810 FAMILY AND MEDICAL LEAVE

Education Code Sections

88080. (a) The commission shall prescribe and, amend, and interpret subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

88081. (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

88198. When any provision of this code expressly authorizes or requires the governing board of a community college district to grant a leave of absence for any purpose or for any period of time to persons employed in classified positions, that express authorization or requirement shall not deprive the governing board of the power to grant leaves of absence with or without pay to those employees for other purposes or for other periods of time, so long as the governing board does not deprive any employee of any leave of absence to which he or she is entitled by law.

Government Code Section

12945.2 (a) It shall be an unlawful employment practice for any employer, as defined in paragraph (4) of subdivision (b), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (r), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The council shall adopt a regulation specifying the elements of a reasonable request.

(b) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

(2) "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.

(3) "Domestic partner" has the same meaning as defined in Section 297 of the Family Code.

(4) "Employer" means either of the following:

(A) Any person who directly employs five or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(5) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

(B) Leave to care for a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(D) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Section 3302.2 of the Unemployment Insurance Code.

(6) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(7) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(8) "Grandchild" means a child of the employee's child.

(9) "Grandparent" means a parent of the employee's parent.

(10) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(11) "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(12) "Parent-in-law" means the parent of a spouse or domestic partner.

(13) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(14) "Sibling" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(c) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (d).

(d) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, grandparent, grandchild, sibling, spouse, o domestic partner with a serious health condition, unless mutually agreed to by the employer and the employee.

(e) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for

purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(f) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(g) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(h) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(i) (1) An employer may require that an employee's request for leave to care for a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(j) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by the employee's health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee's position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee's health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(k) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to the individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(l) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(m) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(n) This section shall be construed as separate and distinct from Section 12945.

(o) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(q) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(r) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term "applicable monthly guarantee" means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule those employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay those employees on reserve status for any given month, as established in the collective bargaining agreement or, if none exists, in the employer's policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

The provisions of this rule enact the provisions of the Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). This rule does not supersede any contract provisions or memoranda of understanding that provides greater family or medical leave rights.

A. Qualifying Reasons for Leave

1. An eligible classified employee may take up to a total of 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

    a. The birth of a child and to bond with the newborn child within one year of birth;
    b. The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement;
    c. A serious health condition that makes the employee unable to perform the functions of their job (FMLA/CFRA), including incapacity due to pregnancy and for prenatal medical care (FMLA);
    d. To care for the employee's spouse, registered domestic partner, child, or parent (FMLA/CFRA) or parent-in-law, grandparent, grandchild, sibling, or designated person as defined in section 12945.2 of the Government Code (CFRA) who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
    e. Any qualifying exigency arising out of the fact that the employee's spouse, registered domestic partner, child, or parent is a military member on covered active duty or call to covered active duty status.

2. An eligible classified employee may take up to 26 workweeks of leave during a single 12-month period of unpaid, job-protected leave to care for a covered military service member with a serious injury or illness if the eligible employee is the military service member's spouse, child, parent, or next of kin. This is beyond, but not in addition to, the regular 12 weeks of FMLA leave.

B. Service Eligibility Requirements

An employee is eligible for leave if they satisfy both of the following criteria:

1. Has 12 months of employment with the District as of the date the leave is to commence. For purposes of determining 12 months of employment:

    a. Twelve months is any combination of 52 weeks.
    b. Part-time, temporary, or intermittent work shall count towards the 12 months of employment;
    c. An employee who is maintained on the payroll for any part of a week, that week counts as a week of employment;
    d. Any time previously worked for the District could, in most cases, be used to meet the 12-month requirement;
    e. Time served before a break in service of 7 years or more is not creditable unless the break is due to service under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

2. Has at least 1,250 on-the-job hours over the past 12 months as of the date the leave is to commence. For purposes of determining 1,250 hours:

    a. The hours need not be consecutive hours.
    b. Only time actually worked, including overtime hours worked, shall be counted. Time not actually worked, including vacation, personal leave, sick leave, holidays, and any other form of paid time off shall not be counted.
    c. Unpaid leaves of any kind or periods of layoff shall not be counted.
    d. An employee returning from fulfilling a USERRA-covered military service obligation shall be credited with the hours of service that would have been performed but for the period of military service.

C. Leave Duration and Time

1. The District may retroactively designate CFRA leave if notice is given to the employee and the failure to timely designate leave does not harm the employee.

