

**Changes Without Regulatory Effect to the
California Family Rights Act Regulations (2 CCR 11087 et seq.)**

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 2. Discrimination in Employment

Article 11. California Family Rights Act

TEXT

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Article 11. California Family Rights Act

§ 11087. Definitions.

The following definitions apply only to this article. The definitions in the federal regulations that became effective March 8, 2013 interpreting the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. § 2601 et seq.) shall also apply to this article, to the extent that they are not inconsistent with the following definitions:

(a) “Certification” means a written communication from the health care provider of the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, or employee with a serious health condition to the employer of the employee requesting a family care leave to care for an aforementioned family member of the employee, or a medical leave for the employee's own serious health condition.

(1) For family care leave for the employee's family member, this certification need not identify the serious health condition involved, but shall contain the information identified in Government Code section 12945.2.

(A) the date, if known, on which the serious health condition commenced,

(B) the probable duration of the condition,

(C) an estimate of the amount of time which the health care provider believes the employee needs to care for the family member, and

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

1. “Warrants the participation of the employee,” within the meaning of Government Code section 12945.2, includes, but is not limited to, providing psychological comfort and arranging third party care for the family member, as well as directly providing, or

participating in, the medical care.

(2) For medical leave for the employee's own serious health condition, this certification need not, but may, at the employee's option, identify the serious health condition involved. Any certification shall contain the information identified in Government Code section 12945.2, as is demonstrated in section 11097 of these regulations. For purposes of the certification "unable to perform the function of the employee's position" means that an employee is unable to perform any one or more of the essential functions of the employee's position. The certification shall contain:

(A) The date, if known, on which the serious health condition commenced,

(B) The probable duration of the condition, and

(C) A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of the employee's position.

(b) "CFRA" means the Moore-Brown-Roberti California Family Rights Act of 1993. (California Family Rights Act, Gov. Code, §§ 12945.1-12945.2.) "CFRA leave" means family care or medical leave taken pursuant to CFRA.

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

(1) "In loco parentis" means in the place of a parent; instead of a parent; charged with a parent's rights, duties, and responsibilities. It does not require a biological or legal relationship.

(d) "Covered employer" means any person or individual, including successors in interest of a covered employer, engaged in any business or enterprise in California who directly employs five or more persons within any state of the United States, the District of Columbia or any territory or possession of the United States to perform services for a wage or salary. It also includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. There is no requirement that the five employees work at the same location or work full-time. "Employer" as used in these regulations means "covered employer."

(1) "Directly employs" means that the employer maintains an aggregate of at least five part or full-time employees to perform services for a wage or salary for any part of the day on which the unlawful conduct occurred or on a "regular basis" as that term is defined in subdivision 11008(d)(1)(A). Employees on paid or unpaid leave, including CFRA leave, leave of absence, disciplinary suspension, or other leave, are counted.

(2) "Perform services for a wage or salary" excludes independent contractors as defined in the Labor Code, but includes persons who are compensated in whole or in part by commission.

(3) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under CFRA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. A determination of

whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality based on the economic realities of the situation. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(A) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(B) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or

(C) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(e) "Domestic partner" means a member of a domestic partnership, as that term is defined in Family Code section 297.

(f) "Eligible employee" means either of the following:

(1) A full- or part-time employee in California who has been employed for a total of at least 12 months (52 weeks) with the employer at any time prior to the commencement of a CFRA leave, and who has actually worked (within the meaning of the California Labor Code and Industrial Welfare Commission Wage Orders) for the employer at least 1,250 hours during the 12-month period immediately prior to the date the CFRA leave is to commence.

(A) Once the employee meets these two eligibility criteria and takes a leave for a qualifying event, the employee does not have to requalify, in terms of the numbers of hours worked, in order to take additional leave for the same qualifying event during the employee's 12-month leave period.

(B) Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12 months, except for a break in service caused by a military service obligation or written agreement to the contrary. Nothing in this section prevents an employer from considering employment prior to a continuous break in service of more than seven years so long as the employer does so uniformly, with respect to all employees with similar breaks in service.

