



LEAVES FMLA/CFRA

I. PURPOSE

The purpose of this policy is to provide definition for and a process to request family and medical leaves. The granting and approval of family and medical leaves are governed by two separate pieces of legislation; the Family Medical Leave Act and the California Family Rights Act. This policy will also provide a general summary of employee benefits under the applicable legislation.

It is the policy of the City/District to comply with the provisions of the Family Medical Leave Act as well as the California Family Rights Act. Defining leave entitlement under the FMLA (Family Medical Leave Act, Federal Government) and CFRA (California Family Rights Act) is complicated. The City does not have a comprehensive policy that states employee leave entitlements, because an employee's leave entitlement depends on his/her gender, family status, whether disabled in the definition of the law, etc. The City/District approaches entitlement on an individual basis. One employee's circumstance is not generally the same as another. This document summarizes the general leave entitlements under the two pieces of legislation.

II. DEFINITIONS

FMLA:

An employee is eligible if he/she:

- Has been employed for at least 12 months;
- Has been employed for at least 1250 hours during the 12-month period preceding the commencement of the leave; and
- Is employed at a work site where the employer employs at least 50 employees within a 75 mile radius of the work site.

CFRA requires one additional day of employment for eligibility.

Permissible Reasons for Leave:

Leave under the FMLA may be taken for:

- The birth of a child of an employee and to care for a newborn;
- The placement of a child with an employee in connection with the adoption or foster care of a child by an employee;
- Leave to care for a child, parent, spouse, or registered domestic partner who has a serious health condition; and
- Leave due to a serious health condition that makes the employee unable to perform the functions of his/her position (essential functions as defined by the ADA).

Child means the son or daughter including biological, adopted, foster child, stepchild, legal ward or a child in loco parentis who is under the age of 18 years of age, or 18 years of age and older, and incapable of self care because of disability.

Parent means the biological parent or an individual who stands in loco parentis to an employee. **Does not include in-laws.**

Spouse means a husband or wife as recognized by state law for purposes of marriage or a registered domestic partner as recognized by state law.

Serious health condition includes an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care (i.e., an overnight stay or the expectation of an overnight stay when the individual is admitted to the hospital but is later discharged or transferred to another facility without actually remaining overnight) in a hospital, hospice, or residential care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or any subsequent treatment with inpatient care; or
2. Continuing treatment by a health care provider that includes one or more of the following:
 - a. A period of incapacity of more than 3 consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that involves:
 - i. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by 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; or
 - ii. Treatment by a health care provider on at least one occasion which results in regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment for purposes of FMLA leave.
 - b. Any period of incapacity due to pregnancy or for parental care.
 - c. Any period of incapacity or treatment for such incapacity due to chronic serious health condition. A chronic health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant 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.). Absences for such incapacity qualify for FMLA leave even if the absence lasts only one day. For example, an employee who has an asthma attack or morning sickness may use FMLA for a few hours in the morning.
 - d. A period of incapacity which is permanent or 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.g., Alzheimer's, a severe stroke, or the terminal stages of a disease); or
 - 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, either for restorative surgery after an accident or other injury, or for a condition that would likely result from a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Voluntary cosmetic treatments which are not medically necessary (e.g., treatments for orthodontia or acne) are not covered under the FMLA. Additionally, routine preventive physical exams, common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, and routine dental problems are conditions that do not meet the definition of a serious health condition.

The regulations for the CFRA are identical to those of the FMLA with one exception. The CFRA does not include pregnancy or related medical conditions within the definition of serious health conditions. The FMLA does.

How Much Leave Time:

Under FMLA, eligible employees are entitled to 12 workweeks of leave during any 12-month period. The City/District uses the rolling calendar year method so that employees are provided with maximum use of the leave period. In other words, the year period is the 12 months measured backward from the date leave is used.

The regulations for CFRA are similar to that of the FMLA. Under both pieces of legislation, an employee may take the leave intermittently during the 12-month period.

Maternity/Paternity Leave:

Unless there is specific language in an MOU, Maternity Leave is governed by the State law Pregnancy Disability Leave. This law is reserved for women. Paternity leave is covered in the FMLA and CFRA as it is related to the birth, adoption and bonding of a child. This leave under the CFRA is limited to two weeks during the first year of the birth or adoption of the child. This leave under the FMLA may be up to 12 weeks.

Paid or Unpaid Leave:

Leave under the FMLA and CFRA are unpaid unless the employer designates the leave as paid. *Sick Leave is permitted only when the leave is related to the health and/or birth of the child. However, time taken for the bonding with the newborn/newly adopted child is not considered sick time. As a result, other accrued leaves must be utilized for such purpose.*

III. RESPONSIBILITIES

It is the responsibility of the employee to request either family or medical leave sufficiently in advance of the defining event in order to provide management with the opportunity to make the necessary assessment of the impacts to the organization and plan for such eventual absence from the workplace. All requests shall be submitted to the employee's immediate supervisor at least two weeks in advance of the event which is the result of the request. If the event is sudden and imminent, it is the responsibility of the employee to provide as much notice as possible. Additionally, it is the responsibility of the employee to obtain and provide his/her immediate supervisor a completed copy of the "Certification Of Health Care Provider" for any request or designation of leave under the FMLA or CFRA related to a serious health condition. Leave may be denied without such certification.

It is the responsibility of management to provide a fair and equitable assessment of any employee request for family or medical leave. In making such assessments, management shall be sensitive to the employee needs and be timely in the response to all requests. Responses to requests shall be in writing, stating the period of the leave and whether or not the employee will be required to utilize accrued leaves balances during the period of the leave.

IV. POLICY IMPLEMENTATION

Human Resources is responsible for ensuring that the Family and Medical Leave Policy is complied with by implementing and documenting the following measures:

- Posting copies of the policy and procedures on the Human Resources page of the City/District Intranet;
- Having managers and supervisors inform their employees of the policy and procedures;
- Holding employees, supervisors and managers accountable for following the provisions of this policy and procedures; and
- Requiring managers, supervisors to attend training or read materials supplied by the City/District regarding the provisions of applicable legislation.

Suggestions for improvements to the policy can be communicated to the Human Resources Director at any time. The policy will be reviewed periodically and revised as needed to comply with laws and legal recommendations.

V. EFFECTIVE DATE

This revised policy is effective July 1, 2015 and shall remain in effect as periodically modified or eliminated as per applicable legislation.



Kevin M. Miller, City/District Manager



Date