



Memo

To: Commissioners, First 5 Ventura County

From: Lauren Arzu, On behalf of the Administration Finance Committee

Date: April 20, 2023

Re: Recommendation to Modify Requirements for Use of Accrued Paid Leave When on Leave

Background

First 5 Ventura County's current policy outlined in the Employee Handbook requires employees to utilize applicable paid leave benefits (sick and vacation) towards all or part of an otherwise unpaid Family and Medical Leave Act (FMLA) leave. Similarly, when there is a leave of absence not governed by FMLA, employees are required to use all available and eligible paid leave benefits before an unpaid leave of absence may be granted.

The Family and Medical Leave Act (FMLA) allows an employee to elect, or an employer to require the employee, to substitute accrued paid leave for FMLA leave. Employers are not legally required to mandate employees to substitute paid leave for FMLA leave or non-FMLA leave. When an employee elects partial wage replacement when on leave through state disability insurance (SDI) or paid family leave (PFL), the Commission's practice is to coordinate/integrate benefits with SDI or PFL so that the employee receives their normal wages by using applicable paid leave until it is depleted. When the employee returns from leave, they may not have any remaining vacation or sick leave available and are forced to take unpaid leave for follow-up medical appointments or other necessary sick time.

Allowing employees on a leave of absence to retain up to 80 hours of sick and/or vacation leave would allow a safety net when time off is necessary for employees 1) recovering from an illness/health condition, 2) caring for a family member with an illness/health condition, or 3) new parents attending well child visits or caring for a sick infant.

The following recommendation has been reviewed and approved by legal counsel and the Administration Finance Committee.

Recommendation

The recommendation is to revise the requirement for use of accrued leave benefits when on leave outlined in the Employee Handbook allowing employees to retain up to 80 hours of sick and/or vacation leave as proposed in the attachment.

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Paid Family Leave

Paid Family Leave (PFL) is an aspect of State Disability Insurance (SDI) and may provide benefits to individuals who need to take time off work to:

- Care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner.
- Bond with a new child entering the family by birth, adoption, or foster care placement.
- Participate in a qualifying event because of a family member's (spouse, registered domestic partner, parent, or child) military deployment to a foreign country.

If eligible, you can receive about 60 to 70 percent (depending on income) of wages earned 5 to 18 months before your claim start date for up to eight weeks within any 12-month period. The length of time worked at your current job does not affect eligibility. PFL provides benefit payments but not job protection. The Family Medical Leave Act may provide job protection.

State Disability Insurance (SDI)

First 5 Ventura County employees who are unable to work due to illness, injury, or pregnancy disability may be eligible for disability benefits through SDI for the time they are unable to work. SDI is an employee paid benefit that provides to employees deemed eligible by the state partial replacement of wages lost because of a disability not caused by work. The determination of benefits is up to the state Employee Development Department (EDD). The first seven calendar days of an employee's absence are generally considered a "waiting period," and SDI benefits are not paid during that period. Information and claim forms are available from the local EDD office or the EDD website.

Family and Medical Leave

The purpose of this policy is to provide leaves of absence to eligible staff members in accordance with the Family Medical Leave Act ("FMLA") of 1993 and the California Family Rights Act ("CFRA").

This policy applies to all staff members who have worked at the Commission for at least twelve months (either consecutively or non-consecutively) at the time the leave is requested and have completed at least 1,250 hours of service during the 12-month period preceding the leave request.

Eligible employees may be granted up to 12 weeks unpaid leave in the 12-month period beginning on their anniversary date.

- For the birth of an employee's child, or upon placement of a child with an employee for adoption or foster care. This leave will normally be taken in one block of time unless special arrangements for "intermittent" or "reduced work schedule" are approved by the Executive Director's office.
- When the employee is needed to care for a child, spouse or parent who has a serious health condition.
- When the employee is unable to perform the essential functions of his or her position due to a serious health condition.

~~Applicable leave benefits must be substituted for all or part of any otherwise unpaid FMLA/CFRA leave. The total of paid and unpaid leave under this policy is not to exceed 12 weeks.~~

For the purpose of this policy the following definitions will serve:

Child: Anyone under 18 years who is the employee's biological, adopted or foster child, stepchild, legal ward or such a child who is over 18 but incapable of self-care because of a mental or physical disability. This may include a child for whom the Employee has day-to-day responsibility.

