

FMLA - Notice of Eligibility and Rights and Responsibilities

INSTRUCTIONS FOR THE EMPLOYER

When an employee requests FMLA/CFRA leave or when you learn that an employee's leave may be for a FMLA/CFRA qualifying reason, you must notify the employee of his or her eligibility to take FMLA/CFRA leave within **five business days**, absent extenuating circumstances.

The *Notice of Eligibility and Rights and Responsibilities* must state whether the employee is eligible for leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why. For example, the notice may inform the employee that he or she is ineligible because the employee worked less than 1,250 hours in the preceding 12 months.

Any requirement for medical certification or certification of a qualifying exigency must be specified in the notice, along with the consequences for failing to provide the required certification.

The *Notice of Eligibility and Rights and Responsibilities* also details the specific expectations and obligations of the employee and explains consequences for not meeting those expectations and obligations. This information regarding rights and responsibilities is required by federal and state law.

▲ Click above to insert your company logo

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[Part A – NOTICE OF ELIGIBILITY]

Eligibility does not mean approval. Once we obtain the information from you specified in Part B, we will inform you whether your leave will be designated as FMLA/CFRA leave and count toward your leave entitlement. In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. Part B provides employees with information regarding their rights and responsibilities for taking FMLA only, CFRA only or FMLA/CFRA leave.

To: _____
Employee

From: _____
Employer Representative

Date: _____

On _____, you informed us that you needed leave beginning on _____ for:

- The birth of a child, or placement of a child with you for adoption or foster care.
- Your own serious health condition, including a workers' compensation injury.
- Your own pregnancy, childbirth or related medical condition (pregnancy disability leave running concurrently with FMLA).
- Because you are needed to care for your spouse; child; parent; registered domestic partner due to his/ her serious health condition.
- Because of a qualifying exigency arising out of the fact that your spouse, son, daughter, or parent is on covered active duty or call to covered active duty status with the Armed forces.
- Because you are the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- Are eligible for:
 - FMLA leave; CFRA leave; FMLA/CFRA running concurrently
(See Part B below for Rights and Responsibilities)
- Are **not** eligible for FMLA or CFRA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
 - You have not met the FMLA/CFRA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
 - You have not met the FMLA/CFRA's hours of service requirement.
 - You do not work and/or report to a site with 50 or more employees within 75-miles.*

If you have any questions, contact _____ or view the FMLA and CFRA posters located in _____.

* If you are seeking time off for the birth of a child or placement of a child with you for adoption or foster care, you may be eligible for leave under the New Parent Leave Act if you work at and/or report to a site with 20 or more employees within 75 miles. Please contact _____ for more information.

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[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA/CFRA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA and/or CFRA leave and still have FMLA and/or CFRA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA/CFRA leave, you must return the following information to us by _____.** (If a certification is requested, employers must allow no less than **15 calendar days** from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- Sufficient certification to support your request for leave. A certification form that sets forth the information necessary to support your request **is** / **is not** enclosed.
- Sufficient documentation to establish the required relationship between you and your family
- Other information needed (such as documentation for military family leave):

- No additional information requested.

If your leave does qualify as FMLA/CFRA leave you will have the following **responsibilities** while on FMLA/CFRA leave (only checked boxes apply):

- Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable _____) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA/CFRA leave, and recover these payments from you upon your return to work.
- You will be required to use your available paid **sick**, **vacation**, and/or **other leave** during your FMLA/CFRA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA/CFRA leave and counted against your FMLA/CFRA leave entitlement.
- Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA/CFRA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We **have** **have not** determined that restoring you to employment at the conclusion of FMLA/CFRA leave will cause substantial and grievous economic harm to us.
- While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

Misuse or abuse of approved FMLA/CFRA time is grounds for disciplinary action, up to and including termination.

If the circumstances of your leave change and you are able to return to work earlier than the date indicated, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA/CFRA leave you will have the following **rights** while on FMLA/CFRA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - the calendar year (January – December).
 - a fixed leave year based on _____.
 - the 12-month period measured forward from the date of your first FMLA/CFRA leave usage.
 - a "rolling" 12-month period measured backward from the date of any FMLA/CFRA leave usage.

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- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____ (first day of approved leave).
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA/CFRA protected leave. (If your leave extends beyond the end of your FMLA/CFRA entitlement, you do not have return rights under FMLA/CFRA. If you have an ongoing disability beyond the end of your FMLA/CFRA entitlement, please contact _____ to discuss.)
- If you do not return to work following FMLA/CFRA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA/CFRA leave; 2) the continuation, recurrence, or onset of a covered service member's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA/CFRA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA/CFRA leave entitlement, you have the right to have **sick**, **vacation**, and/or **other leave** _____ run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA/CFRA leave.

For a copy of conditions applicable to sick/ vacation/ other leave usage, please refer to _____ available at: _____.

Applicable conditions for use of paid leave: _____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA/CFRA leave and count towards your FMLA/CFRA leave entitlement. If you have any questions, please do not hesitate to contact _____ (name) at (____) ____ - ____ (phone).

Employers should retain a copy of this disclosure in their records for three years (29 U.S.C. 2616, 29 CFR825.500). DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.

This form adapted for California use from U.S. Department of Labor WH-381 Revised February 2013 (OMB Control Number 1235-0003 Expires 8/31/2021)