

Section 1: POLICY

The City of Manteca ("City") will provide family care and medical 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 Policy, "Leave" under this Policy shall mean leave pursuant to the FMLA and CFRA. Certain employees may have additional and/or different rights as set forth in an applicable memorandum of understanding and consistent with law.

Section 2: DEFINITIONS

- A. **"12-Month Period"** means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. **"Child"** means a child under the age of 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, a biological, adopted, foster or step-child, a legal ward, or child standing in loco parentis (in place of a parent) or child of the employee's registered domestic partner.

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, adoptive, step, or foster father or mother, 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 parent-in-law.
- D. **"Spouse"** means a husband or wife as defined or recognized under California State law for purposes of marriage, or a registered domestic partner as defined under California State law.
- E. **"Next of kin of a covered service member"** means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have

been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service-member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

- F. **“Serious health condition”** means an illness, injury impairment, or physical or mental condition (other than disabilities relating to pregnancy or childbirth, which are covered under Pregnancy Disability Leave) that involves any of the following:
- 1) **Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); 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, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i) Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
 - ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
 - b) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.) Absences for such incapacity qualify for leave even if the absence lasts only one day.
- c) 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.
- d) 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 consecutive calendar days in the absence of medical intervention or treatment.

G. "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
- 3) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

- 4) Nurse practitioners and nurse-midwives and clinical social workers and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- 5) Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts; and
- 6) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

Section 3: 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.
- E. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; and
- F. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

Section 4: 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.

Employees who are not eligible for leave under this policy may request a Leave of Absence Without Pay under the City's Personnel Rules.

Section 5: AMOUNT OF LEAVE

Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period. An eligible employee is entitled to 26 work weeks of leave to care for a covered service member with a serious injury or illness during a single 12 month period. Note that this leave entitlement is separate and apart from any Pregnancy Disability Leave to which the employee may be entitled. (See Pregnancy Disability Leave Policy.) Additional medical leave beyond that provided by this policy may be available under the City's Leave of Absence Without Pay rule.

A. Minimum Duration of Leave

Leave may be taken on an intermittent or reduced schedule consistent with state and/or federal law.

B. Spouses Both Employed By the City of Manteca

In any case in which spouses are both employed by the City of Manteca and are both eligible for leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

Section 6: RELATIONSHIP OF FAMILY CARE AND MEDICAL LEAVE TO OTHER LEAVES

In general, any leave of absence taken for a reason that also qualifies for Family Care and Medical Leave may be designated by the City as Family Care and Medical Leave (FMLA) , and runs concurrently (at the same time) as the employee's 12-week family care and medical leave entitlement. For example, an eligible clerical employee who is on leave because of a work-related injury will also be on family care and medical leave under this policy at the same time.

Also, leave for disabilities related to pregnancy, childbirth or recovery therefrom under the City's Pregnancy Disability Leave Policy (PDL) will run concurrent with FMLA. An eligible employee who takes Pregnancy Disability Leave will at the end of that leave still have up to 12 weeks of California Family Rights Act (CFRA) to use "for the birth of the child," i.e., bonding.

There is an exception where the leave is not counted against the 12-week Family Care and Medical Leave entitlement but instead runs *consecutively* to it:

- A. Leave pursuant to Labor Code Section 4850 for peace officers suffering from a work-related illness or injury.

Section 7: EMPLOYEE BENEFITS WHILE ON LEAVE

While on leave, employees will continue to be covered by the same health insurance benefits and premium payment arrangement to the same extent that coverage is provided while the employee is on the job.

Employees may make the appropriate contributions for continued coverage under the health insurance benefit plans by payroll deductions or direct payments made to these plan(s). Depending on the particular plan, the City will inform you whether the premiums should be paid to the carrier or to the City. Your coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. 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 Manteca 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 of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

Section 8: PAY DURING LEAVE AND SUBSTITUTION OF PAID ACCRUED LEAVES

Leave under this policy is generally unpaid. However, certain employees may be eligible for the following income replacement benefits during leave:

- Disability Benefits during leave taken for an employee's non-industrial serious health condition; and

- Workers' Compensation Benefits during leave taken for an employee's work-related serious-health condition.

In addition, while on leave under this policy, as set forth herein, an employee must concurrently use paid accrued leaves as outlined below. The City of Manteca will require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave. Use of such paid leave will not extend the maximum 12 weeks of leave available under this policy. Any paid leave used during periods that an employee is receiving Disability Benefits or Workers' Compensation benefits, will be coordinated with such benefits up to a combined maximum of 100% of pay.

A. Employee's Right To Use Paid Accrued Leaves Concurrently With Family Leave

Where an employee has earned or accrued paid vacation, administrative leave, or compensatory time, the employee must use such leave during any leave under this policy.

An employee is entitled to use sick leave concurrently with leave under this policy if:

- 1) The leave is for the employee's own serious health condition; or
- 2) The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave pursuant to current applicable MOUs.

B. City's Right To Require An Employee To Use Paid Leave When Using FMLA/CFRA Leave

Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave with three 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, up to the maximum allowed under applicable MOU/Personnel Rules and Regulations for family members; and

- 3) Employees will only be required to use accrued paid leave for periods during which they are *not* receiving any type of disability or workers' compensation.

C. City's and Employee's Right If An Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the City may require the employee to exhaust accrued leave as described above.

Section 9: 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.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform one or more of the essential functions 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 within the time frame requested by the City (which must allow at least 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 cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Recertification

If the City has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City 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 opinion when there is a recertification.

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 the employee's own serious health condition 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 there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Section 10: EMPLOYEE NOTICE OF LEAVE

Although the City recognizes that emergencies arise which may require employee 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 that 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 orally given. If the City determines that an employee's notice is inadequate or the employee knew about the request leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute, or until 30 days after notice was given, whichever is earlier.

Section 11: REINSTATEMENT UPON RETURN FROM LEAVE

A. Right to Reinstatement

Upon expiration of leave provided under this Policy, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. 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 the employee does not return to work until after the expiration of FMLA/CFRA leave period, his/her reinstatement rights, if any, will be determined by applicable law and/or City policy.

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 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 treating 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) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

Section 12: REQUIRED FORMS

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

- 1) "Request For Family or Medical Leave Form"
- 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 benefits plan coverage continuation; and
- 4) Fitness for duty to return from leave form.