New York University
UNIVERSITY POLICIES

Title: California Family Rights Act (CFRA) Leave Policy and Procedure
Effective Date: March 25, 2019
Supersedes: N/A
Issuing Authority: Executive Vice President
Responsible Officer: Human Resources

Statement of Policy

In accordance with the terms and conditions of this Policy, New York University in California (“NYU-CA” or “the University”) will provide unpaid, job-protected leave under the California Family Rights Act (“CFRA”) and applicable regulations to eligible employees working in California. As detailed below, this Policy sets forth the eligibility requirements for CFRA leave, the conditions for using leave, the process for requesting leave, and other related provisions.

To Whom the Policy Applies

Subject to the conditions listed in items (a)-(b) below, employees are eligible for CFRA leave if they have been employed with the University for at least 12 months and if they have worked for at least 1,250 hours during the 12 month period immediately preceding commencement of the leave (hereinafter, “eligible employee”).

➢ a. The 12 months of service with the University need not be consecutive months and time previously worked for the University may be used to meet the 12-month requirement. However, the University need not consider any period of previous employment occurring more than seven (7) years before the date of the employee’s most recent hire, unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement outlining the University’s intention to rehire the employee after the break in service.

➢ b. All periods of time worked during the 12-month period preceding commencement of leave count for purposes of meeting the “1,250 hours” requirement. Time taken for holidays, vacation, or leave is not considered work time except that an employee returning from his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence due to or necessitated by USERRA-covered service.

Note: For an employee who takes a pregnancy disability leave, and who then wants to take CFRA leave for reason of the birth of her child immediately after her pregnancy disability leave, the 12-month period during which she must have worked 1,250 hours is that period immediately preceding her first day of pregnancy disability leave, not the first day of the subsequent CFRA leave for reason of the birth of her child.
**Policy and Procedures**

**CFRA Leave Entitlement**

An eligible employee may receive up to 12 workweeks (or the equivalent of 60 work days) of CFRA leave during a 12 month period (as defined below) for any one or combination of the following qualifying reasons:

- The birth of a child, and to care for a newborn child; or the placement with the employee of a child for adoption or foster care (hereinafter, “bonding leave”);
- The care of an employee's spouse, child, or parent with a serious health condition; or
- The employee's own serious health condition that renders the employee unable to perform his or her job duties.

The 12 month period in which an eligible employee may take the CFRA leave described above is calculated on a "rolling" basis measured backward from the date the employee first uses such leave. That is, each time an employee takes such CFRA leave the remaining leave entitlement would be any balance of the 12 weeks of leave that had not been used during the immediately preceding 12 months.

In the event an employee and his/her spouse are both employees of the University, the spouses may only take a combined total of 12 workweeks during a 12 month period for the birth and care of a newborn child, or placement of a child in adoptive or foster care.

Leave for the birth and care of a newborn child, or placement of a child in adoptive or foster care, must conclude within 12 months of the birth or placement.

**Intermittent or Reduced CFRA Leave**

**Bonding Leave.** CFRA leave taken for reason of the birth, adoption, or foster care placement of a child of the employee does not have to be taken in one continuous period of time. The basic minimum duration of the leave shall be two weeks. However, the University shall grant a request for a CFRA leave of less than two weeks’ duration on any two occasions and may grant requests for additional occasions of leave lasting less than two weeks.

**Other CFRA Leaves.** An eligible employee may take intermittent (in blocks of time) or reduced CFRA leave for an employee's own serious health condition, or to care for a spouse, parent, or child with a serious health condition, where there is a medical need for such leave that can be best accommodated through an intermittent or reduced schedule. The University will account for such intermittent or reduced leave using increments no greater than the shortest period of time that the University uses to account for use of other forms of leaves (within the employee's classification group); provided that the increment is not greater than one hour and that the employee's CFRA leave entitlement may not be reduced by more than the amount of leave actually taken. Employees who require intermittent or reduced schedule leave for a planned medical treatment should make a reasonable effort to schedule their leave to minimize disruption of their department's operations.
Note: During any period of intermittent leave or reduced schedule, the University reserves the right to transfer the employee to an alternative position, with equivalent pay and benefits, for which the employee is qualified and which may better accommodate the periods of leave than the employee's regular position.

