

THE FAMILY MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) provides unpaid leave to eligible employees with qualifying circumstances and ensures that the employee will be reinstated to the same or equivalent position with no loss of benefits once the leave is concluded. In California, employees are also covered by the California Family Rights Act (CFRA) and the Pregnancy Disability Leave Act, each of which provide family or medical leave that can run concurrently or consecutively with the federal leave, depending on the circumstances.

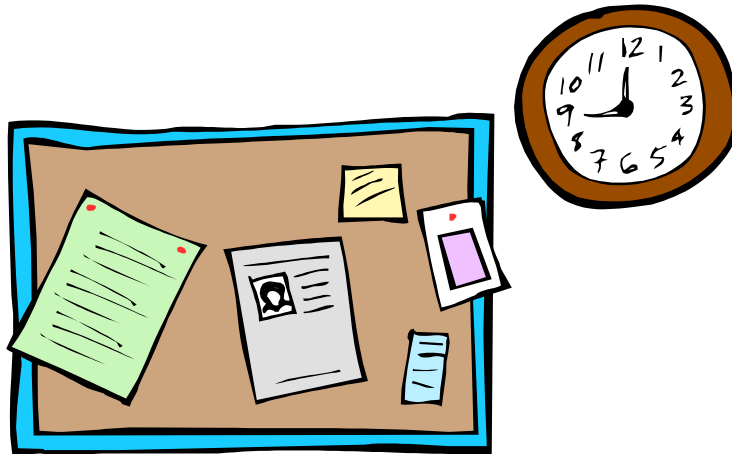
Following, is a guide to the FMLA and how it is applied in the City of Richmond. For any questions or to obtain additional copies of any forms or posting, please contact Lisa Stephenson, Labor Relations Manager (510) 620-6609.



Posting Requirements

Each department **must post a notice** in a conspicuous place which explains the FMLA's major provisions, and identifies procedures for filing complaints of violations. Failure to post a notice may preclude the City from taking any adverse action against an employee, including denying FMLA leave for the employee's failure to give proper notice.

- ◆ Each department must post the federal FMLA notice at each work site (see attached sample).
- ◆ Each department must post a California Family Rights Act and Pregnancy Disability Leave notice at each work site (see attached samples).



Employees Eligible for FMLA Leave

- ◆ The employee (does not include contract employees) has been employed by the City for **at least twelve (12) months**. The 12 months DO NOT need to be consecutive months. However, breaks in service of greater than seven (7) years need not be counted in determining eligibility, unless the break in service was caused by military leave or allowed per the terms of a written agreement and/or collective bargaining agreement.

AND

- ◆ The employee has worked for the City **at least 1,250 hours** during the twelve (12) month period immediately preceding the commencement of the leave. Paid vacation, paid sick leave, paid holidays and Workers' Compensation time **do not** count toward the 1,250 hours. Military leave **does** count toward the 1,250 hours.

Permitted Reasons for Leave

An employee is entitled to FMLA leave for one (1) or more of the following six (6) circumstances:

1. Birth of an employee's child;

- ◆ Eligibility ends twelve (12) months after the birth of the child.

2. Placement of a child for adoption or foster care;

- ◆ FMLA leave may be taken for events that are part of the adoption process, i.e. pre-placement counseling sessions, court appearances, consultation with attorneys, etc., as well as the bonding period following the placement.
- ◆ Eligibility ends twelve (12) months after the placement of the child.

3. To care for a spouse, parent, child or domestic partner with a serious health condition;

- ◆ **Spouse:** a partner in marriage as defined by Family Code Section 301.
- ◆ **Parent:** a biological, foster, or adoptive parent, a step-parent, legal guardian, conservator, or other person standing in loco parentis to a child.
- ◆ **Child:** a biological, adopted or foster child, stepchild, legal ward, conservatee or child who is under eighteen (18) years of age for whom the employee is the guardian or conservator, or an adult dependent child of the employee.
- ◆ **Domestic Partner:** an unmarried person, eighteen (18) years or older, to whom the employee is not related and with whom the employee resides and shares the common necessities of life and who are registered with the State of California as domestic partners.

