



PROCEDURES HANDBOOK

FOR THE

FAMILY AND MEDICAL LEAVE ACT

AND

CALIFORNIA FAMILY RIGHTS ACT

July 2015

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Introduction

The purpose of this handbook is to provide basic information on the Federal Family and Medical Leave Act (FMLA) of 1993, as amended, and the California Family Rights Act (CFRA) of 1993 as amended. These pieces of legislation were implemented in order to allow employees to secure leaves from work under certain specified conditions while also providing job security and health care benefits. These laws also have an impact on other statutes such as Workers' Compensation and various internal leave policies.

It is beyond the scope of this handbook to address all situations that may develop when considering the implementation of this legislation. Situations which are not explained in the handbook should be referred to the Personnel Services Department or the City Attorney's office.

Length and Purpose of Family and Medical Leave

In accordance with the requirements of the FMLA and the CFRA, as amended, the City of Fresno will provide an eligible employee with up to twelve (12) weeks of protected leave during each fiscal year (July 1- June 30) for any of the following qualifying reasons:

1. For the birth of a child or to care for the newborn child or for placement (with the employee) of a child for adoption or foster care. FMLA/CFRA time off work must be taken within twelve (12) months of the date of the birth or placement.
2. To care for an immediate family member (i.e., spouse, child, parent, or domestic partner) of the employee, if the immediate family member has a serious health condition.

NOTES: Child means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis (i.e. in place of the parent) who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. Spouse includes same-sex spouse.

3. For a serious health condition that makes the employee unable to perform any one or more of the essential functions of his/her position.
4. In January, 2009, the FMLA was amended to include two additional qualifying leaves related to military service. These leaves are identified as "Military Exigency Leave" and "Military Caregiver Leave". An explanation of when these leaves can be used is outlined in this handbook under the section "What is a Qualifying Event?".

What is a Qualifying Event in order to use FMLA/CFRA?

Under the provisions of the FMLA, "leave" from work may be taken for any of the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent, spouse, or domestic partner (under CFRA only) who has a serious health condition;
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
5. Leave for a "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on covered active duty or call to active status (under FMLA only, not CFRA); or
6. Leave to care for spouse, son, daughter, parent, or "next of kin" who is a covered

service member of the United States Armed Forces who has serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under FMLA only, not CFRA).

Bonding

"Bonding" with a newborn is a special provision contained in CFRA which permits an extension of leave beyond the initial period of disability due to pregnancy. In many instances, this "bonding" provision will extend the employee's leave beyond the 12 week period provided by FMLA.

Bonding includes leave for the employee (either male or female) to bond with his/her own child, or with his/her adopted or foster child. All leave for bonding must conclude within one year of the birth of the child, or one year from the date the child was placed with the employee for adoption or foster care.

What is a "Serious Health Condition"?

The majority of requests for FMLA/CFRA leave will revolve around medical issues. For this reason, it is important employees and managers have an understanding of the definition of a "serious health condition" and its application to the employee's leave request.

Not all medical conditions are protected under the FMLA/CFRA. By definition, a "serious health condition" under the FMLA/CFRA means an illness, injury impairment, or physical or mental condition that involves inpatient care, as defined below, or continuing treatment by a health care provider, (including but not limited to, treatment for substance abuse) as defined below:

1. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. A person is considered an "inpatient" when a health care facility formally admits him or her to the facility with the expectation that he or she 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
2. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care

- provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by, a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity; or
- ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider
- b) For FMLA only, any period of incapacity due to pregnancy or for prenatal care.
 - c) Any period of incapacity or treatment for such incapacity due to 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).
 - d) A period of incapacity which is permanent or a long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
 - e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
 - i) Restorative surgery after an accident or other injury; or
 - ii) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Who Qualifies For FMLA/CFRA Leave?

