



CITY OF SAN RAFAEL POLICIES AND PROCEDURES

Subject:	Family Care and Medical Leave Policy
Resolution No.	
Issue Date:	March 2007
Revision Date:	December 1, 2009
Prepared By	Leslie Loomis, Human Resources Director
Approved By:	Ken Nordhoff, City Manager

FAMILY CARE AND MEDICAL LEAVE POLICY

PURPOSE:

To establish a policy to provide family care and medical leave to eligible employees in accordance with applicable federal and state law, and City Memorandums of Understandings.

RESPONSIBILITY: All City employees

REFERENCES:

Federal Family and Medical Leave Act of 1993 amended (FMLA); National Defense Authorization Act for FY2008 (NDAA); California Family Rights Act of 1991 (CFRA) (Government Code Section 1294.2 as amended). California Government Code 12945, Pregnancy and Childbirth; California Fair Employment and Housing Act (FEHA); City of San Rafael MOUs relevant to sections on leave and use of leave or related medical conditions.

DEFINITIONS:

1. **Federal Family Care and Medical Leave (FMLA):** Federal law providing the right to unpaid leave for up to twelve (12) weeks within a twelve (12) month period calculated on a rolling twelve (12) month period:
 - a. following the birth or adoption of a child
 - b. to care for a spouse, child, or parent with a serious health condition, or
 - c. for the serious health condition of the employee, including job injuries and disability due to pregnancy.
 - d. for a qualifying exigency that arises out of the fact that a spouse, parent, or child: 1) is a member of the National Guard or military reserves, or has been called to active duty as a retired member of the military; and 2) has been called to or is on active duty in support of a “contingency operation.”

2. **California Family Leave (CFRA):** State law counterpart of FMLA. FMLA and CFRA are generally provided for the same reasons but CFRA leave can be taken to care for a registered domestic partner and FMLA may not. Additionally, disability due to pregnancy and industrial injuries for peace officers under California Labor Section 4850 are treated differently under these statutes.

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3. **California Military Spouse Leave:** Federal law providing employees who work more than twenty (20) hours per week and have a spouse in the Armed Forces, National Guard or Reserves who have been deployed during a period of military conflict, with up to ten (10) unpaid days off when their spouse is on leave from military deployment. On October 28, 2009, President Obama signed the National Defense Authorization Act for Fiscal Year 2010 into law. The bill includes provisions amending the Family and Medical Leave Act (FMLA) military family leave entitlements, expanding qualifying exigency leave and caregiver leave eligibility.

Qualifying exigency leave will now cover family members of the regular Armed Forces, in addition to current coverage of family members of the Guard or Reserves. It will also cover family members of individuals deployed to a foreign country, removing the current requirement that National Guard or Reserve members be serving "in support of a contingency operation."

Military caregiver leave has also been expanded so it may be used by family members to care for veterans undergoing treatment, recuperation or therapy for an injury, as long as the veteran was a member of the Armed Forces, National Guard or Reserves within five years of requiring care. The bill also expands military caregiver leave so that employees may use it to care for a covered service member's serious injury or illness incurred because service on active duty aggravated an existing or preexisting injuries. Previously, the law only allowed caregiver leave for serious illnesses or injuries incurred on active duty.

4. **California Pregnancy Disability Leave (PDL):** State law providing up to four (4) months of leave for an employee disabled by her pregnancy, childbirth or related medical condition. PDL runs concurrent with FMLA leave.
5. **Child:** Any biological, adopted, foster child, stepchild, legal ward, or child of a person standing in "loco parentis" (in place of a parent) who is under age eighteen (18), or an adult dependent child.
6. **Parent:** Biological, foster, or adoptive parent, step parent, or legal guardian.
7. **Registered Domestic Partner:** Domestic partner who is registered with the State of California.
8. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition which warrants the participation of a family member to provide care during a period of treatment or supervision and involves either:
 - a. In-patient care in a hospital, hospice, or residential health care facility; or
 - b. Continuing treatment or continuing supervision by a health care provider.
9. **Eligible Employee:** A full or part time employee who has worked regularly and continuously for the City of San Rafael for more than twelve (12) months calculated on a rolling twelve (12) month period. Reinstated employees must complete more than one year of continuous service to be eligible for Family Care Leave.
10. **Reduced Leave:** A leave schedule that reduces the employee's usual number of hours per work week or work day.

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11. **Servicemember Family Leave:** Federal law providing for up to twenty-six (26) weeks of leave during a single twelve (12) month period for the spouse, son, daughter, parent, or next-of-kin of a “covered servicemember” and who is otherwise eligible for FMLA leave to care for the servicemember.