(C) For an employee who takes a pregnancy disability leave, and who then wants to take CFRA leave for reason of the birth of the employee's child immediately after the employee's pregnancy disability leave, the 12-month period during which the employee must have worked 1,250 hours is that period immediately preceding the employee's first day of pregnancy disability leave, not the first day of the subsequent CFRA leave for reason of the birth of the employee's child.

(2) An employee employed by an air carrier as a flight deck or cabin crew member who has been

employed for 12 or more months with the employer, has worked or been paid for 60 percent of the applicable monthly guarantee or the equivalent annualized over the preceding 12-month period, and has worked or been paid for at least 504 hours during the preceding 12-month period. For purposes of this subdivision, “applicable monthly guarantee” means the minimum number of hours for which the employer has agreed to schedule such employees for any given month, unless the employee is on reserve status. For those employees on reserve status, the “applicable monthly guarantee” is the number of hours for which the employer has agreed to pay employees who are on reserve status for any given month pursuant to a collective bargaining agreement, or employer policy if no collective bargaining agreement exists.

(3) For purposes of determining an employee's eligibility for CFRA leave under either subdivision (1) or (2), the following terms also apply:

(A) Once the employee meets their eligibility criteria and gives notice of the need for a leave, the employer may not deny the leave, cut short the leave, or deny any subsequent leave taken for the same qualifying event during the employee's 12-month leave period, even if the number of employees falls below five employees for purposes of CFRA. In such cases, however, the employee would not be eligible for any subsequent leave requested for a different qualifying event.

(B) If an employee is not eligible for CFRA leave at the start of a leave because the employee has not met the 12-month length of service requirement, the employee may nonetheless meet this requirement while on leave, because leave to which the employee is otherwise entitled counts toward length of service (although not for the 1,250 hour requirement). The employer should designate the portion of the leave in which the employee has met the 12-month requirement as CFRA leave. For example, if an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g. workers' compensation, group health plan benefits, etc.), the week counts as a week of employment.

(g) “Employment in the same position” means employment in, or reinstatement to, the original position the employee held prior to taking a CFRA leave.

(h) “Employment in a comparable position” means employment in a position that is virtually identical to the employee's original position in terms of pay, benefits, and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from where the employee was previously employed. It ordinarily means the same shift or the same or an equivalent work schedule. It has the same meaning as the term “equivalent position” in FMLA and its implementing regulations.

(i) “Family care leave” means either:

(1) Leave of up to a total of 12 workweeks in a 12-month period 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, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(2) Leave of up to a total of 12 workweeks in a 12-month period to care for an employee's child, parent, grandparent, grandchild, sibling, spouse, or domestic partner (sometimes referred to as "family members" in these regulations) who has a serious health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(3) Leave of up to a total of 12 workweeks in a 12-month period because of a "qualifying exigency," as that term is defined in Unemployment Code section 3302.2, related to covered active duty or a call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

(j) "Family member" means an employee's child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(k) "FMLA" means the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., and its implementing regulations, 29 C.F.R. Part 825 that became effective March 8, 2013. "FMLA leave" means family care or medical leave taken pursuant to FMLA.

(l) "Grandchild" means the child of an employee's child.

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

(n) "Health care provider" means either:

(1) 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 or 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 any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or

(2) any other person who meets the definition of others "capable of providing health care services," as set forth in FMLA and its implementing regulations.

(o) "Medical leave" means leave of up to a total of 12 workweeks in a 12-month period because of an employee's own serious health condition that makes the employee unable to work at all or unable to perform any one or more of the essential functions of the position of that employee. The term "essential functions" is defined in Government Code section 12926. "Medical leave" does not include leave taken for an employee's pregnancy disability, as defined in (r) below, except as specified below in section 11093(c)(1).

(p) "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. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the

employee as a child. ~~Parent does not include a parent-in-law.~~

(q) ~~Reserved.~~ “Parent-in-law” means the parent of a spouse or domestic partner.

(r) “Pregnancy disability leave” means a leave taken for disability on account of pregnancy, childbirth, or a related medical condition, pursuant to Government Code section 12945 and defined in section 11035(r) of the regulations.

(s) “Reason of the birth of a child,” within the meaning of Government Code section 12945.2 and these regulations includes, but is not limited to, bonding with a child after birth.

(t) “Reinstatement” means the return of an employee to the position that the employee held prior to CFRA leave, or a comparable position, and is synonymous with “restoration” within the meaning of FMLA and its implementing regulations.

