions are maintained. Again, it is essential that you educate yourself on the terms of these programs; and that you understand and consistently apply relevant organizational policies. Generally, STD/LTD insurance companies have helpful claims administrators; and your workers' compensation claims adjuster can also provide helpful support in the case of industrially caused medical leaves.

An outline for assessing the benefits available to employees on protected leave is provided [HERE](#). You can use this to review your policies and benefits contracts and document the facts about your benefits in order to write policies that are accurate, and provide consistent administration.

Please remember that good policies will guide you in problem solving—but they will not give you the solutions. There is so much variation possible in protected leave administration that you should expect to invest time and energy in analyzing and managing each case. It is beyond the scope of both your organizational policies and this guidebook to enumerate the situations you may encounter. RGS strongly recommends that administrators (within the bounds of appropriate medical confidentiality) regularly involve both agency stakeholders and experts (HR Advisors, employment attorneys, claims administrators, benefit brokers) in evaluating options, weighing risks, and developing leave management plans.

IMPACTS OF OTHER ORGANIZATIONAL ISSUES

Leave administrators should also remain vigilant and informed of organizational plans and programs that intersect with protected leave. These include reorganizations, layoffs, promotional recruitments, mandatory training, and more.

Employees on leave who do not have access to opportunity, or whose job return is negatively impacted, may have legitimate causes for complaint. And employees who have exercised leave rights may perceive adverse outcomes as being retaliatory for hardships caused by the use of leave.

Because the leave administrator possesses both situational information and a “big picture” view of overall leave patterns, it is the role of the leave administrator to help decision makers understand the impacts and risks of their organizational decisions, to mitigate these to the extent possible, and to assist in transparent communications with potentially impacted employees.

For your convenient reference, a reminder of “best practices” is provided and a “to-do” checklist are provided in the following pages.

RGS' BEST PRACTICE RECOMMENDATIONS FOR LEAVE ADMINISTRATORS

REMEMBER:

Your success relies on a good balance of confidentiality, interpersonal skills, and attention to details to the role of leave administrator. Make sure you adjust your workload as needed so that you will have the compassion and time to effectively work through leave management steps.

Keep medical leave information on a need to know basis. You can actually protect the agency from claims of discrimination by keeping information confidential. Operational managers only need to know about work impacts of leave.

Benefits available to employees who are working will also be available to employees who are on medical leave. Check your policies, procedures, collective bargaining agreements, and past practices. Consult with legal counsel or allow RGS HR professionals to help you sort through the unique questions for your agency.

Update mandatory employer postings on or before 1/1/2023 with required CFRA posting – available [HERE](#).

GET ORGANIZED:

Create a checklist for YOUR responsibilities and the responsibilities of employees during a protected leave. Use it regularly and store in the medical file.

Ensure good documentation and respect employee privacy--keep each employee's process documentation, medical notes, and leave correspondence in a locked Confidential Medical File, *separate from the Personnel File*.

Use calendaring tools to stay on top of deadlines. Respond to "trigger events", and newly-submitted medical notes within 5 business days; set, communicate and enforce realistic deadlines for employees to provide documentations or take action; track leave start and end dates, and do not accept leave documents that lack a measurable period of absence.

START EDUCATING:

Obtain detailed and credible training for yourself to supplement this leave guide.

Educate your employees: Unlike sick leave, CFRA leave provides job protections, return rights and benefits maintenance. To best access these protections, employees will be

expected to engage in interactive discussions with employers. Remind employees that they are not required to disclose their diagnosis, treatment regimen, or prognosis--they only need to share and discuss the impact of the condition on work.

RESIST:

The urge to administer leave more “favorably” for “good” staff than “poor performers”. Consistent treatment is key to success.

Relying on your own or an employee’s opinion about a medical condition or accommodation need that is not documented by a medical provider. Medical documentation is the only basis for such needs.

Any inclination to deny or modify the return rights for CFRA and PDL users because the staff who have provided temporary coverage “do a better job” than the employee on leave.

GOOD COMMUNICATION PRACTICES:

Refrain from speaking too soon. A period of silence can help to draw out discussion on sensitive matters.

Use *open-ended* questions. Instead of asking, “Do you need medical leave?” ask “If you need medical leave, can you tell me how long you think you might need to be away from work?”

Respond briefly to requests when you do not know the answer--“*Let me look into that and get back to you*” is often the smartest answer you can give.

Don’t ask about a diagnosis. Document voluntary disclosures containing medically private information with a note as “*employee voluntarily disclosed*”

When adopting new or changed practices and/or policies related to leave administration, update all staff with copies or emailed links to updated policies.

SEEK HELP:

Ask before denying leave or failing to designate it as CFRA/PDL leave IF the primary reason for denial is the employee’s failure to follow your organization’s policy and procedures in requesting leave. Legal counsel can help you distinguish between how to handle the leave request, and how to engage with the employee on failure to follow instructions.

Communicate early and often with your employment counsel and/or RGS HR Advisor to effectively handle complicated situations. Asking for advice from experts is a wise choice.

GETTING READY: A TO-DO LIST

- Develop and maintain a compliant written CFRA policy.
- Ensure that the policy aligns with collective bargaining agreements. If policy and CBA do not align, follow legal requirements first, and then the CBA before discretionary policy elements.
- Contact benefit providers and check contracts to understand the requirements for continuation of benefits and/or income replacement insurance claims for employees on leave.
- Develop procedures to track employees' eligibility for leave and use of leave.
 - Ensure that employment event documents include clear and consistent dates of service.
 - Ensure that payroll records document actual hours worked.
 - Develop protected leave request forms and notice letter templates.
- Coordinate impact of protected leave with payroll.
 - Ensure effective coding and reporting of protected leave use.
 - Ensure integration of pay with income replacement benefits if appropriate.
 - Ensure premium contribution maintenance, proper deductions or payment processes for employee share of contributions, and immediate notice process if employee fails to make required contributions.
- Train employees about:
 - Their rights and required responsibilities.
 - Procedures to follow and forms to use.
 - Post and/or distribute legally-required notices.
- Train supervisors about:
 - Employees' and agency's rights and responsibilities.
 - Ways to maintain operations during an extended employee leave.
 - Modifications that can bring employees back from leave to perform productive work.
- Develop a recovery of premiums procedure if your policy includes this practice when an employee does not return from protected leave.
- Develop a dispute resolution process to quickly resolve protected leave issues.

Reminder: This guidebook is intended to provide you with a basic toolkit and does not address all the potential variation and complexity that occurs when the need for leave is encountered. ALWAYS seek legal advice from your agency's employment counsel before adopting employment policies and programs.