

**LEAVES OF ABSENCE****1.9.5****E. FAMILY AND MEDICAL LEAVE ACT**

In accordance with federal and state law and regulations, the City will provide family and medical leave, which is unpaid leave, to eligible employees. Unless otherwise provided by this policy, leave under this policy refers to leave pursuant to the Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act (CFRA). Employees with any questions or requests for information about family and medical leave should consult with the Office of Human Resources.

**1. Definitions**

- a. **12 Month Period:** a rolling 12 month period measured back from the date leave is taken. Each time an employee takes eligible leave, the remaining leave entitlement is based on the amount of family and medical leave taken during the immediate preceding 12 months.
- b. **12 Work Weeks:** twelve weeks of leave based on the employee's regular schedule. For example, if an employee works 20 hours per week, he or she would be eligible to take 12 weeks times 20 hours for a total of 240 hours of family medical leave.
- c. **Child:** The employees' biological, adopted, or foster child, stepchild, legal ward, or a child for who the employee stood in loco parentis;
- d. **Parent:** the employee's biological, adoptive, step or foster father or mother, or any individual who stood in loco parentis to the employee. It does not include parents in law. e. **Spouse:** husband or wife as defined under state law.
- f. **Next of kin of a covered service member:** the nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member's next of kin. If the covered service member designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member.

**2. Eligibility**

An employee is eligible for leave if the employee:

- a. Has been employed for at least 12 months; and
- b. Has worked for at least 1250 hours during the 12 month period immediately preceding the commencement of the leave. The Fair Labor Standards Act (FLSA) hours worked principles apply in determining whether an employee meets the 1250 hour requirement.

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**3. Reasons for Leave**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- a. The birth of a child and in order to care for that child.
- b. The placement of a child for adoption or foster care and to care for the newly placed child.
- c. To care for a spouse, child or parent with a serious health condition.
- d. The serious health condition of the employee as described below:
  - i. Pregnancy or prenatal care;
  - ii. Hospital Care – an inpatient stay at a hospital, hospice, or residential medical care facility;
  - iii. Incapacity of three or more days and medical treatment – incapacity that lasts more than three consecutive days.
  - iv. Incapacity plus two or more treatments – treatment of two or more times by a health care provider;
  - v. Incapacity plus continuing treatment – at least one treatment by a health care provider that results in a regimen of continuing treatment;
  - vi. Incapacity from a chronic condition – incapacity from a chronic serious health condition such as asthma, diabetes, or epilepsy;
  - vii. Incapacity from a long-term condition – incapacity from a long term or permanent condition for which treatment may not be effective such as Alzheimer’s disease; or
  - viii. Absences for treatment – to receive or recover from multiple treatments by a health care provider such as chemotherapy, physical therapy, or kidney dialysis.
- e. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member’s call-up or service. The qualifying exigency must be one of the following:

- i. Short-notice deployment.
- ii. Military events and activities,
- iii. Child care and school activities,
- iv. Financial and legal arrangements,
- v. Counseling,
- vi. Rest and recuperation,
- vii. Post-deployment activities and
- viii. additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

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Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list.

Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list. In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered service member.

“Covered active duty” means:

- (i) “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- (ii) “Covered active duty” for members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. (a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and the leave may commence as soon as the individual receives the call-up notice.  
(Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor).  
This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

- f. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term “covered service member” means:

- i. a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- ii. a veteran who is undergoing medical treatment, recuperation, or therapy, for a

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serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term "serious injury or illness means:

- i. in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- ii. in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.
- iii. Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**4. Amount of Leave****a. Total Leave Entitlement**

Eligible employees are entitled to a total of 12 work weeks of leave during any rolling 12 month period. When parents are both employees of the city, the maximum collective amount of leave they may take for child-bonding is 12 weeks. An employee's entitlement to leave for the birth or placement of a child for adoption or foster care expires 12 months after birth or placement. Employees are eligible for up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness.

