

DEPARTMENT OF PUBLIC WORKS MANAGEMENT MANUAL

Personnel Directive

Subject: FAMILY AND MEDICAL LEAVE AND PREGNANCY-RELATED DISABILITY LEAVE

ADOPTED BY THE BOARD OF PUBLIC WORKS, CITY OF LOS ANGELES

(Revised September 2009)

PERSONNEL DIRECTIVE NO. 54

BACKGROUND

In accordance with the Federal Family and Medical Leave Act (FMLA) of 1993, finalized in 1995, and amended in 2009, the State of California Family Rights Act (CFRA) of 1991, amended in 1995, as well as the Los Angeles City Administrative Code (LAAC) and various City employee MOUs, the City of Los Angeles provides all qualified employees with Family and Medical Leave for up to four (4) months per twelve (12) month period for various reasons as described in this Directive. Additionally, in accordance with the 1995 California Fair Employment and Housing Act's (FEHA) regulations regarding pregnancy, childbirth, and related medical conditions, qualified female employees are also entitled to up to four (4) months of Pregnancy-Related Disability Leave.

Final U.S. Department of Labor (DOL) regulations governing recent changes to FMLA became effective January 16, 2009. These changes include various modifications to existing FMLA provisions, as well as new Military Family Leave Entitlements enacted under the National Defense Authorization Act, which amended the FMLA. The CAO's Employee Relations Division released a revised bulletin (attached), dated February 6, 2009, to assist departments in complying with and administering the new legislative mandates.

NOTE: This Directive is intended only as a **guideline and general summary**. Its purpose is to clarify and provide Department managers, supervisors, and employees with general information regarding these benefits and their application as well as to outline Department procedures for compliance. It is our intention to be in compliance with all applicable Federal, State and City laws, including any MOU provisions. Currently, the general rule used in determining the more applicable law in any given Family and Medical Leave situation is to follow the provision(s) which provide the greatest benefit to the affected employee.

INDIVIDUAL MOU'S AND, IN SOME CASES, THE APPLICABLE STATE AND FEDERAL LAWS MUST ALSO BE CONSULTED IN DETERMINING ELIGIBILITY/BENEFITS FOR ANY EMPLOYEE REQUESTING A FAMILY AND MEDICAL LEAVE AND/OR PREGNANCY-RELATED DISABILITY LEAVE.

I. SUMMARY OF BENEFITSA. Benefit

City employees may apply for up to four month (nine pay periods) of family or medical leave for the purpose of childbirth, adoption, foster care of a child, the employee's own serious health condition, or the serious health condition of an immediate family member (as defined in LAAC Section 4.127 or in the employee's MOU).

B. Eligibility

All City employees who have been employed by the City for at least 12 months and who have worked at least 1040 hours during the 12 months preceding the start of the leave are eligible to apply.

EXCEPTION: In accordance with the Pregnancy Disability Leave provisions of the California Fair Employment and Housing Act (FEHA), pregnant employees are eligible for six weeks (three pay periods) of leave if not disabled due to pregnancy and up to four months (nine pay periods) of leave if disabled due to pregnancy, inclusive of the six-week, non-disability leave, upon the first day of employment with the City.

C. Applicable Time-Off

Upon Departmental approval of a family or medical leave, the employee shall take time off in accordance with the provisions of LAAC 4.129 (for non-represented employees) or the Family and Medical Leave Article of the employee's MOU (for represented employees). Such time-off may be a combination of sick leave, vacation, accrued compensatory time-off, and unpaid leave. Refer to the appropriate document for information on the order in which time-off may be taken.

D. Frequency of Benefit

Leave taken under the City's Family and Medical Leave provisions is limited to nine pay periods for all incidents (or up to 18 pay periods for pregnancy disability and bonding) during a 12-month period.

E. Management's Right to Designate Family or Medical Leave

Management has the obligation and right to designate family or medical leave regardless of whether or not the employee has requested such leave. Once management has sufficient information from an employee or an employee's spokesperson to know that the employee qualifies for leave under FMLA, management may count such leave (paid or unpaid) against the employee's annual family and medical leave entitlement. However, such designation cannot be made retroactively if management had knowledge that the leave qualified under FMLA but failed to act upon that knowledge.

F. Compensatory Time-Off May Extend Leave

Under the provision, employees may use compensatory time-off (CTO) after exhaustion of their 100% sick leave. However, pursuant to U.S. Department of Labor regulations, such use of CTO shall not be counted against an employee's annual four-month (nine pay periods) family and medical leave entitlement. Therefore, usage of CTO for this purpose shall extend the employee's FMLA leave by the total amount of CTO used.

G. Pregnancy/Childbirth Leave

The City uses a combination of three pieces of legislation governing leave for the birth or adoption of a child: 1) the California Fair Employment and Housing Act (FEHA) – Pregnancy Disability Leave provisions; 2) the California Family Rights Act; and 3) the Federal Family and Medical Leave Act.

