

**TENTATIVE AGREEMENT BETWEEN
THE OFFICE OF THE SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS
AND SMCEA**

July 6, 2021

8.14 Unpaid Family Care Leave

The County Office will grant family and medical leave in accordance with the requirements of applicable state and federal law in effect at the time the leave is granted. (See 29 U.S.C. § 2601 *et seq.*; 29 CFR 800 *et seq.*, which is referred to as Family Medical Leave Act (“FMLA”)); California Government Code §§ 12945.1 and 12945.2; 2 CCR 7297.0 *et seq.*, which is referred to as the California Family Rights Act (“CFRA”). Although the federal and state laws sometimes have different names, the County Office refers to these types of leaves collectively as “FMLA Leave.”

8.14.1 Unit Member Eligibility

8.14.1.1 To be eligible for leave under the FMLA (“Fed-FMLA”) and CFRA (collectively “FMLA Leave”), a unit member must: (1) have worked for the County Office for a total of at least 12 months; (2) have been employed for six or more hours per day or have worked at least 1,250 hours over the previous 12 months as of the start of the leave; and (3) work at a location where at least 50 unit members are employed by the County Office within 75 miles, as of the date the leave is requested.

8.14.1.2 SMCEA unit members who are otherwise eligible for but who are employed for less than 6 hours a day or less than 1,250 hours per year shall be entitled to family care leave but without the County Office-paid benefit contribution provided in number 8.14.6 below.

8.14.1.3 The leave described below represents the minimum available leave. A unit member may request additional leave under Articles 8 and 21.

8.14.2 Reasons for Leave

State and federal laws allow FMLA Leave for various reasons. Because a unit member’s rights and obligations may vary depending upon the reason for the FMLA Leave, it is important to identify the purpose or reason for the leave. Fed-FMLA leave and CFRA leave run concurrently except for the following reasons: to care for a **child without regard to age or dependency status**, registered domestic partner or a child of a registered domestic partner, **grandparent, grandchild, or sibling** (CFRA only), leave taken for a serious health condition due to pregnancy or prenatal care (Fed-FMLA only), **qualifying exigency leave as defined under the FMLA** (Fed-FMLA only), **qualifying exigency leave as defined under the CFRA (CFRA only)**, and military caregiver leave (Fed-FMLA only). FMLA Leave may be used for one of the following reasons:

- 8.14.2.1 the birth, adoption, or foster care of a unit member's child within 12 months following birth or placement of the child ("Bonding Leave");
- 8.14.2.2 to care for an immediate family member (spouse, ~~registered domestic partner,~~ child, or parent **and for CFRA Leave: registered domestic partner, child of a registered domestic partner, grandparent, grandchild, or sibling** with a serious health condition) ("Family Care Leave");
- 8.14.2.3 a unit member's inability to work because of a serious health condition ("Serious Health Condition Leave");
- 8.14.2.4 a "qualifying exigency," as defined under the FMLA, arising from a spouse's, child's, or parent's active duty or call to active duty in a foreign country as a member of the military reserves, National Guard or Armed Forces **or as defined under the CFRA, 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** ("Military Emergency Leave"); or
- 8.14.2.5 to care for a spouse, child, parent or next of kin (nearest blood relative) who is a "Covered ServiceMember," as defined below ("Military Caregiver Leave"). This leave includes the days of paid personal necessity leave which may be used for paternal leave pursuant to Article 8.16.

8.14.3 Length of Leave

- 8.14.3.1 If the reason for leave is common to both Fed-FMLA and CFRA and, therefore, running concurrently, the maximum amount of FMLA Leave will be 12 work weeks in any 12-month period ~~when the leave is taken for: (1) Bonding Leave; (2) Family Care Leave; (3) Serious Health Condition Leave; and (4) Military Emergency Leave.~~ If the reason for leave is not common to both Fed-FMLA and CFRA and, therefore, not running concurrently, then an eligible unit member may be entitled to additional leave under applicable law. ~~When the reason for leave is Bonding Leave and both spouses work for the County Office and are eligible for leave under this Section, the spouses will be limited to a total of 12 workweeks off between the two of them. When the reason for leave is Family Care Leave and if both spouses work for the County Office and are eligible for leave under this Section, the spouses will be limited to a total of 12 work weeks off between the two of them under Fed-FMLA. A 12-month period begins on the date of your first use of FMLA Leave.~~

Successive 12-month periods commence on the date of an a unit member's first use of such leave after the preceding 12-month period has ended.

