

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: FAMILY AND MEDICAL LEAVE ACT AND CALIFORNIA FAMILY CARE AND MEDICAL LEAVE ACT	Directive No: HR-59	Page No. 1 of 32
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I. PURPOSE

To assist employees in dealing with the competing demands of work productivity and family medical needs, it is the purpose of this policy to implement the requirements of the Family and Medical Leave Act of 1993 (29 U.S.C. § 2601, *et seq.*); the California Family Rights Act (2 C.C.R § 7297, *et seq.*); the Americans With Disabilities Act of 1990; and any other federal and state laws applicable to employee medical leaves.

II. POLICY

A. It is the administrative policy of the City of Stockton (“City”) to provide family and medical leave for eligible employees as required by state and federal law. This policy sets forth rights and obligations with respect to such leave. In accordance with the Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act (CFRA), eligible City employees are entitled to leave up to a total of 12 workweeks in a 12-month period for the following reasons:

1. The birth of the employee’s child or to care for a newborn of the employee;
2. The placement of a child with the employee in connection with adoption or foster care;
3. To care for a child, parent, or spouse/domestic partner who has a Serious Health Condition, when medically necessary; or
4. A Serious Health Condition that makes the employee unable to perform the functions of his/her position.

B. It is the policy of the City that employees are not required to choose between continuing employment and attending to the needs of seriously ill family members or their own medical needs. Toward that end, an eligible employee (as defined in Section III. D.) is entitled to be restored to the same or an equivalent position upon return from FMLA leave, in accordance with the provisions of Section IV. H.

C. This policy shall be administered by the Human Resources Department;

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although each department head, or a designated person in each department, shall ensure that the procedures set forth in this policy are followed.

- D. The Human Resources Department shall periodically schedule training classes on the guidelines and procedures set forth in this policy, which shall be mandatory for all city employees to attend.

III. DEFINITIONS

The following words and phrases shall have the meanings as set forth below:

- A. 12-month period
The 12-month period shall be a rolling 12-months, measured forward from the date an employee's first family and medical leave begins.
- B. Continuing Treatment
A Serious Health Condition involving continuing treatment by a Health Care Provider includes any one or more of the following:
1. A period of incapacity (i.e., inability to work or to perform other regular daily activities due to the 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:
 - a. Treatment two or more times 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
 - b. Treatment by a Health Care Provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the Health Care Provider.
 2. Any period of incapacity due to pregnancy, or for prenatal

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care.

3. Any period of incapacity or treatment for such incapacity due to a chronic Serious Health Condition. A chronic Serious Health Condition is one that:
 - a. 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;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
4. A period of incapacity that 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 Disease, a severe stroke, or the terminal stages of a disease.)
5. Any period of absence to receive multiple treatments (including any recovery period) 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, such as cancer, severe arthritis, or kidney disease. (Note: Any period of incapacity that results from pregnancy or a chronic condition is a qualifying event under this policy even if the employee does not receive treatment from a health care provider or the absence does not last more than three (3) days.)

C. Domestic Partner

A partner, as defined by the California Family Code, Section 297, and the

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California Domestic Partner Rights and Responsibility Act of 2003 and registered with the Secretary of State. (e.g. Two persons of the same sex or two persons of the opposite sex if one or both are over the age of 62.)

D. Eligible Employee

An employee who (1) has been employed for at least 12 months by the City on the date on which any FMLA leave is to commence, including paid and unpaid leave; (2) has actually worked for the City at least 1,250 hours during the previous 12-month period, on the date on which any FMLA leave is to commence; and (3) who meets all of the other requirements set forth in applicable law. (See guidelines for eligibility requirements.)

E. Employment Benefits

All benefits provided or made available to eligible City employees.

F. Family Member

A spouse, domestic partner, son, daughter, or parent.

G. Health Care Provider

A Health Care Provider is any of the following:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices.
2. A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice under state law and performing within the scope of his or her practice as defined by state law; and
3. Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law; and;
4. Christian Science practitioners, as specified in the Family and Medical Leave Act.

