



**Division of Risk Management and Insurance Services**  
**Integrated Disability Management**  
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**FMLA Programs Section**

*Helpful FMLA Information – a series of Q&As*

**Your Eligibility for FMLA** (more information is available in FMLA - 107)

“FMLA Eligibility” is based on measurements of an employee’s worktime. Meeting these standards is required for an employee to ensure FMLA protections. Without FMLA eligibility, these rights do not exist. Therefore, it’s important to know how and when you as an employee are “FMLA eligible”.

Am I guaranteed protections as long as I’m FMLA eligible? No. If you are FMLA eligible, your reason for absence must also be for an FMLA-qualifying event. If you have both, eligibility and qualification, FMLA protections are activated, including rights to take and return from leave, rights to not be criticized for those absences under FMLA protection, and rights to District-paid health benefits.

If for example I take an absence to care for my very ill spouse, isn’t that kind of absence automatically FMLA protected? No. You have described what obviously appears to be an FMLA qualifying event. Yet it is important to re-emphasize that FMLA protections require two essential components: a qualifying event, which you have; *AND* FMLA eligibility. FMLA eligibility is a separate component from the qualifying event. You as an employee must meet both criteria for FMLA protections.

Are the District’s eligibility requirements two-pronged: working 130 workdays in the last 12 months, and being employed one year with LAUSD at any time? Yes. Let’s examine the one-year employment first. In order for an employee to be granted an absence or leave under FMLA or CFRA, the employee must have been employed with the District for at least 12 months at any time. These months need not be consecutive.

Does the District’s second eligibility requirement, working 130 workdays in the last 12 months, operate in the same way as the 12-month requirement? No. The eligible employee must have served, meaning having shown-up-for-work, at least 130 workdays during period of measurement, meaning the 12 months immediately preceding the effective first date of the specific FMLA absence or FMLA leave. Note that there are two different “12 months”: one for counting employment; the other is a consecutive 12 months used for counting workdays. While the 12-month period of measuring workdays is consecutive, the actual 130 workdays need not be consecutive. These workdays cannot be any form of employment with the District. They do not include any time off, unpaid or paid. There’s an exception however: any time serving in the U.S. military would count as workdays.

Is the period of measurement, specifically defined above as “the 12 months immediately preceding the effective first date of FMLA,” typically a calendar year, school year, or fiscal year? No, it is none of these. When taking an FMLA absence or FMLA leave, there will be a starting date. Let’s say it is April 9. You (and management) would need to go back exactly 12 months – to April 9 of the previous year. Count the number of workdays between April 9 of last year through April 8 of this current year. Is the count more than 130 show-up-for-work workdays? If yes, you are FMLA eligible.

Is it necessary for the District to even consider the U.S. federal requirement (1,250 workhours), since it is more difficult to meet as compared to the District minimum? Yes, at least for some employees at the District. The federal requirement is important to know because some LAUSD employees must meet this higher

threshold. The federal regulation states that an employee qualifies by working a certain number of hours; but the legal standard and its computation is separate from LAUSD's 130 workdays. The CA State rules, and the U.S. Dept. of Labor rules, are that the employee must have served and worked 1250 workhours during the 12 months immediately preceding the effective first date of the specific FMLA absence or FMLA leave. Like the rules defining "workdays", these "workhours" are not any form of employment with the District; they do not include any time off, unpaid or paid, except time away for U.S. military service.

Is it easy to identify which LAUSD employees must meet the U.S. federal requirement of 1250 workhours? More or less 'yes'; the analysis is fairly straightforward. First, there are those employees whose bargaining agreements specifically state that the federal requirement is applicable: Unit A employees, typically school police; and Unit E employees, typically skilled crafts. Second, there are additional employees whose bargaining agreements do not provide any FMLA references within their contract: Unit G employees, typically playground aides. Third, other temporary employees must also meet this higher-level standard.

Are the eligibility requirements for another California law, CA PDL (Pregnancy Disability Leave), different from FMLA? Yes, the requirements are very different. Under PDL, there is no minimum amount of work time that an employee needs to have worked. For instance, an employee does not need to have 12 months with LAUSD, and the employee does not need to have worked 130 workdays in the year immediately preceding the first date of absence. A recently hired employee is eligible for these PDL protections.

If I start FMLA or CFRA for three weeks, or even three days, and then return to work for a while, do I have to re-establish my FMLA eligibility and my FMLA protections when more leave is needed? No. This eligibility along with your protections is automatically saved. Once you take a CFRA or FMLA absence in one FMLA Year for a specific reason, you retain eligibility for CFRA/FMLA for the remaining part of the FMLA Year. Yet this automatic retention of eligibility applies only for that original reason that CFRA/FMLA was taken (such as caring for your ill mother). If reasons for leave change (such as absence for your own serious health condition), then you must be subjected to renewed measurements of eligibility.

Is the "FMLA Year" typically a calendar, school, or fiscal year? No, it is none of these either. The District's FMLA Year is directly obtained from the FMLA Regulations. It is formally labeled "FMLA Variable Year Forward". It could be informally called "FMLA Trigger Year". The FMLA Year is triggered on the first date that the FMLA absence occurs, or the first day of absence when FMLA should have been recognized.

Even if I'm FMLA-eligible and taking absence for an FMLA-qualifying event, don't I have to complete paperwork for the District to recognize my FMLA protections? Absolutely Yes. Just like for any absence, you will need to obtain and complete the District's standard absence form. Typically this form will be "Certification/Request of Absence for Illness, Family Illness, New Child". There are several FMLA questions on this form, such as # 5 and # 6, in which your answers are essential, especially if your verbal information to your manager or designee is unclear as to whether the reason for your absence includes any qualifying FMLA information.

Aren't there more LAUSD documents to complete for my absence and my protections? Again, absolutely Yes. Have your health provider (or your family member's health provider) complete the "FMLA Certification of Health Care Provider" (form FMLA – 3.2). You'll need to submit this form within 15 calendar days. You can obtain a reasonable extension if you inform your manager that your provider is unable to complete the form in time despite your diligent efforts to secure timely completion. In addition, if your absence will be for more than 20 consecutive working days, then you will need to complete the appropriate forms for a formal leave of absence from the applicable LAUSD personnel division, plus the two forms above. You can obtain these leave forms from the various personnel divisions on-line at [www.lausd.net](http://www.lausd.net) . You can obtain the FMLA – 3.2 form from your site or on-line at [fmla.lausd.net](http://fmla.lausd.net) .

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