



**POLICY FOR STATE AND FEDERAL FAMILY MEDICAL LEAVES**

**Purpose of Leaves**

The purpose of this policy is to provide a uniform way to access information for those employees who wish to take leave under the Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA) and/or the Pregnancy Disability Leave (PDL). Under FMLA and CFRA, employees who have worked for at least twelve (12) months and for 1,250 hours during that 12 month period may request family care and medical leave of up to twelve (12) workweeks during a twelve (12) month period. There is no minimum length of service requirement for PDL. Under PDL, employees may request leave for a reasonable period of time, not to exceed four (4) months.

Leave may be requested for the following reasons:

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| FMLA | <ul style="list-style-type: none"> <li>• Bonding time with newborn, including adoption and foster care</li> <li>• Care of child, parent or spouse with serious health condition, including psychological comfort</li> <li>• Serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position</li> <li>• Incapacity due to pregnancy, prenatal care, or for a mother's own serious health condition following the birth of the child (CFR 825.120.4)</li> <li>• Military-related leaves including qualifying exigency leave and military caregiver leave</li> </ul> <p><b>CFR 825.200</b></p> |
| CFRA | <ul style="list-style-type: none"> <li>• Bonding time with newborn, including adoption and foster care</li> <li>• Care of child, parent, domestic partner, domestic partner's child or spouse with serious health condition, including psychological comfort</li> <li>• Serious health condition that makes the employee unable to perform functions of his/her position</li> </ul> <p><b>CCR Title 2, Section 7297</b></p>   |
| PDL  | <p>To allow a female employee disabled by pregnancy, childbirth, or related medical conditions to take a leave for a reasonable period of time not to exceed four months.</p> <p><b>Gov Code 12945</b></p>  |

**Definitions**

1. **"12-Month Period"** – A "rolling" 12-month period measured backward from the date an employee uses any FMLA/CFRA leave.
2. **"Child"** – Son or daughter. For purposes of leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that leave is to commence.
3. **"Disability for purposes of PDL"** - An employee is considered disabled under PDL if she is unable to perform one or more essential functions of her job due to her pregnancy or related health condition.
4. **"Serious Health Condition"** – Illness, injury, impairment or physical or mental condition which involves inpatient care or continuing treatment by a health care provider.

5. **“Continuing treatment”** -
  - Any period of incapacity due to pregnancy or prenatal care
  - Incapacity of more than 3 consecutive, full calendar days and
    - 2 or more treatments (1<sup>st</sup> within 7 days and 2<sup>nd</sup> within 30 days of incapacity)
    - At least 1 treatment within 7 days of the first day of incapacity and continuing treatment
  - Chronic conditions
    - Periodic visits (at least twice a year) for treatment by a healthcare provider
    - Continues over an extended period of time; and
    - May cause episodic period of incapacity
  - Conditions requiring multiple treatments
  
6. **“Intermittent Leave”** - Leave taken in separate blocks of time due to a single qualifying reason
  
7. **“Reduced Leave Schedule”** - A leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

**Note:** Under CFRA, a disability due to pregnancy, birth, or related medical condition is not a “serious health condition”. Also under CFRA, leave may be taken for “treatment” for substance abuse. It is not necessary that the employee be admitted to a hospital or clinic in order to qualify, thus, an employee attending outpatient treatment sessions would qualify for protected leave.

**Amount of Leave**

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| FMLA | Except in the case of leave to care for a covered service member with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 (twelve) workweeks of leave during any 12-month period, as previously defined. An employee's entitlement to leave for the birth or placement of a child for adoption or foster care expires 12 months after the birth or placement.<br><b>CFR 825.200(a)</b>   |
| CFRA | A covered employer is required to grant an eligible employee a maximum leave of 12 workweeks in a 12-month period.<br>“12 workweeks” means the <i>equivalent</i> of 12 of the employee's normally scheduled workweeks. For eligible employees who work more or less than five days per week, or pursuant to an alternative work schedule, the number of working days that constitute 12 workweeks is calculated on a pro rata or proportional basis.<br><b>CCR Title 2, Section 7297.3, Subdivision C</b> |
| PDL  | For a reasonable period of time not to exceed four months.<br><b>Gov Code 12945</b>   |