4. The employee's own serious health condition.

5. To care for a current (not retired or permanently disabled) military servicemember with a serious injury or illness if the employee is the spouse, registered domestic partner, child, parent, or next of kin of the servicemember.

Permitted Reasons for Leave CONTINUED

- ◆ **Next of Kin:** the nearest blood relative other than the servicemember's spouse, domestic partner, parent or child, in the following order: blood relatives who have been granted custody of the servicemember by court decree, siblings, grandparents, aunts and uncles, and first cousins, unless the servicemember has designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave.
 - ◆ **Serious injury or illness:** an injury or illness incurred by a servicemember in the line of duty on active duty that renders the servicemember unfit to perform the duties of his or her position.
- 6. A “qualifying exigency” arising out of the fact that an employee’s spouse, registered domestic partner, child or parent is on active duty or has been notified of an impending call or order to active duty.**
- ◆ This leave entitlement only applies to members of the Reserve and National Guard and to certain retired members of the Regular Armed Forces and retired Reserve. **This leave entitlement does not extend to family members of the Regular Armed Forces on active duty, because those individuals, per federal law, do not serve under a call or order to active duty.**
 - ◆ **“Qualifying Exigency”:** Leave needed to participate in the following activities, **so long as** the need for leave relates to the active duty or call to active duty:
 - (1) addressing issues arising from a short-notice deployment (defined as seven (7) days or less);
 - (2) attending military sponsored events;
 - (3) arranging for childcare;
 - (4) participating in school activities;
 - (5) making or updating financial or legal arrangements;

Permitted Reasons for Leave CONTINUED

- (6) attending counseling;
- (7) spending time with a covered servicemember who is on short-term rest and recuperation leave during the period of deployment (leave limited to up to five (5) days for each instance of rest and recuperation);
- (8) participating in post-deployment activities, such as arrival ceremonies, reintegration briefings, and other military sponsored events for a period of ninety (90) days following termination of the servicemember's active duty status; and
- (9) addressing other issues arising out of the servicemember's active duty or call to active duty, provided that the City and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

How Much FMLA Leave are City of Richmond Employees Entitled To?

- ◆ **Twelve (12) or Twenty-Six (26) weeks of FMLA leave depending upon the type of leave taken.**

12 WEEKS

- ◆ City employees, represented and unrepresented, are entitled to twelve (12) weeks of FMLA **during any twelve month “rolling” period** when leave is taken for the following reasons: (1) birth of an employee’s child; (2) placement of a child for adoption or foster care; (3) to care for a family member with a serious health condition; (4) the employee’s own serious health condition; and (5) a “qualifying exigency” arising from an employee’s family member being on active duty or called to active duty.
- ◆ The twelve (12) month period for calculating leave entitlement will be a “rolling” period measured backward from the date leave is taken and continues with each additional leave day taken.

26 WEEKS

- ◆ City employees, represented and unrepresented, are entitled to twenty-six (26) weeks of FMLA leave **during a single 12 month period** to care for a family member who is a current military servicemember and has suffered a serious injury or illness.
- ◆ The “single twelve (12) month period” begins on the first day the employee takes leave and ends 12 months after that date.
- ◆ This leave entitlement does not increase the amount of leave an employee may take for other FMLA qualifying reasons during the “single 12 month period.”

