



City of Arts & Innovation

City of Riverside, California
Human Resources Policy and Procedure Manual

Approved:

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Human Resources Director
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City Manager

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**SUBJECT: FAMILY, MEDICAL, MILITARY CAREGIVER, AND/OR PREGNANCY
DISABILITY LEAVE**

PURPOSE:

To define the City of Riverside’s policy and procedure with regard to family, medical, military caregiver, and pregnancy disability leave in accordance with State and Federal Laws including the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), National Defense Authorization Act (NDAA), and the pregnancy disability leave provisions of the California Fair Employment and Housing Act (FEHA).¹

DEFINITIONS:²

Spouse – A husband or wife, as defined or recognized under state law for purposes of marriage.

Domestic Partners³ – Two adults in a domestic partnership registered with the State of California⁴.

Child – A biological, adopted or foster child, a stepchild, a legal ward (guardianship or conservatorship), or a child of a person standing *in loco parentis*. A child must be under 18 years of age, or if over 18, incapable of self-care because of a mental or physical disability as defined under law.

¹ Although pregnancy disability is a serious health condition under the FMLA, FEHA separately provides for up to 4 months of unpaid leave for a pregnancy disability. FEHA pregnancy disability leave runs concurrently with FMLA leave but not as CFRA leave. This distinction shall apply if necessary to any determination of leave benefits under this policy.

² Words used in this policy will have the meanings assigned to them by the FMLA (29 U.S.C. §§ 2601-2654), the CFRA (California Government Code §§ 12945.2 and 19702.3), FEHA (California Government Code § 12945) and Code of Federal Regulations (29 CFR 825.126).

³ The California Domestic Partner Rights and Responsibilities Act extends most of the same rights, responsibilities, and benefits to registered domestic partners that are provided under the California Family Rights Act (CFRA), but not FMLA.

⁴ Pursuant to Family Code section 297.

Eligible Employee – An employee who has been employed by the City of Riverside for at least twelve (12) months (consecutive or non-consecutive) and for at least 1,250 hours during the preceding 12-month period.

Parent – A biological, foster, or adoptive parent, a step-parent, a legal guardian, or other person who, stood *in loco parentis* to the employee when the employee was a child.

Covered Servicemember – 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. As it pertains to Military Caregiver Leave, this definition also applies to veterans who have been with the Armed Forces (including the National Guard or Reserves) at any time within five (5) years preceding his or her treatment, recuperation, or therapy for the serious injury or illness.

Active Duty – Duty under a call or order to active duty (or notification of an impending call or order to active duty).

Health Care Provider – An individual holding either a physician's or a surgeon's certificate⁵, an osteopathic physician's and surgeon's certificate⁶, an individual duly licensed as a physician, surgeon or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or any other person who meets the definition of others "capable of providing health care services" under the FMLA.

Serious Health Condition⁷ - An illness, injury (including on-the-job), impairment, physical, or mental condition that involves:

1. Inpatient care (an overnight stay) in a hospital, hospice, or residential health care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider, including any one or more of the following:
 - A. A period of incapacity of more than three (3) full consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - 1) Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a

⁵ Issued pursuant to Business and Professions Code Section 2080 et seq.

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⁷ Although pregnancy disability is a serious health condition under the FMLA, FEHA separately provides for up to 4 months of unpaid leave for a pregnancy disability. FEHA pregnancy disability leave runs concurrently with FMLA leave, but not as CFRA leave. This distinction shall apply if necessary to any determination of leave benefits under this policy.

health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity; or

- 2) Treatment by a health care provider on at least one (1) occasion which must take place within seven (7) days of the first day of incapacity and results in a 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.
 - B. A period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits of at least twice per year for treatment by a health care provider over an extended and/or episodic period (e.g. asthma, diabetes, epilepsy); or
 - C. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer's, severe stroke, terminal cancer); or
 - D. A period of absence to receive multiple treatments for an injury or condition which would result in incapacity of more than three (3) days if not treated (e.g. chemotherapy or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).
3. When applied to the Military Caregiver Leave entitlement, a serious injury or illness is defined as an injury or illness incurred by the covered servicemember in the "line of duty" on active duty or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. For a veteran, a serious injury or illness is defined as a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Services (or that 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 Force) and that manifested itself before or after the member became a veteran.

