

**BP 7347 FAMILY MEDICAL LEAVE**

**References:**

Government Code Sections 12940, 12945, 12945.1-12945.2 (California Family Rights Act), and 19702.3;  
Title 2 Sections 7291.2 et seq. and 7297 et seq.;  
29 United States Code, Sections 2601-2654 (Family And Medical Leave Act of 1993);  
29 Code of Federal Regulations, Sections 825.100-825.800 (Family And Medical Leave Act of 1993)

In accordance with state and federal law, under certain conditions administrators or confidential/supervisory employees may be eligible for an unpaid leave of absence for up to 12 weeks for reasons related to family circumstances. Qualifying circumstances would include but not be limited to: serious health condition of the employee, or care of a child, spouse or parent with a serious health condition, or birth or adoption of a child.

Administrators or confidential/supervisory employees who qualify for District-provided health care benefits shall continue to receive District-provided health care benefits while under family leave.

Use of family medical leave for a qualifying circumstance including the worker's own serious illness runs concurrently with other paid and unpaid medical leaves granted by the District.

***NOTE: The following language is recommended for deletion as maternity leave is treated no differently than any other medical condition under Family Medical Leave.***

❖ **From the current CLPCCD Policy 4048 titled Maternity Leave**

~~Leaves of absence for pregnancy and for convalescence following childbirth may be granted to employees with contract/regular or probationary/permanent status. A pregnant employee has the responsibility of informing her immediate supervisor in writing of her condition and of the anticipated date of birth as soon as there is medical confirmation. The beginning and ending dates of the maternity leave shall be mutually agreed upon and determined on the basis of the following factors:~~

- ~~1. The employee's physical and mental condition and ability to perform her regular duties prior to and following birth of the child as verified by her physician on a medical report to be submitted to the Chancellor;~~
- ~~2. Her willingness to carry out her assignment;~~
- ~~3. The welfare of students of the District.~~

~~The employee shall continue to receive her same group insurance benefits during the leave of absence. Disability caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom shall be treated as sick leave in accordance with applicable provisions of the Education Code regarding certificated or classified employees. This leave of absence shall otherwise be without pay.~~

~~The employee, upon expiration of the leave, unless she otherwise agrees, shall be reinstated in the position held by her at the time of the granting of the leave of absence.~~

***NOTE: The following language is recommended for deletion as it reiterates the language already defined in law and included in the legal reference citations above.***

**❖ From the current CLPCCD Policy 4050 titled Family and Medical (FMLA) (Unpaid Leave)**

**Eligibility**

~~Employees are eligible for FMLA leave if:~~

- ~~1. They have been employed for at least 12 months:
  - ~~a. the 12 months need not be consecutive;~~
  - ~~b. 52 weeks will be considered as 12 months;~~
  - ~~c. if employee is on payroll for part of a week the entire week must be counted as a week of employment; and~~~~
- ~~2. They have worked at least 1,250 hours within the 12-month period immediately preceding the leave.~~
- ~~3. The 12-month period shall be measured forward from the first date that an employee's first FMLA leave begins.~~

**Reasons for Leave**

~~Family or medical problems that entitle eligible employees to leave under FMLA are:~~

- ~~1. Birth of a child and in order to care for that child.~~
- ~~2. Placement of a child with the employee for adoption or foster care.~~
- ~~3. Care for the employee's child, spouse, parent, or equally significant other person with a serious health condition.~~
- ~~4. Employee's own serious health condition that makes the employee unable to perform the essential functions of the job.~~

~~If two employees both work for the District, and if the leave is taken for the birth or placement of a child or to care for a parent with a serious health condition, the District~~

~~limits the aggregate leave taken by both employees to a total of 12 weeks. However, if the leave is taken by either employee to care for one another who is seriously ill, or for his/her own illness, then each is eligible for 12 weeks of leave.~~

~~If an employee experiences more than one of these events in a 12-month period, only a total of 12 weeks of leave is available.~~

~~Definition and procedures to obtain this leave are included in the Administrative Rules and Procedures.~~