How Much FMLA Leave are City of Richmond Employees Entitled To? CONTINUED

- ◆ **Intermittent Leave or Reduced Work Schedule:** FMLA leave may be taken intermittently or may include a reduced work schedule depending on the circumstances. Intermittent leave may be taken in separate blocks of time due to a single qualifying reason. Examples include taking two (2) hours of leave weekly for physical therapy or working three (3) days a week while being treated for a qualifying illness.
 - ✓ Employees must make a **reasonable effort** to schedule intermittent leave so as not to disrupt normal work operations.
 - ✓ The City can request certification supporting the employee's need for intermittent leave..
 - ✓ **Baby Bonding Leave:** In California, employees can take intermittent leave for the birth or care of a newborn or placement of a child for adoption or foster care. Generally, an employer does not have to allow "baby bonding leave" that is less than two (2) weeks long, however, the employer does have to grant up to two requests for baby bonding leave that is less than two (2) weeks long.

- ◆ Where the parents (whether married or not) of a child are **both employed** by the City, FMLA leave based on the birth, adoption or foster care of a child is **limited to an aggregate for both employees together of twelve (12) weeks each twelve (12) month period.** It is important to apply this provision to all parents, not just married couples, as California law prohibits discrimination based on marital status.

- ◆ **Pregnancy Disability Leave Act (PDL):** Employees are entitled to up to four (4) months of Pregnancy Disability Leave for any period of actual disability caused by the employee's pregnancy, childbirth or related medical conditions. PDL can be taken intermittently. Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth are all covered.

How Much FMLA Leave are City of Richmond Employees Entitled To? CONTINUED

- ◆ Even if an employee is not eligible for FMLA leave (i.e., because they have not worked with the City for a year or have not worked the required 1250 hours), the employee is still entitled to Pregnancy Disability Leave.
- ◆ An employee's FMLA leave does not begin tolling until after the employee's health care provider determines she is no longer disabled due to her pregnancy or until the employee has exhausted the four (4) months of Pregnancy Disability Leave to which the employee is entitled.
 - ✓ Where there are no complications, health care providers usually apply state disability insurance (SDI) criteria and presume that an employee is "disabled" due to her pregnancy for a period up to four (4) weeks prior to the birth and for a period of six (6) weeks following the birth (eight (8) weeks following a Caesarian section). The length of time that an employee is "disabled" due to her pregnancy is determined by her health care provider and can exceed the guidelines above.
 - ✓ An employer can require medical certification for a pregnancy related disability leave.

What is a “Serious Health Condition” Entitling an Employee to FMLA Leave?

- ◆ For purposes of FMLA, a “serious health condition” entitling an employee to FMLA leave means an **illness, injury, impairment, or physical or mental condition** that involves:

1. **Inpatient care** (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity (inability to work, attend school or perform regular daily activities due to the serious health condition, treatment thereof or recovery therefrom), or any subsequent treatment in connection with such inpatient care;

OR

2. **Continuing treatment** by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity (i.e., inability to work, attend school or perform regular daily activities due to the serious health condition, treatment thereof or recovery therefrom) of more than three (3) 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 thirty (30) days of the incapacity (unless extenuating circumstances exist) by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- 2) Treatment by a health care provider on a least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider; and

What is a “Serious Health Condition” Entitling an Employee to FMLA Leave? CONTINUED

- 3) Treatment by a health care provider that takes place in-person within seven (7) days of the first day of incapacity.

OR

3. Any period of incapacity or treatment for such incapacity due to a **chronic serious health condition**. A chronic serious health condition is one which:
 - (A) Requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
 - (B) Continues over an extended period of time; and
 - (C) May cause episodic rather than a continuing period of incapacity.
4. A period of **incapacity which is permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke or the terminal stages of a disease.
5. Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either **for restorative surgery** after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

◆ What is not a Serious Health Condition:

- √ Short term conditions requiring brief treatment such as the common cold, flu, earaches, upset stomach, minor ulcers, headaches (except migraines), routine dental problems and periodontal disease.
- ✓ Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications arise.
- ✓ Mental illness resulting from stress or health conditions relating to allergies may be serious health conditions, but only if all the conditions discussed above are met.
- ✓ Substance abuse may be a serious health condition if the conditions discussed above are met. FMLA leave may only be taken for treatment of substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. However, absence because of the employee’s use of the substance, rather than for treatment, does not qualify for FMLA leave.

