

I. STATEMENT OF POLICY

To the extent not already provided for under current leave policies and provisions, the City of Garden Grove will provide family and medical care leave for eligible employees as required by State and Federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA and CFRA.

II. REASONS FOR LEAVE

Leave is only permitted for the following reasons:

- A. The birth of a child or to care for a newborn of an employee;
- B. The placement of a child with an employee in connection with the adoption or foster care of a child;
- C. Leave to care for a child, parent, or a spouse who has a serious health condition; or
- D. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.

III. EMPLOYEES ELIGIBLE FOR LEAVE

An employee is eligible for leave if the employee:

- A. Has been employed for at least 12 months; and
- B. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

IV. AMOUNT OF LEAVE

Eligible employees are entitled to a total of 12 work weeks of leave during any 12-month period, with the period beginning on the first day of absence.

A. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for any of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse, or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, intermittent leave is available only when medically necessary. All notice and medical certification provisions of this policy must be complied with.

B. Coordination of Leaves

California Pregnancy Disability Act leave begins the first day an employee is disabled from work due to pregnancy and leave may continue until disability concludes or for a maximum of four months, whichever is earlier. The Federal FMLA also begins the first day an employee is disabled for a maximum of 12 weeks. At the conclusion of California Pregnancy Disability Act leave, the employee may be entitled to CFRA leave for up to an additional 12 weeks to the extent still available that year.

For eligible leaves other than pregnancy disability, FMLA and CFRA will run concurrently for a maximum of 12 weeks.

V. **EMPLOYEE BENEFITS WHILE ON LEAVE**

Leave under this policy is unpaid. While on approved leave, employees will continue to be covered by the City of Garden Grove's group health and dental insurance to the same extent that coverage is provided while the employee is on the job for up to 12 weeks in a 12 month period. Employees are responsible for their share of the premiums and the City will continue to pay its share.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City of Garden Grove shall have the right to recover its share of health and dental plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

Depending on the particular plan, the City of Garden Grove will inform you whether the premiums should be paid to the carrier or the City of Garden Grove. Your coverage on a particular plan may be cancelled if you are more than 30 days late in making a premium payment. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

VI. **SUBSTITUTION OF ACCRUED PAID LEAVES**

A. Use of Paid Leave

Employees must exhaust their accrued paid and unpaid leaves (eg., vacation, sick, administrative leave, or compensatory time) concurrently with FMLA/CFRA leave with the following exceptions:

1. Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
2. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition. An employee may use family sick leave under this policy if the leave is needed to care for a parent, spouse, or child with a serious health condition and qualifies for family sick leave under the City of Garden Grove's sick leave policy. The use of family sick leave is limited to the maximum allowed in the applicable Memorandum of Understanding.

3. Employees are not required to use vacation during California Pregnancy Disability Act leave.

VII. MEDICAL CERTIFICATION

Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City of Garden Grove.

If the leave is requested because of the employee's own serious health condition, the certification must also include a statement that the employee is unable to work at all or is unable to perform an essential function of his/her position.

A. Time To Provide a Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City of Garden Grove within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to remedy any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City of Garden Grove may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Second and Third Opinion

If the City of Garden Grove has reason to doubt the validity of a certification, the City of Garden Grove may require a medical opinion of a second health care provider chosen and paid for by the City of Garden Grove. If the second opinion is different from the first, the City of Garden Grove may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third opinion.

D. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule for his/her own medical leave or to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means that it must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

VIII. EMPLOYEE NOTICE OF LEAVE

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In

addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be given verbally. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave.

IX. REINSTATEMENT UPON RETURN FROM LEAVE

A. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced or to an equivalent position. Employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation To Periodically Report On His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness For Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition which made the employee unable to perform his/her job, the employee must obtain and present a fitness for duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

D. Reinstatement of "Key Employees"

The City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the worksite).

X. REQUIRED FORMS

Employees must fill out the following applicable forms in connection with leave under this policy:

- A. "Request For Family or Medical Leave Form" prepared by the City to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A CITY RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;
- B. Medical certification - Either for the employee's own serious health condition or for the serious health condition of a child, parent, or spouse;

- C. Fitness for duty to return from leave form.

XI. DEFINITIONS

- A. 12-Month Period - Means a rolling 12-month period measured backward from the date leave is taken.
- B. Child - Means a child under 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or step-child.

A child is "incapable of self care" if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living (such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.).

- C. Parent - Means the biological parent of an employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- D. Spouse - Means a husband or wife as defined or recognized under California State law for purposes of marriage.