Any employee (including temporary, part time, or seasonal) who has been maintained on the City payroll for at least twelve (12) months and who has worked at least 1,250 hours (actual working hours including overtime) during the previous twelve (12) months for the City of Fresno is eligible for time off work under this policy for any of the qualifying reasons outlined above. (NOTE: The 12 months of employment with the City need not be consecutive; however, employment periods prior to a break in service of seven years or more shall not be counted in determining whether the employee has been employed

by the employer for at least 12 months, except for a break in service cause by a military service obligation or written agreement to the contrary).

If an employee is not eligible for CFRA leave at the start of a leave because the employee has not met the 12-month length of service requirement, the employee may nonetheless meet this 12-month requirement while on leave, if he/she subsequently accrues leave otherwise entitled. However, leave accrued while out on leave does not satisfy the 1,250 hour requirement because it is not actual work time.

It is also important to keep in mind FMLA/CFRA leave is unpaid leave. Basically, FMLA/CFRA leave is an employee's right to be away from the job while still enjoying certain statutory protections provided by law. Absent an employee having other leave balances which must be used to remain in a paid leave status if they are accessible under City policy, an employee who is off work on a FMLA/CFRA will be in a Leave Without Pay status. Employees solely on CFRA leave (i.e. not concurrently on FMLA) for child or family care can use sick leave if mutually agreed to by the City and the employee. Employees, with some exceptions, may, however, apply for State Disability Insurance or Paid Family Leave through the Employment Development Department irrespective of their FMLA/CFRA status.

Employee Rights and Benefits Under FMLA/CFRA

Any City employee who is granted time off work for a FMLA/CFRA qualifying reason is eligible to receive the following benefits:

1. Retention of employment status (i.e., position, seniority, benefits) with the City of Fresno during the period of time off;
2. Reinstatement to the same or equivalent position after the twelve (12) week period of time off is concluded; (In some instances this may be more than twelve weeks).
3. Group health plan benefits continue on the same basis as coverage would have been provided if the employee had been continuously employed during the 12 week leave period. If the employee is disabled by pregnancy, the employee will continue to be covered for up to 4 months each leave year. In the event an employee is disabled by pregnancy and also uses CFRA for bonding, the City of Fresno will maintain the employee's health benefits while the employee is disabled by pregnancy (up to four months or 17 weeks) and during the employee's CFRA leave (up to 12 weeks).
4. Entitlement to continuation of group health benefit plan under the Consolidated Omnibus Reconciliation Act (COBRA) of 1986;
5. Protection against unlawful discharge or discrimination associated with the leave. It is important to keep in mind that the benefits of these statutes frequently overlap and sometimes may in conflict. In such cases, the employee is always given the benefit of the most favorable statute.

Important Concepts in Understanding FMLA/CFRA Leaves

Think of FMLA/CFRA as the ability to be absent from work. Employees who qualify for an FMLA/CFRA absence will use their leave balances at the same time to remain in a paid leave status.

FMLA/CFRA leaves are protected. This means when an employee has an approved FMLA/CFRA leave, it is exempt from any negotiated leave abuse clause in the bargaining unit Memorandum of Understanding.

FMLA/CFRA Leave vs. Family Sick Leave

It is significant to distinguish between an FMLA/CFRA qualifying leave and what has commonly come to be known as "Family Sick Leave" in the City of Fresno. Specifically, in order to qualify for FMLA/CFRA, the medical condition must meet the criteria of being a "serious medical condition". In most cases, an earache, cold, flu symptoms, upset stomach, etc. do not meet this standard and would not qualify.

In contrast, Labor Code Section 233, Family Sick Leave, provides that an employee may take up to half of their annual accrued sick leave to attend to illnesses, such as those noted above, of a child, parent, spouse or domestic partner but not for those of the employee. Employees who accumulate Annual Leave and Supplemental Sick may include these leaves in terms of calculating the amount of annual LC 233 leave they may use for this purpose.