8.14.3.2 The maximum amount of FMLA Leave for a unit member wishing to take Military Caregiver Leave will be a combined leave total of 26 workweeks in a single 12-month period. A "single 12-month period" begins on the date of your first use of such leave and ends 12 months after that date.

8.14.3.3 If both spouses work for the County Office and are eligible for leave under the Fed-FMLA, the spouses will be limited to a total of 26 work weeks off between the two when the leave is for Military Caregiver Leave only or is for a combination of Military Caregiver Leave, Bonding Leave and/or Family Care Leave.

8.14.3.4 Under some circumstances, a unit member may take FMLA Leave intermittently – which means taking leave in blocks of time, or by reducing the unit member’s normal weekly or daily work schedule. If a unit member is taking FMLA Leave due to pregnancy or pregnancy disability purposes, the Pregnancy Disability Leave Section in this Article governs such leaves. Unit members who take leave intermittently or on a reduced work schedule basis for planned medical treatment must make a reasonable effort to schedule the leave so as not to unduly disrupt the County Office’s operations. A unit member must contact his/her manager and the Human Resources Department prior to scheduling planned medical treatment. If FMLA Leave is taken intermittently or on a reduced schedule basis due to foreseeable planned medical treatment, the County Office may require a unit member to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave.

If a unit member’s request for intermittent leave is approved, the County Office may later require a unit member to obtain recertifications of his/her need for leave.

8.14.3.5 To the extent required by law, leave beyond a unit member’s FMLA Leave entitlement will be granted when the leave is necessitated by a unit member’s work-related injury or illness, a pregnancy-related disability or a "disability" as defined under the Americans with Disabilities Act (“ADA”) and/or the Fair Employment and Housing Act (“FEHA”). When the reason for CFRA leave was the unit member’s serious health condition, which also constitutes a “disability” under the FEHA and the unit member cannot return to work at the conclusion of the CFRA leave, the County Office will engage in an interactive process to determine whether an extension of leave would constitute a reasonable accommodation under the FEHA.

8.14.4 Notice and Certification

8.14.4.1 Bonding, Family Care, Serious Health Condition Leave, and Military Caregiver Leave Requirements

8.14.4.1.1 Unit members may be required to provide: (1) 30-day advance notice when the need for the leave is foreseeable; (2) such notice as is both possible and practical if the leave must begin in less than 30 days (normally this would be the same day the unit member becomes aware of the need for leave or the next business day); (3) when the need for leave is not foreseeable, notice within the time prescribed by the County Office's normal absence reporting policy, unless unusual circumstances prevent compliance, in which case notice is required as soon as is otherwise possible and practical; (4) when the leave relates to medical issues, a completed Certification of Health-Care Provider form within 15 calendar days (for Military Caregiver Leave, an invitational travel order or invitational travel authorization may be submitted in lieu of a Certification of Health-Care Provider form); (5) periodic recertification (but only to the extent permitted by applicable law, generally not under CFRA); and (6) periodic reports during the leave.

8.14.4.1.2 At the County Office's expense, the County Office may also require a second or third medical opinion (for the third medical opinion, it must be a health care provider jointly agreed upon by the County Office and unit member, regarding a unit member's own serious health condition or the serious health condition of the unit member's family member for Fed-FMLA purposes and for CFRA purposes, the unit member's own serious health condition. In some cases, the County Office may require a second or third opinion regarding the injury or illness of a "Covered Servicemember." Unit members are expected to cooperate with the County Office in obtaining additional medical opinions that the County Office may require.