Short term conditions requiring only brief treatment and recovery such as the common cold, the flu, earache, upset stomach, minor ulcers, headaches, routine dental or orthodontia are not "serious health conditions." Voluntary cosmetic treatments that are not medically necessary are not "serious health conditions" unless inpatient care is required or complications arise.

POLICY:

1. ELIGIBILITY & ENTITLEMENT

A. Family and Medical Leave

Eligible employees are entitled to an unpaid leave of absence of up to twelve (12) work weeks in a single rolling 12-month period, for one (1) or more of the following reasons:

- 1) The birth of the employee's child and in order to care for the child.

- 2) The placement of a child with the employee for adoption or foster care. Foster care must be by a formal agreement between the foster parent and the State, County, or licensed foster care placement agency.
- 3) To care for the employee's spouse, domestic partner, child, or parent who has a serious health condition.
- 4) A serious health condition of the employee that renders the employee incapable of performing the functions of his or her job.
- 5) Under the NDAA, a qualifying exigency arises as a result of an employee's spouse, child or parent being on active duty, or whose spouse, child or parent is a member of the Armed Forces (including the National Guard or Reserves) who faces recall to active duty or is on active duty.

If both parents are employed by the City, the combined leave for both employees for the birth, adoption, or foster care placement of their child may not exceed twelve (12) weeks. However, any unused portion of either employees' 12-week entitlement would still be available for other authorized leave purposes.

B. Military Caregiver Leave

Eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a combined total of 26 weeks of unpaid leave to care for the servicemember who is undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness that occurred in the line of duty on active duty.

This leave provision allows eligible employees to take FMLA leave to care for a covered servicemember intermittently or on a reduced leave schedule when medically necessary. The 26-work week entitlement is a one-time entitlement applied on a per-servicemember, per-injury basis. Proof of a "next of kin" relationship may be required in writing from the employee.

C. Pregnancy Disability Leave (PDL)

All female employees, regardless of service time, are eligible to take an unpaid leave on account of a disability caused or contributed to by pregnancy, childbirth, or recovery therefrom for a reasonable period of time not to exceed four (4) months/sixteen (16) weeks. Such leave may be taken intermittently or used for a reduced work schedule, when medically advisable.

Pregnancy disability leave is separate from family and medical leave. For example, a female employee may qualify for up to four (4) months of pregnancy disability leave and still be eligible for up to twelve (12) weeks of family and medical leave to care for the newborn child or for any other valid use of family and medical leave.

The employee may request a transfer to a less hazardous or strenuous position if she is capable of working in such a position even though she is temporarily disabled due to pregnancy, childbirth, or a related medical condition.

2. INTERMITTENT LEAVE OR REDUCED LEAVE SCHEDULE

Leave under this policy may be taken on an intermittent basis or on a reduced leave schedule based on the recommendation by a health care provider. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a parent, child, or registered domestic partner with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical necessity for such leave.

3. ENTITLEMENT PERIOD

The 12-month period in which an eligible employee is entitled to family and medical leave will commence with the first day on which any such leave is taken, and is computed on a 12-month rolling basis. The balance of any such leave not taken shall be available for the remainder of the commenced 12-month period.

Eligible employees who work less than full time (40 hours per week) are entitled to leave on a pro-rata basis. For example, if an employee works 25 hours per week, his or her leave period will consist of twelve (12) weeks of 25 hours (300 hours).

Leaves for the birth, adoption, or placement of a child must conclude no later than twelve (12) months after the date of the birth or placement of the child. Under the CFRA, the basic minimum duration of such leave is two (2) weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one (1) day, but less than two (2) weeks duration on any two occasions.

