

## **ADMINISTRATIVE ORDER NUMBER 2-21**

### **SUBJECT: Family and Medical Leave Act and California Family Rights Act**

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**Responsible Department: Personnel Services**

**Date Issued: 12-01-1998**

**Date Revised: 01-01-2021**

**Approved: *(Signature on File)***

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### **Purpose**

“Family Leave” is mandated under the Federal Family and Medical Leave Act of 1993 (“FMLA”) and the California Family Rights Act of 1991 (“CFRA”). This Administrative Order is intended to provide a summary of and instruction for compliance with FMLA/CFRA. In the case of any conflict with this Administrative Order, the administrative regulations issued by Federal and State authorities shall take precedence. This Administrative Order does not address Pregnancy Disability Leave, which is part of California Fair Employment and Housing Act or Family Leave (i.e. LC 233). For City procedures regarding such leaves, refer to Procedures Handbook for the Family and Medical Leave Act and California Family Rights Act.

### **Procedures**

1. **Entitlement to FMLA/CFRA Leave:** All employees, who have been employed for at least 12 months and have worked at least 1,250 hours in the 12 months preceding the date the employee requests leave to begin, are eligible for leave pursuant to FMLA and CFRA.
2. **FMLA/CFRA Leave:** Eligible employees are entitled to take up to 12 weeks of leave during the City’s fiscal year (July 1 through June 30) for the following purposes:
  - a. **Child Care/Bonding:** Leave may be taken because of the birth, adoption, or foster-care placement of a child in order to care for or bond with the child.
    - (1) Leave must conclude within 12 months from the date of the birth, adoption or foster-care placement.
    - (2) Parents who are both employees of the City and who are eligible to take leave are each entitled to take a total of 12 weeks of leave for purposes of child care/bonding.

- (3) Employees who anticipate taking leave for child care/bonding must provide reasonable advance notice of their intent at least 30 days prior to the date leave is anticipated to begin, or as soon as practicable if leave becomes necessary before such 30-day notice.
  - (4) The minimum duration of baby bonding leave shall be two weeks, except that a request of leave of less than two weeks on two different occasions will be granted. Requests for additional baby bonding leave for less than two weeks may be considered by the City.
- b. **Family Care:** Leave may be taken to care for a child (defined under CFRA and FMLA as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis), parent, grandparent (defined as a parent of the employee's parent under CFRA only), grandchild (defined as a child of the employee's child under CFRA only), sibling (defined as a person related to another person by blood, adoption, or affinity through a common legal or biological parent under CFRA only), spouse, or domestic partner (under CFRA only) who has a serious health condition.
- (1) A serious health condition is one that:
    - a) Requires inpatient treatment (requires overnight stay; a health care facility formally admits the family member to the facility with the expectation that they will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight); or
    - b) Causes an incapacity and absence from work, school, or normal activities for more than three consecutive, full calendar days and requires treatment by or under the direction or supervision of a health-care provider on two or more occasions, within 30 days of the initial date of incapacity. The first treatment must take place within seven (7) days of the first day of incapacity.
    - c) Requires treatment 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.
    - d) Any period of incapacity or treatment due to a permanent or long-term condition; a chronic serious health condition. A chronic serious health condition is one which:

- i. Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
    - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - (2) Employees requesting FMLA/CFRA leave for family care must submit a certification form, provided by the Personnel Services Department and completed by the treating health care provider.
  - (3) Employees taking FMLA/CFRA leave for family care may take leave intermittently upon submitting a certification form from the treating health care provider verifying that the intermittent leave is necessary, or the employee is needed to assist with the care of the family member, as well as the dates and duration of treatment for which leave is anticipated. Employees using leave on an intermittent basis must make a reasonable effort to schedule the leave so as to minimize disruption to City operations. Further, an employee taking a scheduled or foreseeable intermittent leave may be temporarily reassigned to an alternate position, with equivalent pay and benefits, that better accommodates the recurring periods of leave.
  - (4) Employees who anticipate taking leave for family care are required to provide reasonable advance notice of their intent at least 30 days prior to the date leave is anticipated to begin, or such notice as is practicable if leave becomes necessary before such 30-day notice period.
  - (5) An employee is required to submit a completed medical certification from a health care provider within no less than 15 days whenever FMLA/CFRA time off work is needed due to the serious health condition of the immediate family member.
- c. **Self-Care:** Leave may be taken when the employee is unable to perform any one or more of the essential functions of their position
- (1) Employees seeking leave for self-care must have a serious health condition, as defined under paragraph 2b(1), above.

- (2) Employees requesting self-care must submit a certification form, provided by the Personnel Services Department and completed by the treating health care provider.
  - (3) Employees taking leave for self-care may take the leave intermittently upon submitting a certification from the treating health care provider verifying that the intermittent leave is medically necessary, and the dates and duration treatment and/or leave is anticipated. Employees using leave on an intermittent basis for planned medical treatment must make a reasonable effort to schedule the treatment so as to minimize disruption to normal operations. Further, an employee taking a scheduled or foreseeable intermittent leave may be reassigned to an alternate position, with equivalent pay and benefits, that better accommodates the recurring periods of leave.
  - (4) Employees who anticipate taking leave for self-care must provide advance notice of their intent at least 30 days prior to the date leave is anticipated to begin, or as soon as practicable if leave becomes necessary before such 30-day notice period.
  - (5) An employee is required to submit a completed medical certification from a health care provider within no less than 15 days whenever FMLA/CFRA time off work is needed due to the serious health condition of the employee.
- d. **Failure to Provide Required Certifications:** Failure to provide the certifications required under this paragraph may result in denial of the requested leave.
3. **Qualifying Exigency Leave:** Eligible employees may take up to 12 weeks of leave for one or more of the qualifying exigencies due to a spouse, domestic partner (under CFRA), child, or parent of the employee being on covered active duty or being notified of an impending call to covered active duty status. Only employees whose family member actively serves as part of the Reserve components of the Armed Services or the National Guard, or is an active or retired member of the regular component of the Armed Services, are eligible for exigency leave.
- a. **Qualifying exigencies are defined by FMLA and California Unemployment Insurance Code § 3302.2 (under CFRA) and include:**
- (1) Short-notice deployment
  - (2) Military events and related activities
  - (3) Childcare and school activities
  - (4) Financial and legal arrangements