(u) “Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a family member of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse.

(1) “Inpatient care” means a stay in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity. A person is considered an “inpatient” when a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

(2) “Incapacity” means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

(3) “Continuing treatment” means ongoing medical treatment or supervision by a health care provider, as detailed in section 11097 of these regulations.

(v) “Sibling” means a person related to the employee by blood, adoption, or by having a common legal or biological parent.

(w) “Spouse” means a partner in marriage as defined in Family Code section 300 or a registered domestic partner, within the meaning of Family Code sections 297 through 297.5. As used in this article and the Family Code, “spouse” includes same-sex partners in marriage.

(x) “Twelve workweeks” means the equivalent of 12 of the employee's normally scheduled workweeks. (See also section 11090(c).)

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12945.2,

Government Code; *J.E. Robinson v. FEHC* (1992) 2 Cal.4th 226 [5 Cal.Rptr.2d 782]; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 and 2611; and 29 C.F.R. § 825.

§ 11094. Retaliation and Protection from Interference with CFRA Rights.

(a) Any violation of CFRA or these implementing regulations constitutes interfering with, restraining, or denying the exercise of rights provided by CFRA. “Interfering with” the exercise of an employee's rights includes, for example, refusing to authorize CFRA leave and discouraging an employee from using such leave. It would also include an action by a covered employer to avoid responsibilities under CFRA, for example:

- (1) Changing the essential functions of the job in order to preclude the taking of leave;
- (2) Reducing an employee's hours available to work in order to avoid employee eligibility; and
- (3) Terminating an employee when it anticipates an otherwise eligible employee will be asking for a CFRA-qualifying leave in the future.

(b) CFRA's prohibition against “interference” prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise CFRA rights or giving information or testimony regarding the employee's CFRA leave, or another person's CFRA ~~or NPLA~~ leave, in any inquiry or proceeding related to any right guaranteed under this article. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid CFRA leave. By the same token, employers cannot use the taking of CFRA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can CFRA leave be counted against an employee under an employer's attendance policies.

(c) Employees cannot waive, nor may employers induce employees to waive, their prospective rights under CFRA. For example, employees (or their collective bargaining representatives) cannot “trade off” the right to take CFRA leave against some other benefit offered by the employer. This does not prevent the settlement or release of CFRA claims by employees based on past employer conduct without the approval of a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be reinstated to the same position the employee held at the time the employee's CFRA leave commenced or to a comparable position.

(d) All individuals, and not merely employees who are CFRA-qualified, are protected from retaliation for opposing (e.g., filing a complaint about) any practice that is unlawful under CFRA ~~or NPLA~~. They are similarly protected if they oppose any practice that they reasonably believe to be a violation of CFRA or these implementing regulations.

(e) In addition to retaliation prohibited by CFRA, retaliation is also prohibited by Government Code 12940 and section 11021 of the regulations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, 2611 and 2615; and 29 C.F.R. § 825.

§ 11095. Notice of CFRA Rights and Obligations.

(a) Employers to Post Notice.

Every employer covered by the CFRA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Department of Fair Employment and Housing. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. If the employer publishes an employee handbook that describes other kinds of personal or disability leaves available to its employees, the employer shall include a description of CFRA leave in the next edition of its handbook it publishes following adoption of these regulations. The employer may include both pregnancy disability leave and CFRA leave requirements in a single notice.

(b) Employers to Give Notice.

Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.

(c) Non-English Speaking Workforce.

Any employer whose workforce at any facility or establishment contains 10 percent or more of persons who speak a language other than English as their spoken language shall translate the notice into every language that is spoken by at least 10 percent of the workforce.

(d) Text of Notice.

The text below contains only the minimum requirements of the California Family Rights Act of 1993 and of the employer's obligation to provide pregnancy disability leave. Nothing in this notice requirement prohibits an employer from providing a leave policy that is more generous than that required by CFRA and providing its own notice of its own policy. Covered employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.

FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to

begin your leave, and if we employ five or more employees, you may have a right to a family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or domestic partner. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement - for pregnancy disability it is to the same position and for CFRA it is to the same or a comparable position - at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your family member~~child, parent, or spouse~~, who has a serious health condition, before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, the basic minimum duration of the leave is two weeks, and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.