Special Sick Leave vs. Family Sick and FMLA/CFRA Leave

Fresno Municipal Code Section 3-107 (d) states that an employee may take Special Sick Leave for the care of "an immediate family member" and have it charged to their own Sick Leave balance under special circumstances. These circumstances include the death of an immediate family member, hospitalization of an immediate family member or household member, or to care for an immediate family member who is critically ill or injured. An immediate family member is defined as a parent, spouse, natural or legally adopted child, brother or sister. Please notice that this definition is different from both the FMLA/CFRA and Family Sick Leave definitions of family members. In other words, an employee could use Special Sick Leave to take care of a critically injured brother with the approval of the appointing authority, but would not be able to use FMLA/CFRA leave for this purpose as a brother is not included as a family member under FMLA/CFRA or Family Sick Leave.

Essentially, Special Sick Leave allows employees to use their own sick leave beyond that permitted by LC 233 (i.e. Family Sick) in order to take care of an immediate family member who is critically ill or injured with the approval of the Department Head.

The employee's use of "Special Sick Leave" under this Code section could, dependent upon the circumstances, also run concurrently with an FMLA/CFRA protected leave.

Initiation of FMLA/CFRA Leave

FMLA/CFRA is unique in that it may be initiated by either the City or at the request of

the employee.

1. Procedure for **City-designated** FMLA/CFRA Leave:

Whenever an employee is absent, or expected to be absent from work for a period in excess of two weeks, the Department/Division shall request that the employee provide information regarding the absence in order to determine if an FMLA/CFRA leave designation is appropriate. **Exception:** Any leave charged to an absence which relates to a job-related injury (except those covered under LC 4850) shall be immediately designated as FMLA/CFRA for all time lost due to the injury and any leave which relates to a pregnancy related disability shall be immediately designated as FMLA.

- a) The criteria contained in the section "Qualifying Reasons for FMLA/CFRA Time Off Work" in this handbook will be applied when considering the designation of FMLA/CFRA leave.
- b) If there is insufficient information to determine if the employee is qualified for FMLA/CFRA leave protection, Personnel Services will send the employee a Certification of Health Care Provider form together with a Notice of Eligibility and Rights & Responsibilities indicating the need for medical support to determine if the leave qualifies for FMLA/CFRA protection. The employee will be given 15 days within which to submit the required medical support documentation.
- c) Departments/Divisions shall designate that the leave is being charged as FMLA/CFRA qualifying utilizing the proper payroll leave codes after receiving notice from Personnel Services that the leave qualifies as protected leave under FMLA/CFRA.

2. Procedure for **Employee Initiated** FMLA/CFRA Leave:

A City employee must submit to the Department/Division a completed Certification of Health Care Provider form at least 30 days in advance of the requested beginning date of the leave. An exception can be made when advance notice could not be reasonably anticipated nor predicted by the employee.

Personnel Services will advise the employee of their FMLA/CFRA status using the Notice of Eligibility and Rights & Responsibilities form. A copy of the completed Notice of Eligibility and Rights & Responsibilities will be provided to the employee's Department/Division.

An employee is responsible to comply with the following requirements when requesting time off work due to a FMLA/CFRA qualifying reason.

- a) Provide 30-day status reports which qualify the employee for the use of FMLA/CFRA time off work and notice of the employee's intention of return to work at the conclusion of the approved leave; and
- b) Provide a health care provider's release verifying the employee's ability to

return to work from medical leave (if the leave taken is due to the employee's own serious health condition).

- c) An employee is required to use all of his/her accrued paid leave balances for a FMLA/CFRA qualifying absence.

In a situation where an employee has an approved FMLA/CFRA request on file, when the employee initially calls in to report their inability to report to work, managers or front line supervisors are not precluded from asking the employee if they are requesting that their absence be covered by FMLA/CFRA. Managers should exercise discretion with regard to issues involving medical confidentiality. Under California law, it is not allowable to ask the employee to produce medical documentation which identifies an actual diagnosis.