**b. Minimum Duration of Leave**

**Serious Health Condition:** Subject to compliance with the medical certification requirements, there is no minimum duration for leave associated with a serious health condition of the employee or the employee's child, parent, or spouse.

**Child Bonding:** If leave is requested for the birth, adoption or foster care placement of a child of the employee, the minimum duration of such leave is two weeks, with the exception of up to two occasions when an employee make take less.

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- i. **Compensation:** Leave under this policy is unpaid. Employees shall use accrued leave for the leave period as allowed by law.
- ii. **Accrued Leaves:** While on leave, employees do not accrue vacation, sick, or other paid leave time and their performance evaluation dates may be adjusted to the same extent as any other unpaid leaves.
- iii. **Health Benefits:** While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. Employees will be responsible for their portion of any applicable premiums.
- iv. **Other Benefits:** Employees will not be covered by any other benefits while on leave, including, but not limited to life insurance, short term or long term disability insurance, retirement plans, and supplemental benefits plans to the same extent as any other unpaid leaves. Employees may continue coverage on their own by payroll deductions or direct payments made to these plans. The City will inform employees whether the premiums should be paid to the carrier or to the City. Coverage by a plan may be dropped if employees are more than 30 days late in making a premium payment. The City will provide notice at least 15 days before coverage is to cease. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his or her leave entitlement is exhausted or expires, the City will have the right to recover premiums through deduction from any sums due the employee (e.g. unpaid wages, vacation pay, etc.)

**5. Substitution of Paid Accrued Leaves**

Employees shall exhaust all paid accrued leaves, including vacation leave and sick leave, concurrently with FMLA/CFRA leave with two exceptions:

- a. Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
- b. When the leave request is for the serious health condition of a child, spouse, domestic partner, or parent, employees will only be required to exhaust up to ½ of their annual sick leave entitlement.

**6. Employee Notice of Leave**

Employees must submit requests for leave in writing to the Office of Human Resources. Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that leave will be needed in the future, but does not know the exact dates (e.g. for the birth of a child or take care of a newborn), the employee shall inform the Office of Human Resources as soon as possible that such leave will be needed. Whenever the Office of Human Resources is notified of a request for leave

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under this policy, they will notify the requesting employee's Department Head or designee. The Office of Human Resources will also notify the Department Head of any determination to grant or deny the request.

If the Office of Human Resources determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the HR/Risk Management Director may delay the granting of the leave until, in his or her discretion, adequate coverage is found for the position.

**7. Medical Certification**

Employees who request leave for themselves or to care for a child, parent, or a spouse must provide written certification for the eligible individual with a serious health condition. If the leave is for the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

- a. **Timing of Certification.** Medical certification should be provided with the employee's request for leave. When this is not possible, the employee must provide the requested certification to the Office of Human Resources within 15 days of the date of request for leave.
- b. **Recertification.** If the HR/Risk Management Director has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding.

Employees will be required to provide updated certifications each time the certification on file is expired based on the dates provided by the health care provider or as often as every 6 months in conjunction with an absence.

- c. **Certification for Intermittent Leave or Reduced Schedule.** If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. Medically necessary means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

**8. Reinstatement upon Return from Leave**

- a. **Right to Reinstatement.** Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.
- b. **Fitness for Duty Certification.** As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-

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for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

**9. Exhaustion of Leave**

If an employee's illness or injury requires a leave of absence for more than 12 weeks, the City will, with satisfactory medical evidence, extend the employee's leave for an additional 14 weeks for a total of 26 weeks in a 12 month period. The city will extend the employee's reinstatement rights through the end of the 26 week period as long as the employee can perform the job with or without reasonable accommodation. At the end of the 26 week period, the city may extend the leave for additional 26 weeks for a total of 52 weeks of leave; however, the employee will not retain reinstatement rights. The City may at this time fill the employee's position. At the end of the 52 week period, if the employee is unable to return to work or if there is not a position available as determined by the HR/Risk Management Director, the employee's employment will be terminated.