4. REQUESTING/GRANTING LEAVE

An employee is responsible to request family, medical, pregnancy disability leave, and/or military caregiver leave. An employee requesting leave must complete a Request for Leave Form and return it to Human Resources at least 30 days before the leave begins. In the case of an unforeseen event or incapacitation, notification must be made by the employee or the employee's authorized representative to Human Resources as soon as the need arises and no later than two (2) business days after leave has commenced. The Human Resources Department will send an eligibility notice to the employee within five (5) working days of receipt of the employee's request for FMLA or within (5) working days of acquiring knowledge of the need for such leave. Once the eligibility notice is received, the employee must submit proper medical certification to the Human Resources Department before the leave begins, in the case of a foreseeable event. In the case of an unforeseeable event, proper medical certification must be submitted to Human Resources within fifteen (15) calendar days of receipt of eligibility notice. **Failure of the employee to provide timely medical certification may defer or even disqualify requests for FMLA leave.**

An application for leave based on pregnancy disability, military caregiver leave, or the serious health condition of the employee or the employee's spouse, domestic partner, child, or parent, must be accompanied by a Medical Certification Form completed by the applicable health care

provider, except in an emergency as provided below. All medical information shall be maintained in a confidential manner by Human Resources and disclosed only to the extent necessary to process the request for leave and in conformance with law.

An application for leave based on a qualifying exigency must be supported by military orders, or other appropriate documentation. It shall be the responsibility of the employee concerned to provide his/her immediate supervisor with supporting documentation.

An application for leave for the birth, adoption, or foster care placement of a child must be accompanied by a birth certificate or other appropriate documentation.

An employee must sufficiently explain the purpose of the leave so that Human Resources can determine whether it qualifies as family or medical leave or pregnancy disability leave. This explanation is necessary even if accrued paid leave (e.g. vacation or sick leave) shall be used concurrently with the otherwise unpaid leave under this policy.

If necessary, any leave already taken may be retroactively designated as family and medical leave, pregnancy disability leave, or military caregiver leave.

Human Resources shall process the leave request in consultation with the employee's supervisor and, if necessary, with the Department Head. Employees who take intermittent leave should make a reasonable effort to schedule such treatment so as to minimize disruption to the workplace.

When responding to any request for medical information, employees should be aware of the Genetic Information and Nondiscrimination Act (GINA), as referenced below:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, the City requires that employees not provide any genetic information when responding to a request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services⁸.

5. CONCURRENT USE OF PAID AND OTHER LEAVES

A. Use of Leave Balances

An employee who has been granted leave under this policy must concurrently use, any and all available and accrued paid leave in the following order for each qualifying reason:

- **Employee's own serious health condition:** Sick leave, vacation, then any and all other accrued paid time off.

⁸ According to 29 C.F.R. § 1635.8

- **The serious health condition of a “family member”:** Sick leave may be used. If employee chooses not to use sick leave, vacation must be used, then any and all other accrued paid time off other than sick leave.
- **Birth of a son or daughter, to care for the newborn child, and/or for placement with the employee of a son or daughter for adoption or foster care:** Vacation, then any and all other accrued paid time off other than sick leave.
- **Qualifying exigency:** Vacation, then any and all other accrued paid time off other than sick leave.
- **Caring for a covered servicemember:** Sick leave may be used. If employee chooses not to use sick leave, vacation must be used, then any and all other accrued paid time off other than sick leave.
- **Pregnancy disability:** Sick leave.

These requirements do not preclude the employee from electing to use all other leave balances (i.e. sick leave, vacation, compensatory time, etc.) once the required leave balances outlined above are exhausted.

Such concurrent use of paid leave may not contradict provisions of any applicable memorandum of understanding. Any leave used under this policy, where paid leave is also concurrently used, shall count toward the twelve (12) week cap on benefit entitlements.

B. Other Concurrent Leaves

Any use of leave under this policy that is not used concurrently with paid leave, is otherwise considered unpaid leave and must be counted as leave time allocated under Policy V-6, Leave of Absence Without Pay (General).

A leave of absence taken pursuant to Workers' Compensation Law or a temporary disability benefit plan (State Disability Insurance or other) shall also be counted, to the extent that such leave of absence qualifies, as family and medical leave or pregnancy disability leave under this policy and related law. FMLA leave does not run concurrent with leave taken under Labor Code Section 4850.

FMLA leave taken due to a qualifying exigency will not run concurrently with leave under the CFRA. However, military caregiver leave taken to care for a family member or next of kin who is a covered service member will run concurrently with leave under the CFRA, unless the covered service member is a next of kin that is not considered a family member under the CFRA.