The Process for Requesting CFRA Leave

1. Where the need for CFRA leave is foreseeable, the employee shall inform Lincoln Financial Group (the University's CFRA administrator) and his or her supervisor of the need for leave at least 30 days before the leave is scheduled to begin, where practicable. Where the need for leave is unforeseeable, the employee shall inform Lincoln Financial Group and his or her supervisor as soon as practicable. The employee may report a claim through one of the following means: online (using MyLincolnPortal® at www.mylincolnportal.com); telephonically (at 888-339-6830); or paper (by completing the form available here). First time users of the MyLincolnPortal must register using Company Code NEWYORKUNIV.

2. When an employee requests CFRA leave, or when the University acquires knowledge that an employee’s leave may be for a CFRA-qualifying reason, the employee shall be notified within 5 business days, absent extenuating circumstances, whether she or she is eligible for CFRA leave. If eligible, the employee will be provided with any required certification.

3. If certification is required, the employee must provide a completed certification to Lincoln Financial Group within 30 calendar days of the request for certification, or as soon as it is reasonably possible under the circumstances. As appropriate, the employee may be required to furnish a certification from a health care provider for the employee’s leave: (i) to care for the employee’s covered family member with a serious health condition or (ii) due to the employee’s own serious health condition that renders him or her unable to perform the essential functions of the position. The contents of the certifications must be in accordance with the CFRA. Where a certification by a foreign health care provider is in a language other than English, the employee must provide Lincoln Financial Group with a written translation of the certification upon request. Failure to furnish the appropriate certification in a timely fashion may result in a delay or denial of an employee’s CFRA leave.

4. The employee may be required to correct any deficiencies in the certification within 7 days. Where the certification is for an employee’s serious health condition, the employee may be required to obtain a second medical opinion if the University doubts the validity of the certification, or to obtain a third medical opinion if the first and second opinions differ.

5. When the University has the information necessary to determine if leave is CFRA protected, within 5 business days, the employee shall be notified whether the leave will be designated as CFRA leave and, if possible, how much leave will be counted against his or her CFRA entitlement. Note that the University may preliminarily designate absences for more than 3 consecutive days as CFRA Leave. If the University determines that the leave is not covered by the CFRA, the employee must be notified of that determination.

6. Recertification may be requested for the serious health condition of the employee or the employee’s family member if additional leave is requested. During an absence because of an employee’s own serious health condition, the University may request, no more frequently than every 30 days, periodic reports that describe the employee’s status and prospects for return to work. In
addition, employees must give notice as soon as practical if the dates of leave change or are extended, or initially were unknown.

**Health Benefits**

Group health benefit coverage will be maintained on the same basis as coverage would have been provided had the employee been continuously employed during the CFRA leave period.

Any share of group health plan premiums which had been paid by the employee prior to CFRA leave must continue to be paid by the employee during the CFRA leave period.

If the employee's premium payment obligations under the applicable plan are not covered by the employee's paycheck, the employee must provide the University with a check or money order in the appropriate amount.

In the event that an employee fails to return from leave, he or she may be required to reimburse the University for any health insurance contributions made during any unpaid period of leave, in accordance with the CFRA.

**Job Restoration and Fitness for Duty Certification**

Employees generally have the right to return to their position or a position of equivalent pay, benefits, and working conditions, upon completion of their CFRA leave. When CFRA leave was taken due to an employee's serious health condition, the employee may be required to provide an acceptable fitness for duty certificate prior to reinstatement. Failure to provide such certification, or failure to return to work as scheduled after the exhaustion of CFRA leave, may result in a denial of job reinstatement or termination from employment.

An employee is not entitled to job restoration in circumstances where the employee would not have been employed at the time reinstatement is requested, regardless of CFRA status, due to reduction in force, or if the employee was a "key employee" and reinstatement would cause "substantial and grievous economic injury" to the University.

**Other University Leaves**

CFRA leave shall run concurrently with leave taken under other applicable laws or University policies in the manner set forth below.

