

CITY OF OCEANSIDE ADMINISTRATIVE DIRECTIVE		
SUBJECT: Family and Medical Leave Policy	NUMBER AD-08	PAGE 1 of 10
	ISSUE DATE: 10/6/08	
Previously issued as 04-8 on 1/8/94, and revised 8/16/04		

I. PURPOSE

It is the policy of the City of Oceanside to grant up to 12 weeks of family and medical leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA)/California Family Rights Act (CFRA) and up to 26 weeks of leave in any 12-month period in compliance with the expansion of FMLA/CFRA under The Support for Injured Service members Act of 2007. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

II. 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. "Spouse" – includes married partners only. If both spouses work for the City, their total leave in any 12-month period may be limited to an aggregate of 12 weeks if the leave is taken for either the birth or placement for adoption or foster care of a child, or to care for a sick parent. Each spouse may receive up to 12 weeks a year for his or her own serious health condition, or to care for a child or the other spouse with a serious health condition.
- C. "Child" – means a child either 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 stepchild. Only placement by the state of a child for foster care qualifies for FMLA/CFRA leave.
- D. "Serious Health Condition" – means an illness, injury, impairment, or physical or mental condition that requires:
 - 1. Inpatient care in a medical facility; or
 - 2. Any period of incapacity requiring absence from work for more than three calendar days AND involving continuing treatment by a health care provider; or

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
2 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

3. Continuing treatment by a health care provider for a chronic or long-term condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
 4. Prenatal care by a health provider.
- E. "Continuing Treatment" – means:
1. Two or more visits to a health care provider; or
 2. Two or more treatments by a health care practitioner on referral from, or under direction of, a health care provider; or
 3. A single visit to a health care provider that results in a regimen or continuing treatment; or
 4. In the case of a serious, long-term or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider. Voluntary or cosmetic treatments do not qualify as a serious health condition unless inpatient care is required. Stress, allergies, or substance abuse may qualify for serious health conditions if the other requirements are met.

III. ELIGIBILITY

To qualify for family or medical leave under this policy, the employee must meet both of the following conditions:

- A. The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on an approved leave during the week.
- B. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA/CFRA.

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
3 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

IV. TYPE OF LEAVE COVERED

To qualify as FMLA/CFRA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- A. The birth of a child and in order to care for that child.
- B. The placement of a child for adoption or foster care and to care for the newly placed child.
- C. To care for a spouse, child or parent with a serious health condition.
- D. The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition, which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.

Employees with questions about what illnesses are covered under this FMLA/CFRA policy or under the City's sick leave policy are encouraged to consult with the City Department.

The City may require an employee to provide a doctor's certification of the serious health condition. The certification process is outlined in section 8 of this policy.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the City may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

- E. A covered family member's active duty or call to active duty in the Armed Forces.

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
4 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. Reasons related to the call-up or service, including helping the family member prepare for the departure or caring for children of the service member. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA/CFRA leave is defined the same as for child for other types of FMLA/CFRA leave, except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA/CFRA leave in a 12-month period.

Employees requesting this type of FMLA/CFRA leave must provide proof of the qualifying family member's call-up or active military service before leave is granted.

F. To care for an injured or ill service member.

This leave may extend to up to 26 weeks in a 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering service member. An employee is also eligible for this type of leave when the family service member is receiving medical treatment, recuperation or therapy, even if the service member is on temporary disability retired list.

Employees requesting this type of FMLA/CFRA leave must provide certification of the family member or next-of-kin's injury, recovery or need for care. This certification is not tied to a serious health condition as for other types of FMLA/CFRA leave. This is the only type of FMLA/CFRA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA/CFRA leave are included with this type of leave totaling the 26 weeks.

An eligible employee can take up to 12 weeks (or up to 26 weeks of leave to care for an injured or ill service member) under this policy during any 12-month period. The City will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy in

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
5 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

the last 12 months and subtract it from the 12 weeks (or 26 weeks for the care of an injured or ill service member) of available leave, with the balance remaining being the amount the employee is entitled to take at that time.

If a husband and wife both work for the City and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent in-law) with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the City and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

V. EMPLOYEE STATUS AND BENEFITS DURING LEAVE

While an employee is on leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount paid for the employee's health insurance premium during the leave period.

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the City Department on the 15th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The City will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay their portion of the premiums; or the City may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the City may discontinue coverage during the leave. If the City maintains coverage, the City may recover the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

CITY OF OCEANSIDE ADMINISTRATIVE DIRECTIVE		
SUBJECT: Family and Medical Leave Policy	NUMBER AD-08	PAGE 6 of 10
	ISSUE DATE: 10/6/08	
Previously issued as 04-8 on 1/8/94, and revised 8/16/04		

VI. EMPLOYEE STATUS AFTER LEAVE

An employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or virtually identical in terms of pay, benefits and working conditions.

