

# NOTICE OF ELIGIBILITY, RIGHTS AND RESPONSIBILITIES

## OVERVIEW

The Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) of 1993 require the City to provide, within a 12-month period, up to 12 weeks (480 hours for full-time employees) of unpaid, job-protected leave to eligible employees for certain family and medical reasons, as well as for military exigencies. You are eligible for these leaves if you have been employed with the City for at least 12 months and have worked at least 1,250 hours in the 12 months preceding your leave. Time served in other departments and at other City jobs counts toward the 12-month employment requirement. Hours taken as sick pay, vacation or other types of leave do not count; however, military service does count in calculating the 1,250 hours worked.

## REASONS FOR TAKING LEAVE AND USE OF ACCRUED LEAVE<sup>1</sup>

- To care for your child after birth and to care for that child
- For the placement of a child for adoption or foster care with you and to care for that child
- To care for your spouse or domestic partner,<sup>2</sup> child or parent who has a serious health condition
- For your own serious health condition<sup>3</sup>
- To care for your family member who is in the military and who has a serious injury or illness related to military service (FMLA Only – 26 Weeks)
- To take leave due to a military exigency that arose because a family member is deployed or will be deployed (FMLA Only)

City policy requires that, except for authorized Workers' Compensation leave, you must concurrently use accrued sick leave for your time off when you take unpaid FMLA/CFRA qualifying leave. After sick leave with pay credits have been exhausted, you can elect, or the City may require you, to use accrued vacation leave, followed by the use of floating holidays, to cover the remaining unpaid FMLA/CFRA leave. You can also elect to use your accrued leave to supplement other benefits, such as state disability or paid family leave.

## 12 WEEKS OF LEAVE IN A "ROLLING" 12-MONTH PERIOD

If your leave qualifies for FMLA/CFRA protections, you have a right to up to 12 weeks of unpaid leave in a rolling 12-months period measured backward from the date of any FMLA/CFRA leave taken. Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks that has not been used during the immediately preceding 12 months. For example, Employee A requests two weeks of FMLA/CFRA leave to begin on November 1st. The department looks back 12 months (from November 1st back to the previous November 2nd) and sees that Employee A had taken four weeks of FMLA/CFRA leave beginning January 1st, four weeks beginning March 1st, and three weeks beginning June 1st. Employee A has taken 11 weeks of FMLA/CFRA leave in the 12-month period, and thus only has one week of FMLA/CFRA-protected leave available. After Employee A takes the one week in November, she can next take FMLA/CFRA leave beginning January 1st as the days of her previous January leave "roll off" the leave year.

You also have the right under the FMLA to up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. The single 12-month period for leave to care for a covered servicemember (both current servicemembers and veterans) with a serious injury or illness begins on the first day you take leave for this reason and ends 12 months later, regardless of the rolling 12-month period established for other types of FMLA leave.

## ADVANCE NOTICE AND MEDICAL CERTIFICATION

The City is entitled to advance notice for your leave when practical. Your FMLA/CFRA leave protections may be delayed or denied if advance notification and medical certification is not provided.

- You ordinarily must provide 30 days advance notice when the leave is foreseeable
- You must provide notice as soon as practicable if leave is unforeseeable, or if the leave is foreseeable less than 30 days in advance
- The City requires medical certification to support a request for leave because of a serious health condition, and may require second or third opinions for your own serious health condition (at the City's expense) and will require a valid medical release to return to work

## JOB BENEFITS AND PROTECTION

- The City will maintain your health benefits under your group health plan for the duration of your FMLA, CFRA or PDL leave as if you had continued working. However, you are responsible for paying your share of premium costs to Health Services System ("HSS"), if any, during any period of unpaid leave.
- **Contact HSS at (415) 554-1750 (Option #5) to make arrangements to pay your share of premium payments to maintain your health benefits while on unpaid leave.**
- If health insurance payments are not made timely, your group health insurance may be cancelled, provided the City notifies you in writing at least 15 days before the date that your health coverage will lapse. At the City's option, the City may pay your share of the premiums during FMLA, CFRA or PDL leave, and recover these payments from you upon your return to work.