- (5) Counseling
- (6) Rest and recuperation
- (7) Post-Deployment activities
- (8) Additional activities (additional qualifying events are subject to agreement by the City and the employee)

- b. **Required Notice:** Employees requesting leave for a qualifying exigency must provide a copy of the military issued notice indicating a spouse, domestic partner, child, or parent is on active duty or has received a call to active duty status; the requested leave is for one or more of the qualifying exigencies; and the anticipated duration of the absence. The notice may be a copy of the active duty orders, or other documentation issued by the military, which indicates the family member is on active duty or has an impending call to active duty in support of a contingency operation, and the dates of the service.
4. **Military Caregiver Leave:** An eligible employee who is a spouse, domestic partner, child, parent, or next of kin of a covered service member, including a veteran, may take up to 26 weeks of leave, during a “single 12-month period,” to care for the covered service member with a serious injury or illness incurred in the line of duty while on active duty and have been discharged within the last five years. This is a one-time entitlement per covered service member per serious injury or illness.
- a. **Covered Service Member:** This includes current members of the Regular Armed Forces, National Guard, or Reserves, members of the Regular Armed Forces, National Guard, and the Reserves who are on the temporary disability retired list.
  - b. **Injury or Illness:** The covered service member’s injury or illness must be one in which they are:
    - (1) Undergoing medical treatment, recuperation, or therapy;
    - (2) Otherwise in outpatient status; or
    - (3) Otherwise on the temporary disability retired list for a serious injury or illness.
  - c. **Single 12-month period:** This begins on the first day the eligible employee takes the leave and ends 12 months after that date, despite the fiscal year precedent of the City for Family Leave.
  - d. **Next of Kin:** This is the covered service member’s nearest blood relative, other than a spouse, domestic partner, parent, or child, unless the covered service member has specifically designated in writing another blood relative as service member’s nearest blood relative for purposes of military

caregiver leave. An employee may be required to provide reasonable documentation of the familial relationship.

5. **Use of Accrued Paid Leave:** Eligible employees shall be required to use accrued paid leave before unpaid leave is taken under the following circumstances:
  - a. **Child:** Employees taking leave upon the birth, adoption, or placement of a foster child under paragraph 2a, above must use all accrued vacation, holiday, compensatory and administrative leave prior to taking unpaid leave.
  - b. **Family Care or Self-Care:** Employees who take leave for family care or self-care under paragraphs 2b and 2c above must use accrued vacation, holiday, compensatory, annual, administrative and sick leave prior to taking unpaid leave.
  - c. **Qualifying Exigency:** Employees taking leave for a qualifying exigency under paragraph 3 must use all accrued vacation, holiday, compensatory, annual and administrative leave prior to taking unpaid leave.
  - d. **Military Caregiver:** Employees taking leave for purposes identified under paragraph 4 must use accrued vacation, holiday, compensatory, annual, administrative, and sick leave prior to taking unpaid leave.
  
6. **Benefits While on Leave:** During any period of leave under this policy, an employee's group health insurance coverage will be maintained at the same level and under the same conditions as before the leave began.
  - a. **Employee Contributions:** Employees who normally make a contribution toward their health insurance coverage must continue to do so. If on paid leave, the employee's contribution will be collected in the same manner as if the employee were reporting to work. During periods of unpaid leave, the employee must arrange with the Payroll Division for payment of the employee's share of the premium prior to commencement of the leave.
  - b. **Liability For City Paid Contributions:** An employee who does not return to duty from unpaid leave under this policy for at least 30 calendar days will be liable for the City's group health insurance premium contribution and any part of the employee's share paid by the City, unless the failure to return to duty is caused by continuation, recurrence, or onset of a serious health condition that would otherwise entitle the employee to leave under this policy or for circumstances beyond the employee's control. Where recovery of premiums is permitted, the City shall be entitled to recover the amount against any final pay or monetary benefit to which the employee would otherwise be entitled.

- c. **Other benefits:** Employees will not accrue any other benefits while in an unpaid leave status for more than 80 hours.
  
- 7. **Return to Duty:** Upon return to duty, an employee is entitled to be restored to the former position or an equivalent position with equivalent pay and benefits except as noted below:
  - a. An employee who has taken leave for self-care under paragraph 2c above will be required to present a release to return-to-work from a health-care provider prior to commencement of work. Failure to provide the certification may cause denial of reinstatement.
  
  - b. Reinstatement may be denied to any salaried employee with an annual salary among the highest paid 10 percent of all City employees if reinstatement causes substantial and grievous economic injury to the operations of the City.