

MEMORANDUM

To: PERSONNEL MANAGEMENT LIAISONS

Date: July 20, 1993

Reference Code: 93-48

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Labor Relations Officers
Personnel Officers

From: Department of Personnel Administration
Office of the Director

Subject: Family and Medical Leave Act of 1993

On February 5, 1993, the Federal Family and Medical Leave Act (FMLA) was signed into law by President Clinton. This new law will be administered by the U. S. Department of Labor (DOL) under its regulations. The Department of Personnel Administration (DPA) does not have regulatory or enforcement authority for its provisions; however, we have compiled a variety of information concerning the Act which is being conveyed to State agencies through this memorandum. Certain interpretative provisions and materials are still being developed by the Federal government. We will share them with State agencies in a follow-up memo when they become available.

FMLA requires private employers with 50 or more employees and all public employers to provide up to 12 weeks of unpaid leave each year to an employee:

- for the birth, adoption, or foster care placement of a child;
- to care for a parent, spouse, or child who is seriously ill; and/or
- for the employee's own serious illness.

Provided that one of these conditions for leave is met, family leave may be taken in one 12-week stretch, or in increments of one hour or more that total 12 weeks. FMLA also requires the employer to maintain the employee's health, dental, and vision coverages (with normal State contributions) while an employee is on an unpaid family care leave.

Except for the continuation of the State's contributions for health, dental, and vision benefits, these leave provisions are largely consistent with existing State requirements and practices. However, as outlined in this memorandum, State agencies must still ensure in each case, that they are in specific compliance with the Federal law. It is also

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important to note that the Federal provisions are in addition to and do not reduce existing State provisions. Therefore, employees will retain their existing entitlements to leaves provided under State laws, rules, and bargaining agreements that exceed or are not covered by FMLA provisions.

Effective Date

State employees will be subject to two effective dates under FMLA. The law generally goes into effect on August 5, 1993. This effective date will cover all excluded employees, as well as members of Bargaining Unit 14 (since there is no current agreement for this unit). However, for employees covered by collective bargaining agreements (including all of the State's other represented employees), the law takes effect February 5, 1994.

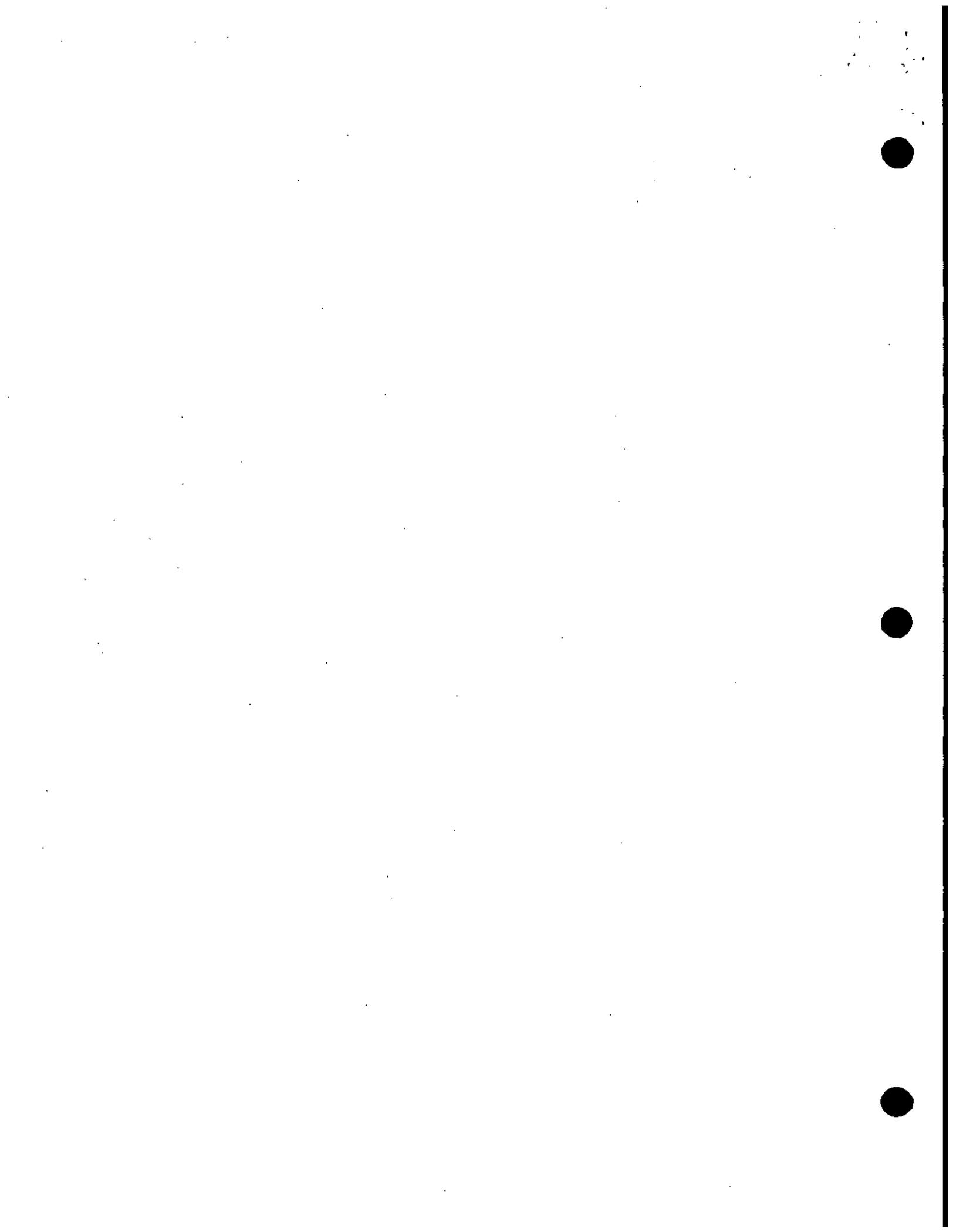
Determining the 12-Month Period

An employer is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

- the calendar year;
- any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;
- the 12-month period measured forward from the date any employee's first FMLA leave begins; or,
- a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before August 5, 1993).

The alternative chosen must be applied consistently and uniformly to all employees. We recommend departments implement the "rolling" 12-month period, as this is consistent with the method used under the State's Family Rights Act. Departments should make sure employees are informed of their eligibility period.

An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave.



Coordination with Other Laws

On January 1, 1992 the State's Family Rights Act became effective. This law is administered by the California Department of Fair Employment and Housing. Under its provisions, employers with 50 or more employees are also required to provide unpaid leaves of absence for family reasons. However, under this State law, employees are entitled to four months during a 24-month period; furthermore, leave is not provided to an employee for his/her own serious illness, and the employer is not required to maintain the employee's health care coverage while the employee is on a family care leave.

Assemblywoman Gwen Moore, the author of the State's Family Rights Act, has introduced legislation this year, AB 1460, to conform the State law with the provisions of the Federal FMLA. If this legislation passes, it would become effective immediately upon its being signed. Otherwise, departments will have to implement the leave provisions from each law.

FMLA does not pre-empt any State or local laws. While overall both the Federal and State laws contain similar leave provisions, there are many technical differences between the two. Where the provisions of the State and Federal laws differ, the most generous/less restrictive leave provisions must be applied. As an example, an employee would be entitled to four months of family leave in one year under California law and 12 weeks the next year under FMLA.

Employee entitlements and eligibility requirements provided under DPA Rules and collective bargaining agreements remain intact. As such, departments will need to compare these existing State employee leave entitlements with the State and Federal provisions when granting family care leave requests.

Attached for your information are two charts comparing the Federal and State family care leave provisions (Attachments A and B), in addition to the other leave of absence provisions provided to State employees.

Integration of Disability Benefits

DOL regulations specify that if a leave taken by an employee qualifies for FMLA, the leave used counts against the employee's entitlement under FMLA. As an example, if an employee takes a Nonindustrial Disability Insurance (NDI) leave for 10 weeks because of a heart attack, the employee would be entitled to two additional weeks of family care leave during the remaining year. However, paid leaves due to job-related accidents or injuries [Industrial Disability Leave (IDL) or Temporary Disability (TD)] should not be counted against an employee's entitlement under FMLA.