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5. Any Health Care Provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a Serious Health condition to substantiate a claim for benefits.
 6. A Health Care Provider, as defined above, who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.
- H. Intermittent Leave
Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Leave may include periods from one hour to several weeks.
- I. Medical Leave
Leave for up to 12 workweeks in a 12-month period because of an employee's own Serious Health Condition that makes the employee unable to work at all or unable to perform any one or more of the essential functions of the position.
- J. Parent
The biological parent of an employee or an individual who stood loco parentis (in the place of a parent) to an employee when the employee was a son or daughter. This term does not include parents-in-law.
- K. Reasonable Leave
A Family and Medical Leave request is reasonable if it complies with the notice requirements herein.
- L. Reduced Leave Schedule
A leave schedule that reduces the usual number of hours per week or hours per workday of an employee, normally from full-time to part-time.
- M. Serious Health Condition
1. For purposes of FMLA, "Serious Health Condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

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- a. Inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work or to perform other regular daily activities due to the Serious Health Condition, treatment involved, or recovery time), or any subsequent treatment in connection with such inpatient care; or
- b. Continuing treatment by a health care provider, as defined in Section III. (B) of this policy.

N. Son or Daughter

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in place of a parent), who is under 18 years of age or 18 years or older and incapable of self-care because of a mental or physical disability.

O. Spouse

A partner in marriage arising out of a civil contract between a man and a woman.

IV. GUIDELINES

A. Eligibility

- 1. Employees who have been employed by the City for at least 12 months and have worked a minimum of 1,250 hours within the 12-month period immediately preceding the commencement of the leave are eligible to apply for leave under this policy. Exempt employees, as defined in the Fair Labor Standards Act, are presumed to have worked the 1,250 hours if they have worked for the City for at least 12 months. The 1,250 hours include only those hours actually worked for the City. Paid leave and unpaid leave, including FMLA leave, are not included in the 1,250 hours, but are included in the 12-month period.
- 2. When in dispute, all questions relating to eligibility of employees shall be referred to the Human Resources Department for resolution.

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B. Amount of Benefit

Employees who work more or less than 5-days a week, or who work an alternative work schedule, receive leave on a pro-rata or proportional basis of 12 weeks.

Example: If an employee works five, 8-hour days every week, 12 workweeks equates to 60 working days of leave entitlement. For an employee who works half-time, 12 workweeks shall equate to 30-working days. In other words, 12 workweeks is defined by the employee's normal work schedule.

C. Amount of Leave

1. Eligible employees are entitled to a total of 12 workweeks of unpaid leave in a 12-month period. Leave may be taken on a continuous basis, intermittently, or on a reduced schedule, as is medically necessary. In such cases, only the amount of leave actually taken by an employee shall be counted toward the 12-week leave provided under this policy. For example, if an employee who normally works eight hours a day instead works four hours a day under a reduced leave schedule, the employee would use 1/2 week of FMLA leave each week. Similarly, if an employee who normally works five days a week takes off one day, the employee would use 1/5 week of FMLA leave each week.

2. Holiday

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as leave under this policy has no effect. The week is counted as a week of FMLA leave.

3. Spousal Exception

a. If a husband and wife both work for the City and are eligible for leave under this policy, they are only entitled to a combined total of 12 workweeks during any 12-month period for the birth, adoption or foster care placement of a child.

b. For all other qualifying events, a husband and wife are each entitled to the full 12-workweek leave under this policy.

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D. Notice to the City (Employer) from Employee

1. An employee must provide the City at least 30 days advance notice before FMLA leave is to begin, if the need for leave is foreseeable based on the expected birth, placement for adoption or foster care of a child, or the planned medical treatment for a Serious Health Condition of the employee or of a family member.
2. If 30-days notice is not practicable, notice must be given as soon as practicable. Such advance notice may not be practicable, for example, when an employee's health condition requires leave to commence earlier than anticipated before the birth of a child. Similarly, there may be little opportunity for notice before placement of a child for adoption.
3. "As soon as practicable" means as soon as is both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30-days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee.
4. Whether the leave is to be continuous or is to be taken intermittently, or on a reduced schedule basis, notice need only be given one time for the same condition; however, the employee shall advise the City as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

E. Designation of FMLA Leave

It is the City's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as required under the FMLA. In any circumstance where the City does not have sufficient information about the reason for an employee's leave, the City may inquire further of the employee or a representative to determine whether the leave is potentially FMLA-qualifying. |

F. Qualifying Health Conditions

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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 any recovery), or any subsequent treatment in connection with inpatient care.

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 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 or more times by a Health Care Provider; or
 - (2) Treatment by a Health Care Provider on at least one occasion that result in a regimen of continuing treatment under the supervision of the health care provider.