Note: Authority cited: Section 12935, Government Code. Reference: Sections 12940, 12945 and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.

§ 11097. Certification Form.

For leaves involving serious health conditions under CFRA or FMLA, the employer may utilize the following Certification of Health Care Provider form or its equivalent. Employers may also utilize

any other certification form so long as the health care provider does not disclose the underlying diagnosis of the serious health condition involved without the consent of the patient.

FAIR EMPLOYMENT & HOUSING COUNCIL
CERTIFICATION OF HEALTH CARE PROVIDER

(California Family Rights Act (CFRA) or Family and Medical Leave Act (FMLA))

IMPORTANT NOTE: The California Genetic Information Nondiscrimination Act of 2011 (CalGINA) prohibits employers and other covered entities from requesting, or requiring, genetic information of an individual or family member of the individual except as specifically allowed by law. To comply with the Act, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic Information," as defined by CalGINA, includes information about the individual's or the individual's family member's genetic tests, information regarding the manifestation of a disease or disorder in a family member of the individual, and includes information from genetic services or participation in clinical research that includes genetic services by an individual or any family member of the individual. "Genetic Information" does not include information about an individual's sex or age.

1. Employee's Name: _____

2. Patient's Name (If other than employee): _____

Is patient the employee's family member (i.e., child, parent, grandparent, grandchild, sibling, spouse, or domestic partner)?

(Note: "child" includes a biological, adopted, foster child, a stepchild, a legal ward, a child of the employee's domestic partner, and a person to whom the employee stands in loco parentis. "Parent" includes 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. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child.)

Yes No

3. Date medical condition or need for treatment commenced [NOTE: THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT]: _____

4. Probable duration of medical condition or need for treatment:

5. Below is a description of what constitutes a "serious health condition" under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the

patient's condition qualify as a serious health condition?

Yes No

6. If the certification is for the serious health condition of the employee, please answer the following:

Is employee able to perform work of any kind? (If "No," skip next question.)

Yes No

Is employee unable to perform any one or more of the essential functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

Yes No

7. If the certification is for the care of the employee's family member, please answer the following:

Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?

Yes No

After review of the employee's signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

Yes No

8. Estimate the period of time care is needed or during which the employee's presence would be beneficial: _____

9. Please answer the following questions only if the employee is asking for intermittent leave or a reduced work schedule.

Intermittent Leave: Is it medically necessary for the employee to be off work on an intermittent basis due to the serious health condition of the employee or family member?

Yes No

If yes, please indicate the estimated frequency of the employee's need for intermittent leave due to the serious health condition, and the duration of such leaves (e.g. 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours or

_____ day(s) per episode

Yes No

Reduced Schedule Leave: Is it medically necessary for the employee to work less than the employee's normal work schedule due to the serious health condition of the employee or family member?

If yes, please indicate the part-time or reduced work schedule the employee needs: _____ hour(s) per day; _____ days per week, from _____ through _____

Yes No

Time Off for Medical Appointments or Treatment: Is it medically necessary for the employee to take time off work for doctor's visits or medical treatment, either by the health care practitioner or another provider of health services?

If yes, please indicate the estimated frequency of the employee's need for leave for doctor's visits or medical treatment, and the time required for each appointment, including any recovery period: Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours or _____ day(s) per appointment/treatment

Yes No

ITEM 10 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE. ****TO BE PROVIDED TO THE HEALTH CARE PROVIDER UNDER SEPARATE COVER.

10. When family care leave is needed to care for a seriously-ill family member, the employee shall state the care the employee will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced work schedule:

11. Printed name of health care provider: _____

Signature of health care provider: _____

Date: _____

12. Signature of Employee: _____

Date: _____

--- Serious Health Condition ---

“Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or domestic partner of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse. A serious health condition may involve one or more of the following:

1. Hospital Care Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care. A person is considered an “inpatient” when a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment two 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., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy [NOTE: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA]

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatment A chronic condition which:

(1) 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;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision 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, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions) 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 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).

Note: Authority cited: Section 12935, Government Code. Reference: Section 12945.2, Government Code; California Genetic Information Nondiscrimination Act, Stats. 2011, ch. 261; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.