Recordkeeping and Documentation

Under the provisions of FMLA, employers are required to keep records of compliance. DOL may request such records annually or more frequently if there is reasonable cause to believe an employer is violating the requirements. To comply with DOL requirements, the following records must be maintained:

- payroll data that includes: employee name, occupation, rate or basis of pay and terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, and total compensation paid [State agencies should be able to retrieve this from the State Controller's Office (SCO) data base];
- date(s) FMLA is taken by employee. The leave must be designated as FMLA and must not include leaves taken under laws or employer-provided provisions that are not covered by FMLA;
- if FMLA is taken in increments of less than one day, the hours of the leave;
- copies of employee leave requests and copies of all notices given to employees as required by FMLA;
- copies of documents of employer policies and practices regarding taking of paid and unpaid leaves;
- records of premium payments of employee benefits; and
- records of any dispute between the employer and employee regarding designation of leave as FMLA, including the reasons for the designation and for the disagreement by the employer and/or employee.

The rules specify no particular order or form of records is required. However, the records must be available for inspection, copying, and transcription if requested by DOL (e.g., investigation of an employee complaint). Employers must maintain FMLA records for a minimum of three years.

Because employees may use various leave credits to remain on pay status while on family care leave, SCO will not have all of the information needed available to provide statewide data on FMLA leaves. Therefore, departments should maintain this information regarding family care leave usage to satisfy DOL requirements.



In addition to the federally-mandated recordkeeping requirements, departments should monitor their employees' family care leave requests:

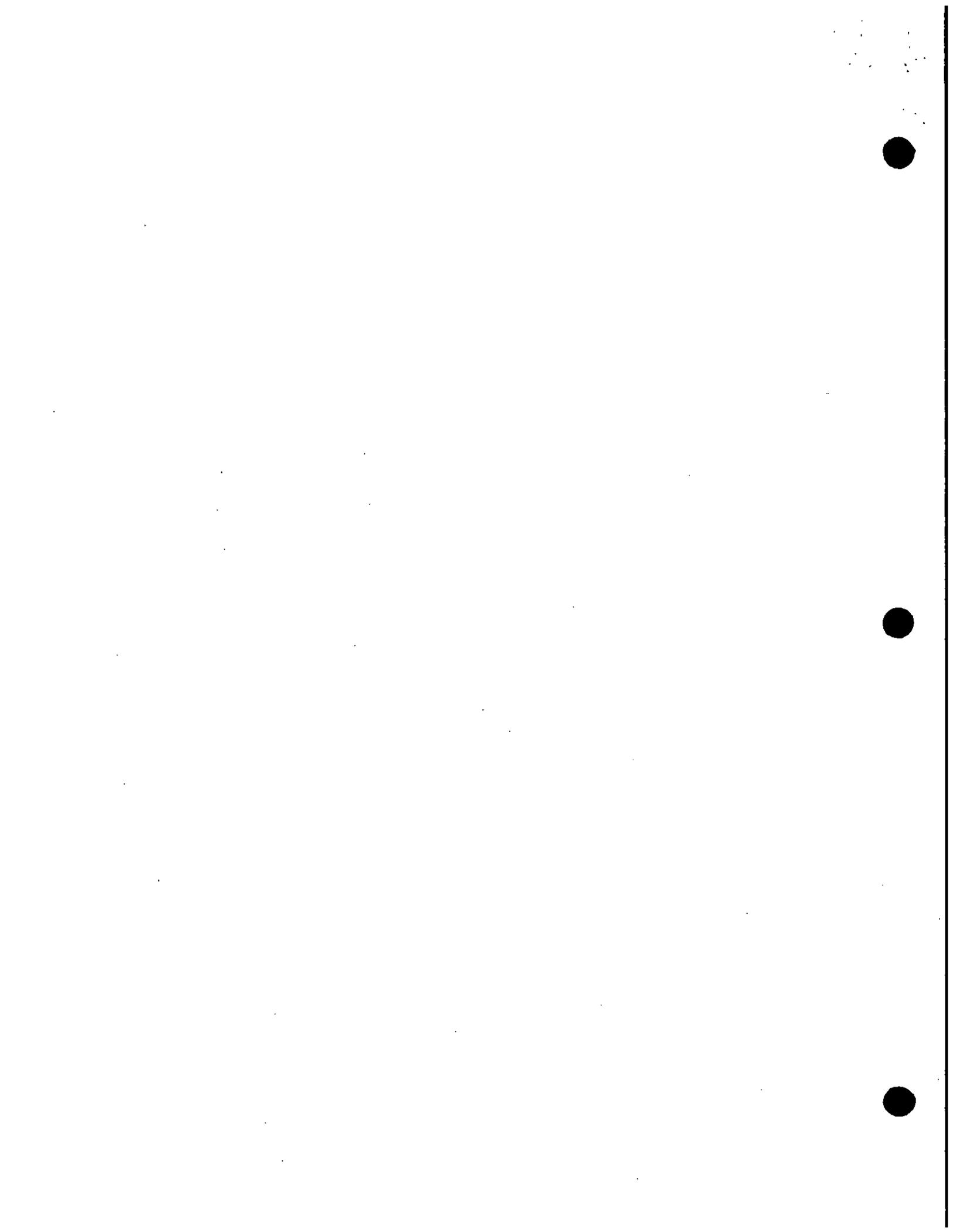
- to determine when the employee entitlements provided for both the Federal and State laws are satisfied;
- to ensure that the employer's continuation of coverage for health care premiums does not exceed the 12-week maximum in a 12-month period;
- to determine when combined leaves for spouses (e.g., for the birth or adoption of a child) does not exceed the 12-week maximum for both parents (see Attachment B); and
- to monitor State and Federal leave eligibility for part-time, intermittent as well as full-time employees.

SCO will be issuing instructions to departments for processing Personnel Action Request (PAR) forms to place an employee on a family care leave of absence. Instructions on how to request continued health, dental, and vision coverage when an employee is off payroll while on family care leave are also forthcoming.

Posting and Noticing Requirements

FMLA requires that employers post and keep posted a notice explaining the Act's provisions and provide information regarding the procedures for filing complaints of violations with DOL. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. FMLA also requires that the notice must be developed by DOL and no reproduction of the notice shall be smaller than 8 1/2 by 11 inches to meet the posting requirements. The attached notice (Attachment C) has been prepared by DOL. You may use this notice or copies of the required notice may be obtained directly from DOL.

In addition to the posting requirements, DOL regulations specify that, if an employer has any written guidance to employees concerning employee benefits or leave rights, such as in a handbook, information concerning FMLA entitlements and employee obligations must be included in the handbook or other document. For example, if an employer provides an employee handbook that describes policies regarding leaves, attendance, or similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employer's policies regarding FMLA. If an employer does not have written policies, manuals, or handbooks, the employer is required to provide written guidance to an employee concerning all the employee's rights and obligations under FMLA. DOL will be publishing an FMLA Fact Sheet which may be used to provide this information to employees. Informational publications describing the Act's provisions and the FMLA Fact Sheet should be available from DOL sometime in August.



Finally, FMLA requires that when an employee requests a family care leave, the employer shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet such obligations. The specific requirements for this notice are outlined on the reverse side of the attached Request for Family Care Leave Form (Attachment D). You may design your own notice or request a prototype notice which will also be available from DOL. DOL notice may be adapted to meet DOL's specific notice requirements.

Employee Requirements

FMLA and related DOL rules impose certain requirements on employees in order for them to properly exercise and receive their family leave rights. For example:

- when the need for a leave is foreseeable, the employee must request it at least 30 days in advance;
- the employer may require the employee to provide medical certification for medically-related leaves; and
- when it is taken for medical or other FMLA-related appointments, the employee can be required to make a reasonable effort to schedule the appointment at a time that minimizes disruption to the employer.

Interim Regulations

DOL has issued interim regulations (Part II, 29 CFR Part 825 - Family and Medical Leave Act: Interim Final Rule) implementing FMLA. These "user friendly" regulations which were developed in a question and answer provide guidance on:

- what FMLA does;
- who is covered;
- what an employee is entitled to;
- rights and obligations of employers and employees;
- recordkeeping requirements;
- special rules for school employees;

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- coordination with other laws and collective bargaining agreements; and
- definitions.

