

**HUMAN RESOURCES  
POLICIES AND PROCEDURES**



<b>Policy:</b>	Family and Medical Leave Policy	
<b>Date:</b> December 6, 2000	<b>Revision Date:</b> April 1, 2024	<b>Approved by:</b> Human Resources

**I. POLICY STATEMENT**

To the extent not already provided for under current leave policies and provisions, the Eastern Municipal Water District (EMWD) will provide family and medical care leave for eligible employees pursuant to federal Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA), as amended. The following provisions set forth certain of the rights and obligations with respect to such leave. Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

This policy also defines leave for the following:

- Organ/Bone Marrow Donor Leave provisions pursuant to California Labor Code Section 1510.
- California Paid Sick Leave Law, specifically California Labor Code Section 233, commonly referred to as Kin Care Law, as amended.
- Reproductive Loss Leave pursuant to Government Code Section 12945.6.

**II. DEFINITIONS**

- “12-Month Period” means a 12-month period measured forward from the date any employee’s first leave begins.
- Eligible “family member” as defined and amended within FMLA, CFRA and California Paid Sick Leave Law (Kin Care).

**Eligible Family Members Covered by FMLA/CFRA/Kin Care**

	FMLA	CFRA	Kin Care
Child- a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under age 18, or age 18 or older and “incapable of self-care because of mental or physical disability” at the time that FMLA leave is to commence.	X	X	
Child of any age		X	X

EASTERN MUNICIPAL WATER DISTRICT  
 FAMILY AND MEDICAL LEAVE POLICY

	FMLA	CFRA	Kin Care
Grandparent, grandchild, sibling		X	X
Parent - A biological, foster or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child. Parent does not include a parent-in-law.  FMLA regulations define “in loco parentis” as including “those with day-to-day responsibilities to care for and financially support a child,” or, in the case of an employee, who had such responsibility for the employee when the employee was a child.	X	X	X
Registered Domestic Partner		X	X
Spouse - husband or wife, including those in same-sex marriages	X	X	X
Parent-in-law		X	
Designated Person		X	X

- C. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
- I. Inpatient Care (i.e., formally admitted to a health care facility with the expectation of an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or any subsequent treatment in connection with such inpatient care; or
  - II. Continuing treatment by a health care provider; a serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
    - a. A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment or recovery) of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
      - i. Treatment two (2) or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by, a health care provider; or

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

- ii. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example; a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter and can be initiated without a visit to a health care provider, it is not, by itself, sufficient to constitute a regimen of continuing treatment.
- b. Any period of incapacity due to pregnancy or for prenatal care. (The right to take FMLA is separate from the right to take pregnancy disability leave. State law allows an employee to take up to four (4) months of pregnancy disability leave. If an employee exhausts her pregnancy disability leave prior to the birth of the child, and her physician certifies that continued leave is medically necessary, the employee may use FMLA leave prior to the birth of the child. The maximum possible combined leave for pregnancy disability/CFRA/FMLA is four (4) months and twelve (12) workweeks). This entitles the employee to FMLA leave, but not CFRA leave.
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absence for such incapacity qualifies for leave even if the absence lasts less than one (1) day.
- d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of but need not be receiving active treatment by a health care provider. Examples include Alzheimer's disease, a severe stroke, or the terminal stages of a disease.

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

- e. Any period of absence to receive multiple treatments (including any period of recovery therefrom ) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or, kidney disease (dialysis).

D. "Health Care Provider" means:

1. A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or
2. Any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.
3. Others "capable of providing health care services" as determined by the U.S. Secretary of Labor include only:
  - a. Podiatrists, dentists, clinical psychologist, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law.
  - b. Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law.
  - c. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.
  - d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

EASTERN MUNICIPAL WATER DISTRICT  
 FAMILY AND MEDICAL LEAVE POLICY

- e. A health care provider listed above who practices in a country other than the United States, who is performing within the scope of their practice as defined under such law and who is authorized to practice in accordance with the law of that country.
  - f. The phrase “authorized to practice in the state” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.
- E. “Qualifying Exigency” means a need to take military family leave arising out of the fact that the eligible servicemember is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. This is intended to assist families with non-medical needs such as:
1. Short-notice deployment
  2. Military events and related activities (before or during deployment)
  3. Childcare and school activities (e.g., arrange for alternate childcare)
  4. Financial and legal arrangements
  5. Counseling (non-medical for oneself, the service member, or child)
  6. Rest and recuperation (up to 5 days for each)
  7. Post-deployment activities (ceremonies or briefings)
  8. Parental care
  9. Additional activities agreed to by the employer and employee