Designation of Retroactive FMLA/CFRA Leave

In the event the employee did not initially advise his/her Department that a particular leave/time off was for an FMLA/CFRA qualifying reason, the leave may still be designated as FMLA/CFRA if the employee makes the request within two business days of returning to work. The employee has 15 days in which to produce the physician's verification regarding the need for leave.

The law does permit employers to retroactively designate employee leaves as FMLA/CFRA qualifying even though not initially designated as such, unless it can be shown that the employee was actually harmed by the retroactive designation.

Advance Notice of Request for Time Off Work for FMLA/CFRA Qualifying Reasons

As stated above, employees are required to provide 30 days' notice to their immediate supervisor for foreseeable FMLA/CFRA time off work. The notice must describe (1) the reason for the FMLA/CFRA time off; (2) the anticipated duration of the FMLA/CFRA time off; and (3) the anticipated commencement of the FMLA/CFRA time off. If the 30 days notice is not practical due to a lack of knowledge of when the time off will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as possible.

If an employee fails to give 30 days' notice for a foreseeable situation without a reasonable excuse for the delay, the FMLA/CFRA time off work may be denied until at least 30 days after the employee provides notice.

Requirement of Medical Certification by Health Care Provider

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 or the employee's immediate family member.

A Physician or Practitioner Medical Certification, Employee/Family Member Serious Health Condition form must be completed by a health care provider and submitted to

Personnel Services.

Recertification of Health Condition

The law provides that once an employee has provided certification of a medical condition, a recertification cannot be requested for a period of 30 days. Exceptions to this 30 day rule exist when there is a showing that one of following events has occurred:

1. The employee requests an extension of the leave;
2. The circumstances described by the original certification have changed significantly; or
3. The employer has information that casts doubt on the continuing validity of the certification. Documentation is important to show a pattern of leave abuse.

If there is a good faith, objective reason to question or doubt the medical information that the employee provides, the Department/Division may ask Personnel Services to send the employee for a second medical opinion. Second opinions will be ***at the expense of the requesting Department***. When a second opinion differs from a first opinion, the Department/Division may require, ***at the expense of the requesting Department***, that the employee obtain the opinion of a third health care provider approved jointly by the employer and employee. The opinion of a third health care provider shall be considered final and binding.

The City reserves the right to authenticate the medical certification information provided by a health care provider.

Employee Obligation to Provide Periodic Status Reports During FMLA/CFRA Time Off Work

Any employee who is on approved FMLA/CFRA time off work is required to report his/her status every 30 days. Status reports should specify the employee's intention to return to work or the employee's election to resign due to a change in circumstances. The City may discontinue the employee's health insurance premium as soon as the employee notifies his/her Department of the intention to not return to work. Employees may then be eligible for continuation of group health care coverage under COBRA.

Release to Return to Work

An employee who takes time off under FMLA/CFRA due to his/her own serious health condition is required, prior to his/her return from the FMLA/CFRA leave, to provide a medical certification verifying he/she is able to return from medical leave and perform his/her job duties. Managers need to be aware that the policy of requiring employees to present a doctor's verification to return to work must be applied equally to all employees.

Employee Reinstatement Rights

The City will restore an employee to the same position or an equivalent position, upon

the conclusion of the FMLA/CFRA leave. An equivalent position is one which is virtually identical to the employee's former position in terms of pay, benefits, and working conditions. Exceptions to the reinstatement right include: the "elimination of position," the "key employee" exemption, and the absence of a proper "Release to Return to Work" notice from the employee's physician.

If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license or other non-qualifying reason, as a result of the leave, the employee will be given a reasonable opportunity to fulfill those conditions upon returning to work.

What Happens When An Employee's FMLA/CFRA Expires?

Upon the conclusion of the protected leave all of the outlined benefits that FMLA/CFRA provide are concluded. The employee may continue on leave beyond the statutory protected period with the approval of Leave Without Pay, consistent with the Municipal Code. At the conclusion of the FMLA/CFRA leave, management should consider the impact of the employee's continued absence. If such an absence creates an undue hardship on the Department's operation, Personnel Services is to be consulted.