POLICY:

It shall be the policy of the City of San Rafael to provide leave procedures that are consistent with Federal law, State law, and City MOUs.

The following section outlines the provisions of each type of leave and how the leaves may relate to one another.

1. Family and Medical Leave Act (FMLA)

A. Duration: Federal law providing the right to unpaid leave for up to twelve (12) weeks within a twelve (12) month period:

- (a) following the birth or adoption of a child,
- (b) to care for a spouse, child, or parent with a serious health condition, or
- (c) for the serious health condition of the employee, including job injuries and disability due to pregnancy.
- (d) for a qualifying exigency that arises out of the fact that a spouse, parent, or child: 1) is a member of the National Guard or military reserves, or has been called to active duty as a retired member of the military; and 2) has been called to or is on active duty in support of a “contingency operation.”

B. Employee Eligibility:

- 1. Employed by the City for twelve (12) months, during any twelve (12) month period.
- 2. Worked at least 1,250 hours in the previous twelve (12) months.

C. Qualifying Event:

- 1. Birth of a child of an employee
- 2. Placement of a child with an employee in connection with the adoption of a child by an employee.
- 3. Placement of a child with the employee for foster care
- 4. Serious illness of a child of an employee
- 5. Serious health condition that makes the employee unable to perform the functions of their position
- 6. To care for a child, parent or spouse who has a serious health condition
- 7. When one or more of the following qualifying exigencies occurs:
 - a. Short-notice deployment – employee may take up to seven (7) days beginning on the date of notification
 - b. Attendance at military events and related activities
 - c. For urgent childcare and school activities
 - d. For updating financial or legal arrangements

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- e. For counseling for the employee or his minor child – only if the counseling is not related to a serious health condition for which the employee could take traditional FMLA leave
- f. To spend time with the covered servicemember on rest and recuperation breaks during deployment – employee may take up to five (5) days per break
- g. To attend post-deployment activities
- h. For other purposes arising out of the call to duty, as agreed to by the employee and employer

D. Pay: FMLA leave is unpaid leave, but employees may request, in accordance with their MOU's or Compensation Plan, to use the following in order to receive compensation while on FMLA leave:

- Vacation and other accrued time.
- Accrued sick leave.

E. Health Plan Coverage during FMLA Leave: Coverage under any group health plan (medical, dental, vision, employee assistance) will be maintained by the City during FMLA leave to the same extent coverage would be maintained if the employee was actively at work. City employees may choose not to retain the City's group health plan coverage during unpaid leave.

If an employee fails to return to work from FMLA leave, the City will recover the premium(s) paid for maintaining health coverage during the authorized FMLA period, unless the employee provides written certification issued by a health care provider that inability to return to work is due to the continuance, recurrence or onset of a serious health condition.

F. Retirement: The City shall not make retirement plan payments during FMLA leave. Employee contributions during unpaid portions of the leave period are subject to the terms of the retirement plan.

G. Employee Status: FMLA leave does not constitute a break in service for purposes of longevity, and/or seniority for the purposes of layoff, recall, promotion, job assignment, and seniority related benefits, such as vacation.

H. SDI: During the FMLA leave, employees may be eligible for SDI benefits.

I. FMLA coordination with other leaves: FMLA leave runs concurrently with CFRA leave, PDL, and Workers' Compensation leave. For Non-Public Safety employees, paid injury leave or leave while covered by Workers' Compensation is considered FMLA qualifying and the twelve (12) week FMLA period will commence once the City of San Rafael provides notice to the employee. For Public Safety employees (i.e., Police and Fire), the FMLA qualifying period begins after Labor Code 4850 expires and the employee is still receiving temporary disability benefits under workers' compensation.

2. California Family Rights Act (CFRA)

A. Duration: State law providing the right to unpaid leave for up to twelve (12) weeks within a twelve (12) month period, (a) following the birth or adoption of a child, (b) to care for a spouse, domestic partner, child, or parent with a serious health condition, or (c) for the serious health condition of the employee, including job injuries and disability due to pregnancy.

B. Employee Eligibility:

- (1) Employed by the City for twelve (12) months; however these twelve (12) months of employment, may, but need not be, performed consecutively.
- (2) Worked at least 1,250 hours in the previous twelve (12) months.