**Intermittent and Reduced Schedule Leave**

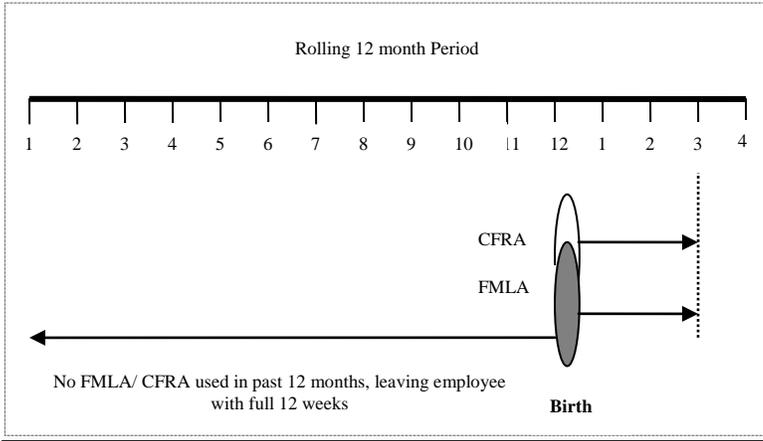
FMLA, CFRA and PDL leave may be taken on an intermittent or reduced schedule for any qualifying reason, when medically necessary. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. The employer's agreement is not required, however, for FMLA or PDL leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, or if the employer agrees to permit intermittent or reduced schedule

leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

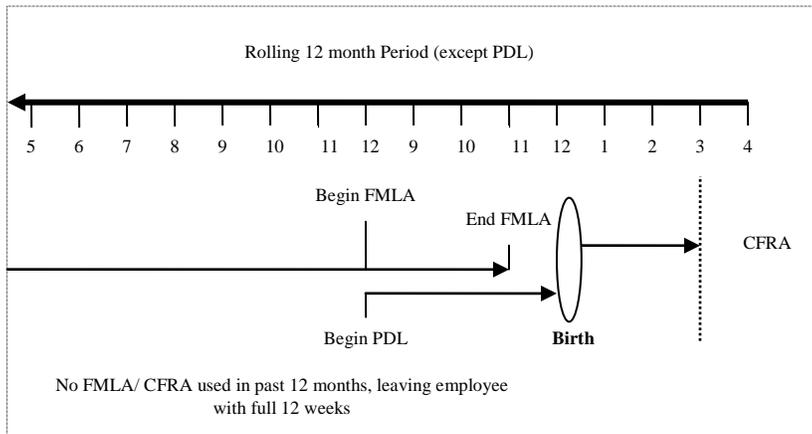
**Leaves Interaction**

Timeline Examples:



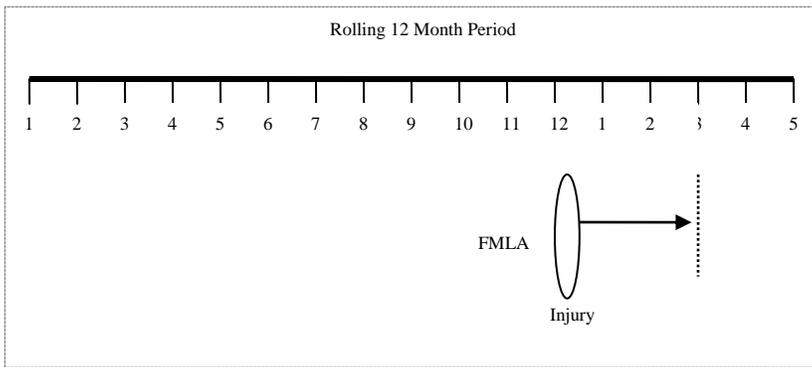
**Example 1:** A male employee uses 12 weeks of leave due to the birth of a child.

All leaves shall run concurrently, where appropriate. An employee is entitled to no more than twelve (12) total weeks of City-paid health benefits during any unpaid leave taken during a twelve (12) month period, as provided for by the FMLA law.

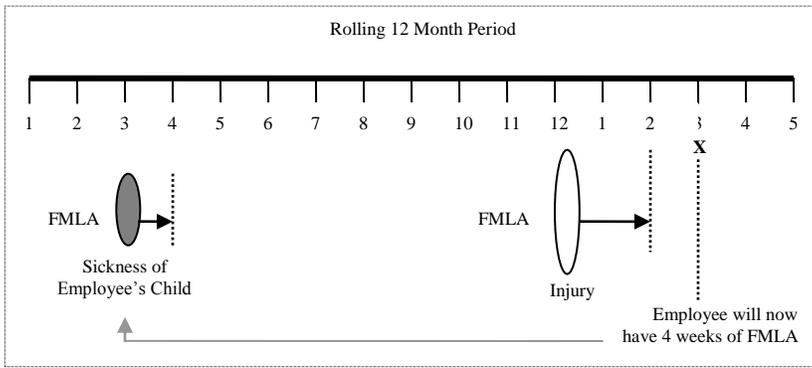


**Example 2:** A female employee is pregnant and unable to perform one or more of her essential job functions due to the pregnancy. As a result, beginning in month 5 of the pregnancy, the employee utilizes PDL which runs concurrently with FMLA. Once the child is born, the employee begins to use CFRA for the maximum 12 weeks, in order to bond with and care for the baby.