City of Fresno's Right of Delay or Refusal for Reinstatement Under FMLA/CFRA

Under the provisions of FMLA/CFRA, any City employee may be refused reinstatement to his/her position for any of the following reasons:

1. Lack of Medical Release to Return to Work:
The City may delay an employee's return to work until an employee (who was off work due to employee's own serious health condition) submits a required release to return to work from a health care provider. The release itself need only be a simple statement clearing the employee to return to work. Employees who present such clearance to their supervisor/manager shall be allowed to return to work.
2. Layoff of Position during FMLA/CFRA Time Off Work:
The City may lay off an employee from his/her position while an employee is on approved FMLA/CFRA time off work as a non-discriminatory reduction in force when layoffs are necessary.
3. "Key Employee"
A "key employee" is a salaried FMLA/CFRA eligible City employee who is among the highest paid ten (10) percent of all City employees. The City may refuse to reinstate a key employee if the denial of reinstatement can prevent "substantial and grievous economic injury" to City operations. City will inform the employee in writing at the time the employee gives notice of the need for CFRA leave (or when CFRA leave commences, if earlier) that he or she is a key employee and inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the City determines reinstatement will result

in substantial and grievous economic injury to its operations.

A "key employee" must be given a written notice, either in person or via certified mail, of potential denial of reinstatement when the employee begins time off work under the FMLA/CFRA provisions. Such written notice is incorporated in the Employee FMLA/CFRA Notification form which will be distributed by Personnel Services staff.

Employees who commence a FMLA/CFRA leave while on probation shall have their probationary period extended for an amount of time equal to the time spent on protected leave. In addition, performance reviews or evaluations may be delayed if the time period for review was extended by a FMLA/CFRA leave.

Salary step increases which are based on length of service and performance will be delayed for any employee on an unpaid FMLA/CFRA leave. Shift preferences may also be delayed when related to an FMLA leave.

FMLA/CFRA Entitlement and Pregnancy Disability Leave (PDL)

The Federal FMLA statute considers pregnancy to be a disability. The State CFRA statute does not consider pregnancy to be a disability since there is another California law, Pregnancy Disability Leave (PDL), which addresses this issue. Employees will always enjoy the most favorable benefit that each law provides.

California law under Pregnancy Disability Leave (PDL) provides special protection for women with pregnancy related disabilities. This law allows an employee who is disabled by virtue of a pregnancy related disability to take up to four months off work due to her disability. This benefit is only permitted during the period the employee is actually **disabled** as documented by the treating physician. Generally, following the period of disability, the employee would be eligible to take an additional 12 weeks off work under the CFRA statute. CFRA basically provides an opportunity to "bond" with the newborn.

Under these conditions, an employee could potentially remain off work for a maximum of up to 4 months (Pregnancy Disability Leave) and an additional 12 weeks (CFRA bonding leave). As a reminder, there cannot be any overlap between a PDL and CFRA leave for pregnancy related disabilities. PDL is based on the existence of a medical **disability** associated with the pregnancy while CFRA is a **bonding leave with the newborn**. This maximum entitlement does not include leave provided as a reasonable accommodation for a physical or mental disability under the FEHA. 2 C.C.R. §11093(d).

Further, eligibility for PDL leave commences with the date of employment. Unlike the FMLA/CFRA, there is no service eligibility requirement pertaining to the one year period of service or minimum number of hours worked.

Due to the fact that **Federal FMLA** considers pregnancy to be a disability, there will be an overlap with PDL and FMLA leaves. The following example is an illustration of the interaction of these leaves:

An eligible employee is disabled due to pregnancy for eight weeks. During this

eight week period, she will be covered by both the provisions of the PDL and the FMLA. She now decides to take an additional six weeks to "bond" with her newborn. Since the FMLA is both a disability leave and a bonding leave, the employee will exhaust the remaining four weeks of her FMLA entitlement. Concurrent with the remaining four weeks of FMLA, the employee will also use four weeks of her CFRA leave entitlement.