Attached is an excerpt from the definitions section (Section 825.800) of DOL regulations (Attachment E). We have attempted to provide the definitions that will be used most frequently by departments. However, we recommend that you obtain a copy of FMLA regulations so you will have all the necessary information to properly implement FMLA.

Copies of the proposed regulations or other DOL issued publications can be ordered from the Department of Labor, 2981 Fulton Avenue, Sacramento, California 95821 or by calling (916) 978-4233

Beginning on July 28, 1993, DPA will have a limited supply of the proposed regulations which will be available for pick up in our Reception Area located at 1515 S Street, North Building, Suite 400, Sacramento.

Leave Request Forms

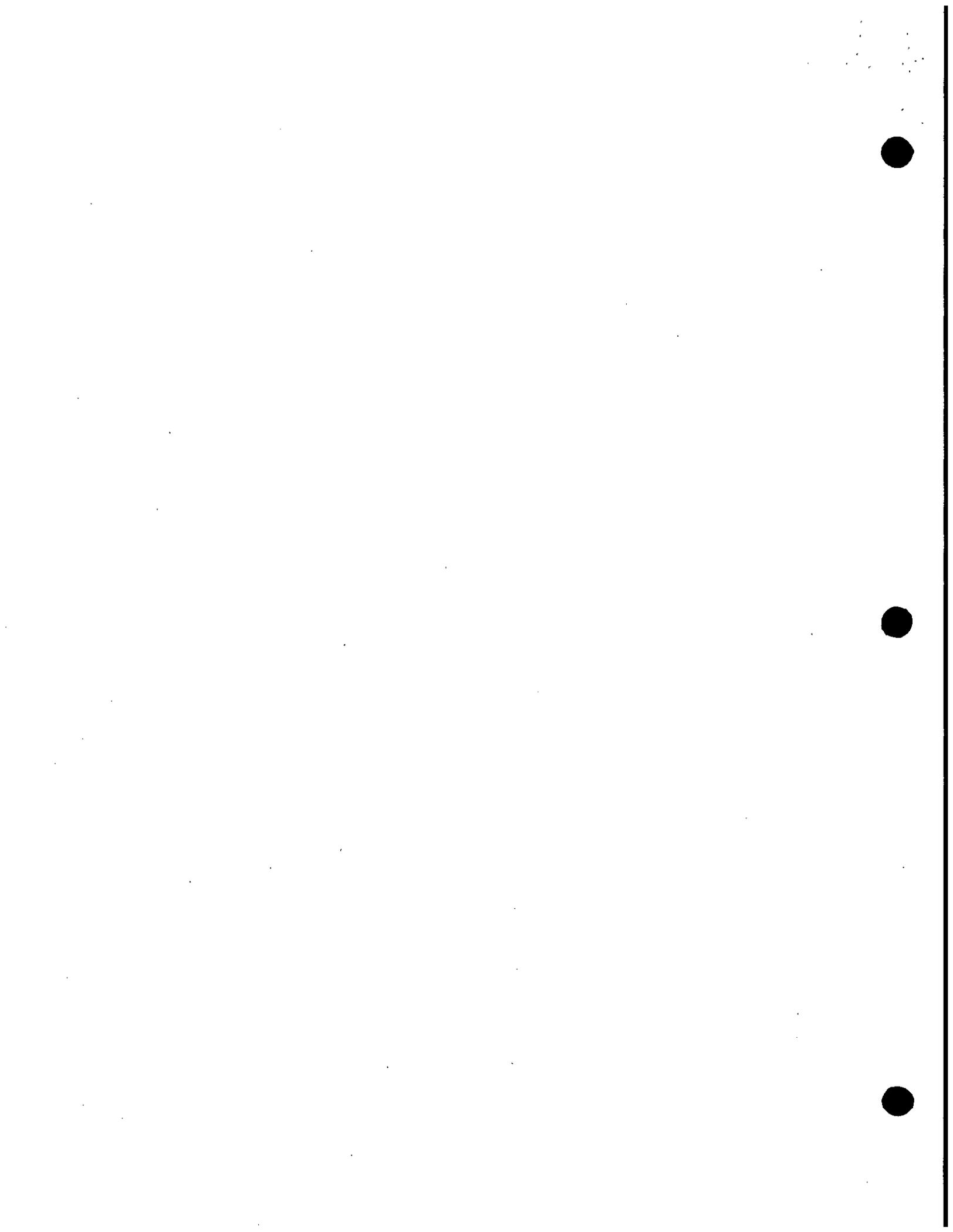
Attached is a sample Request for Family Care Leave Form (Attachment D). You may use this form or develop one of your own. If you develop your own departmental form, please ensure that it includes appeal procedure information for both the State and Federal laws.

Additional Information

We will continue to provide departments with additional information and materials as they become available. If you have policy questions or desire additional information regarding the implementation of the FMLA or State Family Rights Act please contact:

FMLA Contact: Mike Ginley
Department of Labor
2981 Fulton Avenue
Sacramento, California 95821
(916) 978-4233

State CFRA Contact: Prudence Poppink
Fair Employment and Housing Commission
1390 Market Street, Suite 410
San Francisco, California 94102
(415) 557-2325 or (CALNET) 597-2325

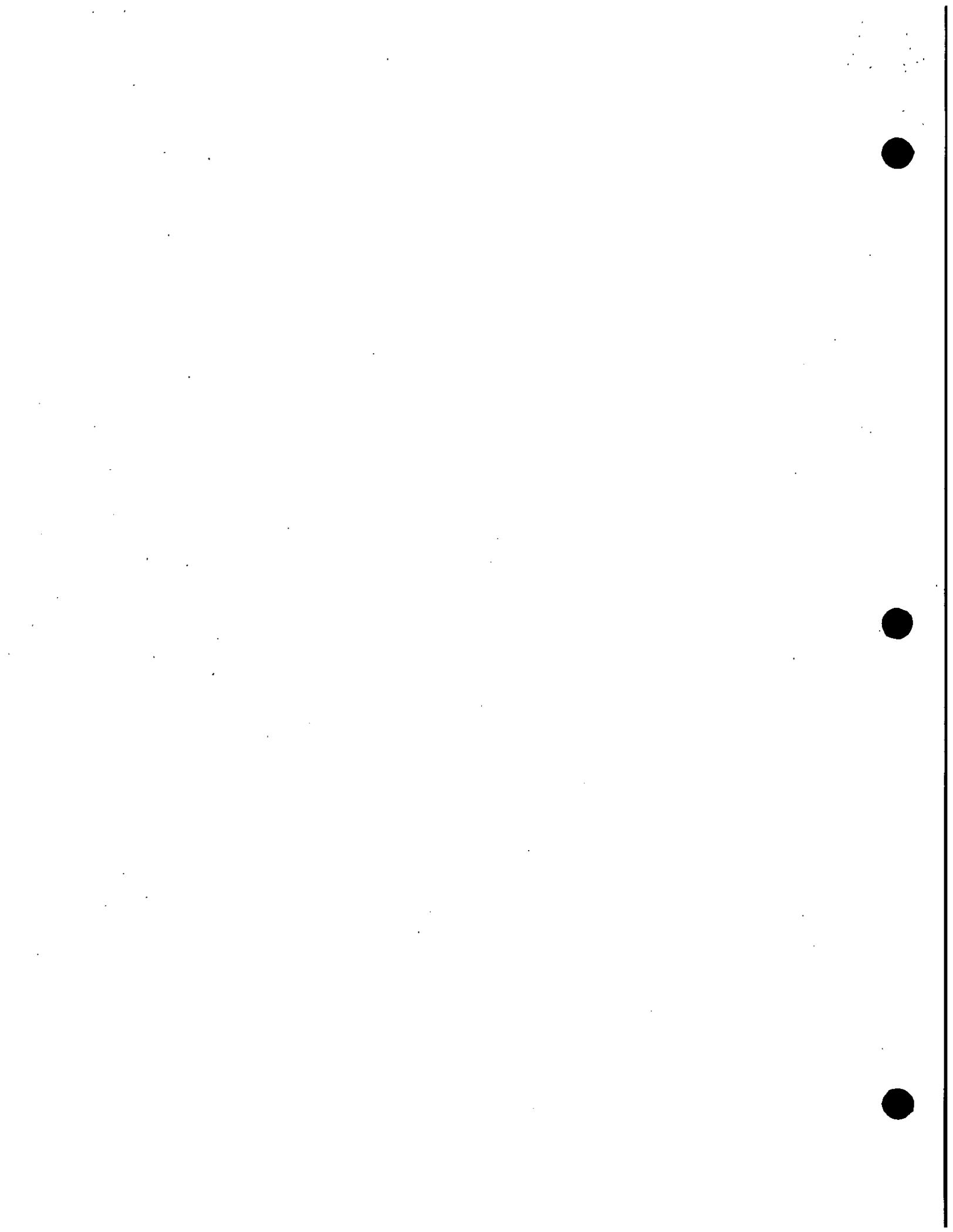


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If you have questions regarding this memo, please contact Sydney Perry, Policy Development Office at (916) 445-9244 or (CALNET) 485-9244.