**III. TYPES OF LEAVES COVERED UNDER FMLA/CFRA**

	FMLA	CFRA
Employee’s own serious health condition that makes the employee unable to perform the functions of their position (this includes participation in a drug or alcohol rehabilitation program)	X	X
Qualifying exigency relating to close family member’s military service	X	X
Up to 26 weeks per 12-month period to care for an ill or injured servicemember	X	
Pregnancy-related disability	X	
Bonding with a newborn, and adopted child or a child placed in foster care with an employee	X	X

EASTERN MUNICIPAL WATER DISTRICT  
 FAMILY AND MEDICAL LEAVE POLICY

Caring for an eligible family member, as defined, with a serious health condition	X	X
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**IV. EMPLOYEES ELIGIBLE FOR LEAVE**

An employee is eligible for FMLA/CFRA leave if the employee:

- A. Has been employed for at least twelve (12) months; and
- B. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

An employee is eligible for Organ/Marrow Donation leave if the employee has been employed for ninety (90) days immediately preceding the commencement of leave.

An employee is eligible for Kin Care leave upon hire as accruals are earned.

An employee is eligible for Reproductive Loss leave if the employee has been employed for thirty (30) days immediately preceding the commencement of leave.

**V. AMOUNT OF LEAVE**

**FMLA/CFRA Leave**

Eligible employees are entitled to a total of twelve (12) workweeks of FMLA/CFRA leave during any 12-month period, and are entitled to military family leave which, when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) weeks during a 12-month period.

A. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, unless otherwise approved by the employee’s department head, the basic minimum duration of such leave is two (2) weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one (1) day, but less than two (2) weeks duration on any two (2) occasions.

If leave is requested to care for a family member/designated person with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

**Organ/Marrow Donation Leave**

Eligible employees are entitled to a total of thirty (30) days of paid leave during any 12-month period to donate an organ to another person. An additional unpaid leave of up to thirty (30) days in a 12-month period may be granted.

Eligible employees are entitled to up to five (5) days of paid leave during any 12-month period to donate bone marrow to another person.

**Kin Care Leave**

Full-time employees may utilize up to 50% of their available annual PTO accruals, in any calendar year, and not less than the amount earned during six (6) months of employment, for care of eligible family members.

Part-time employees may utilize a pro-rated amount of paid leave for this purpose based on their accrual rate.

For the maximum allowable hours per year of service, please refer to the table below.

<b>Years of Service</b>	<b>PTO Annual Accrual/Year</b>	<b>Kin Care Max Usage/Year</b>
0-4	176	88
5-7	216	108
8	223	111.5
9	225	112.5
10	236	118
11+	256	128

**Reproductive Loss Leave**

Employees are entitled to up to five (5) days of Reproductive Loss leave following a reproductive loss event. A reproductive loss event is defined as the day of, or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction. An employee is entitled to a total of twenty (20) days of leave within the 12-month period if they experience more than one (1) reproductive loss event within a 12-month period. The leave need not be taken consecutively or immediately following the reproductive loss event but must be taken within three (3) months from the event. If prior to or immediately following a reproductive loss event, an employee is on or chooses to go on FMLA, CFRA, PDL, or any other leave entitlement

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

under state or federal law, the employee shall complete their Reproductive Loss leave within three (3) months of the end date of the other leave.

Employees may take available and accrued PTO or any other accrued paid leave. If an employee does not have any available paid leave, then the employee may take this leave unpaid.

**DEFINITIONS**

- A. "Failed adoption" means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.
- B. "Failed surrogacy" means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to a person who would have been a parent of a child born as a result of the surrogacy.
- C. "Miscarriage" means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.
- D. "Stillbirth" means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.
- E. "Unsuccessful assisted reproduction" means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a person, the person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

**VI. EMPLOYEE BENEFITS WHILE ON LEAVE**

Leave under this policy is unpaid. While on leave, employees will continue to be covered by EMWD's group health insurance to the same extent that coverage is provided while the employee is on the job. Employees are responsible for benefit premiums on the same basis as employees not on leave. Employees will not continue to be covered under non-health related insurance plans (e.g., life insurance) or PTO accruals when the employee is in an unpaid status for more than two (2) consecutive weeks.

Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the plan, EMWD will inform the employee whether the premiums should be paid to the carrier or to EMWD. An employee's coverage on a particular plan may be dropped if they are more than thirty (30) days late in making a premium payment. However, they will receive a notice at least fifteen (15) days before



EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

coverage is to cease, advising that they will be dropped if their premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after their leave entitlement has been exhausted or expires, EMWD shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or their family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

**VII. SUBSTITUTION OF PAID ACCRUED LEAVES**

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves, or EMWD may require an employee to use paid accrued leaves as follows:

A. Employee Right to Use Paid Accrued Leaves Concurrently with FMLA/CFRA

At the employee's request, where an employee has earned or accrued PTO, floating holidays, or compensatory time off (CTO), that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy. While receiving EMWD-provided disability or workers' compensation payments during a FMLA/CFRA leave, employees may choose to apply any accrued, unused paid time off, floating holidays, or CTO to supplement their EMWD-provided disability or workers' compensation payments, up to 100% of their normal wages.

B. EMWD's Right to Require Use of Paid Accrued Benefits

When employees are not receiving EMWD-provided disability or workers' compensation payments, they are required to use accrued, unused PTO, floating holidays, or CTO as follows:

1. If an employee is on FMLA/CFRA leave due to their own serious health condition (excluding pregnancy, childbirth, and related medical conditions), they are required to use any accrued PTO, floating holidays, or CTO.
2. If an employee is on FMLA/CFRA leave due to pregnancy, childbirth, or related medical conditions, they may choose to use any accrued PTO, floating holidays, or CTO.
3. If an employee is on FMLA/CFRA leave for baby bonding purposes or due to the serious health condition of a covered family member or designated person, they are required to use any accrued PTO, floating holidays, or CTO.

C. EMWD's and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued PTO leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, EMWD may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if EMWD denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, EMWD may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, EMWD may designate that leave toward the employee's 12-week FMLA/CFRA entitlement.

#### **VIII. MEDICAL CERTIFICATION**

Employees who request leave for their own serious health condition or to care for an eligible family member who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by EMWD.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of their position.

##### **A. Time to Provide a Certification**

When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to EMWD within the time frame requested by EMWD (which must allow at least fifteen (15) calendar days after the EMWD's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

##### **B. Consequences for Failure to Provide an Adequate or Timely Certification**

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, EMWD may delay the taking of FMLA/CFRA leave until the required certification is provided.

##### **C. Second and Third Medical Opinions**

If EMWD has reason to doubt the validity of a certification, EMWD may require a medical opinion of a second health care provider chosen and paid for by EMWD. If the second opinion is different from the first, EMWD may require the opinion of a third provider jointly approved by EMWD and the employee but paid for by EMWD. The opinion of the third provider will be binding. An employee may

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

request a copy of the health care provider's opinions when there is a recertification.

D. Intermittent Leave or Leave on a Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

E. Subsequent Medical Recertification

If a minimum duration for leave is specified, EMWD may not request recertification until that time period has expired.

**IX. EMPLOYEE NOTICE OF LEAVE**

Although EMWD recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least thirty (30) days' notice is required. In addition, if an employee knows that they will need leave in the future but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform their supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If EMWD determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, EMWD may delay the granting of the leave up to thirty (30) days until it can, in its discretion, adequately cover the position with a substitute. Calling in "sick" without providing the reasons for the needed leave will not be considered sufficient notice for FMLA/CFRA leave under this policy.

**X. REINSTATEMENT UPON RETURN FROM LEAVE**

A. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and

EASTERN MUNICIPAL WATER DISTRICT  
FAMILY AND MEDICAL LEAVE POLICY

EMWD, the employee will be reinstated within two (2) business days, where feasible, after the employee notifies the employer of their readiness to return.

B. Release to Return to Work

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform their job, the employee must obtain and present a release from the health care provider that the employee is able to resume work. This requirement does not apply to employees returning from intermittent leave. Failure to provide such certification will result in denial of reinstatement.

**XI. WORKER'S COMPENSATION AND FAMILY MEDICAL CARE LEAVE COORDINATION**

FMLA/CFRA Leave will be designated by EMWD when an employee qualifies for such leave as a result of a work-related injury or illness.

**XII. REQUIRED FORMS**

Employees must fill out the applicable forms in connection with leave under this policy and may receive all applicable forms through EMWD's third party FMLA/CFRA administrator. Specific contact information can be located on the HR Benefits page of the Pipeline.

**XIII. DISCIPLINARY ACTION**

Employees are generally not subject to disciplinary action for leave use. The use of leave under the provisions of this policy will not be a factor in employee performance reviews, provided employees notify their supervisor of protected leave use at the time it is taken, and for purposes of Kin Care, when they have accrued hours available.

**AUTHORIZED SIGNATURES ON FILE**