2. FMLA leave shall run concurrently with CFRA and is not in addition to the leave entitlements provided by CFRA.

3. FMLA leave and leave taken in accordance with California's Pregnancy Disability Act shall run concurrently. At the conclusion of the pregnancy disability leave period, or at the end of four months of pregnancy disability leave, whichever occurs first, the employee may take a child bonding leave under CFRA, if eligible.

4. An eligible employee shall be limited to a combined total of 26 workweeks of leave for any FMLA/CFRA-qualifying reasons during the single 12-month period.

5. An employee assigned to other than a 12-month position or part-time position shall be eligible for FMLA/CFRA leave on a proportional basis and shall not exceed the number of days equivalent to 12 normally scheduled work weeks.

6. Only the amount of leave actually taken shall be counted against the employee's leave entitlement. Time that an employee is not scheduled to report for work shall not be counted as FMLA/CFRA leave.

7. Fractions of hours taken while on FMLA/CFRA leave shall be reported in increments of one-quarter hour.

8. When a holiday falls during a week in which an employee is taking a full week of FMLA/CFRA leave, the entire week shall be counted as FMLA/CFRA leave. When a holiday falls during a week when an employee is taking less than the full week of FMLA/CFRA leave, the holiday is not counted as FMLA/CFRA leave, unless the employee was scheduled and expected to work on the holiday and used FMLA/CFRA leave for that day.

9. Eligible spouses who are legally married and both work for the District are limited to a combined total of 12 workweeks of FMLA leave in a 12-month period for reasons identified in Paragraph A. 1. (a.), (b), and for the care of a parent with a serious health condition. In addition, eligible spouses are also limited to a combined total of 26 workweeks in a single 12-month period for reasons identified in Paragraph A.2.

D. Intermittent or Reduced Schedule Leave

1. An employee may take FMLA/CFRA leave in separate blocks of time or by reducing the time he/she works each day or week for the reasons noted in Paragraph A.1.(c), (d), and (e) and A.2. above. If FMLA/CFRA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires prior District approval.

2. An employee taking FMLA/CFRA leave on an intermittent or reduced schedule basis shall provide the District an estimate of the dates, duration, and frequency of absences to establish the medical necessity for intermittent or reduced schedule leave.

3. For planned medical treatment, an employee shall consult with their supervisor to try to schedule the treatment at a time that minimizes the disruption to District operations, subject to the approval of the health care provider.

4. An employee may be temporarily transferred to a position in the same classification or to a position in a job classification for which the employee is eligible, to accommodate the employee's need to take intermittent leave. When the employee no longer needs to continue on intermittent or reduced schedule leave, the employee shall be restored to the same or equivalent job as the job that the employee left when the leave started.

E. Health Benefits Coverage

An employee approved for FMLA/CFRA leave shall retain coverage under any group health plan on the same basis as if the employee had been continuously employed during a FMLA/CFRA leave period. However, the District's obligation to continue benefits under FMLA/CFRA shall cease if and when:

1. The employment relationship would have terminated if the employee had not taken FMLA/CFRA leave;

2. The employee informs the District of their intent not to return to work;

3. The employee fails to return from leave; or

4. The employee continues on leave after exhausting their FMLA/CFRA leave entitlement in the 12-month period.

F. Substitution of Paid Leave

1. An employee may be required to use accrued illness and vacation quotas during a FMLA leave.

2. An employee may be required to use accrued illness and vacation quotas for the employee's own serious health condition during a CFRA leave.

3. When paid time off is used for FMLA/CFRA leaves, it shall be used in the following order:

   a. Full-pay illness quota;
   b. Half-pay illness quota. Vacation quota may be used to supplement any half pay illness quota; then
   c. Vacation quota

4. If an eligible employee chooses to use illness and/or vacation quotas to substitute for unpaid FMLA/CFRA leave, the employee shall submit Certification of Absence forms in the same manner as if in active employment. The District may take action under its internal rules and procedures if the employee fails to follow its usual and customary rules for requesting leave.

G. Request for Leave

1. An employee shall give their immediate supervisor at least 30 days advance notice of the need to take FMLA/CFRA leave when the employee knows about the need for the leave in advance and it is possible and practical to do so. If 30 days advance notice is not possible because the foreseeable situations has changed or the employee does not know exactly when leave will be required, the employee shall provide notice of the need for leave as soon as possible and practical.

   If an employee does not provide advance notice, and it was possible and practical to do so, the District may delay the FMLA/CFRA leave until 30 days after the date that the employee provides the notice.