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<sup>1</sup> Information on California's Pregnancy Disability Leave is provided on page 4 of this form.

<sup>2</sup> CFRA covers registered domestic partners; however, the FMLA excludes this relationship.

<sup>3</sup> The City will count a Workers' Compensation leave towards your FMLA/CFRA entitlement if you suffer an on-the-job injury or illness that qualifies as a serious health condition.

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- If you do not return to work following FMLA/CFRA leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition that would entitle you to FMLA/CFRA leave; (2) the continuation, recurrence or onset of a covered servicemember's serious injury or illness that would entitle you to FMLA leave; or (3) other circumstances beyond your control, you may be required to reimburse the City for its share of health insurance premiums paid on your behalf during your FMLA/CFRA leave.
- Upon return from FMLA/CFRA leave, you are entitled to reinstatement to your original or an equivalent position, with the same pay, benefits and terms and conditions of employment, unless your position ceases to exist for reasons unrelated to the leave or you are a "key" employee.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of your leave.

### UNLAWFUL ACTS BY EMPLOYERS

The FMLA/CFRA make it unlawful for the City to:

- Interfere with, restrain or deny the exercise of any right provided under the FMLA/CFRA.
- Discharge, discriminate or retaliate against you for taking protected leave, or for opposing any practice made unlawful by FMLA/CFRA, or for involvement in any proceeding under or relating to the FMLA/CFRA.

### ENFORCEMENT

- The U.S. Department of Labor is authorized to investigate and resolve complaints of FMLA violations
- The California Department of Fair Employment and Housing is authorized to investigate and resolve complaints of CFRA and PDL violations
- An eligible employee may bring a civil action against an employer for FMLA/CFRA violations.

The FMLA/CFRA does not affect any federal or state law prohibiting discrimination or supersede any state or local law, or collective bargaining agreement that provides greater family or medical leave rights.

**FOR ADDITIONAL INFORMATION CONTACT YOUR DEPARTMENTAL HUMAN RESOURCES OFFICE.**

### "NOTICE B" FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with your employer, and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption or foster care placement of your child, or for your own serious health condition or that of your child, parent or spouse.

Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take pregnancy disability leave (PDL) for up to four (4) months, or the working days in one-third of a year, or 17½ weeks, depending on your period(s) of actual disability. Time off needed for prenatal or postnatal care; doctor-ordered bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; childbirth; postpartum depression; loss or end of pregnancy; or recovery from childbirth or loss or end of pregnancy would all be covered by your PDL.

Your employer also has an obligation to reasonably accommodate your medical needs (such as allowing more frequent breaks) and to transfer you to a less strenuous or hazardous position if it is medically advisable because of your pregnancy.

If you are CFRA-eligible, you have certain rights to take BOTH PDL and a separate CFRA leave for reason of the birth of your child. Both leaves guarantee reinstatement to the same or a comparable position at the end of the leave, subject to any defense allowed under the law. If possible, you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or a family member). For events that are unforeseeable, you must to notify your employer, at least verbally, as soon as you learn of the need for the leave.

Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

Your employer may require medical certification from your health care provider before allowing you a leave for:

- your pregnancy;
- your own serious health condition; or
- to care for your child, parent, or spouse who has a serious health condition.

See your employer for a copy of the medical certification form to give to your health care provider to complete (FML 2).

When medically necessary, leave may be taken on an intermittent or a reduced work schedule. If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. Contact your employer for more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). The FEHA prohibits employers from denying, interfering with, or restraining your exercise of these rights. For more information about your rights and obligations, contact your employer, visit the Department of Fair Employment and Housing's (DFEH) website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov), or contact DFEH at (800) 884-1684.