8.14.4.1.3 When leave is for planned medical treatment, a unit member must try to schedule treatment so as not to unduly disrupt the County Office's operation. Unit members are to contact Human Resources prior to scheduling planned medical treatment.

8.14.4.2 Military Emergency Leave

Unit members seeking to use Military Emergency Leave are required to provide: (1) the County Office with as much notice of the need for leave as is reasonable and practicable under the circumstances; (2) a copy of the covered military member's active duty orders when the unit member requests leave and/or documentation (such as Rest and Recuperation

leave orders) issued by the military setting forth the dates of the military member's leave; and (3) a completed Certification of Qualifying Exigency form within 15 calendar days, unless unusual circumstances exist to justify providing the form at a later date.

Certification forms are available from the Human Resources Department.

8.14.4.3 Failure to Provide Certification and to Return from Leave

Absent unusual circumstances, failure to comply with these notice and certification requirements may result in a delay or denial of the leave.

8.14.5. Compensation During Leave/Concurrent Running of Leaves

8.14.5.1 FMLA Leave is unpaid, except as set forth below and/or to the extent it runs concurrently with paid leaves as set forth in this Section. The County Office will only require unit members to use accrued sick leave during an unpaid portion of an FMLA Leave if the reason for the FMLA Leave is the unit member's own serious health condition or for any other reason, mutually agreed to by the County Office and the unit member. All payments of wage-replacement benefits and accrued paid leave will be integrated so that unit members will receive no greater compensation than their regular compensation during the FMLA Leave.

8.14.5.2 Entitlement to family and medical leave for the purposes of the unit member's own illness (except for pregnancy disability) shall be satisfied by and run concurrently with leaves taken pursuant to Article 8 (e.g., Sick Leave, Extended Sick Leave, Parental Leave and Child Care Leave). In addition, unit members may elect to use their accrued sick leave when the FMLA leave is for Family Care Leave and/or Military Caregiver Leave.

8.14.5.3 When such paid benefits are exhausted, the balance of the leave is unpaid, except in the case of Child Bonding Leave (CFRA). The use of paid benefits will not extend the length of a FMLA Leave.

8.14.5.4 A unit member may take up to four months pregnancy disability leave and then take an additional 12 weeks of family care leave for the purpose of caring for the new baby under the CFRA.

8.14.6 Benefits During Leave

8.14.6.1 The County Office will continue making contributions for a unit member's group health benefits during the leave on the same terms as if the unit member had continued to work. This means that if a unit member wants benefits coverage to continue during his/her leave, the unit member must also continue to make any premium payments that he/she is now required to make for the unit member or his/her dependents. Unit members taking **leave for a reason that is common to both Fed-FMLA**

and CFRA and, therefore, leave is running concurrently ~~Bonding Leave, Family Care Leave, Serious Health Condition Leave, and Military Emergency Leave~~ will generally be provided with group health benefits for a 12 workweek period. When **employees take leave for a reason that is not common to both Fed-FMLA and CFRA and, therefore, leave is running consecutively the reason for leave is a pregnancy-related disability, which is a serious health condition under the Fed-FMLA but not the CFRA, and the unit member takes additional time off that qualifies as CFRA leave**, the County Office will continue the unit member's health insurance benefits for up to a maximum of 12 workweeks in a 12-month period **during each applicable leave**. Unit members taking Military Caregiver Leave may be eligible to receive group health benefits coverage for up to a maximum of 26 workweeks. In some instances, the County Office may recover premiums it paid to maintain health coverage if the unit member fails to return to work following a FMLA Leave.

8.14.6.2 If a unit member is on a FMLA Leave but is not entitled to continued paid group health insurance coverage, the unit member may continue his/her coverage through the County Office in conjunction with federal and/or state COBRA guidelines by making monthly payments to the County Office for the amount of the relevant premium. Please contact Human Resources for further information.

8.14.7 Job Reinstatement

8.14.7.1 Under most circumstances, unit members will be reinstated to the same position held at the time of the leave or to an equivalent position with equivalent pay, benefits, and other employment terms and conditions. However, unit members have no greater right to reinstatement than if they had been continuously employed rather than on leave. For example, if a unit member would have been laid off had the unit member not gone on leave, or if the unit member's position has been eliminated during the leave, then the unit member will not be entitled to reinstatement.