2. An employee applying for a leave under the Family Medical Leave Act/California Family Rights Act is required to submit the following documents to the District:

   a. Request for Leave of Absence.

   b. FMLA/CFRA Certification of Health Care Provider. This is not required if the leave is for the purpose of bonding with a newborn child or a child placed for adoption or foster care.

   c. Qualifying Family Relationship Certification. This is required to establish reasonable documentation of the qualifying family relationship. An employee may satisfy this requirement by providing either a simple statement asserting that the requisite family relationship exists, or other documentation such as a child's birth certificate or court document.

3. The District shall acknowledge receipt and advise the employee of the status of their request for CFRA or FMLA leave within 5 calendar days of receipt by certified letter. Such letter shall include notice of FMLA/CFRA rights and responsibilities.

H. Medical Certification Process

1. The District may require a medical certification when an employee requests leave for the employee's or family member's serious health condition. The employee must provide the requested medical certification within 15 calendar days of request. If the medical certification is incomplete or insufficient, the employee shall be sent a written notice by certified mail stating the additional information necessary to be provided within 7 calendar dates from the date of receipt. A certification shall be considered "incomplete" if one or more of the applicable entries on the form have not been completed and "insufficient" if the information provided is vague, unclear, or non-responsive.

2. In the event the District has a good faith, objective reason to doubt that a Health Care Provider Certification is valid for the employee's own or a family member's serious health condition (FMLA) or the employee's own serious health condition (CFRA), the District may pursue one or all of the following:

   a. The District's human resources leave administrator or a contracted health care provider may contact the employee's health care provider to authenticate and clarify (FMLA) or authenticate (CFRA) the certification. The employee's direct supervisor may not contact the employee's health care provider under any circumstances.

   b. Require the employee to submit to a second opinion at the District's expense. The District shall choose the health care provider to provide the second opinion, but may not select a health care provider who it employs on a regular or routine basis.

   c. Require a third medical opinion, at the District's expense, if the first and second opinions differ. The District cannot require a second or third opinion for a recertification.

   The District shall provide copies of second or third opinions to the employee within 5 business days absent extenuating circumstances.

3. The District may require recertification of a serious health care condition as follows:

   a. Under FMLA, recertification of the employee's or family member's serious health care condition may be requested every 30 days with the exception that when the original certification reflected a serious health condition of more than 30 days, recertification may be requested after the minimum duration of the serious health condition noted on the original certification. In all cases, the District may request recertification every six months in connection with an absence by the employee.

Recertification in less than 30 days may be required if:

1. The employee requests an extension of leave;
2. The circumstances described by the previous certification have changed significantly; or
3. The District receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

b. Under CFRA, recertification of the employee's serious health condition may be requested only at the expiration of the leave and the employee is requesting an extension.

c. The District may ask for the same information in a recertification as was permitted in the original medical certification. However, in a recertification, the District may provide the health care provider with a record of the employee's absences and ask if the serious health condition and need for leave is consistent with the leave pattern. The District shall allow the employee at least 15 calendar days from the date of receipt to provide the recertification after the District's request.

The employee is responsible for paying for the cost of a recertification.

The District cannot require a second or third opinion for a recertification.

4. Each time a certification or recertification is required, the employee shall receive notice of FMLA/CFRA rights and responsibilities.

5. Failure to provide a complete and sufficient certification/recertification despite the opportunity to resolve any deficiencies, may result in denial the employee's requested FMLA/CFRA leave.

6. Once the District has received a complete and sufficient certification, it may not request additional information from the health care provider.

7. If an employee's need for FMLA/CFRA leave lasts beyond a single FMLA/CFRA leave year, the employee shall be required to provide a new medical certification in each new FMLA/CFRA leave year.

I. Return from Leave

1. An employee returning from FMLA/CFRA leave may be required to obtain a fitness for duty certification from their health care provider certifying that they are able to resume performance of the essential duties of their position.

The District may delay restoration of the employee to active employment until the required fitness-for-duty certification is received and authenticated, if necessary.

2. An employee returning to work from a FMLA/CFRA leave shall be returned to the position the employee occupied at the time the leave commenced or to a position with equivalent employment benefits, pay, and other terms and conditions of employment.

3. The District may deny restoration to a "key employee" to prevent substantial and grievous economic injury to its operations. A key employee is a salaried FMLA-eligible employee who is among the highest paid 10% of all employees, both eligible and not eligible under the Family Medical Leave Act.

J. Emergency Leave

Additional emergency leave under FMLA may be signed into law by the President of the United States.