



Approved:

City of Commerce, California  
Human Resources Policy and Procedure Manual

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[Signature]  
City Administrator

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

**PURPOSE:**

To define the City of Commerce's policy and procedure with regard to family, medical, and pregnancy disability leave in accordance with State and Federal laws including the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), and the Pregnancy Disability Leave (PDL) provisions of the California Fair Employment and Housing Act (FEHA).<sup>1</sup>

**DEFINITIONS:**<sup>2</sup>

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

Domestic Partners – Two adults in a domestic partnership registered with the State of California and pursuant to Family Code Section 297.

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.

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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. This distinction shall apply if necessary to any determination of leave benefits under this policy.

<sup>2</sup>Words used in the policy will have the meaning as assigned to them by the FMLA (29 U.S.C. §§ 2601-2654), the CFRA (California Government Code §§ 12945.2 and 19702.3) and FEHA (California Government Code § 12945)

Eligible Employee – An employee who has been employed by the City of Commerce for at least twelve months (consecutive or non-consecutive) and has worked a minimum of 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.

Health Care Provider - An individual holding either a physician's or a surgeon's certificate issued pursuant to Business and Professions Code Section 2080 et seq., an osteopathic physician's and surgeon's certificate issued pursuant to Business and Professions Code Section 2080 et seq., 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 Condition<sup>3</sup> - an illness, injury, impairment, or 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 or continuing supervision by a health care provider for a serious health condition including:
  - A. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition; or
  - B. A period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits 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 days if not treated (e.g. chemotherapy or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

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.

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<sup>3</sup>Although pregnancy disability is a serious health condition under the FMLA, the PDA already provides for 16 weeks of independent leave for pregnancy disability. Pregnancy disability taken as PDA will concurrently count as FMLA leave, but not as CFRA leave.

**POLICY:**

Employees who have been employed for at least one (1) year, and have worked a minimum of 1,250 hours during the preceding 12-month period are eligible for family and medical leave. For employees not eligible for family and medical leave, the City of Commerce Medical Leave Policy will take effect and based upon review of business considerations and the individual circumstances involved, consideration will be determined by the City Administrator. Except for those employees designated as "highly" compensated employees, employees will be returned to the same or to an equivalent position.

Family or medical leave will consist of utilizing appropriate accrued paid leave and unpaid leave. If leave is requested for an employee's own serious health condition, the employee must use at a minimum half of their leave at the time of the leave request of his or her accrued paid sick leave, vacation leave, flex leave, compensation time or personal leave. Employees may request leave donations by filling out the appropriate form. The remainder of the leave period will then consist of unpaid leave. Full-time Employees may be eligible for long or short term disability and should contact the Human Resources Department for further information.

**1. ELIGIBILITY & ENTITLEMENT** – All employees who meet the applicable time of service requirements may be granted family or medical leave consisting of appropriate accrued paid leave and unpaid leave, for a period of up to twelve (12) weeks or 60 days or 420 hours, the lowest time increment allowed for intermittent FMLA leaves is one (1) hour (during any 12-month period) for the following reasons:

**A. Family and Medical Leave**

- 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 a spouse, child or parent who has a serious health condition.
- 4) A serious health condition that renders the employee incapable of performing the functions of his or her job.

Any spouse, son, daughter, or parent of the employee serving in the regular Armed Forces (including the National Guard and Reserves) who has been notified of an impending call to active duty status in support of a contingency operation or deployment to a foreign country.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a Armed Forces service member who is undergoing medical treatment, recuperation or therapy for a serious injury or illness sustained in the line of duty while on active duty is entitled up to 26 weeks of leave in a single 12-month period to care for the service

member. The veteran must have been a member of the Armed Forces (including the National Guard or Reserves) at any time within five (5) years preceding his or her treatment for the serious injury or illness. An employee may also take this leave to care for an active service member or veteran who had a pre-existing injury that is aggravated while on active duty.