Parent: Biological, foster or adoptive parents, stepparents, legal guardians, or any individual who stood in place of parents for an employee when the employee was a child.

Spouse: A husband or wife as defined by applicable state law. For purposes of the California Family Rights Act, spouse also includes registered domestic partners.

Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves inpatient care, or any period of incapacity requiring absence from school or work of more than three calendar days and involving treatment by a health care provider.

Procedure for requesting Family and Medical Leave

1. A request for FMLA/CFRA Leave of Absence form must be completed by the employee requesting leave, and submitted to the Executive Director or his/her designee 30 days before commencement date. If 30 days advance notice is not possible, notice must be given as soon as possible.
2. When the leave is due to an employee's or family member's serious health condition, the employee must provide a Certification of Serious Health Condition form completed by the health care provider.
3. Re-certification of the serious health condition may be required during leave.
4. While on leave, employees are required to contact the Executive Director's office every 15 days to advise First 5 Ventura County of any change or improvement in condition.
5. When the leave is planned for medical treatment, the employee must attempt to schedule the treatment so as not to disrupt normal First 5 Ventura County business operations.

Status of benefits during leave

During leave under this policy, an employee is entitled to participate in the current First 5 Ventura County insurance plans, which will continue to be paid by First 5 Ventura County on the same terms and conditions as prior to the effective date of the medical leave, with employee paying any difference required. Federal law, state law and the Commission's insurance plan documents ultimately govern eligibility and entitlement to benefits. Prior to leave, the Executive Director or his/her designee will explain the payment obligations to the staff member.

If an employee fails to return to work at the end of the leave, the Commission may recover from the employee the cost of any payments made to maintain the employee's coverage, unless the failure to return was due to the continuation, recurrence or onset of a serious health condition that would entitle the employee to FMLA/CFRA leave or other circumstances beyond his or her control.

An employee on leave will not have a break in service and will not lose any employment benefits accrued prior to leave, unless a benefit is used by the employee during leave, such as accrued sick leave or vacation. The employee will be entitled to the same seniority as at the time the leave commenced. Sick leave, vacation, holidays, and personal leave do not accrue while a staff member is on unpaid FMLA/CFRA leave. No express or implied contractual rights should be inferred from this policy.

Return to work

Before being permitted to return to work from a leave for the employee's own serious health condition, the employee will be required to provide a certification from her or his own health care provider that he or she is able to resume work.

Upon return from leave, most employees will be reinstated in the following priority of position reassignment: if available, the same position held before leave, or reassignment to an equivalent position with equivalent pay, benefits and other conditions of employment.

If possible, employees on leave should notify their supervisor at least two weeks before the end of the leave to inform First 5 Ventura County of availability to return to work.

Failure to return from leave, or failure to contact a supervisor or the Executive Director on the scheduled date of return, may be considered voluntary termination of employment.

Using Leave Benefits While on a Leave of Absence

Applicable accrued paid leave, including sick and vacation leave, must be used for all or part of any otherwise unpaid SDI, PFL, and/or FMLA/CFRA leave. However, employees may elect, in writing, prior to the

commencement of the leave, to reserve a balance of up to 80 hours of accrued sick and/or vacation leave. In that case, leave will become unpaid when the elected threshold is reached. Employees may continue to receive SDI or PFL benefits, if still eligible. The total of paid and unpaid leave under this policy is not to exceed 12 weeks.

Leave Without Pay

Regular employees ~~who have used all available eligible paid time off~~ may be granted a leave of absence without pay on the written approval of their supervisor and the Executive Director. If the leave does not qualify for SDI, PFL, and/or FMLA/CFRA, then the employee must use all available and eligible paid time off prior to qualifying for a leave without pay. Failure to return from an approved leave at the specified time shall be construed as voluntary resignation.

An employee found to be employed elsewhere while on leave of absence may be terminated.

During a leave without pay, which is not a medical or family care leave, no benefits are accrued. This includes vacation time, holiday pay, personal leave, sick leave, health insurance, and the retirement benefit plan. This may result in the employee making payments to continue insurance coverage.