Health Care Providers

For purposes of FMLA, the following is a list of approved health care providers:

- ◆ Doctor of medicine or osteopathy
- ◆ Podiatrist
- ◆ Dentist
- ◆ Clinical Psychologist
- ◆ Optometrist
- ◆ Chiropractor
- ◆ Nurse Practitioner
- ◆ Nurse-Midwife
- ◆ Clinical Social Worker
- ◆ Physician Assistants
- ◆ Christian Science Practitioner
- ◆ Any Health Care Provider recognized by the City's group health plan
- ◆ A Health Care Provider as defined above who practices and is licensed in a country other than the U.S.



Notice and Designation of Leave

- ◆ In all circumstances, it is the **City's responsibility to designate leave** as FMLA qualifying and to give notice of the designation to the employee.
- ◆ Once the department learns the request is FMLA based, the department must designate leave as FMLA within **five (5) business days**. The designation of FMLA leave must be in writing.
- ◆ **The employee is responsible for providing sufficient information** to allow the City to determine his or her qualification for leave. An employee need not specifically request family leave to meet his or her obligation for requesting FMLA leave. (However, **calling in "sick" is not sufficient notice** of the need for FMLA leave.)
- ◆ If the need for leave is **foreseeable**, under federal law, employees must provide 30 days' notice; California law requires **"reasonable" notice**.
 - √ In those cases where the employee does not give 30 days' notice and/or "reasonable" notice of foreseeable leave, the employee may be required to explain the reasons why earlier notice was not practicable.
 - √ If the need for leave is **not foreseeable**, employees must give notice **"as soon as practicable"**.
 - √ When scheduling foreseeable medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the City's operations.
- ◆ Employees may be required to comply with the City's usual and customary notice and procedural requirements for requesting leave, absent extenuating circumstances.
- ◆ If an employee refuses or fails to give reasons for requesting FMLA leave, or fails to provide adequate notice of the need for leave, the City may deny or delay FMLA leave in appropriate circumstances.

Workers' Compensation

The City may require that the employee's twelve (12) weeks FMLA entitlement run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.



Medical Certifications

The City may require that an employee's leave to care for the employee's seriously ill spouse, child, parent, or domestic partner, or due to the employee's own serious health condition, or time off related to pregnancy disability, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. **The request for medical certification should be made within five (5) business days** after notice for need of leave is given or **within five (5) business days after leave commences, if leave is unforeseen.** California law does not permit employers to ask for a diagnosis in a medical certification. For that reason, do not use the federal medical certification form – it has a section asking for a medical diagnosis. Instead use the California certification of health care provider form (an example is attached). The employee is entitled to **fifteen (15) calendar days to obtain the medical certification.** If the employee does not provide a requested medical certification, the request for leave can be denied and any time the employee has already taken off would not be protected FMLA time off.

- ◆ **Certification for leave to care for a family member shall contain:**
 - ◆ The date, if known, on which the serious health condition commenced.
 - ◆ The probable duration of the condition.
 - ◆ An estimate of the amount of time which the employee needs to render care or supervision.
 - ◆ A statement that the serious health condition warrants the participation of a family member to provide care during period of treatment or supervision.
 - ◆ If for intermittent leave or reduced work schedule leave, the certification should indicate that the intermittent leave or reduced work schedule leave is necessary for the care of the individual or will assist in their recovery, and its expected duration.

Medical Certifications CONTINUED

- ◆ **Certification for leave due to the employee's own serious health condition shall contain:**
 - ◆ The date, if known, on which the serious health condition commenced.
 - ◆ The probable duration of the condition.
 - ◆ A statement that the employee is unable to perform the functions of the employee's job.
 - ◆ If for intermittent leave or a reduced work schedule leave, the certification should indicate the medical necessity for the intermittent leave or reduced work schedule leave and its expected duration.