David J. Tirapelle
Director

Attachments



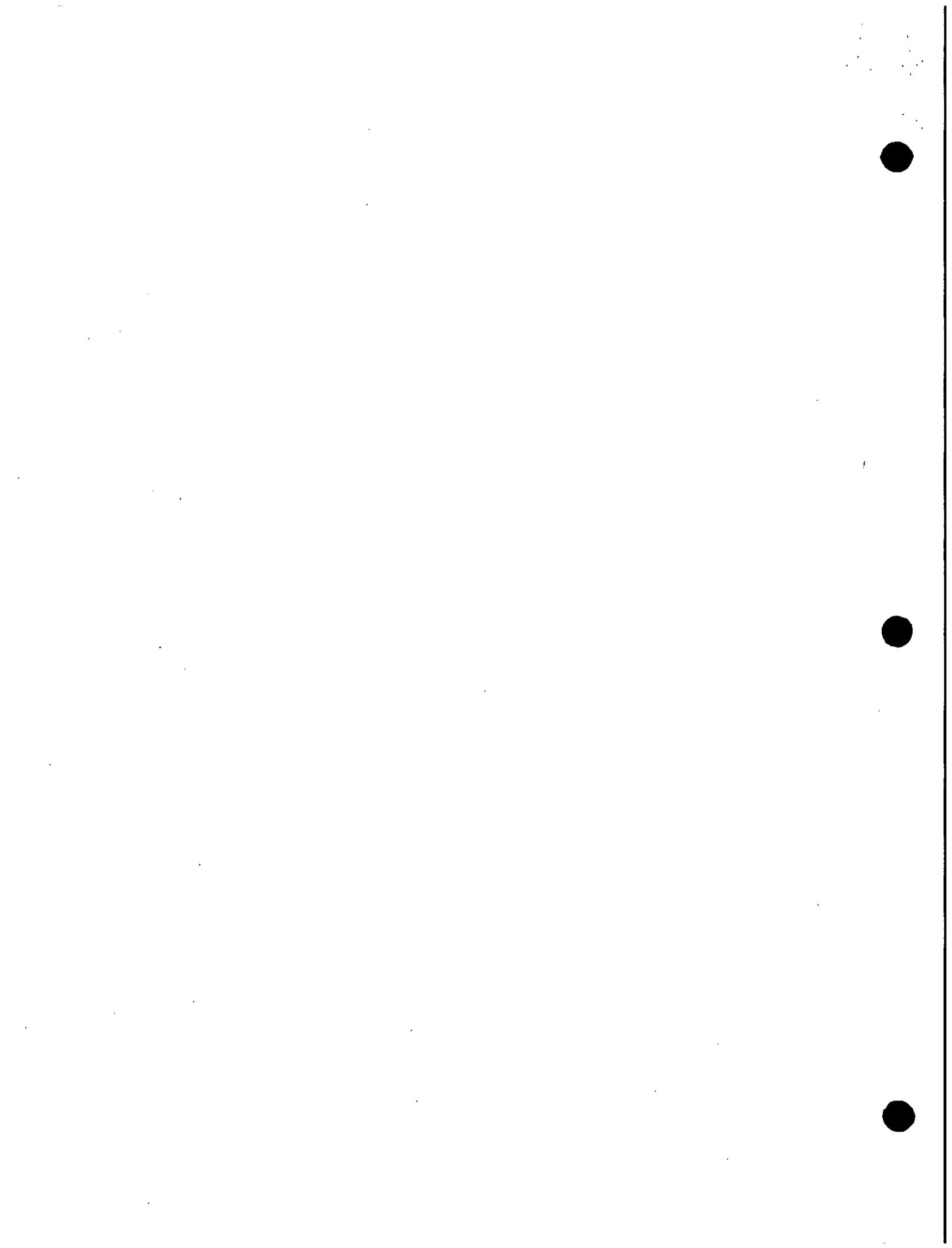
FAMILY CARE LEAVE

	Government Code 12945 [Department of Fair Employment and Housing (DFEH)]	Federal Family and Medical Leave Act (FMLA) of 1993	California Family Rights Act (CFRA) Government Code 12945.2	Government Code 19991.6 [Department of Personnel Administration (DPA)]	MOUs (that supersede Government Code 19991.6)
Pregnancy, Childbirth and Recovery Therefrom	Requires up to 4 months leave for medically verified disability.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	N/A.	Shall provide 12 months leave at employee's request.	None.
Newborn Care					
Mother	N/A.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	Up to 16 weeks leave in 24 months for employees not covered by Government Code 19991.6 or related MOU if the employee has 12 months continuous service and meets other CFRA requirements.	Shall provide 12 months leave at employee's request.	None.
Father	N/A.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	Up to 16 weeks leave in 24 months for employees not covered by Government Code 19991.6 or related MOU if the employee has 12 months continuous service and meets other CFRA requirements.	Excluded employees shall receive 12 months leave at employee's request.	Represented employees shall receive 12 months leave at employee's request.
Adoption Leave	N/A.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	Up to 16 weeks leave in 24 months for employees who meet other CFRA requirements.	Excluded employees may receive 12 months leave at employee's request.**	Various provisions. Check MOU.
Leave of Absence for Sick Child, Spouse, or Parent with Serious Health Condition	N/A.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	Up to 16 weeks leave in 24 months for employees not covered by Government Code 19991.6 or related MOU if the employee has 12 months continuous service and meets other CFRA requirements.	None.	Bargaining Units 15 and 20.
Leave of Absence for Employee with Serious Health Condition	N/A.	Up to 12 workweeks during any 12-month period if employee meets 12 month/1,250 hour requirement.*	None.	None.	None.

* See Attachment B for details.