The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

VII. SUBSTITUTION OF PAID LEAVE FOR UNPAID LEAVE

An employee is required to use all allowable accrued paid leave time (vacation, holiday, compensatory time off, sick leave, and/or executive leave) for family/medical leave taken to care for an immediate family member or the birth or adoption or foster care of a child prior to going on an unpaid status. For family/medical leave taken for the employee's own serious health condition, the employee will be required to use all accrued sick leave and any other accrued leave time prior to going on an unpaid status. Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA/CFRA leave and will run concurrently with FMLA/CFRA. For example, if an City provides six weeks of pregnancy disability leave, the six weeks will be designated as FMLA/CFRA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. Paid leave time must be run concurrently with FMLA/CFRA.

The use of accrued leave time (other than sick leave) will be coordinated with any short-term disability benefits available to eligible employees so that total salary and disability payments do not exceed 100 percent of the employee's normal salary.

Catastrophic leave can be used only if the employee has exhausted all paid leave. Once the employee has returned to work catastrophic leave cannot be used.

VIII. INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

The employee may take FMLA/CFRA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or

CITY OF OCEANSIDE ADMINISTRATIVE DIRECTIVE		
SUBJECT: Family and Medical Leave Policy	NUMBER AD-08	PAGE 7 of 10
	ISSUE DATE: 10/6/08	
Previously issued as 04-8 on 1/8/94, and revised 8/16/04		

workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee’s family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the City and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the City before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The City may require certification of the medical necessity as discussed in Sections 8 and 10.

IX. CERTIFICATON OF SERIOUS HEALTH CONDITION OF THE EMPLOYEE, SPOUSE, CHILD OR PARENT OF THE EMPLOYEE

The City may ask for certification of the serious health condition. The employee must respond to such a request within 15 calendar days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the Medical Certification Form. Request for a medical certificate must be made in writing as part of the City response to the employee’s request for leave.

Certification of the serious health condition shall include the date when the condition began, its expected duration and a brief statement of treatment. For medical leave for the employee’s own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee’s position. For a family member who is seriously ill, the certification must include a statement that the patient, the family member,

CITY OF OCEANSIDE ADMINISTRATIVE DIRECTIVE		
SUBJECT: Family and Medical Leave Policy	NUMBER AD-08	PAGE 8 of 10
	ISSUE DATE: 10/6/08	
Previously issued as 04-8 on 1/8/94, and revised 8/16/04		

requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second doctor, which the City will select. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA/CFRA pending the second and/or third opinion.

X. DOCUMENTATION OF COVERED FAMILY MEMBER'S CALL TO ACTIVE DUTY OR CALL TO ACTIVE DUTY IN THE ARMED FORCES

Employees requesting this type of service member FMLA/CFRA leave must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

XI. DOCUMENTATION OF THE NEED FOR SERVICE MEMBER FMLA/CFRA LEAVE TO CARE FOR AN INJURED OR ILL SERVICE MEMBE

Employees requesting this type of service member FMLA/CFRA leave must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

XII. PROCEDURE FOR REQUESTING LEAVE

- A. For the birth of a child or in order to care for that child;
- B. For the placement of a child for adoption or foster care and to care for the newly placed child;

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
9 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

- C. To care for a spouse, child or parent with a serious health condition; or
- D. For the serious health condition of the employee

All employees requesting this type of FMLA/CFRA leave must provide written notice with an explanation of the reason(s) for the needed leave to their immediate supervisor, who will advise the Human Resources Department. If the leave is foreseeable, the immediate supervisor may require the employee to provide a written request for leave and reasons(s) with a copy to the Human Resources Department. Failure of the employee to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA/CFRA leave.

The City will provide individual notice of rights and obligations to each employee requesting leave within two business days or as soon as practicable. For employees on intermittent or recurring leave for the same incident, this notice will be provided every six months.

When an employee plans to take leave under this policy, the employee must give the City 30 calendar days' notice. If it is not possible to give 30 days' notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the City's operations.

If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the City receives notice. While on leave, employees are requested to report periodically to the City regarding the status of the medical condition and their intent to return to work.

XIII. PROCEDURE FOR REQUESTING LEAVE

- A. For a covered family member's active duty or call to active duty in the Armed Forces or
- B. To care for an injured or ill service member

All employees requesting this type of FMLA/CFRA leave must provide written notice with an explanation of the reason(s) for the needed leave to their immediate supervisor, who will advise the Human Resources Department. Leave may commence as soon as the individual receives the call-up notice. If the leave is foreseeable, the immediate supervisor may require the employee to provide a written request for leave and reasons(s) with a copy to the Human Resources Department.

**CITY OF OCEANSIDE
ADMINISTRATIVE DIRECTIVE**

SUBJECT: Family and Medical Leave Policy

NUMBER
AD-08

PAGE
10 of 10

ISSUE DATE:
10/6/08

Previously issued as 04-8 on 1/8/94, and revised 8/16/04

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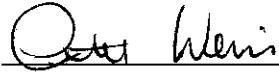
XIV. NOTICE OF POLICY

The City Department will provide notice of this policy to all employees to ensure awareness of employee rights and restrictions as they pertain to the Family Medical Leave/California Family Rights Act and to assist all parties to comply with the requirements of this policy.

XV. RESPONSIBILITY FOR REVIEW

The Human Resources Director shall review this policy annually or as necessary.

Approved: 10-6-08
Date


City Manager