NOTE: For an employee's own serious health condition, the City can ask for a **second opinion** by a health care provider (other than a physician employed by the City) chosen by the City. A **third opinion** can be obtained from a jointly designated or approved health care provider. Under California law, the City **IS NOT** permitted to ask for a second opinion on the need for leave when the leave is to care for a family member.

All medical information must be kept in a file separate from the employee's regular personnel file. ADA and FMLA medical information can be kept in the same file.

◆ **Authentication and Clarification of Medical Certifications**

- ◆ If an employee submits a complete and sufficient certification signed by a health care provider, the employer may **not** request additional information from the health care provider.
- ◆ However, the employer **may** contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) **after the employee has been given the opportunity to cure any deficiencies in the certification.** (Employee is entitled to up to seven (7) calendar days to cure the deficiency.)

Medical Certifications CONTINUED

- √ **Under no circumstances, may the employee’s direct supervisor contact the health care provider for clarification or authentication of a medical certification.** Rather, the employer must use a health care provider, a human resources professional, or a leave administrator.

- √ **“Authentication”** means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification was completed and/or authorized by the health care provider. No additional medical information may be requested.

- √ **“Clarification”** means contacting the health care provider to clarify the handwriting on the medical certification or the meaning of a particular response. The employer may not ask the health care provider for additional information beyond that required by the certification form.

Certification for “Qualifying Exigency” Leave

The employee may be required to provide a copy of the covered military member’s **active duty** orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status and the dates of the active duty service.

The City may also require that leave for a qualifying exigency be supported by a certification from the employee setting forth the following information:

- ◆ The name of the covered military member;
- ◆ The employee’s relationship to the military member;
- ◆ A statement describing the reason(s) for requesting qualifying exigency leave and any related supporting documentation;
- ◆ The approximate date on which the qualifying exigency commenced or will commence;
- ◆ The probable duration of the qualifying exigency leave;
- ◆ If for intermittent leave or a reduced work schedule leave, the certification should indicate the anticipated frequency and duration of the leave;
- ◆ If the qualifying exigency involves meeting with a third party, the certification should include contact information for the individual or entity with whom the employee is meeting and a brief description of the purpose of the meeting.

A sample certification form for “qualifying exigency” leave is attached.

Certification for “Qualifying Exigency” Leave

CONTINUED

Verification

- ◆ If an employee submits a complete and sufficient certification to support his or her request for qualifying exigency leave, the City may not request additional information from the employee.

- ◆ However, if the qualifying exigency involves meeting with a third party, the City may contact the individual or entity with whom the employee is meeting for purposes of verifying the meeting or appointment and the nature of the meeting. **The employee’s permission is not required;** however, no additional information may be requested.

- ◆ An employer may also contact an appropriate unit of the Department of Defense to request verification that the military member named in the certification is on active duty or call to active duty status; No additional information may be requested, and the employee’s permission is not required.

Certification for Military Caregiver Leave

Required Information From Health Care Provider

- ◆ When leave is taken to care for a seriously ill or injured military servicemember, the employee may be required to provide a certification completed by an authorized health care provider of the servicemember. Any of the following health care providers may complete such a certification:
 - A United States Department of Defense (DOD) health care provider;
 - A United States Department of Veterans Affairs (VA) health care provider;
 - A DOD TRICARE network authorized private health care provider; or
 - A DOD non-network TRICARE authorized private health care provider.

- ◆ The City may require that military caregiver leave be supported by a certification from one of the aforementioned health care providers setting forth the following:
 - Whether the servicemember's injury or illness was incurred in the line of duty on active duty;
 - The approximate date on which the serious injury or illness commenced and its probable duration;
 - Whether the injury or illness renders the servicemember unfit to perform the duties of his office, grade, rank or rating;
 - Whether the servicemember is receiving medical treatment, recuperation, or therapy;
 - Information sufficient to establish that the servicemember is in need of care and the estimated duration of the need for care; and

Certification for Military Caregiver Leave CONTINUED

- If for intermittent or reduced work schedule leave for medical treatment appointments, whether there is a medical necessity for the servicemember to have such periodic care and an estimate of the frequency and duration of the treatments.

