

**North Orange County Regional Occupational Program  
FAMILY CARE AND MEDICAL LEAVE  
ROP AR 4261.8**

**AR 4261.8 (a)**

## **Administrative Regulation**

### **Classified Personnel**

#### **Introduction**

The ROP grants eligible employees the right to family care, medical, or pregnancy disability leave (PDL) pursuant to the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA). The ROP will not deny any eligible employee the right to such leave or restrain or interfere with the employee's exercise of such right. In addition, the ROP will not discharge an employee or discriminate or retaliate against him/her for taking such leave, for opposing or challenging any unlawful ROP practice in relation to any of these laws, or for involvement in any related inquiry or proceeding.

#### **Definitions**

Child (son or daughter) means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis, as long as the child is under 18 years of age or an adult dependent child.

Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the ROP for at least 12 months and who has at least 1,250 hours of service with the ROP during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. For parental/child bonding leave only, the 1,250-hour requirement does not apply.

Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is:

1. Unable because of pregnancy to perform one or more of the essential functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or to other persons; or
2. Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss or end of pregnancy, or any other pregnancy-related condition.

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Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents.

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 his/her child, parent, or spouse, including, but not limited to, treatment for substance abuse, that involves either of the following:

1. Inpatient care 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 him/her to the facility with the expectation that he/she will remain overnight and occupy a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight. 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.
2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
  - a. A period of incapacity of more than three consecutive full days
  - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
  - c. Under FMLA only, any period of incapacity due to pregnancy or for prenatal care
  - d. Any period of incapacity that is permanent or long term due to a condition for which treatment may not be effective
  - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage, or a registered domestic partner within the meaning of Family Code 297-297.5.

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**Definitions for Covered Servicemembers**

Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law.

Covered servicemember may be:

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, 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
2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

Next of kin means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except "parents in law"), regardless of the age of the covered servicemember.

Serious injury or illness for purposes of military caregiver leave means:

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

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2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
  - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered him/her unable to perform the duties of his/her office, grade, rank, or rating
  - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
  - c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to his/her military service or that would do so but for treatment received by the veteran
  - d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers.

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

### **Family Care and Medical Leave**

#### **Permissible Uses of Family Care and Medical Leave**

The ROP grants the Family and Medical Leave Act (FMLA) or California Family Rights Act (CFRA) leave to eligible employees for any of the following reasons:

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (baby bonding)
2. To care for the employee's child, parent, or spouse with a serious health condition

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3. The employee's own serious health condition that makes him/her unable to perform one or more essential functions of his/her position
4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. To care for a covered servicemember or veteran with a serious injury or illness if the covered servicemember is the employee's spouse, child, parent, or next of kin, as defined.

In addition, the ROP grants Pregnancy Disability Leave (PDL) to any female employee who is disabled by pregnancy, childbirth, or other related medical condition.

**Terms of Leave**

An eligible employee shall be entitled to a total of 12 work weeks of Family and Medical Leave Act (FMLA) or California Family Rights Act (CFRA) leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently.

This 12-month period is calculated using the "rolling" or "look-back" method, based on the first day of the requested leave.

In addition, for each pregnancy, any female employee who is disabled by pregnancy, childbirth, or other related condition shall be entitled to PDL for the period of the disability not to exceed four months. For a part-time employee, the four months shall be calculated on a proportional basis.

Pregnancy Disability Leave (PDL) runs concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of her child or to bond with or care for the child.

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period.

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If both parents of a child work for the ROP, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 work weeks. This restriction shall apply regardless of the legal status of both parents' relationship.

**Use/Substitution of Paid Leave**

Employees are required to use accrued vacation time and other paid personal leave (except sick leave) for all family care and medical leaves. Employees are required to use paid sick leave and extended sick leave only for the employees' medical leaves.

An employee shall use his/her accrued vacation leave, other accrued time off, and any other paid time off negotiated with the ROP for any otherwise unpaid Family and Medical Leave Act (FMLA) or California Family Rights act (CFRA) leave not involving his/her own serious health condition. For Pregnancy Disability (PDL), CFRA, or FMLA leave due to an employee's own serious health condition, the employee shall use accrued sick leave and may use accrued vacation leave and other paid time off at his/her option.