8.14.7.2 Prior to being allowed to return to work, a unit member wishing to return from a Serious Health Condition Leave must submit an acceptable release from a health care provider that certifies the unit member can perform the essential functions of the job as those essential functions relate to the unit member's serious health condition.

8.14.8 Definitions

8.14.8.1 "Parent" means a biological, foster or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the unit member when the unit member was a son or daughter. This term does not include "parents-in-law", except for Military Emergency leave taken

to provide care to a parent of a military member, the parent must be incapable of self-care, as defined by the FMLA.

- 8.14.8.2 “Child,” for purposes of Bonding Leave and Family Care Leave, means a biological, adopted, or foster child, child of a registered domestic partner, a stepchild, a legal ward, or a child of a person standing in loco parentis, **and for Fed-FMLA only**, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that Family and Medical Leave is to commence. “Child,” for purposes of Military Emergency Leave and Military Caregiver Leave, means a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the person stood in loco parentis, and who is of any age.
- 8.14.8.3 “Covered Active Duty” means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as defined by applicable law.
- 8.14.8.4 “Covered Servicemember” means: (1) a member of the Armed Forces, including a member of a reserve component of the Armed Forces, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty while on active duty that may render the individual medically unfit to perform his or her military duties; or (2) a person who, during the five (5) years prior to the treatment necessitating the leave, served in the active military, Naval, or Air Service, and who was discharged or released therefrom under conditions other than dishonorable (a “veteran” as defined by the Department of Veteran Affairs), and who has a qualifying injury or illness incurred or aggravated in the line of duty while on active duty that manifested itself before or after the member became a veteran. For purposes of determining the five-year period for covered veteran status, the period between October 28, 2009 and March 8, 2013 is excluded.
- 8.14.8.5 “Domestic Partner” is herein defined as the partner of an eligible unit member who shares a long-term committed relationship of indefinite duration with the following characteristics:
- 8.14.8.5.1 Living together for at least 6 months.
- 8.14.8.5.2 Having an exclusive mutual commitment similar to that of marriage.

8.14.8.5.3 Financially responsible for each other's well-being and debts to third parties. This means that a unit member has entered into a contractual commitment for that financial responsibility or have joint ownership of significant assets (such as home, car, bank accounts) and joint liability for debts (such as mortgages and major credit cards).

8.14.8.5.4 Neither partner is married to anyone else nor has another domestic partner.

8.14.8.5.5 Partners are not related by blood closer than would bar marriage in the state of their residence.

An Affidavit of Domestic Partnership must be filed and reviewed 30 calendar days prior to accessing the benefit.

8.14.8.6 "Serious injury or illness" in the case of a current member of the Armed Forces, National Guard or Reserves is an injury or illness incurred by a covered servicemember in the line of duty on active duty (or that preexisted the member's active duty and was aggravated by service in the line of duty on active duty) in the Armed Forces that may render him or her medically unfit to perform the duties of his or her office, grade, rank or rating. In the case of a covered veteran, "serious injury or illness" means an injury or illness that was incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty) and that manifested itself before or after the member became a veteran.


8.14.8.7 "Qualifying exigency" **for Fed-FMLA** is defined by the Department of Labor and **for CFRA is defined by the California Unemployment Insurance Code** generally includes events related to short-notice deployment, military ceremonies, support and assistance programs, changes in childcare, school activities, financial and legal arrangements, counseling and post-deployment activities. Qualifying Exigency Leave may also be used to spend up to 15 days with military members who are on short-term, temporary, rest and recuperation leave during their period of deployment.

8.14.9 This Section of the Agreement may be reopened at any time by either party.

8.14.10 Department of Labor Notice WH1420 is attached to this Agreement as Addendum F.

Dated: 7/7/2021

Dated: 7/7/2021


SMCEA


SMCOE