3. Any period of incapacity due to pregnancy or for prenatal care. (This condition qualified for FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to Pregnancy Disability Leave.)

4. Any period of incapacity or treatment due to a chronic serious health condition, which:
 - a. Requires periodic visits for treatment by a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition);
 - c. May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)

5. Substance abuse may be a qualifying condition if leave is taken for

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treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

Absence because of the employee's use of illegal substances does not qualify for leave under this policy.

6. Disputes relating to qualifying health conditions shall be referred to the Human Resources Department for resolution.

G. Required Use of Paid Accrued Leave

FMLA/CFRA leave is unpaid. However, FMLA/CFRA guidelines authorize an employer to require that employees use all paid accrued leaves while on family or medical leave prior to going in an unpaid status. Except as follows, the City requires the employee to concurrently use all paid accrued leaves (e.g. sick leave, annual leave) while using FMLA/CFRA leave.

Exception: Employees are not required to use compensatory time earned in lieu of overtime, pursuant to the Fair Labor Standards Act, because compensatory time is not a form of accrued paid leave that an employer may require an employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of comp time for FMLA reasons, and if the employer permits the comp time to be used, this time may not be counted against the employee's FMLA leave entitlement.

FMLA leave will run concurrently with absences from work due to occupational injury and/or disability leave absences. The FMLA leave will be applied from the first day the employee is not at work.

H. Reinstatement Rights

1. Except as provided below, or in applicable law, an employee shall be entitled to return to the same position held prior to taking leave under this policy, 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.

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2. An employee shall have no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave provided under this policy. Thus, for example, if an employee is laid off during the course of taking FMLA leave and employment is terminated, the City's responsibility to continue FMLA leave, maintain group health plan benefits and reinstate the employee cease at the time the employee is laid off, provided the City has no continuing obligations under a collective bargaining agreement or otherwise.

3. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a Serious Health Condition, the employee shall have no right to reinstatement under this policy, but may be accommodated in accordance with the Americans With Disabilities Act.

4. The City may deny reinstatement to salaried eligible employees ("key employees," as defined in applicable law) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City.

5. The City may delay reinstatement to an employee who fails to provide a fitness for duty certificate to return to work, as required in the attached Procedures, "D. Return to Work Certification", of this policy.

I. Accommodation in Alternative Position

1. If it is foreseeable that an employee needs intermittent leave or leave on a reduced leave schedule, based on planned medical treatment or recovery from a Serious Health Condition, 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 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.

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Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

2. Transfer to an alternative position may require compliance with an applicable collective bargaining agreement, and federal law and state law.
3. The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The City may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job.

J. Confidentiality

1. Supervisors and department heads are required to keep in strict confidence any information relating to request for family or medical leave. Supervisors and department heads shall use this information only to make decisions regarding the provisions of this policy.
2. All paperwork generated, including applications for leave under this policy, documents relating to return from leave, and health care provider certifications shall be forwarded to the Human Resources Department, which shall keep such information in the employee's confidential medical file.

K. Employee Benefits while on Leave

While on FMLA/CFRA leave, employees will continue to be covered by the City's health insurance to the same extent that coverage is provided while the employee is on the job. However, employees must continue to pay for other benefits they purchase (e.g., insurance through the City's Section 125 plan), as if they were on the job; otherwise, those benefits are subject to cancellation.

L. Medical Documentation (Certification)

1. General Requirements:

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- a. Employees who request leave for their own Serious Health Condition or to care for a child, parent, or a spouse/domestic partner who has a Serious Health Condition, must provide written certification from the Health Care Provider of the individual requiring care.
 - b. Certification is required for leaves in excess of three (3) days.
2. Time to Provide Certification:
- When the leave is foreseeable, and at least 30 days advance notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the City within 15 calendar days after the City's request, unless it is not practicable under the particular circumstances to do so, despite the employee's diligent, good faith efforts.
3. Content of Certification
- a. Leave for Employee: 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 the essential functions of his/her position. The certification shall include the date on which the Serious Health Condition commenced and the probable duration of the condition. In addition, the employee must provide a "Return to Work Certification" is required (Attachment 6).
 - b. Leave for Family Member: If the leave is requested because of a family member's Serious Health Condition, the certification shall include a statement that the Serious Health Condition warrants the participation of the employee to provide care. An estimate of the duration of time needed for such care is also required.
4. Failure to Provide an Adequate and/or Timely Certification:

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

5. Certification/Verification-Employee's Own Serious Health Condition:

If the City doubts the validity of a certification for the employee's own Serious Health Condition, 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 providers' opinions.