An employee's entitlement to employer-paid health coverage during pregnancy disability leave and during leave under the California Family Rights Act (CFRA) is two separate and distinct entitlements. Therefore, depending on how long the employee is disabled by pregnancy, an employee could be entitled to maintenance of her health benefits for four months during her pregnancy disability leave and an additional 12 weeks while using CFRA leave for baby bonding.

FMLA/CFRA "bonding" time must be taken within one year of the birth of the child or placement of an adopted/foster child. Both male and female employees are entitled to FMLA/CFRA time off work to bond with a newborn or newly placed adopted/foster child as long as FMLA/CFRA time has not been previously exhausted.

Limitation for Parents Who are Both Employed by the City of Fresno:

If both parents work for the City, the aggregate amount of leave available to both parents is twelve (12) weeks during any twelve-month period if the time off is for the birth or placement of a child. Leave because of a serious health condition of an employee or an employee's child or spouse is not subject to the aggregate limitation. For example, if each spouse took six (6) weeks of FMLA/CFRA time off work for the birth of a healthy newborn child, each spouse would remain eligible for an additional six (6) weeks of leave due to his/her own serious health condition or to care for a child with a serious health condition. Any period of pregnancy related disability (before or after the birth of a child) would be considered FMLA time off work for a serious health condition and would not be subject to the combined limitation. Unmarried parents have separate rights under FMLA.

This limitation applies even when parents are employed by two different City Departments or work at two different worksites.

Intermittent or Reduced FMLA/CFRA Leave

The FMLA/CFRA time off work does not have to be in one twelve (12) week increment. An employee may take time off work intermittently (a few weeks/days/hours at a time) under certain conditions. Intermittent FMLA/CFRA may be taken for the birth of a child (and to care for such a child) and/or the placement of a child with the employee in connection with the adoption or foster care of a child by an employee. Leave for a serious health condition (either an employee's or an immediate family member) may be taken intermittently or on a reduced leave schedule when "medically necessary".

"Medically necessary" means there must be a medical need for the time off work which can best be accomplished through an intermittent or reduced leave schedule. An employee requesting intermittent time off work is required to submit a medical certificate stating the reason why the

intermittent time off work is necessary and the schedule for treatment, if applicable.

Once medical certification is received, intermittent time off work may be taken for absences when the employee is unable to perform any one or more of the essential functions of the position or the immediate family member is incapacitated because of a chronic serious health condition. This would apply even if the employee or immediate family member does not receive treatment by a health care provider.

A Department head may temporarily transfer an employee to a position with equivalent pay and benefits that better accommodates the employee's need for intermittent time off work.

As a general rule, certain designated executive, administrative, and professional employees will qualify for the minimum wage and overtime pay exemptions in the Fair Labor Standards Act (FLSA). However, providing unpaid leave required by the FMLA/CFRA will not result in the loss an FLSA exemption that is otherwise available.

Determination of the Amount of Intermittent FMLA/CFRA Time Off

When an employee takes FMLA/CFRA time off work on an intermittent or reduced schedule, only the amount of leave actually taken shall be counted toward the twelve (12) week FMLA/CFRA time limit to which an employee is entitled. For example, if a full-time employee who normally works 40 hours per week, works only 20 hours a week under a reduced leave schedule, the employee's twenty hours of leave would constitute one-half of a week of FMLA/CFRA leave for each week the employee works the reduced leave schedule.

If the employee's schedule varies from week to week, a weekly average of the actual hours worked over the twelve (12) weeks prior to the beginning of the leave period would be used for calculating the employee's normal work week and FMLA/CFRA entitlement.