For purposes of this section, the following abbreviations have the following meanings:

- **CAPFL** – refers to paid family leave benefits received under the California Paid Family Leave Insurance Program. (CAPFL forms are available from the California Employment Development Department.)
- **CASDI** – refers to statutory short-term disability benefits received under the California State Disability Benefits Insurance Program. (CASDI forms are generally available from health care providers on online at [http://www.edd.ca.gov/disability/SDI_Online.htm](http://www.edd.ca.gov/disability/SDI_Online.htm).
- **CFRA** – refers to leave taken under the California Family Rights Act.
- **FMLA** – refers to leave taken under the federal Family and Medical Leave Act.
- **PBL** – refers to paid parental bonding leave received under the University’s Parental Bonding Leave Policy or the Faculty Handbook.
- **WC** – refers to worker’s compensation benefits received under the applicable Worker’s Compensation Law.

**Bonding Leave.** CFRA bonding leave shall run concurrently with leave taken under the following laws and University policies, as follows:

<table>
<thead>
<tr>
<th>Eligibility</th>
<th>Requirements</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee is eligible for FMLA, CFRA, CAPFL, and PBL at the same time.</td>
<td>FMLA, CFRA, CAPFL, and PBL shall run concurrently.</td>
<td>Employee will be paid 100% salary (University integrates CAPFL rate with supplemental compensation under PBL).</td>
</tr>
<tr>
<td>Employee is eligible for FMLA, CFRA, and PBL at the same time.</td>
<td>FMLA, CFRA, and PBL shall run concurrently.</td>
<td>Employee will be paid 100% PBL salary from University.</td>
</tr>
<tr>
<td>Employee is eligible only for CFRA and PBL at the same time.</td>
<td>CFRA and PBL shall run concurrently.</td>
<td>Employee paid 100% PBL salary from University.</td>
</tr>
<tr>
<td>Employee is eligible only for FMLA and CFRA at the same time.</td>
<td>FMLA, CFRA, and any unused, accrued Vacation / Personal Days shall run concurrently.</td>
<td>Where accrued Vacation/Personal Days run concurrently, Employee will be paid 100% salary from University. Where Employee does not have any unused, accrued Vacation Days, FMLA/CFRA is unpaid.</td>
</tr>
<tr>
<td>Employee is eligible for CFRA only.</td>
<td>CFRA and any unused, accrued Vacation/Personal Days shall run concurrently.</td>
<td>Where accrued Vacation/Personal Days run concurrently, Employee will be paid 100% salary from University. Where Employee does not have any unused, accrued Vacation/Personal Days, CFRA is unpaid.</td>
</tr>
</tbody>
</table>

**Caring for a Spouse, Child, or Parent with a Serious Health Condition.**

CFRA leave used to care for a spouse, child, or parent with a serious health condition shall run concurrently with leave taken under the following laws and University policies, as follows:
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</thead>
<tbody>
<tr>
<td>Employee is eligible for FMLA, CFRA, and CAPFL at the same time.</td>
<td>FMLA, CFRA, and CAPFL shall run concurrently. Employees are not required to use any unused, accrued Paid Sick Leave (for family members) or unused, accrued Vacation/Personal Days, but if they do, it shall run concurrently.</td>
<td>Where accrued Paid Sick Leave (for family members) or Vacation/Personal Days are used, Employee will be paid 100% salary, which the University will integrate with the CAPFL benefit rate. Where any unused, accrued Paid Sick Leave (for family members) or Vacation/Personal Days do not run concurrently, Employee will be paid the CAPFL benefit rate.</td>
</tr>
<tr>
<td>Employee is eligible only for FMLA and CFRA at the same time.</td>
<td>(1) FMLA, CFRA, and any unused, accrued Paid Sick Leave (for family members) shall first run concurrently. (2) Upon exhaustion of the employee’s Paid Sick Leave (for family members), FMLA, CFRA, and any unused, accrued Vacation/Personal Days shall then run concurrently.</td>
<td>Where accrued Paid Sick Leave (for family members) or Vacation/Personal Days run concurrently, Employee will be paid 100% salary. Where accrued Paid Sick Leave (for family members) or Vacation/Personal Days do not run concurrently, FMLA/CFRA is unpaid.</td>
</tr>
<tr>
<td>Employee is eligible for CFRA only.</td>
<td>(1) CFRA and any unused, accrued Paid Sick Leave (for family members) shall first run concurrently. (2) Upon exhaustion of the employee’s Paid Sick Leave (for family members), CFRA and any unused, accrued Vacation/Personal Days shall then run concurrently.</td>
<td>Where accrued Paid Sick Leave (for family members) or Vacation/Personal Days run concurrently, Employee will be paid 100% salary. Where accrued Paid Sick Leave (for family members) or Vacation/Personal Days do not run concurrently, CFRA is unpaid.</td>
</tr>
</tbody>
</table>