M. Intermittent Leave or Leave on a Reduced Work Schedule:

If an employee requests leave intermittently (a few days or hours at a time) or a reduced work schedule to care for an immediate family member with a Serious Health Condition, or due to the employee's own Serious Health Condition, the employee must provide medical certification that such leave is necessary.

N. Recordkeeping

1. For purposes of complying with this policy, the City is required to keep specified records, as set forth in applicable law, including the following:

a. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

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- b. Documents specifying the dates FMLA leave is taken by FMLA eligible employees. Leave must be designated in records as FMLA leave.
 - c. Documents specifying the hours of FMLA leave, if leave is taken by eligible employees in increments of less than one full day.
 - d. Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific written notices given to employees as required under FMLA and the regulations implementing FMLA.
 - e. Any documents, including written and electronic records, describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
 - f. Premium payments of employee benefits.
 - g. Records of any dispute between the City and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the City or the employee of the reasons for the designation and for the disagreement.
2. Each department is responsible for ensuring that its Payroll Clerk, or other designated person, maintains records of leave balances and FMLA leave usage.
2. All medical records accompanying leave requests under this policy shall be forwarded to the Human Resources Department and kept in the employee's confidential medical file.

APPROVED:

J. GORDON PALMER, JR.
CITY MANAGER

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PROCEDURES

A. Notice

All requests for family or medical leave shall be initiated through the employee's immediate supervisor and approved by the department head on the forms approved by the Director of Human Resources. (See attached forms).

1. If the need for FMLA leave is foreseeable, the employee shall provide notice to the supervisor 30 days prior of the commencement of the leave using the City of Stockton Leave Request Form (Attachment #2).
2. If the need for FMLA is foreseeable, but 30 days advance notice is not practicable, the employee shall provide notice no later than three business days after the commencement of leave. (See Section IV. Guidelines, C. (2) of this policy.)
3. If the need for leave is unforeseeable, such as in an emergency, the employee or a family member should contact the immediate supervisor as early as feasible.

B. Determination of Eligibility and Documentation of Need

1. Upon receipt of a request for leave under this policy (Attachment #2), the supervisor shall determine if the employee's service meets the eligibility requirements as set forth herein.
2. If the employee meets the eligibility requirements, the supervisor will provide the employee with a copy of this policy and procedure and all of its attachments as noted below:
 - a. Attachment #1: Procedures
 - b. Attachment #2: City of Stockton Leave Request Form
 - c. Attachment #3: Employer Response to Employee-Request for Family or Medical Leave
 - d. Attachment #4: U.S. Department of Labor's Fact Sheet #28: The Family and Medical Leave Act
 - e. Attachment #5: Certificate of Health Care Provider
 - f. Attachment #6: Return to Work Certification

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3. Generally, the City will request, no later than three business days after the employee gives notice of the need for leave, that the employee furnish certification from a health care provider of the need for leave. In the case of unforeseen leave, the City will request, within three business days after the leave commences, that the employee provide the certification (Attachment #5).

 4. At the time the City requests certification, the City must advise an employee of the anticipated consequences his/her failure to provide adequate certification. The City shall also advise an employee when it determines that a certification is incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

 5. Medical Certification Form
The employee shall provide the Certification of Health Care Provider form (Attachment #5) within the time frames set forth in Section IV. (C) of this policy.

 6. Payroll
Upon approval of leave, the supervisor shall ensure that the necessary payroll type code be noted for FMLA into the HTE Payroll Module for all time designated as FMLA.
- C. Employee's Obligation to Report on Status
Employees may be required to recertify periodically their eligibility for FMLA/CFRA leave, but not more than once every 30 days. In addition, employees may be required periodically to report on their intent to return to work.
- D. Return to Work Certification
1. An employee, whose FMLA leave was due to the his/her own Serious Health Condition, must present certification from his or her health care provider that he/she is able to resume work. An employee's return to work shall be governed by applicable state

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and federal law, including the American with Disabilities Act, and the provisions of any applicable collective bargaining agreement.

2. An employee shall notify the immediate supervisor of their intent to return to work a minimum of five (5) days prior to returning to work. The employee must provide to his or her immediate supervisor the completed Return to Work Certificate (Attachment #6) before the employee may return to work.
3. An employer may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave.
4. A health care provider employed by the City may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken.