C. Qualifying Event:

1. Baby bonding after the birth of a child
2. Placement of a child with an employee in connection with the adoption of a child by an employee
3. Placement of a child with the employee for foster care
4. Serious illness of a child of an employee
5. Serious health condition that makes the employee unable to perform the functions of their position
6. To care for a child, parent, spouse or registered domestic partner who has a serious health condition

D. Pay: CFRA leave is unpaid leave, but employees may request, in accordance with their MOU's or Compensation Plans, to use the following in order to receive compensation while on CFRA leave:

- Vacation and other accrued time.
- Accrued sick leave.

E. Health Plan Coverage during California Family Leave: Coverage under any group health plan (medical, vision, employee assistance) will be maintained by the City during CFRA leave to the same extent coverage would be maintained if the employee was actively at work. City employees may choose not to retain the City's group health plan coverage during unpaid leave.

If an employee fails to return to work from CFRA leave, the City will recover the premium(s) paid for maintaining health coverage during the authorized period, unless the employee provides written certification issued by a health care provider that inability to return to work is due to the continuance, recurrence or onset of a serious health condition.

F. Retirement: The City shall not make retirement plan payments during CFRA leave. Employee contributions during unpaid portions of the leave period are subject to the terms of the retirement plan.

G. Employee Status: CFRA leave does not constitute a break in service for purposes of longevity, and/or seniority for the purposes of layoff, recall, promotion, job assignment, and seniority related benefits, such as vacation.

H. SDI: During the CFRA leave, employees may be eligible for SDI benefits.

I. CFRA coordination with other leaves: Unlike FMLA and PDL, CFRA leave does not include pregnancy or related medical conditions within the definition of serious health condition. This is a difference between the FMLA and the CFRA. The result is when an employee's pregnancy precludes her from performing her job (i.e., her absence from work is medically necessary because she is disabled by

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pregnancy), it may be counted against her FMLA leave and PDL, but not her CFRA leave. This is the one situation where an employee may be on FMLA leave but not on CFRA leave.

If an employee is on PDL/FMLA leave, CFRA leave may, but need not, commence once the child is born. When the child is born, the employee has a choice of either continuing on PDL until the disability period ends and then begin the CFRA baby bonding leave or commencing the CFRA baby bonding leave immediately.

3. Pregnancy Disability Leave (PDL)

A. Duration: Up to four (4) months of PDL before or after birth when the employee is disabled (physically unable to work) because of pregnancy or a pregnancy-related condition.

B. Employee Eligibility. An employee is eligible for PDL as of the date of hire.

C. Qualifying Event: Pregnancy disability leave is available when the employee is actually disabled. This includes time off needed for prenatal care, severe morning sickness, doctor ordered bed rest, childbirth, recovery from childbirth, or any related medical condition.

D. Pay. PDL leave is unpaid, but employees may request, in accordance with their MOU's and/or Compensation Plans, to use the following in order to receive compensation while on PDL leave:

- Vacation and other accrued time.
- Accrued sick leave.

E. Health Plan Coverage during California Pregnancy Disability Leave: Coverage under any group health plan (medical, vision, employee assistance) will be maintained by the City during PDL leave to the same extent coverage would be maintained if the employee was actively at work. City employees may choose not to retain the City's group health plan coverage during unpaid leave. If an employee chooses to retain the City's group health plan coverage during unpaid leave, the employee is responsible for the timely payment of any group health plan premiums when not covered by FMLA or while in an unpaid status.

If an employee fails to return to work from PDL leave, the City will recover the premium(s) paid for maintaining health coverage during the authorized period, unless the employee provides written certification issued by a health care provider that inability to return to work is due to the continuance, recurrence or onset of a serious health condition.

F. Retirement: The City shall not make retirement plan payments during PDL leave. Employee contributions during unpaid portions of the leave period are subject to the terms of the retirement plan.

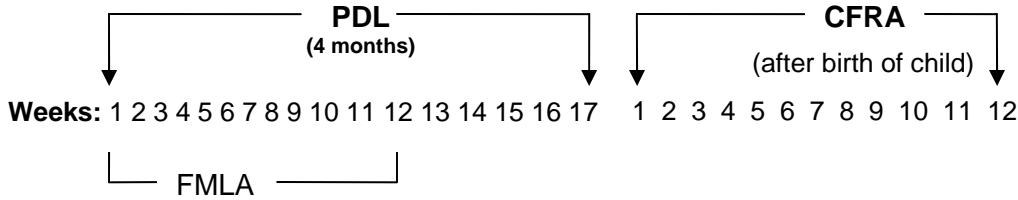
G. Employee Status: PDL leave does not constitute a break in service for purposes of longevity, and/or seniority for the purposes of layoff, recall, promotion, job assignment, and seniority related benefits, such as vacation.