According to State law, pregnant employees are eligible on the first day of employment with the City for up to six weeks (three pay periods) of leave if not disabled due to pregnancy and up to four

months (nine pay periods) of leave if disabled due to pregnancy, inclusive of the six-week, non-disability leave. The disability portion of any pregnancy-related leave must be concluded within one year of the child's birth.

H. Bonding Leaving

For either parent, family leave of up to four months (nine pay periods) is provided by the California Family Rights Act. Such leaves may include adoption or foster care placement, and must conclude within one year of the child's birth, adoption, or placement in the home.

I. Definition of the 12-Month Qualifying Period

The 12-month qualifying period for a family or medical leave begins on the first day of leave for each individual taking such leave. The succeeding 12-month period begins the first day of leave taken after completion of the previous 12-month period.

J. Workers' Compensation and the FMLA

FMLA provides that when an employee is on temporary disability under Workers' Compensation benefits, he/she is automatically considered to be on a family or medical leave.

II. **REVISIONS** (see attached January 2009 ER Bulletin for more detail) include:

- **Posting Requirements** - Management is required to post a notice of the FMLA's provisions and information on filing complaints of violations with the DOL. This "general notice" (January 2009 FMLA poster) must be provided to each employee, by either including the poster in an employee handbook or in other written material provided, upon hire. The poster may be accessed via the following link: <http://www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf>
- **Eligibility Notice** – provision changed to allow employers up to five business days to provide notice of eligibility
- **Designation Notice** – can be made at the same time as eligibility notice and must advise if a Fitness for Duty certification will be required
- **Retroactive Designation** – management may retroactively designate as long as employer's failure to timely designate leave does not cause harm or injury to the employee
- **Fitness for Duty Certification** – fitness for duty certifications can specifically address the ability to perform his/her job and where reasonable job safety concerns exist, employee may be required to produce a fitness for duty certification before returning to work when employee takes intermittent leave
- **Communicating with Employees' Health Care Providers** – person making contact must be a health care provider, human resources professional, a leave administrator or a management official, but in no case may it be the employee's direct supervisor
- **Medical Recertification** – for ongoing condition or when the duration is uncertain, recertification may be requested every six months. When the duration specified has passed or been exceeded, management may request recertification every 30 days
- **Employee Notice Requirements** – when no advance notice has been provided, employee must follow usual and customary call-in procedures

- **Military Leave Entitlements** – (see ER Bulletin)
- **Revised FMLA Forms** – FMLA Form General 191, 192 and 193 (attached) have been revised and are to be used in administering Family and Medical Leave

III. APPLYING FOR FAMILY AND MEDICAL LEAVE

Each family and medical leave request must be approved by the employee's respective appointing authority (Bureau Director or management designee) and submitted to the Office of Management Employee Services (OMES) for processing and documenting.

Individual MOUs, LAAC Section 4.129, the CAO's Employee Relations Bulletin dated February 6, 2009 and, in some cases, applicable State and Federal laws must also be consulted (with the assistance of OMES) in determining eligibility and benefits for any employee requesting a family and medical and/or pregnancy-related leave.

ATTACHMENTS:

- A. "Updated Family and Medical Leave Provisions" Employee Relations Bulletin, Office of the City Administrative Officer-February 6, 2009
<http://caodocs.ci.la.ca.us/ERBulletins/ERBulletin-2009-02-06.pdf>
- B. "Employee Rights and Responsibilities Under the Family and Medical Leave Act" U.S. Department of Labor, January 2009 (poster). <http://www.dol.gov/esa/whd/fmla/finalrule/fmlaposter.pdf>
- C. "Your Rights Under the California Family Rights Act," September 2000 (poster).
<http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-100-21.pdf>
- D. Form Gen. 191, "Employee Request for Family or Medical Leave," February 2009.
<http://cityweb.ci.la.ca.us/repository/forms/urldisplay.cfm?id=64>
- E. Form Gen. 192, "Employer Response to Employee Request for Family or Medical Leave, and Employer Designation of Family or Medical Leave," February 2009.
<http://cityweb.ci.la.ca.us/repository/forms/urldisplay.cfm?id=116>
- F. Form Gen. 193, "Certification of Health Care Provider," February 2009.
<http://cityweb.ci.la.ca.us/repository/forms/urldisplay.cfm?id=59>
Form Gen. 193 may be substituted with a medical form by an employee's physician, provided it includes information adequate to the appointing authority for the purpose of approving or denying the employee's Family/Medical Leave request.
- G. Certification of Qualifying Exigency For Military Family Leave (Family and Medical Leave Act), January 2009. <http://www.dol.gov/esa/whd/forms/wh-385.pdf>
- H. Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave (Family and Medical Leave Act), January 2009. <http://www.dol.gov/esa/whd/forms/wh-384.pdf>