**Employee’s Serious Health Condition (Other than Pregnancy Disability).**

CFRA leave used to care for an employee with a serious health condition (other than pregnancy disability) shall run concurrently with leave taken under the following laws and University policies, as follows:
<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Employee is eligible for FMLA, CFRA, and CASDI at the same time.</td>
<td>FMLA, CFRA, and CASDI shall run concurrently. Employees are not required to exhaust Paid Sick Leave or Vacation/Personal Days before applying for CASDI. Employees may use any unused, accrued Paid Sick Leave or unused, accrued Vacation/Personal Days during the CASDI waiting period or to supplement the difference between the CASDI rate and the Employee’s full salary.</td>
<td>(1) Where accrued Paid Sick Leave or Vacation/Personal Days are used, Employee will be paid 100% salary (University will integrate with CASDI rate where applicable). (2) Where accrued Paid Sick Leave or Vacation/Personal Days are not used, Employee will be paid CASDI benefit rate while receiving CASDI.</td>
</tr>
<tr>
<td>Employee is eligible for FMLA, CFRA, and WC at the same time.</td>
<td>FMLA, CFRA, and WC shall run concurrently. Employees are not required to exhaust Paid Sick Leave or Vacation/Personal Days before applying for WC. Employees may use any unused, accrued Paid Sick Leave or unused, accrued Vacation/Personal Days during the WC waiting period or to supplement the difference between the WC rate and the Employee’s full salary.</td>
<td>(1) Where accrued Paid Sick Leave or Vacation/Personal Days are used, Employee will be paid 100% salary (University will integrate with WC rate where applicable). (2) Where accrued Paid Sick Leave or Vacation/Personal Days are not used, Employee will be paid WC benefit rate while on WC.</td>
</tr>
<tr>
<td>Employee is eligible for FMLA and CFRA only.</td>
<td>(1) FMLA, CFRA, and any unused, accrued Paid Sick Leave shall first run concurrently. (2) Upon exhaustion of Paid Sick Leave, FMLA, CFRA and any unused, accrued Vacation/Personal Days shall run concurrently.</td>
<td>Where accrued Paid Sick Leave or Vacation/Personal Days run concurrently, Employee will be paid 100% salary. Where accrued Paid Sick Leave or Vacation/Personal Days do not run concurrently, FMLA/CFRA is unpaid.</td>
</tr>
</tbody>
</table>
Eligibility

Requirements

Payment

Employee is eligible for CFRA only.

(1) CFRA and any unused, accrued Paid Sick Leave shall first run concurrently.

(2) Upon exhaustion of Paid Sick Leave, CFRA and any unused, accrued Vacation/Personal Days shall run concurrently.

Where accrued Paid Sick Leave or Vacation/Personal Days run concurrently, Employee will be paid 100% salary.

Where accrued Paid Sick Leave or Vacation/Personal Days do not run concurrently, CFRA is unpaid.

**Pregnancy Disability Leave.** Pregnancy disability leave is designated separately from, and does not run concurrently with, family leave under CFRA, although the two leaves may be taken consecutively. Employees who wish to combine family care and medical leave with pregnancy disability leave may take up to seven months (up to four months of pregnancy disability leave, plus up to twelve weeks of family care leave under the CFRA), provided the employee meets the eligibility requirements of this policy and the University’s “Pregnancy Disability Leave and Accommodation Policy – California.”