If an employee utilizes PDL leave, and if she is eligible for FMLA leave at the time she takes PDL leave, her FMLA leave shall run concurrently with her PDL leave. Once PDL ends (as explained above), if an eligible employee wishes additional leave to care for a newborn, she is entitled, under CFRA, to take up to twelve (12) additional weeks of leave. All leaves shall run concurrently, when appropriate.



**Example 3:** An employee is injured and incapable of performing one or more essential functions of his position as a result of the injury. The employee utilizes 12 weeks of FMLA leave in order to recover from the injury.



**Example 4:** An employee is injured and incapable of performing one or more essential functions of his position as a result of the injury. 9 months prior, the employee took 4 weeks of leave to care for his ill child. Therefore, the employee uses his available 8 weeks of leave to recover from his injury.

**When Both Employees Are City Employees**

If both husband and wife or both parents are employed by the City, leave shall not exceed a combined total for both employees of twelve (12) weeks of leave during a twelve (12) month period, for leave taken:

1. Under FMLA leave, to care for the employee's parent with a serious health condition; or
2. Under FMLA and CFRA leave, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. Any leave taken must conclude within one year of the birth or placement of the child.

NOTE: If one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. CFRA may provide greater benefits.

**Employee Benefits While on Leave**

1. Leave under this policy is unpaid. However, in appropriate circumstances employees may substitute paid accrued leave where appropriate. While on leave, employees will continue to be covered by the City of Turlock's group health insurance (medical, dental and vision) at the level and under the same conditions at which that coverage is provided while the employee is on the job. However, employees will not continue to be covered under the City of Turlock's non-health benefit plans which are not provided pursuant to the City of Turlock's group health plans such as life insurance and long term disability. Employees may make the appropriate contributions for continued coverage under the non-health insurance benefits as noted above by payroll deductions or direct payments made to these plans. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City of Turlock shall have the right to recover its share of health 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 which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City of Turlock shall have the right to recover premiums through deduction from any sums due to the employee from the City of Turlock (e.g. unpaid wages, vacation pay, etc.).

2. If an employee does not participate in the City of Turlock's group health insurance, but receives contributions from the plan, those contributions for medical, dental, and vision will continue while the employee is on family leave.

### **Substitution of Paid Accrued Leaves**

1. If an employee requests leave for any reason permitted under this policy, other than the employee's own serious health condition, he/she must exhaust accrued leaves (except sick leave) in connection with the family leave. The exhaustion of accrued leave will run concurrently with the leave under this policy. Employees may use family sick leave as outlined in their Memorandum of Understanding or Personnel Resolution affecting their position in effect at the time leave commences.
  - For TCEA, " Employees may use a maximum of six (6), eight (8) hour days or 48 hours of sick leave per calendar year to care for members of the employee's immediate family."
  - For TAPO, "As many as six (6) eight-hour days of annual sick leave may be used for illness of the employee's immediate family."
  - For FIRE, refer to the Personnel System Rules and Regulations, "A maximum of six (6) days of annual sick leave may be used for illness of the employee's immediate family. (According to California law, employees are entitled to use up to one-half (1/2) of their sick leave earned annually for illness of their immediate family.) If an employee is absent because of illness, he must notify his Department Director or his immediate supervisor at least one (1) hour prior to the time set for beginning his daily duties. If an employee is ill for more than three (3) working days (two (2) working shifts in the case of Fire Department employees) for any one illness, he is required to furnish a doctor's certificate to the Personnel Officer. Employees demonstrating an above average use of sick leave or, patterned sick leave use, may be required to provide a doctors certificate."
2. If an employee requests leave for his/her own serious health condition, the employee must exhaust accrued sick leave as well as other accrued leaves. Pursuant to this policy, long term disability leaves would run concurrent with family leave.
3. For Workers' Compensation Leaves for non-Public Safety Employees, FMLA and Workers' Compensation time run concurrently. For Public Safety employees on 4850 time, FMLA and Workers' Compensation time do not run concurrently.