Eligible employees who work less than full time (40 hours per week) are entitled to utilize accrued paid sick leave, vacation leave, compensation time or personal leave, and will be compensated at the current rate of pay. For example, if an employee works 25 hours per week, his or her leave period will consist of 12 weeks of 25 hours (300 hours).. Employees may request leave donations by filling out the appropriate form. The remainder of the leave period will then consist of unpaid leave.

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

## **B. Pregnancy Disability Leave**

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 or 88 days. 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 12 weeks of family and medical leave to care for the newborn child or 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.

## **C. Other**

Employees not eligible for family, medical and/or pregnancy disability leave may request leave under Human Resources Policy, General Medical Leave or Absence Without Pay Policy.

## **2. 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. The balance of any such leave not taken shall be available for the remainder of the commenced 12-month period.

Leaves for the birth, adoption, or placement of a child must conclude no later than twelve months after the date of the birth or placement of the child.

### **3. REQUESTING/GRANTING LEAVE**

An employee is responsible to request family, medical and/or pregnancy disability leave. An employee requesting leave must complete an Employee request for Family 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 business days after leave has commenced. Failure to timely request leave under this policy may defer or even disqualify requests for leave depending on the circumstances.

An application for leave based on pregnancy disability, 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 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 taken leave may be retroactively designated as family and medical leave or pregnancy disability leave.

Human Resources shall process the leave request in consultation with the relevant Department Head and, if necessary, the employee's supervisor. Employees are obligated to minimize disruption to the workplace as much as possible by, for example, coordinating any medical appointments with the Department's needs.

### **4. CONCURRENT USE OF PAID AND OTHER LEAVE**

An employee who has been granted leave under this policy must use concurrently, during the otherwise unpaid leave granted by this policy, a minimum of half of their leave at the time of request which will include accrued sick leave, vacation, compensation time, flex leave and other paid leave. Such concurrent use of paid leave may not contradict provisions of any applicable long or short term disability policies or exceed 100% of employee's regular pay. Any leave used under this policy, where paid leave is also concurrently used, shall count toward the 12-week cap on benefit entitlements discussed below.

Any use of leave under this policy that is not used concurrently with paid leave of any type must be counted as leave time allocated under Leave of Absence Without Pay (General).

A leave of absence taken pursuant to workers' compensation law or a temporary disability benefit plan (Short/Long Term 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.

**5. 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. To continue health coverage, the employee must continue to make any contributions (if any) that they made to the plan before taking leave; failure to do so may result in loss of coverage.

An employee's hire date and job entry date will not be adjusted as a result of the paid 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 exceeding 10 business days in any one month will not accrue leave balances, advancement in salary range or seniority.

**6. UNION/ASSOCIATION DUES**

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

**7. REINSTATEMENT**

With the exception of those employees designated as "key employees", an employee returning to work from leave will be restored to his or her former position or to a position with equivalent pay, benefits, and other terms and conditions if the employee's position ceases to exist because of legitimate business reasons unrelated to the leave. A determination as to whether a position is an "equivalent position" will be made by the City.

The City of Commerce cannot guarantee that an employee will be returned to his or her original job.

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 an exempt employee who is among the highest paid 10% 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 employee and 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.

## **8. 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 pregnancy disability leave may return to work five (5) days after medical release notification is submitted to Human Resources if they wish to return to work prior to expiration of their originally approved leave.

Before returning from a leave, the employee must submit to Human Resources a Return to Work Medical Leave Certification Form from the health care provider stating that the employee is able to return to work. Such release to return to work must be approved by the City before the employee may return to work.

## **9. ADDITIONAL LEAVE**

Employees who desire leave over and beyond family, medical and/or pregnancy disability leave may request additional leave in accordance with the City's Personal, Medical or General Leave Policies. Leave requests may not exceed a combined total of one year under the various leave policies.