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**NOTE:** *The language in **black ink** is from the current CLPCCD Policy 4048 titled Maternity Leave adopted on March 19, 1996 and current CLPCCD Policy 4050 titled Family and Medical (FMLA) (Unpaid Leave) adopted on March 19, 1996 and May 20, 2003. The language in **green ink** was added during the review by David, Kit, Deborah, and Lori on August 13, 2013.*

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**Date Adopted:**

*(Replaces current CLPCCD Policies 4048 and 4050)*

## Legal Citations for BP 7347

Government Code Sections 12940, 12945, 12945.1-12945.2 (California Family Rights Act), and 19702.3; Title 2 Sections 7291.2 et seq. and 7297 et seq.; 29 United States Code, Sections 2601-2654 (Family And Medical Leave Act of 1993); 29 Code of Federal Regulations, Sections 825.100-825.800 (Family And Medical Leave Act of 1993)

<http://www.documents.dgs.ca.gov/ohr/supervisor/DGSFMLAPolicyProcedures.pdf>

<http://www.dol.gov/compliance/laws/comp-fmla.htm>

### **GOVERNMENT CODE - GOV**

#### **TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000. - 22980.]**

( Title 2 enacted by Stats. 1943, Ch. 134. )

#### **DIVISION 3. EXECUTIVE DEPARTMENT [11000. - 15986.]**

( Division 3 added by Stats. 1945, Ch. 111. )

#### **PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900. - 12996.]**

( Part 2.8 added by Stats. 1980, Ch. 992. )

#### **CHAPTER 6. Discrimination Prohibited [12940. - 12956.2.]**

( Chapter 6 added by Stats. 1980, Ch. 992. )

#### **ARTICLE 1. Unlawful Practices, Generally [12940. - 12951.]**

( Article 1 added by Stats. 1980, Ch. 992. )

##### **12940.**

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with

the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, or any intent to make any such limitation, specification, or

discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that

prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have



known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a

conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (t) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (p) of Section 12926.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (t) of Section 12926, to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

*(Amended by Stats. 2012, Ch. 287, Sec. 2. Effective January 1, 2013.)*

**GOVERNMENT CODE - GOV**

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000. - 22980.]**

*( Title 2 enacted by Stats. 1943, Ch. 134. )*

**DIVISION 3. EXECUTIVE DEPARTMENT [11000. - 15986.]**

*( Division 3 added by Stats. 1945, Ch. 111. )*

**PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900. - 12996.]**

*( Part 2.8 added by Stats. 1980, Ch. 992. )*

**CHAPTER 6. Discrimination Prohibited [12940. - 12956.2.]**

*( Chapter 6 added by Stats. 1980, Ch. 992. )*

**ARTICLE 1. Unlawful Practices, Generally [12940. - 12951.]**

*( Article 1 added by Stats. 1980, Ch. 992. )*

**12945.**

(a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible female employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under

paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(ii) The employee's failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible female employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to

discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this part, including subdivision (a) of Section 12940.

*(Amended by Stats. 2011, Ch. 678, Sec. 1.5. Effective January 1, 2012.)*

## **GOVERNMENT CODE - GOV**

### **TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000. - 22980.]**

*( Title 2 enacted by Stats. 1943, Ch. 134. )*

#### **DIVISION 5. PERSONNEL [18000. - 22980.]**

*( Division 5 added by Stats. 1945, Ch. 123. )*

#### **PART 2. STATE CIVIL SERVICE [18500. - 19799.]**

*( Part 2 added by Stats. 1945, Ch. 123. )*

#### **CHAPTER 10. Prohibitions and Offenses [19680. - 19765.]**

*( Chapter 10 added by Stats. 1945, Ch. 123. )*

### **ARTICLE 2. Discrimination [19700. - 19706.]**

*( Article 2 added by Stats. 1945, Ch. 123. )*

#### **19702.3.**

(a) An appointing authority shall not refuse to hire, and shall not discharge, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care leave provided by subdivision (a) of Section 12945.2.

(2) An individual's giving information or testimony as to his or her own family care leave, or another person's family care leave, in any inquiry or proceeding related to rights guaranteed under Section 12945.2.

(b) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

*(Amended by Stats. 1994, Ch. 1232, Sec. 1. Effective January 1, 1995.)*