### **Medical Certification**

1. For FMLA and CFRA, the Employer should request medical certification within five business days after notice of the need for FMLA or CFRA leave. In all FMLA cases, including FMLA running concurrently with CFRA, employees must provide medical certification within 15 days
  - If leave is for a child, parent or spouse, request must be accepted if properly filled out.
  - If leave is for individual, certification must state that the employee is incapable of performing at least one of their essential job functions.
  - If certification is incomplete or insufficient, employer must advise the employee as to what additional information is needed, in writing.
    - Employer must provide employee with 7 days to cure insufficiency.

- If insufficiencies are not cured in the new certification, employer may deny the FMLA leave.

For PDL, the medical certification should include:

- the date on which the employee become disabled due to pregnancy or the date of the medical advisability for the transfer or reasonable accommodation;
- the probable duration of the period(s) of disability or the period(s) for the advisability of the transfer or reasonable accommodation; and,
- a statement that, due to the disability, the employee is unable to work at all or to perform any one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy or to other persons or a statement that, due to her pregnancy, the transfer or reasonable accommodation is medically advisable.

2. If the City of Turlock has reason to doubt the validity of a certification for the employee's own serious health condition, the City of Turlock may require a medical opinion of a second health care provider chosen by the City of Turlock. If the second opinion is different from the first, the City of Turlock may require the opinion of a third provider jointly approved by the City of Turlock and the employee. The opinion of the third provider will be binding. To choose a third provider, the City of Turlock and the employee will each submit a list of three providers. The employee and the City of Turlock must agree on one of these providers. The second and third medical opinions will be at the expense of the City.
3. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced work schedule 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 there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced work schedule. If granted Intermittent leave, the employee must make a reasonable effort to schedule planned medical treatments so as not to disrupt unduly the employer's operations.
4. If additional leave is required upon the expiration of the time the health care provider estimates for the leave, the City may require the employee to obtain recertification in accordance with the initial certification procedure.

### **Employee Notice of Leave**

1. Although the City of Turlock recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible for their need for leave. If the 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.
2. When an employee gives less than 30 days advance notice, the employee must respond to a request from the employer to explain why it was not practicable to give 30 days notice.

### **Reinstatement Upon Return from Leave**

1. Upon expiration of leave and/or disability, an employee is entitled to be restored to the position of employment held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and all other terms and conditions of employment, unless the assignment to the

position has expired as provided in applicable MOU's, or the position has been eliminated. It is the intent of this policy that the employee's use of leave shall not adversely impact their salary, rank, seniority, pension, or other employee benefits.

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| FMLA | On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.<br><b>CFR 825.214</b>                              |
| CFRA | When granting an employee's request for CFRA leave, the employer shall guarantee that the employee will be reinstated to the same or a comparable position, unless legally excused from doing so. If the employee requests, the guarantee must be provided in writing. Under California law, family care and medical leave shall not be deemed to have been granted unless the employer provides the guarantee.<br><b>CCR Title 2, Section 7297.3, Subdivision C</b> |

- As a condition of restoration 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 (for FMLA) or return-to-work (for CFRA and PDL) from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of restoration, until such verification is provided, or in termination.

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| FMLA | When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work if the employer has provided the required notice; the employer may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.<br><b>CFR 825.214</b> |
| CFRA | As a condition of the employee's return from leave, the employer may require that the employee obtain and submit a "return-to-work" release from his/her health care provider. The release must state that the employee is able to resume work.<br><b>CCR Title 2, Section 7297.4</b>  |

- Employees still on probation at the time they began leave under PDL, FMLA, or CFRA may have the probationary period extended at the discretion of the Department Director. The Department Director shall consider factors such as the amount of probationary time remaining and performance of the employee prior to leave in making the decision.

## **ADDITIONAL LEAVE**

### **Requests**

If the employee wishes leave beyond that provided for by PDL, FMLA, and CFRA, the employee shall make a written request to the City Manager, through their Department Director, and provide an explanation of the need for the extended leave. Requests for additional leave will be reviewed on a case-by-case basis and granted at the sole discretion of the City Manager. An employee is entitled to no more than twelve (12) total weeks of City-paid health benefits during any unpaid leave taken during a twelve (12) month period, as provided for by the FMLA law.

**Required Forms** – To be submitted to Human Resources. Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request for Family or Medical Leave form" prepared by the City of Turlock to be eligible for leave;
2. Medical Certification – either for the employee's own serious health condition or for the serious health condition of a child, parent or spouse;
3. Authorization for payroll deductions for benefit plan coverage continuation; and
4. Fitness for duty to return from leave form, if appropriate.