Required Information from Employee and/or Servicemember

- ◆ The City may also require that the employee and/or servicemember provide a certification containing the following information:
 - The name of the servicemember;
 - The relationship of the employee to the servicemember;
 - Whether the servicemember is a current member of the Armed Forces, The National Guard or Reserves, and the servicemember's military branch, rank, and current unit assignment;
 - Whether the servicemember is assigned to a military medical facility and the name of the medical treatment facility;
 - Whether the servicemember is on the temporary disability retired list; and
 - A description of the care to be provided to the servicemember and an estimate of the duration of the leave.

A sample certification form for military caregiver leave is attached.

Certification for Military Caregiver Leave CONTINUED

Verification

- ◆ The City may seek authentication and/or clarification of the certification in the manner described above with respect to medical certifications unrelated to military caregiver leave. However, **second and third opinions are not permitted** for leave to care for a servicemember.
- ◆ The City may require an employee to provide confirmation of a covered family relationship to the servicemember.
- ◆ In lieu of a certification form containing the information set forth above, the City will accept Invitational Travel Orders (ITOs) or Invitational Travel Authorizations (ITA's) issued to any family member to join an injured or ill servicemember at his or her bedside. As with a certification, the City may seek authentication or clarification of the ITO or ITA, but no second or third opinion is allowed.



Requesting Recertification

- ◆ **Leave to Care for a Family Member:** Upon expiration of the time estimated by the family member's health care provider (in the initial medical certification) that the employee needs to provide care for the family member, the City may require that the employee obtain a recertification if additional leave is required.
- ◆ **Leave for Employee's own Serious Health Condition:** The City may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis (typically no more than every thirty (30) days with certain exceptions.) Consult with Human Resources to determine when a recertification may be requested within less than thirty (30) days or when more than thirty (30) days must elapse before recertification may be sought.

The employee must provide the requested recertification within the time frame requested by the City (15 calendar days) unless not practicable to do so under the circumstances. The employee must bear the expense, if any, of obtaining the recertification. No second or third opinion may be required for purposes of recertification.

No recertification may be sought for military caregiver leave.

Employee's Intent to Return

- ◆ The City can require **periodic reports** of the employee's status and intent to return to work **every thirty (30) calendar days** while on FMLA leave. The employee should be made aware of this requirement when the leave commences.
- ◆ If the employee gives unequivocal notice of intent not to return, obligations under FMLA cease.
- ◆ The City may require two **(2) business days' notice** of the employee's **intent to return to work early**.



Fitness for Duty Reports

An employee who takes leave for his or her own serious health condition can be required to obtain and present certification from the employee's health care provider that the employee is able to return to work. Restoration of employment may be delayed until an employee submits a required fitness for duty certification.

- ◆ The City must notify the employee at the time the leave commences that a return to work certification will be required or the City cannot delay job restoration for failure to provide certification.

Limitations:

- ◆ If the department's policy is to require fitness for duty reports, there must be a uniformly applied policy or practice that requires all similarly situated employees (same occupations, same serious health condition) who take leave, to obtain fitness for duty reports, i.e. cannot require fitness for duty reports from one employee, and not from another, if they are similarly situated.
- ◆ The fitness for duty report must certify that the employee is able to resume work. The City must inform the employee that it will require a fitness for duty certification at the time the leave is designated as FMLA qualifying.
- ◆ The City may require that the fitness for duty certification specifically address the employee's ability to perform the essential functions of the employee's job, but **only if** the FMLA designation notice informs the employee of this requirement and sets forth the essential functions of the position. If these requirements are satisfied, the employee's health care provider must certify that the employee can perform the previously identified essential job functions.
- ◆ The City may seek authentication and/or clarification of the fitness for duty certification in the same manner described above with respect to medical certifications.