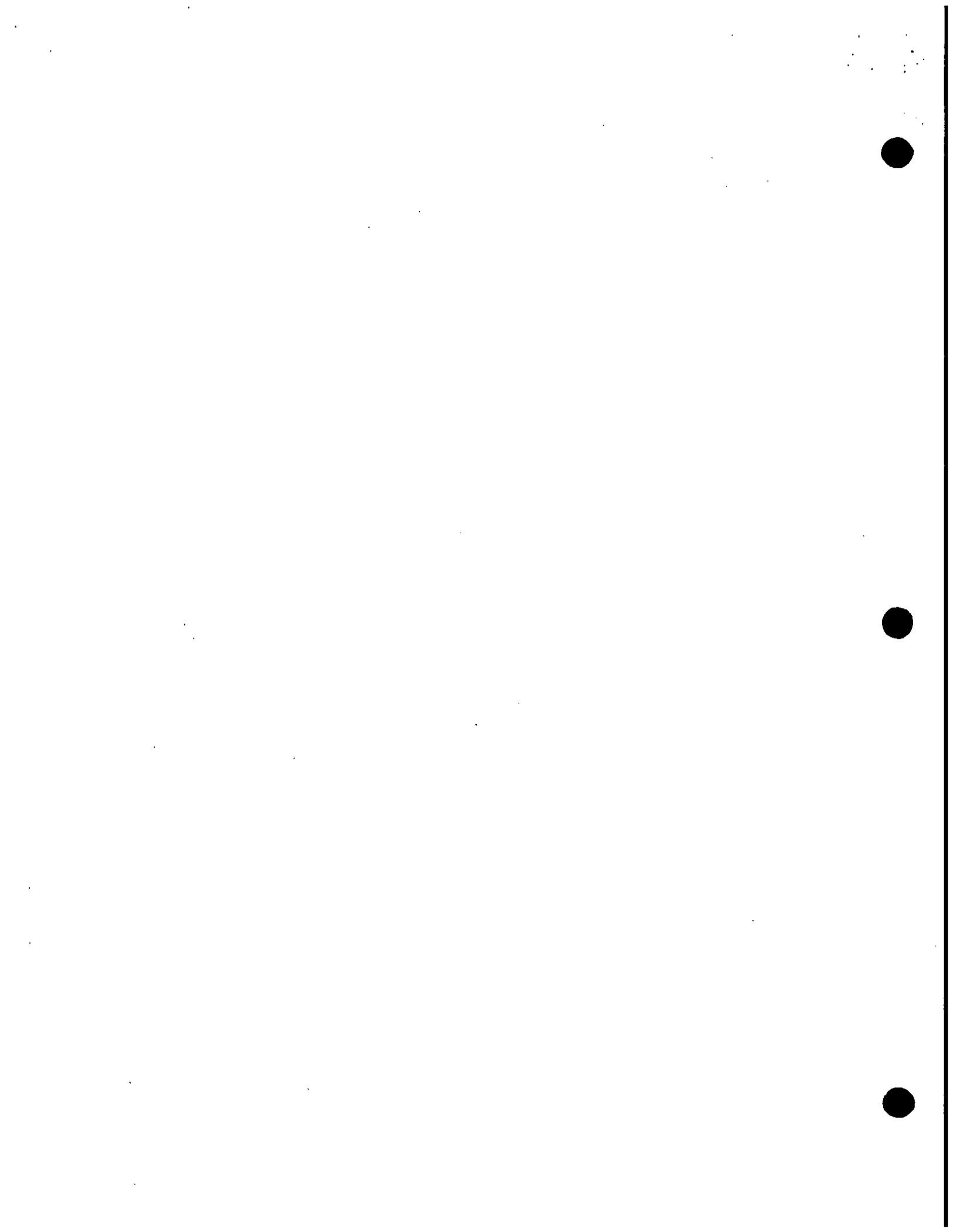
** For an employee who has been turned down under Government Code 19991.6, the employee still has an entitlement of up to 4 months under AB 77 provisions.

NOTE: When an employee qualifies for family leave under more than one of the criteria specified above, the employee's total entitlement for all such leaves is still 12 weeks (FMLA)/16 weeks (CFRA).



Comparison of Family Care Leave Provisions

<u>PROVISION</u>	<u>FEDERAL LAW</u>	<u>STATE LAW -- AB 77 (1991)</u>
Definition of employer	Private employers of 50 or more persons and <u>all</u> public employers; however, requirement for leave limited to worksites with 50 or more persons within 75 miles of worksite.	Employers of 50 or more persons employed anywhere in California.
Employee eligibility	12 months of service under the employer (not necessarily consecutive) <u>and</u> within the past year, at least 1250 hours of work time under the employer. No benefit criteria.	One year of service, and the employee must qualify for benefits.
Maximum duration of leave	Up to 12 weeks in a one-year period.	A maximum of four months in a 24-month period. However, the entire four months may be taken within the first 12 months of the 24-month period.
Permitting event	<ul style="list-style-type: none"> . Birth of a child (includes maternity and paternity leave). . The placement of a child with an employee for adoption or foster care. . To care for a child, spouse or parent who has a serious health condition. . For a serious health condition that makes the employee unable to perform his or her job (this includes pregnancy-related disabilities). 	<ul style="list-style-type: none"> . Same. . Adoption only. . Same. . Not applicable.
Definition of parent for whom an employee may request leave for care	Leave may be provided for the care of a biological parent or a person who stood "in loco parentis" to the employee.	Same, except that foster, adoptive, step-parent and legal guardian included. "In loco parentis" not included.



PROVISION

FEDERAL LAW

STATE LAW -- AB 77 (1991)

Notice by employee request leave

Employee is required to provide employer with 30 days notice if the need for the leave is foreseeable; otherwise the most timely notice feasible is required.

Same.

Intermittent Leave

For parent, spouse, or child with serious health condition

Leave may be taken intermittently when medically necessary.

Same, except some limitations apply on duration. Basic minimum duration is two weeks.

Employee with serious health condition

Provides for leave to be taken intermittently when medically necessary.

Not applicable.

Adoption or birth of a child

Must be taken continuously unless employer and employee agree otherwise.

Same, except some limitations apply on duration.

Leaves for Births, Adoptions, or Foster Placements

Who is provided leave?

Leave is provided to either parent for birth, adoption, or foster placement of a child.

Same for birth and adoption. Foster placement not covered.

Within what period must leave for birth or adoption of a child be taken.

Leave must be completed within one year of the qualifying event.

Leave must be commenced within one year.

Both parents restriction

If both parents are employed by the same employer, the employer may limit leave to no more than a total of 12 weeks between the two. Parents may be on leave simultaneously as long as there is a certification of the need for their care.

Same, except that leave cannot exceed a total of four months between the two, and the employer is not required to grant leave if the other parent is unemployed or on leave.



PROVISION

FEDERAL LAW

STATE LAW -- AB 77 (1991)

Substitution of
Paid Leave

Adoption, birth,
or foster placement
(Federal)

An employee may elect or an employer may require the employee to substitute any accrued vacation leave, personal leave or family leave.

Same, except that an employee may use accrued sick leave if mutually agreed to between employee and employer. (Use of sick leave subject to DPA laws and rules/MOUs.)

Leave for spouse,
child or parent with
serious health
condition

An employee may elect or an employer may require the employee to substitute any accrued vacation leave, personal leave, medical or sick leave.

Same, except that an employee may use accrued sick leave if mutually agreed to between employee and employer. (Use of sick leave subject to DPA laws and rules/MOUs.)

Leave for employee
with health condition

An employee may elect or an employer may require the employee to substitute any accrued vacation leave, personal leave, medical or sick leave.

Not applicable. [State law does not provide leaves for this purpose (AB 77).]