The ROP and employee may also negotiate for the employee's use of any additional paid or unpaid time off instead of using the employee's CFRA leave.

An employee with at least one year of service who is the mother or father of a newborn, newly adopted or newly placed child may use available sick leave during parental (bonding) leave. Once the employee has exhausted all current and accumulated sick leave, the employee is entitled to 50 percent pay for the remainder of the parental (bonding) leave. Parental (bonding) leave may not exceed 12 work weeks and is subject to all other terms of FMLA/CFRA bonding leave for birth, newly adopted or newly placed child discussed in this regulation. Employees must exhaust all available paid sick leave before being entitled to 50 percent pay during parental (bonding) leave. Alternatively, employees may take up to 12 weeks of parental leave without pay under FMLA and/or CFRA as described above under "Terms of Leave."

**Intermittent Leave/Reduced Work or Leave Schedule**

Pregnancy Disability Leave (PDL) and family care and medical leave for the serious health condition of an employee or his/her child, parent, or spouse may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the ROP shall limit leave increments to the shortest time the ROP's payroll system uses to account for absences or use of leave provided it is not to be greater than one hour.

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The basic minimum duration of leave for the birth or placement of a child is two weeks. However, the ROP may grant a request for such leave of less than two weeks on any two occasions.

The ROP may require an employee to transfer temporarily to an available alternative position if the employee is pregnant and provides medical certification from her health care provider of a medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on his/her planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule.

**Request for Leave**

The ROP shall consider an employee's request for Pregnancy Disability Leave (PDL) or family care and medical leave only if the employee provides notice sufficient to make the ROP aware of the need for the leave and the anticipated timing and duration of the leave.

For family care and medical leave, the employee need not expressly assert or mention Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA) to satisfy this requirement. However, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken.

The ROP shall respond to requests for leave as soon as practicable, normally within five business days of receiving the employee's request.

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of FMLA/CFRA protection if the ROP is unable to determine whether the leave is FMLA/CFRA qualifying.

When an employee is able to foresee the need for the PDL or family care and medical leave at least 30 days in advance of the leave, the employee shall provide the ROP with at least 30 days' advance notice before the leave. When the 30 days' notice is not practicable because of a lack of knowledge of when leave is needed, a change in circumstances, a medical emergency, or other good cause, the employee shall provide

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the ROP with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial or delay of leave.

In all instances, the employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to ROP operations.

Any requests for extensions of a family care or medical leave must be received at least five working days before the date on which the employee was originally scheduled to return to work and must include the revised anticipated return to work and must include the revised anticipated date(s) and duration of the family care or medical leave.

**Certification of Health Condition**

Within five business days of an employee's request for family care and medical leave for his/her own or his/her child's, parent's, or spouse's serious health condition, the Superintendent or designee shall ask the employee for certification by a health care provider of the need for leave. Upon receiving the ROP's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts.

The certification shall include the following:

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, parent, or spouse with a serious health condition, both:
  - a. A statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of the child, parent, or spouse during a period of the treatment or supervision, and
  - b. The estimated amount of time the health care provider believes the employee needs to care for the child, parent, or spouse

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4. If the employee is requesting leave because of his/her own serious health condition, a statement that due to the serious health condition, he/she is unable to work at all or is unable to perform one or more essential functions of his/her job
  
5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave.

When an employee has provided sufficient medical certification to enable the ROP to determine whether the employee's leave request is Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee.

If the Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, he/she may require the employee to obtain a second opinion from an ROP-approved health care provider, at the ROP's expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the ROP, again at the ROP expense. The opinion of the third health care provider shall be final and binding.

For Pregnancy Disability Leave (PDL), the Superintendent or designee shall ask the employee for certification by a health care provider of the need for leave at the time the employee requests PDL, or within two business days of the request. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if he/she has reason to question the appropriateness of the leave or its duration.

For PDL that is foreseeable and for which at least 30 days' notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts.

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Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave.

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the employee shall provide recertification in the manner specified for the leave.

The Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the federal Genetic Information Nondiscrimination Act of 2008 and the California Genetic Information Nondiscrimination Act of 2011.

#### **Release to Return to Work**

Upon expiration of an employee's Pregnancy Disability Leave (PDL) or family care and medical leave taken for his/her own serious health condition, the employee shall present certification from the health care provider that he/she is able to resume work.