6. BENEFITS COVERAGE DURING LEAVE

During authorized leave under this policy, an employee will be retained on the City's health plan under the same conditions that applied before leave commenced. Furthermore, the City will maintain its contribution towards medical and/or dental plans during any FMLA leave and/or PDL. To continue health coverage, the employee must continue to make any contributions that they made to the plan before taking leave; failure to do so may result in loss of coverage.

The City will cease to maintain the employee's health coverage if an employee's premium payment is more than thirty (30) days late. The City will notify the employee fifteen (15) days before coverage will cease. The employee is responsible for all health coverage costs for absences or time away from work exceeding any period of leave authorized by this policy.

If the employee fails to return to work after expiration of the authorized leave, the employee will be required to reimburse the City for payment of health insurance premiums paid during the leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his or her job, or circumstances beyond the employee's control (in accordance with state and federal laws).

An employee's hire date and job entry date will not be adjusted as a result of the leave. The review date for performance and merit salary increases shall be subject to adjustment pursuant to applicable policy. An employee on paid leave will continue to accrue sick leave and vacation leave at their normal rate; however, an employee on an unpaid leave will not accrue sick and vacation leave.

Employees in the General, Confidential, and Refuse Units taking leave under this policy may be eligible for benefits under the State Disability Insurance (SDI) Program and/or the Paid Family Leave (PFL) Program (See Policy V-1 State Disability Insurance/Paid Family Leave).

7. UNION DUES

The employee is responsible for maintaining dues to the applicable employee association, if required.

8. REINSTATEMENT

An employee returning to work from leave has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period. Employees will retain their same seniority level in relation to shift assignments and vacation requests. As a result of a leave, the employee's probationary period, evaluation date and/or merit date may be subject to adjustment in accordance with applicable City policies.

The City cannot guarantee that an employee will be returned to his or her original assignment. With certain exceptions, employees returning from leave will be reinstated to the same or a comparable position with identical pay, benefits, and other terms and conditions of employment, unless the employee's position ceases to exist because of legitimate business reasons unrelated to the leave. A determination as to whether a position is a comparable position will be made by the City.

The City may refuse to reinstate an employee returning from family and medical leave (but not from pregnancy disability leave) to the same or a comparable position if all of the following apply:

1. The employee is a salaried employee who is among the highest paid 10 percent of the City's employees who are employed within 75 miles of the work site at which the employee is employed.

2. The refusal is necessary to prevent substantial and grievous economic injury to the operation of the City.
3. The City notifies the employee of the intent to refuse reinstatement at the time the City determines the refusal is necessary under subparagraph (2).
4. In any case in which the leave has already commenced, the City shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (3).

The City may refuse to reinstate an employee for any other reasons permitted under Federal or State law.

9. RETURN FROM LEAVE

An employee on leave is expected to return to work on the next work day following the last day of the approved leave period. If an employee wishes to return to work prior to the expiration of a leave, notification must be given to Human Resources at least five (5) working days prior to the employee's revised return date. Employees returning from PDL may return to work two (2) days after notifying Human Resources if they wish to return to work prior to expiration of their leave.

Before returning from a leave, for the employee's own serious illness or pregnancy disability, the employee must submit to Human Resources a Medical Certification Form from the health care provider stating that the employee is able to return to work without any restrictions. The Medical Certification form must be approved by Human Resources before the employee may return to work.

10. ADDITIONAL LEAVE

Employees who desire leave over and beyond family, medical, military caregiver, and/or pregnancy disability leave may request leave without pay, in accordance with the City's Policy V-6 Leave of Absence Without Pay (General).

11. FAILURE TO RETURN FROM LEAVE

The failure of an employee to return to work upon the expiration of an authorized leave of absence will be interpreted by the City as the employee's desire to voluntarily resign.

12. WAIVER OF RIGHTS

Employees cannot waive, nor can the City induce employees to waive, their prospective rights under FMLA.

Disclaimer: This policy is for internal processes only. Should a discrepancy exist between this document and Federal and State Law, Federal and State Law will prevail.