Other Provisions

Continuation of
benefits

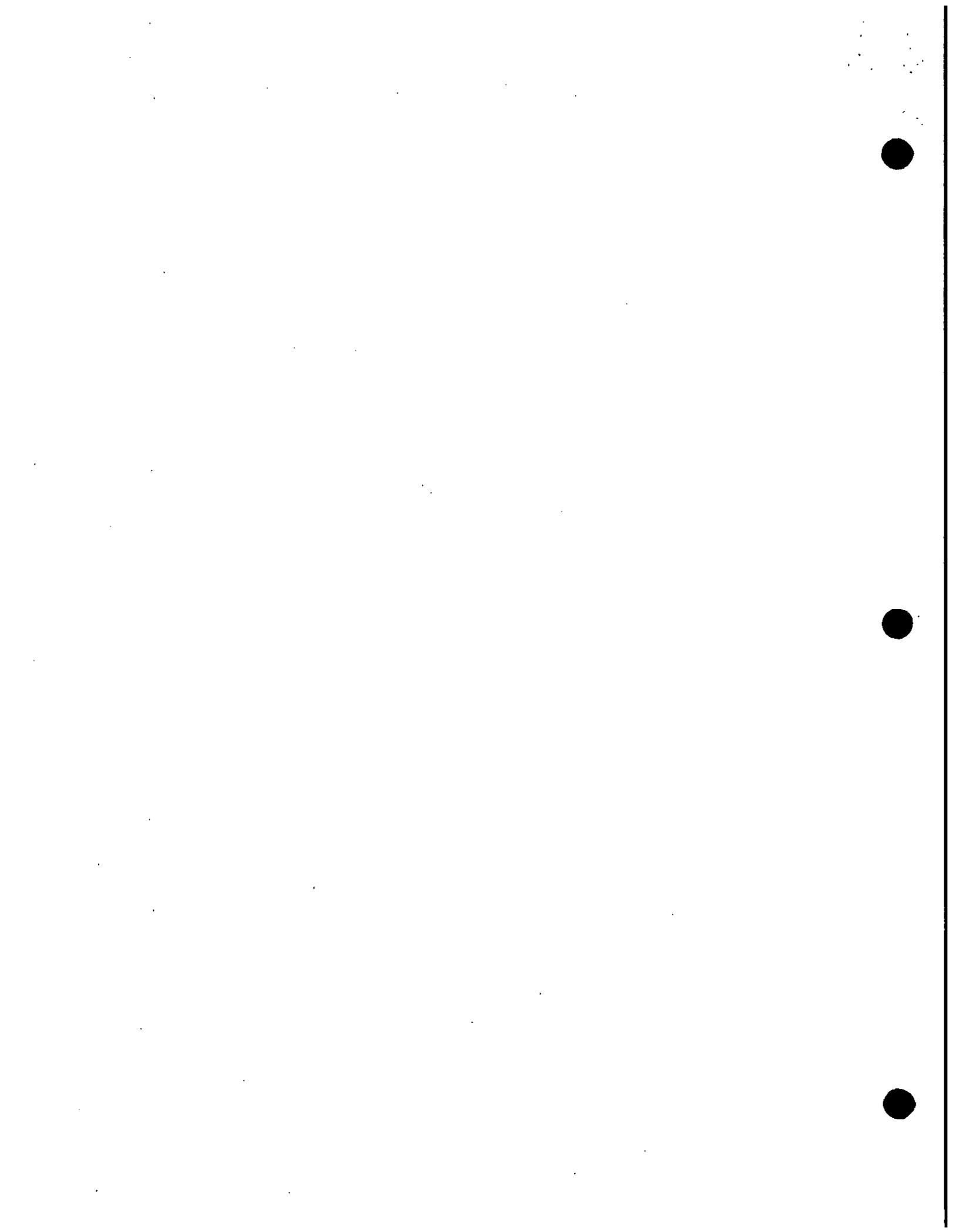
Employer will continue to pay its share of employee health, dental, and vision benefits. If the employee fails to return to work at the end of leave for reasons other than the disability of the employee, or for reasons beyond the control of the employee, the employer may collect the cost of the premium.

Not required unless employer maintains benefits for employees on other kinds of leave.

Health Care Providers

Licensed physician or osteopath, and such other kind of health care provider as might be designated by the Secretary of Labor.

Only physicians, osteopaths, or psychologists licensed in California.



PROVISION

FEDERAL LAW

STATE LAW -- AB 77 (1991)

Certification of a health care provider

At employer's expense, may require examination by an independent second provider (not on employer's payroll). If second provider differs from employee's provider, at employer's expense, may require third opinion. Third opinion binding.

No specific provision.

Reinstatement following leave

The same or an equivalent job.

The same or a comparable position.

Refusal of leave request by employer based on business consideration

No hardship defense allowed.

If an undue hardship can be demonstrated.

Exemption of higher paid employees

Employer must demonstrate that denial is necessary to prevent substantial and grievous economic injury to them. An employer may deny leave to any employee who is in the top 10% paid at the work location or within 75 miles of the location. Salaried status is not a criteria.

Without a demonstration of hardship, leave may be denied to a salaried employee who, at the time of request for leave, is either one of the five highest paid employees at a location or in the top 10% of employees at the location, whichever number is greater.

Posting of notice

Employers are required to post a notice to employees, prepared by Department of Labor.

Same, except the employer can prepare the notice.

How are provisions enforced?

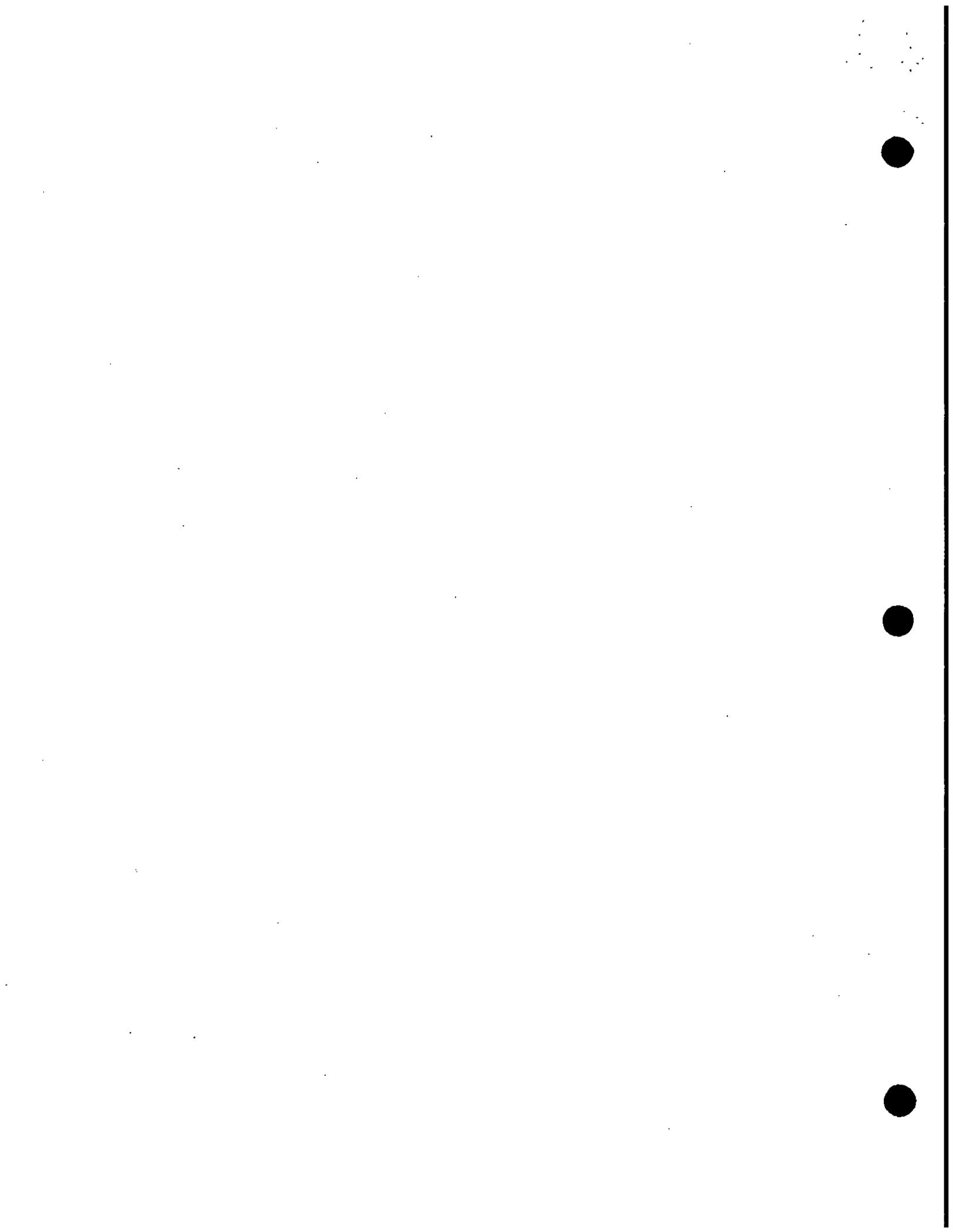
A complaint may be filed with the Secretary of Labor or a lawsuit must be filed within two years of an alleged violation.

A complaint may be filed with the Department of Fair Employment and Housing. The statute of limitation is one year for both lawsuits and complaints.

What remedy is available if a violation of the law is found?

Wages, salary, or compensation lost; in cases where wages or salary have not been lost, actual monetary losses as a direct result of being denied leave, such as providing for care, up to a sum equal to 12 weeks salary; interest; equitable relief including employment, reinstatement and promotion. Court may order court costs and attorneys' fees.

Same, except that remedy may also include administrative fines and \$50,000 cap for some remedies.



Appendix C to Part 825—Notice to Employees of Rights Under FMLA

YOUR RIGHTS

under the

FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- ▶ to care for the employee's child after birth, or placement for adoption or foster care;
- ▶ to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- ▶ for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- ▶ The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- ▶ An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- ▶ For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- ▶ Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- ▶ The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- ▶ interfere with, restrain, or deny the exercise of any right provided under FMLA;
- ▶ discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- ▶ The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- ▶ An eligible employee may bring a civil action against an employer for violations.