Fitness for Duty Reports CONTINUED

- ◆ The City may not require second or third opinions of a fitness for duty certification.
- ◆ No fitness for duty certification may be required of an employee on intermittent leave, **unless** reasonable safety concerns (i.e., a reasonable belief of significant risk of harm to the employee or others) exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. In such circumstances, the City is entitled to request a fitness for duty certification for intermittent absences up to once every thirty (30) days, so long as the employee has been previously informed of the requirement to submit such a certification at reasonable intervals during the intermittent leave.



Use of Accruals

FMLA leave is unpaid. However, the FMLA permits an employee to choose to use paid leave (sick leave, vacation, management leave, floating personal holiday & compensatory time) while on an FMLA leave.

- ✓ Use of sick leave accruals may be elected to the extent the circumstances meet the City's usual requirements for the use of sick leave accruals. The City **is not required** to allow the use of sick leave accruals during an FMLA leave in any situation where the City's uniform policy does not normally allow such paid leave from work due to illness or injury.
- ✓ Pursuant to California's "Kin Care" law, employees must be allowed to use accrued sick leave for otherwise unpaid leave to care for a seriously ill spouse, domestic partner, child, or parent.

The City **may require** the use of sick accruals during FMLA leave which is due to the employee's own serious health condition, **except in the following circumstances:**

- ✓ The City may not require an employee to use accrued sick leave when the employee is receiving compensation pursuant to a disability benefit plan or workers' compensation benefits.
- ✓ However, the City and employee may agree to allow paid sick leave to supplement disability plan or workers' compensation benefits in cases where said benefits only provide replacement for a portion of the employee's income.

Maintenance of Benefits

- ◆ **Health Plans:** The City must maintain the employee's group health insurance coverage for the duration of the qualified FMLA leave at the level and under the conditions that the coverage would have been provided if the employee were not on leave.
- ◆ The employee is required to pay timely the full employee contribution to maintain their group health plan coverage, either through payroll deduction or by paying the City directly.
- ◆ If the employee fails to make payments as agreed, the City can cancel coverage provided the City allows the employee a 30 day grace period to pay and provides written notice of intent to cancel at least 15 days before coverage is lost.
- ◆ The employee can choose not to continue health insurance during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of pre-existing conditions, waiting for an open enrollment period, etc.
- ◆ **Pension and Retirement Plans:** FMLA leave must be treated as regular continued service (no service breaks) for the purposes of vesting and eligibility to participate in pension and retirement plans.
- ◆ **Seniority:** FMLA leave does not impact an employee's seniority.

Reinstatement from FMLA Leave

An employee is entitled to be **returned to the same position** the employee held when the leave commenced or to an **equivalent position** with equivalent benefits, pay and other terms and conditions of employment.

- ◆ At the time the leave is approved, the employee must be notified in writing of the final date to return to work, or the maximum number of hours of leave, in order to guarantee reinstatement to the same or equivalent position.



Denying Job Restoration

The City's right to deny job restoration is limited. The City must be able to show that an employee would not otherwise have been employed at the time restoration is requested in order to deny restoration to employment.

- ◆ **Lay-Off:** The City has the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.
- ◆ **Elimination of Shift or Overtime:** If a shift has been eliminated, or overtime has been decreased, the employee is not entitled to return to that shift or the original overtime hours; however, if a shift has been filled by another employee, the returning employee has a right to restoration to the same shift.
- ◆ **Project Employee:** The City has no obligation to restore an employee to work if the project is completed at the time of return.
- ◆ **Inability To Perform Essential Job Functions:** An employee has no right to reinstatement if he or she is unable to perform an essential function of the position because of the continuation of a serious health condition or an injury or illness also covered by workers' compensation. However, the employee may be entitled to reinstatement pursuant to the Americans with Disabilities Act (ADA), state disability law, or workers' compensation laws.