**Holidays.** If a holiday falls within a week taken as CFRA leave, the week is nevertheless counted as a week of CFRA leave. If, however, the University's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, the days the University's activities have ceased do not count against the employee's CFRA entitlement. Similarly, if an employee uses CFRA leave in increments of less than one week, the fact that a holiday may occur within a week in which an employee partially takes leave does not count against the employee's CFRA entitlement, unless the employee was otherwise scheduled and expected to work during the holiday.

**Additional Options.** If the employee is unable to return to work upon the exhaustion of his or her CFRA leave, the employee may take or continue to take any other leave for which the employee is eligible under any other applicable laws or University policies; pursue disability options; or seek an accommodation, as appropriate. At no point shall any continued leave be counted as CFRA leave unless and until the employee again satisfies the respective eligibility requirements.

Nothing in this Policy shall supersede any provision of law or employment benefit program that provides greater employee family or medical leave rights than the family or medical rights established under this Policy.

**Definitions**

*All definitions set forth in this section are to be read in accordance with the CFRA and applicable regulations.

**Adoption** means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for CFRA leave.
**Child** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or an adult dependent child. An adult dependent child is an individual who is age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that CFRA leave is to commence.

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

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, as defined by applicable law and regulations.

(3) “In loco parentis” means in the place of a parent; instead of a parent; charged with a parent's rights, duties, and responsibilities. It does not require a biological or legal relationship.

**Foster care** is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

**Health Care Provider** includes, as defined by the CFRA, the following professionals:

a. doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices,
b. podiatrist,
c. dentist,
d. clinical psychologist,
e. optometrist,
f. chiropractor,
g. nurse practitioner,
h. nurse-midwife,
i. physician assistant,
j. Christian Scientist practitioner,
k. clinical social worker, or
l. any other persons determined by the United States Secretary of Labor to be capable of providing health care services.

**Key Employee** means a salaried CFRA-eligible employee who is paid in the highest 10% of all employees employed by the University within 75 miles of the employee’s worksite at the time of the leave request.
**Parent** means a biological, adoptive, step or foster father or mother, legal guardian, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law."

**Serious health condition** means an illness, injury (including, but not limited to, on-the-job injuries), impairment or physical or mental condition that involves any one of the following, including, but not limited to, treatment for substance abuse, provided, however, that an employee’s own disability due to pregnancy, childbirth, or a related medical condition is not a serious health condition under the CFRA:

- **a.** Inpatient care for an overnight stay in a hospital, hospice or residential medical care facility, or any subsequent treatment in connection with such inpatient care.

- **b.** Continuing treatment by a health care provider for any one of the following:
  - **i.** A period of incapacity for more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - **aa.** Treatment two or more times by a health care provider (or agent thereof as defined by the CFRA) within 30 days of the first incapacity, unless extenuating circumstances exist or,
    - **bb.** Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the provider.
  - **ii.** A period of incapacity or treatment due to a chronic serious health condition, which:
    - **aa.** Requires periodic visits (defined as at least twice a year) for treatment by a health care provider (or agent thereof as defined by the CFRA),
    - **bb.** Continues over an extended period of time, and
    - **cc.** May cause episodic rather than continuing periods of incapacity.

- **c.** A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Examples include: Alzheimer’s, a severe stroke or terminal stages of a disease.

- **d.** A period of absence to receive multiple treatments by a health care provider or by the provider of healthcare services under orders of or on referral by a health care provider, either for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis or kidney disease.

- **e.** Absences attributable to incapacity under paragraph (b)(ii) of this section qualify for CFRA leave even though the employee or the covered family member does not receive treatment
from a health care provider during the absence, and even if the absence does not last more
than three consecutive, full calendar days. For example, an employee with asthma may be
unable to report for work due to the onset of an asthma attack or because the employee's
health care provider has advised the employee to stay home when the pollen count exceeds a
certain level.

Note: Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers,
headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are
examples of conditions that do not meet the definition of a serious health condition. Mental illness or
allergies may be serious health conditions, but only if all the conditions of this section are met.

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