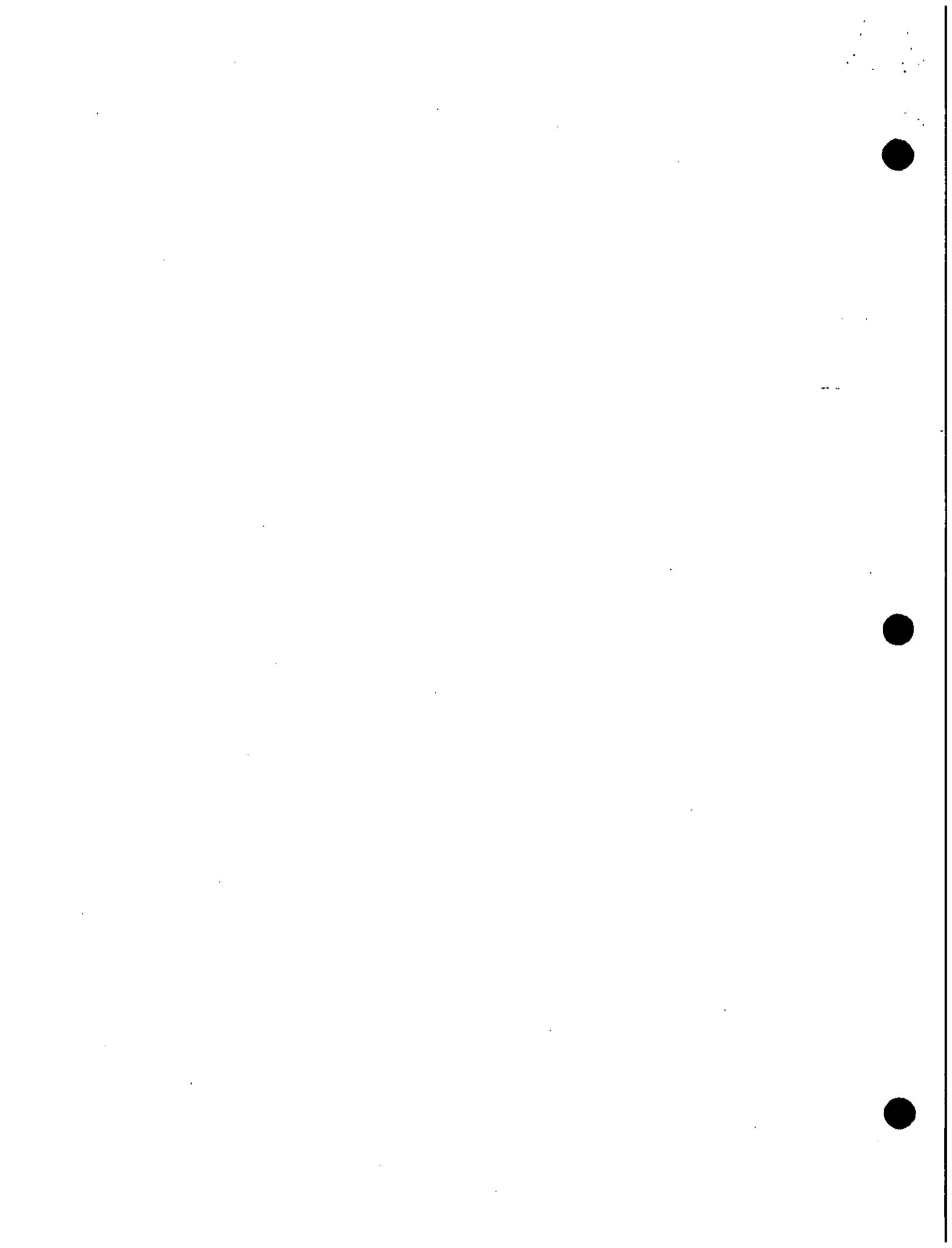
FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor, Employment Standards Administration
Wage and Hour Division, Washington, D.C. 20210

WH Publication 1420
June 1993

[PR Doc. 93-13028 Filed 6-3-93; 8:45 am]



REQUEST FOR FAMILY CARE LEAVE -- LEAVE APPROVAL PROCEDURES

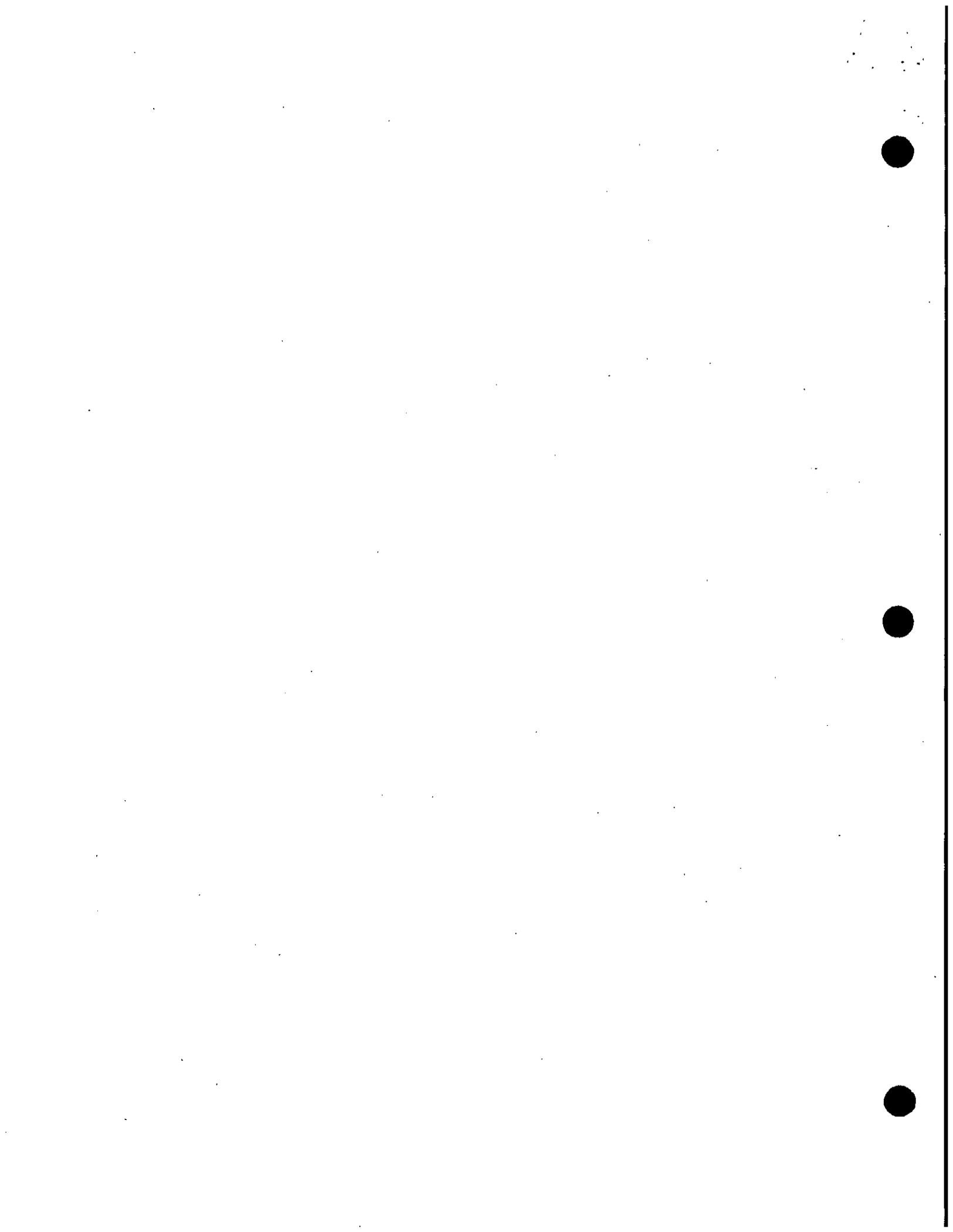
EMPLOYEE REQUEST FOR LEAVE			
EMPLOYEE NAME		EMPLOYEE'S CIVIL SERVICE CLASS	
DATE OF REQUEST	LAST DAY OF WORK	DATE EMPLOYEE WILL RETURN	
REASON FOR LEAVE			
INTERMITTENT LEAVE SCHEDULE			
SUBSTITUTION OF PAID LEAVE -- I CHOOSE TO SUBSTITUTE LEAVE WITH:			DATE(S)
<input type="checkbox"/> VACATION	<input type="checkbox"/> SICK LEAVE	<input type="checkbox"/> ANNUAL LEAVE	<input type="checkbox"/> PERSONAL LEAVE
SIGNATURE OF EMPLOYEE			
RECOMMENDATION OF SUPERVISOR			
<input type="checkbox"/> THE LEAVE OF ABSENCE SHOULD BE GRANTED		<input type="checkbox"/> THE LEAVE OF ABSENCE SHOULD NOT BE GRANTED	
SIGNATURE OF SUPERVISOR			DATE
RECOMMENDATION OF DIVISION CHIEF			
<input type="checkbox"/> THE LEAVE OF ABSENCE SHOULD BE GRANTED		<input type="checkbox"/> THE LEAVE OF ABSENCE SHOULD NOT BE GRANTED	
SIGNATURE OF DIVISION CHIEF			DATE
FOR COMPLETION BY PERSONNEL OFFICE			
LAST DAY AT WORK	LAST DAY ON PAYROLL	PERIOD OF LEAVE WITHOUT PAY	HAS STATUS TO BE ELIGIBLE FOR FAMILY CARE LEAVE <input type="checkbox"/> YES <input type="checkbox"/> NO
TYPE OF LEAVE: <input type="checkbox"/> BIRTH/ADOPTION <input type="checkbox"/> EMPLOYEE ILLNESS <input type="checkbox"/> ILL PARENT, SPOUSE OR CHILD		SUBSTITUTION OF LEAVE CREDITS: <input type="checkbox"/> VACATION <input type="checkbox"/> ANNUAL LEAVE DATE(S) USED: <input type="checkbox"/> SICK LEAVE <input type="checkbox"/> PERSONAL LEAVE _____	
COMPILED BY			DATE
APPROVAL OF PERSONNEL OFFICER			
<input type="checkbox"/> I APPROVE THE LEAVE OF ABSENCE		<input type="checkbox"/> I DO NOT APPROVE THE LEAVE OF ABSENCE	
SIGNATURE OF PERSONNEL OFFICER			DATE