## **10. FAILURE TO RETURN FROM LEAVE**

The failure of an employee to return to work upon the expiration of an authorized leave of absence will subject the employee to dismissal in accordance with the City of Commerce Discipline Policy.

### **PROCEDURES:**

#### **Responsibility**

#### **Action**

### **REQUESTING/GRANTING LEAVE**

Employee

1. Provides Human Resources with a completed Request for Leave Form at least 30 days prior to the beginning of the leave or in the case of an unforeseen event, as soon as possible.

Human Resources

2. Provides Human Resources with a completed Medical Certification Form for leave of pregnancy disability or the serious health condition of the employee, or the employee's spouse, child, or parent.
3. Upon receipt of the request for leave, notifies the Department Head or designee that a request for leave for certain dates has been submitted by the employee.
4. Determines if the request for leave meets the entitlement criteria under this policy and law.
5. Consults with the Department Head or designee about any scheduling or other issues related to the request for leave.
6. Approves and designates the leave if the request complies with this policy and law.
7. If necessary, makes a preliminary approval and designation if any requested medical certification has not yet been received or confirmation is otherwise pending.
8. Notifies the employee of the approval, preliminary approval, or non-approval of the request for leave and the underlying reasons.
9. Notifies the supervisor and the Department Head or designee of the approval, preliminary approval, or lack of approval of the request for leave.
10. Notifies the supervisor of the requirement that the employee concurrently use paid leave during the otherwise unpaid leave.

Supervisor

11. Prepares a Personnel Action Form (PAF) indicating the effective date of the leave (first day of leave usage). Forwards PAF to Human Resources.
12. Ensures that the employee's time card is coded with appropriate family, medical and/or pregnancy disability hour types (contact Payroll for specific code information).



Employee

13. Prepares a Personnel Action Form (PAF) placing the employee on unpaid family and medical leave or pregnancy disability leave when all available paid leave has been exhausted. Forwards PAF form to Human Resources.
14. Maintains the employee's share of any health benefit contributions under the same conditions that applied before leave commenced.
15. Maintains union/association dues, if applicable.
16. Remits any appropriate payments in response to billing advice from the City of Commerce.

### RETURNING FROM LEAVE

Employee

17. Notifies Human Resources that employee will be returning to work, but:
  - a. When returning prior to expiration of a family and medical leave, provides Human Resources at least five (5) work days notice prior to the return date.
  - b. When returning prior to expiration of a pregnancy disability leave, provides Human Resources at least five (5) work days notice prior to the return date.
18. Provides Human Resources a Medical Certification Form from the health care provider stating that the employee is able to return to work, if leave was taken for the employee's own serious illness or for pregnancy disability at least five (5) days prior to the return date.
19. Determines, in consultation with the Department Head or designee, and the City Attorney's Office if necessary, if any required Medical Certification Form releasing the employee back to work is sufficient under this policy and law.
20. Notifies the Department Head or designee of the date the employee is scheduled to return to duty.

Supervisor/Department Head

21. Prepares a Personnel Action Form (PAF) returning the employee to regular status. Forwards PAF form to Human Resources.

22. Reinstates the employee to their original assignment or an assignment substantially similar on the agreed upon date of return, unless the employee's assignment ceased to exist because of legitimate business reasons unrelated to the leave.
23. Notifies the employee, the Department Head or designee, and the City Attorney's Office if the employee fails to return to work after expiration of an authorized leave and any extensions thereto.

### **FAILURE TO RETURN**

Human Resources

24. Notifies the employee, the Department Head or designee, and the City Attorney's Office if the employee fails to return to work after expiration of an authorized leave and any extensions thereto.

Department Head

25. In consultation with Human Resources and the City Attorney's Office, considers disciplinary action pursuant to Personnel Discipline Policy.

Attachments: Employee Request for Family Leave Form  
Medical Certification Form (Caregiver, Employee)  
Return to Work Form