E. Effect of Non-return from Leave

1. If the employee notifies the supervisor that he/she is not returning from leave under this policy, the City shall terminate the employee's health benefits and the employee shall not have the right to reinstatement to the same or equivalent position, unless such right is exercised under the applicable City regulation or bargaining unit agreement.
2. The employee shall be entitled to continuation of health benefits only to the extent required by the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
3. An employee who fails to return to work after leave under this policy shall be considered to have voluntarily resigned, as defined in the applicable City regulation or bargaining unit agreement.

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Attachment #2

**City of Stockton
Leave Request Form**

Employee Name: _____

Position: _____ Employee Number: _____

Department: _____

Type of Leave Requested

Date and Time Requested

- | | |
|--|--|
| <input type="checkbox"/> Annual Leave | Date(s): _____ |
| <input type="checkbox"/> Bereavement | Time: # of days: _____ # of hours: _____ |
| <input type="checkbox"/> Birthday Leave | |
| <input type="checkbox"/> Compensatory (Comp) Time | |
| <input type="checkbox"/> Family Sick Leave | |
| <input type="checkbox"/> Family Medical Leave (FMLA)/ California Family Rights Act (CFRA)- Check appropriate box: | |
| <input type="checkbox"/> Birth of child or to care for a newborn | <input type="checkbox"/> Baby bonding |
| <input type="checkbox"/> Placement of a child due to adoption or foster care | <input type="checkbox"/> Employee's serious health condition |
| <input type="checkbox"/> Serious health condition of employee's: Child, parent, spouse or domestic partner (Circle one) | |
| <input type="checkbox"/> Jury Duty | |
| <input type="checkbox"/> Leave without Pay (LWOP) | |
| <input type="checkbox"/> Military Leave | |
| <input type="checkbox"/> Pregnancy Disability Leave (in conjunction with FMLA/CFRA) | |
| <input type="checkbox"/> Sick Leave | |

Employee Name: _____

Employee Signature: _____ Date: _____

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**Employer Response to Employee
Request for Family or Medical Leave**

Date: _____

To: _____
(Employee's Name)

From: _____
(Employer Representative)

Subject: **REQUEST FOR FAMILY / MEDICAL LEAVE**

On _____, you notified us of your need to take family/medical leave due to:

- The birth of a child, or the placement of a child with you for adoption or foster care;
- A serious health condition making you unable to perform the essential functions for your job; or
- A serious health condition affecting your:
 - Spouse/Registered Domestic Partner
 - Child
 - Parent, for which you provide care

You notified us that you need this leave beginning on _____
(Date)

and that you expect leave to continue until on or about _____
(Date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

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**Employer Response to Employee
Request for Family or Medical Leave**

This is to inform you that:

1. You are eligible not eligible for leave under the FMLA.
2. The requested leave will will not be counted against your annual FMLA leave.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (date)
(must be at least 15 days after you are notified of this requirement), or we may delay the commencement of your leave until the certification is submitted.
4. You must use any accrued paid leave while on FMLA leave, with the exception of compensatory time. If you have no accrued paid leave, you will continue your qualified FMLA leave in an unpaid status.
- 5.(a) If you normally pay a portion of the premiums for your health insurance or other benefits, such as voluntary products under the Section 125 plan, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows:

- (b) You have a minimum 60-day grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled. You will be provided with continuation coverage notification, in writing.
6. You will will not be required to present the **Return to Work Certificate** prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.
- 7.(a) If the circumstances of your leave changes and you are able to return to work earlier than the date indicated on the original Leave Request Form or Return to Work Certificate, you will be required to notify us at least two working days prior to the date you intend to report to work and supply an updated Return to Work Certificate.

Supervisor Signature: _____

Date: _____

Department Head Signature: _____

Date: _____

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**U.S. Department of Labor
Employment Standards Administration Wage and
Hour Division**

Fact Sheet #28: The Family and Medical Leave Act of 1993
[THE FAMILY AND MEDICAL LEAVE ACT OF 1993](#)

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE - FMLA applies to all:

public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY - To be eligible for FMLA benefits, an employee **must:**

1. work for a covered employer;
2. have worked for the employer for a total of 12 months*;
3. have worked at least 1,250 hours over the previous 12 months*; and
4. work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

* See [special rules for returning reservists under USERRA](#).