**Employer Notice Requirements
Federal Family Medical Leave Act (FMLA)
Section 825.301**

The following information must be provided to an employee when he/she provides notice of the need for a Family Care Leave:

- (1) FMLA leave will be counted against their annual FMLA entitlement;
- (2) A requirement for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;
- (3) The employee's right to substitute paid leave and whether the employer will require the substitution of paid leave, and the conditions related to any substitution;
- (4) Any requirement for the employee to make any premium payments (if they choose to continue their benefits) to maintain health benefits and the arrangements for making such payments;
- (5) Any requirement for the employee to present a "fitness-for-duty" certificate to be restored to employment;
- (6) Their status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;
- (7) The employee's right to restoration to the same or equivalent job upon return from leave; and
- (8) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave. This specific notice may include other information.



Federal Family Medical Leave Act (FMLA)
Definitions - Section 825.702

Continuing treatment by a health care provider means one or more of the following:

(1) The employee or family member in question is treated two or more times for the injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician's assistant under direct supervision of the health care provider.

(2) The employee or family member is treated for the injury or illness two or more times by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider, or is treated for the injury or illness 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 -- for example, a course of medication or therapy -- to resolve the health condition.

(3) The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured. Examples include persons with Alzheimer's, persons who have suffered a severe stroke, or persons in the terminal stages of a disease who may not be receiving active medical treatment.

Eligible employee means:

(1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence; and

(2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250 hours of service with such employer during the previous 12-month period.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, 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; and

(3) Nurse practitioners and nurse-midwives who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.



Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLs." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does *not* include parents "in law."

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

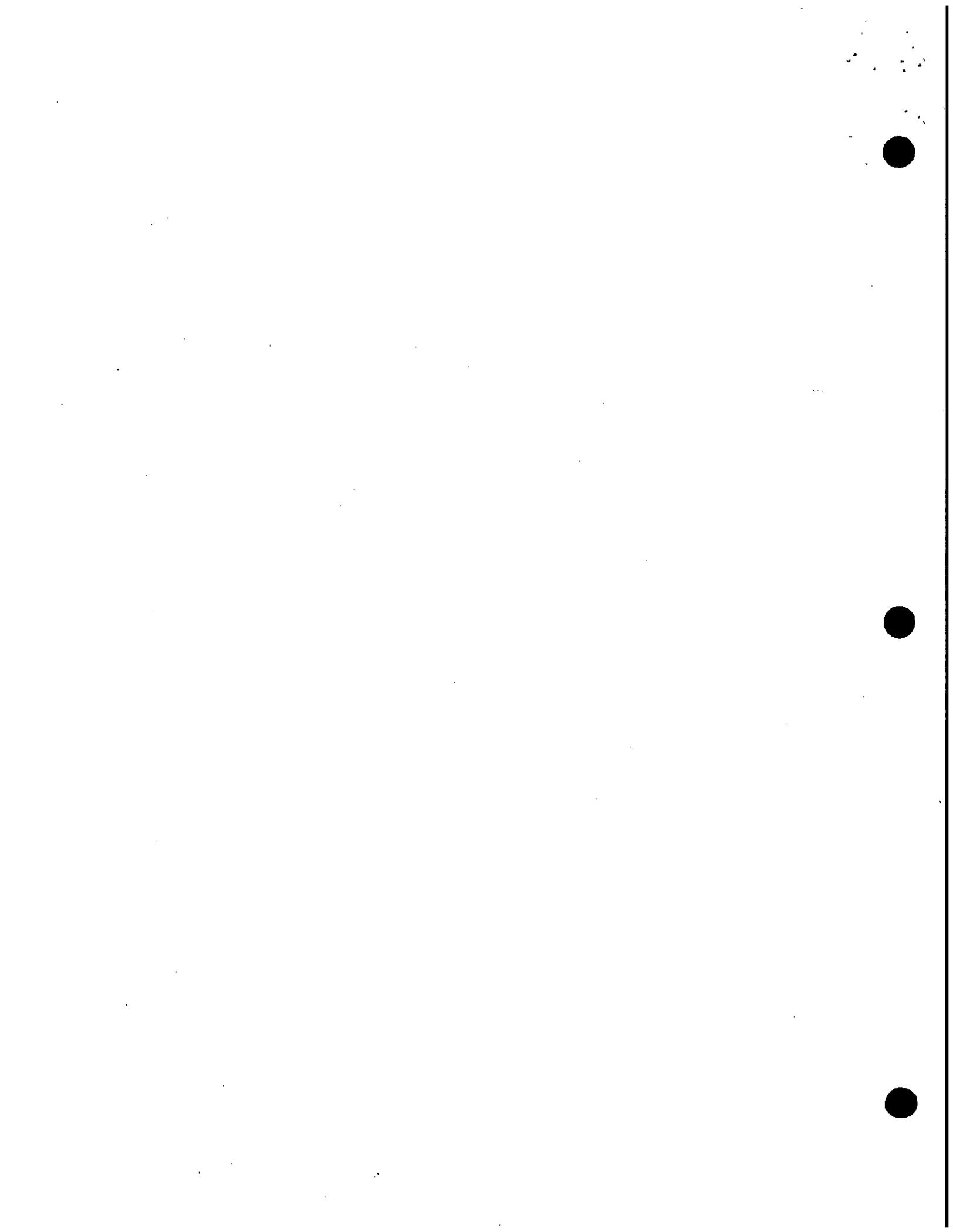
Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; and for prenatal care.

(4) Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgery after an accident, or removal of cancerous growths are serious health conditions if all the conditions of the regulation are met. Prenatal care is included as a serious health condition. Routine preventive physical examinations are excluded.



Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or a wife as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instruction, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

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