H. SDI: During the PDL leave, employees may be eligible for SDI benefits.

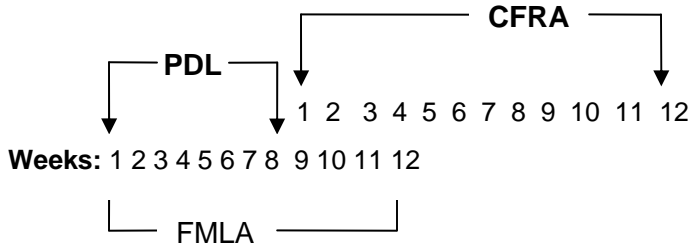
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I. Relationship between PDL coordination with other leaves: PDL runs concurrently with FMLA. CFRA leave begins after the birth of the child, for purposes of baby bonding. It does not apply to the disability period itself. The following timeline shows the relationship between the maximum amount of PDL, running concurrently with FMLA, followed by the beginning of CFRA leave for baby bonding.

Example:



This timeline shows a more common scenario when an employee's pregnancy disability is shorter than the 12-week FMLA entitlement. In this case, the CFRA entitlement runs concurrently with the FMLA entitlement for a period of four weeks.



EMPLOYEE REQUESTS FOR FMLA/CFRA/PDL LEAVE

1. Notice

- a. If the event necessitating the leave becomes known to the employee more than thirty (30) calendar days prior to the employee's need for a leave, the employee shall provide thirty (30) day notice.
- b. If the event necessitating the leave becomes known to the employee less than thirty (30) calendar days prior to the employee's need for leave, the employee shall provide as much notice as possible and, at a minimum, written notice no more than five (5) working days from learning of the need for the leave.
- c. If an employee's need for leave is foreseeable due to a planned medical treatment or planned supervision of a child, parent or spouse with a serious health condition, the employee must provide reasonable advance notice of the need for the leave and consult with their supervisor regarding the scheduling of the treatment or supervision, so as to minimize disruptions to the City. **NOTE:** Any such scheduling must be subject to the approval of the health care provider of the child, parent or spouse.

2. Certification:

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Employees must provide certification from their health care provider for the individual requiring care. Certification is sufficient if it includes all of the following:

- a. the date, if known, on which the serious health condition commenced;
- b. the probable duration of the condition;
- c. an estimate of the amount of time which the health care provider believes the employee needs to care for the individual;
- d. a statement that the serious health condition warrants the participation of a family member to provide care during a period of treatment or supervision of the child, parent or spouse;
- e. If intermittent leave or leave on a reduced leave schedule is needed for an employee's serious health condition, the certification should indicate the medical necessity for the intermittent leave or leave on a reduced leave schedule, and its expected duration.
- f. If intermittent leave or leave on a reduced schedule is needed to care for a spouse, son, daughter or parent with a serious health condition, the certification must indicate that the intermittent leave or leave on a reduced leave schedule is necessary for the care of the individual, or will assist in their recovery, and the expected duration of such leave.

3. Second Opinions

- a. If the City has reason to doubt the validity of the certification, the City may require, at its own expense, that the eligible employee obtain the opinion of a second health care provider designated or approved by the City concerning the information certified. The health care provider may not be employed by the City on a regular basis.
- b. Where a second opinion differs from the first, the City may require, at the expense of the City, a third opinion by a health care provider designated or approved jointly by the City and employee. The opinion of the third health care provider shall be considered final and binding on the City and employee.
- c. The City may require that the employee obtain subsequent re-certification on a reasonable basis.

4. Notice of Granting of Leave

The City shall respond to the leave request as soon as possible and, in any event, no later than ten (10) days after receiving the request. The City shall attempt to respond to the leave request before the date the leave is to begin.

5. Denial of Leave

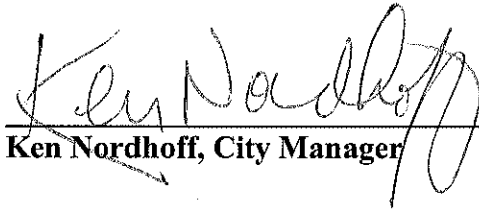
In any case in which a husband and wife are entitled to leave and are both employed by the City, the aggregate number of work weeks of leave to which both are entitled is limited to twelve (12) work weeks during any twelve (12) month period, unless the leave involves a serious health condition of either employee.

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6. Reinstatement to Position

Upon return from family care leave, the employee shall be entitled to reinstatement to the same or comparable position. An employee reinstated after Family Care Leave is not entitled to any right, benefit, or position of employment, other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

APPROVED BY:



Ken Nordhoff, City Manager

12/11/2009

Date