Insurance Coverage

The City will maintain the employee's health plan coverage (that is already in effect) during the twelve (12) weeks of FMLA/CFRA approved time off work. Employees must continue making contributions to the plan as they had been prior to FMLA/CFRA leave in order to continue coverage. In the event an employee is disabled by pregnancy and also uses leave under the California Family Rights Act (CFRA) for bonding, the City of Fresno will maintain the employee's health benefits while the employee is disabled by pregnancy (up to four months or 17 weeks) and during the employee's CFRA leave (up to 12 weeks).

Recovery of Health Insurance Premiums by the City

The City may recover from the employee any premiums paid for an employee's group health care coverage if the employee's FMLA/CFRA time off work has expired, **and** if the employee is no longer on an approved leave of absence, **and** if the employee's failure to return to work is for a reason other than the employee's serious health

condition or the employee's immediate family member's serious health condition, or circumstances beyond the employee's control.

Employee Entitlement to Continuation of Health Benefits under COBRA

The last day of FMLA/CFRA time off work is the end of the FMLA/CFRA period OR the date the employee informs his/her Department that he/she (i.e., the employee) will not be returning to work, whichever occurs first. An employee who does not return to employment with the City at the end of the FMLA/CFRA time off work may have a right to select COBRA continuation coverage.

Any lapse in group health care plan coverage during FMLA/CFRA time off work shall not impact the employee's right to COBRA continuation if otherwise eligible.

Americans with Disabilities Act (ADA) and FMLA/CFRA

Any City employee with a serious health condition, who is eligible for time off work under the FMLA/CFRA and who also meets the criteria of being a qualified individual with a disability under the Americans with Disability Act (ADA) is entitled to his/her rights under all statutes including the ADA, FEHA, FMLA, and CFRA. For example, an FMLA/CFRA eligible employee who is working part time due to reasonable accommodation under the ADA, may take FMLA/CFRA time off work for any of the qualifying reasons under FMLA/CFRA.

Workers' Compensation and FMLA/CFRA

When an employee is injured on the job and the injury also results in a serious health condition that makes an employee unable to perform any one of the essential functions of the employee's position within the meaning of FMLA/CFRA, the employee qualifies for both Workers' Compensation benefits and FMLA/CFRA. This excludes safety employees covered under LC 4850. Both Workers' Compensation and FMLA/CFRA run concurrently.

All charged time off due to an employee's absence for a Workers' Compensation injury is charged against the 12 week entitlement to FMLA/CFRA leave for all FMLA/CFRA eligible employees except sworn safety employees covered under LC 4850.

Employee Protection Against Unlawful Employment Practices

Any City employee who has used FMLA/CFRA leave shall be protected against unlawful employment practices. It is unlawful to discharge, discriminate, interfere with, restrain or deny any employee the ability to exercise or attempt to exercise any leave or right granted under the provision of the FMLA or CFRA.

It is also unlawful to discharge or discriminate against any employee because of giving information or testimony in connection with an inquiry or proceeding relating to a right provided by the law, opposing any unlawful practice by the law, opposing any unlawful practice or filing a charge or instituting a proceeding under law.

FMLA/CFRA and Retirement Plans

Any period of FMLA/CFRA leave will be treated as continuous service for purposes of vesting and eligibility to participate in the City's retirement plan.

A City employee is entitled to the right of reinstatement to the same or equivalent position and equivalent benefits after the conclusion of an unpaid FMLA/CFRA leave, including the retirement benefit plan.

FMLA/CFRA Posting Requirements

All City Departments are required to post the California and Federal Employment Notices poster, provided by Personnel Services, in conspicuous places where notices to employees and job applicants are customarily posted.

Recordkeeping

City Departments are required to prepare and preserve records pertaining to their compliance with the FMLA and CFRA regulations. The records must be maintained for at least three (3) years in accordance with regulations issued by the Department of Labor. The Department of Labor may require submission of the records for inspection.

Technical Assistance/Questions

Personnel Services can be contacted at (559) 621-6950 or (559) 621-6900 for any FMLA/CFRA related questions and for assistance on a case by case basis.