The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job, any functional limitations, and the need for any reasonable accommodations.

#### **Rights to Reinstatement**

Upon granting an employee's request for Pregnancy Disability Leave (PDL) or Family and Medical Leave Act (FMLA)/California Family Act (CFRA) leave, the ROP will reinstate the employee in the same or a comparable position when the leave ends.

The ROP may refuse to reinstate an employee returning from FMLA or CFRA leave to the same or a comparable position if all of the following apply:

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of ROP employees who are employed within 75 miles of the employee's worksite
2. The refusal is necessary to prevent substantial and grievous economic injury to ROP operations

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3. The ROP informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service

The ROP may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee.

The ROP may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL.

**Leave's Effect on Pay**

Except to the extent that other paid leave is substituted for family care or medical leave, family care and medical leave is unpaid.

**Maintenance of Benefits/Failure to Return from Leave**

While an employee is on Pregnancy Disability Leave (PDL) or family care and medical leave, he/she shall maintain his/her status with the ROP and the leave is not a break in service for purposes of longevity, seniority, or any employee benefit plan.

For up to a maximum of four months for PDL and 12 work weeks for other family care and medical leave, the ROP shall continue to provide an eligible employee the group health plan coverage at the level and under the terms and conditions coverage would have been provided if the employee had continued in employment for the duration of leave. The employee shall continue to have the employee portion for group health plan coverage deducted to the same extent and under the terms and conditions coverage would have been provided if the employee had continued in employment for the duration of leave.

The employee shall reimburse the ROP for premiums paid during the leave if he/she fails to return to ROP employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond his/her control. In such circumstances, if while on leave, the employee exhausts all available leave accrual, the employee shall be afforded the opportunity to elect coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), for the duration of leave. If the employee returns to active status, benefits will be reinstated to the same extent and under the same terms and conditions as would apply had the employee not taken leave.

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While an employee is on PDL or family care and medical leave, the employee accrue employment benefits, such as sick leave and extended sick leave, only when paid leave is being used or substituted for unpaid leave, and only if the employee would otherwise be entitled to such accrual.

In addition, while an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and

retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the ROP shall not make plan payments for an employee during any unpaid portion of the leave, and the unpaid leave shall not be counted for purposes of time accrued under the plan.

**Military Family Leave Resulting from Qualifying Exigencies**

An eligible employee may take up to 12 work weeks of unpaid Family and Medical Leave Act (FMLA) leave during a 12-month fiscal year for one or more qualifying exigencies while his/her child, parent, or spouse who is a military member is on covered active duty or on call to covered active duty status.

Qualifying exigencies include time needed to:

1. Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of the call or order of short notice deployment
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status
3. Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. Make or update financial and legal arrangements to address a military member's absence
5. Attend counseling provided by someone other than a health care provider

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6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. Address any other event that the employee and ROP agree is a qualifying exigency

The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis.

During the period of qualified exigency leave, the ROP's rule regarding an employee's use of his/her accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

**Military Caregiver Leave**

The ROP shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, son, daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other Family and Medical Leave Act (FMLA) qualifying reasons.

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section "Request for Leave" above.

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An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the ROP and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period.

During the period of military caregiver leave, the ROP's rule regarding an employee's use of his/her accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

**Notifications**

The Superintendent or designee shall provide the following notifications regarding state and federal law related to Pregnancy Disability Leave (PDL) or Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA) leave:

1. General Notice: Information explaining the provisions of the FEHA/PDL and FMLA/CFRA and employee rights and obligations are posted in a conspicuous place on ROP premises or electronically, and included in employee handbooks
2. Eligibility Notice: When an employee requests leave or takes a leave that may qualify for FMLA/CFRA or PDL, the ROP will notify the employee of his/her eligibility to take such leave
3. Rights and Responsibilities Notice: The Superintendent or designee provides written notification to employees who take or request family care and medical leave, explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations
4. Designation Notice: Upon determining whether the leave qualifies as FMLA/CFRA leave, the Superintendent or designee provides written notice designating the leave as FMLA/CFRA qualifying or the reason the leave will not be so designated

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**Records**

The Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law.

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