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Fact Sheet #28: The Family and Medical Leave Act of 1993

LEAVE ENTITLEMENT - A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

for the birth and care of the newborn child of the employee;
for placement with the employee of a son or daughter for adoption or foster care;
to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees **or** employers may choose to use accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

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Fact Sheet #28: The Family and Medical Leave Act of 1993

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

treatment two or more times by or under the supervision of a health care provider; **or**
one treatment by a health care provider with a continuing regimen of treatment; **or**

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**
nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
Any health care provider recognized by the employer or the employer's group health plan benefits manager.

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MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "**key**" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; **and**
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "**key**" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

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NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
second or third medical opinions (at the employer's expense) and periodic recertification;
and
periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

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OTHER PROVISIONS

Special rules apply to **employees of local education agencies**. Generally, these rules provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For more information, please contact the nearest office of the **Wage and Hour Division**, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE, TTY: 1-877-889-5627

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**CERTIFICATE OF HEALTH CARE PROVIDER
(Family and Medical Leave Act of 1993)**

1. _____
Employee's Name

2. _____
Patient's Name

3. Page 3 describes what is meant by a "**serious health condition**" under the Family and Medical Leave Act (FMLA). Does the patient's condition qualify under any of the categories described? If so, please check the applicable category:
 Category 1 Category 2 Category 3
 Category 4 Category 5 Category 6

- 4.(a) State the approximate date the condition commenced and the probable duration of the condition (Also the probable duration of the patient's present incapacity if different).

(b) Will it be necessary for the employee to take intermittent leave or to work on a less than full work schedule as a result of the condition?
 Yes No

If yes, give the probable duration: _____

- (c) If the condition is for pregnancy (Category 3) or a chronic condition (Category 4), state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity. ("Incapacity" for the purposes of FMLA is defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment or recovery.)

- 5.(a) If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

- 6.(a) If medical leave is required for the employee's absence from work because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?
 Yes No

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**CERTIFICATE OF HEALTH CARE PROVIDER
(Family and Medical Leave Act of 1993)**

(b) If the answer is "No", is it necessary for the employee to be absent from work?

Yes No

(c) If "Yes", please explain:

7.(a) If leave is required to **care for a family member** of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs, safety, or transportation?

Yes No

If the patient will need care only intermittently or on a part-time basis, please indicate the probably duration of this need:

Printed Name of Health Care Provider

Type of Practice

Address

Phone Number

Signature of Health Care Provider

Date

To be completed by the employee needing family leave to care for a family member:
State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date

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**CERTIFICATE OF HEALTH CARE PROVIDER
(Family and Medical Leave Act of 1993)**

Serious Health Conditions

A "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves one of the following:

- 1) **Hospital Care**
Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- 2) **Absence Plus Treatment**
A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - a. Treatment two or more times 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
 - b. 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.
- 3) **Pregnancy**
Any period of incapacity due to pregnancy or for prenatal care.
- 4) **Chronic Conditions Requiring Treatments**
A chronic condition which:
 - a. 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;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuous period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)
- 5) **Permanent/Long-term Conditions Requiring Supervision**
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 states of a disease.

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**CERTIFICATE OF HEALTH CARE PROVIDER
(Family and Medical Leave Act of 1993)**

**Serious Health Conditions
(continued)**

6) Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery from) 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, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), and kidney disease (dialysis).

Once completed, this form should be returned to the employee, as it may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification.

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**FAMILY AND MEDICAL LEAVE
RETURN TO WORK CERTIFICATION**

Employee Name:	
THE FOLLOWING INFORMATION IS TO BE COMPLETED BY YOUR HEALTH CARE PROVIDER. RETURN THIS FORM TO YOUR SUPERVISOR PRIOR TO YOUR RETURN TO WORK.	
Employee is released to return to work on:	Date:

Is employee able to perform functions of his/her job? (see attached job description)	Yes <input type="checkbox"/>	Yes, with restrictions <input type="checkbox"/>	No <input type="checkbox"/>
Questions regarding employee's job duties may be addressed to the employee's supervisor.			
Employee's Supervisor:		Phone:	
Please list any restrictions/accommodations the department should consider:			
Are the restrictions/accommodations: <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary until (date):			
Comments of Health Care Provider:			
Health Care Provider Information			
Health Care Provider Signature:			Date:
Type of Health Care Provider:			
Address:		Phone:	