

CITY OF CHICO
Administrative Procedure and Policy Manual

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| Subject: LEAVES OF ABSENCE | | Number: 13-24 |
| | | Effective Date: 10/10/2014 |
| | | Supersedes: 13-21 dated 8/6/12, 3/16/10, 1/4/93, 12/8/78; 13-48 dated 8/6/12 |
| Department(s) Affected: All Departments | | File Reference: |
| Authority: Section 2.12.010 Chico Municipal Code | Approved: <i>Mark Orma</i> | |

I. PURPOSE

To provide a uniform policy regarding the utilization of a leave of absence (with or without pay), in accordance with applicable State and Federal laws.

II. POLICY

A. **Leave of Absence Without Pay.** The City Manager may grant an employee a leave of absence without pay for a period not to exceed four (4) months. Such leave shall not be granted by the City Manager without the submission of a City Leave of Absence Request Form (LOA-1) (Exhibit "1") by the employee, setting forth the reasons for the request, and approved by the employee's department head. The City tracks Leave Without Pay (LWOP) starting with the first full LWOP work day or shift that the employee reports on his/her timecard through the first scheduled work day or shift that the employee returns to active paid status. Leaves for medical or child care reasons may be extended upon request of the employee, at the discretion of the City Manager, based on the needs of the City. Such extensions of leave are subject to approval by the department head and the City Manager on a Leave of Absence Request Form (LOA-1) (Exhibit "1"). Upon expiration of such an approved leave, the employee shall be reinstated to the same or a similar position held at the time leave was granted. Failure on the part of an employee on leave to report to work promptly upon its expiration may be cause for discharge. The employee shall not accrue any seniority or leave benefits. The employee's responsibility for all insurance premiums for benefits during the term of such leave of absence, shall be determined by the employee's eligibility for benefits under the Affordable Care Act (ACA).

1. **Partial Leave of Absence Without Pay.** Employees may be permitted to temporarily modify their work schedule to a part-time status, thus resulting in a partial leave of absence without pay.
 - a) **Accruals.** For the first ninety (90) days, accruals and insurance premiums will continue as though the employee was actively working in their regular status. After ninety (90) days, accruals and insurance premiums will be prorated based upon the hours worked each pay period and in accordance with the Affordable Care Act (ACA). All leave accrual use (e.g.: vacation, sick leave, comp time, etc.) shall be in accordance with the employee's modified schedule. An employee may not use more leave in any particular day than what they were scheduled for in that day.

B. **Leave of Absence With Pay.** The City Manager, with prior approval of the City Council, may grant a permanent employee a leave of absence with pay for a period not to exceed six (6) months. Such leave shall not be granted without the submission of a City Leave of Absence Request Form (LOA-1) (Exhibit "1") by the employee, setting forth the reasons for the request, and approved by the employee's department head. Upon the expiration of such an approved leave, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report to work promptly upon its expiration may be cause for discharge.

- C. **Sick Leave.** Sick leave with pay shall be granted to all employees as set forth in the applicable employee group Memorandum of Understanding or Pay and Benefits Resolution, or as defined in the California Paid Sick Leave Law. Sick leave shall not be considered as a right which may be used at the employees' discretion, but shall be allowed only in case of necessity and actual personal sickness or disability of the employee or approved family member pursuant to a Memorandum of Understanding or Pay and Benefits Resolution.
1. The City may, at any time, require a Physician Letter for sick leave usage and return to work purposes, for reason including but not limited to suspicion of abuse or identifying work restrictions.
- D. **Military Leave.** Military leave is provided pursuant to the California Military and Veterans Code, § 389 et seq., as amended. Employees who are members of a military reserve, National Guard Unit, or both, shall provide City with a schedule of Employee's military reserve or National Guard Unit meetings and summer camp assignment dates as soon as such schedules are available to Employee, but no later than the next working day following their notification from the military reserve or National Guard Unit. Such Employees shall provide City with a copy of military orders for active duty training as soon as such orders are available. Pursuant to Military and Veterans Code section 395.02, if the employee has been employed with the public agency for a period of not less than one year, the employee is entitled to receive his salary or compensation for the first 30 calendar days while engaged in the performance of ordered military duty. All other Military Leave shall be unpaid.
- E. **Bereavement Leave.**
1. **Permanent City Employees.** In the event of the death of an Employee's immediate family member, Employee shall be entitled to a period of five (5) work days of leave with pay. Such leave shall only be taken within seven (7) days after the death of the immediate family member or within seven (7) days of the date of the funeral or memorial service for the deceased. For the purposes of this subsection "immediate family member" shall include Employee's spouse, registered domestic partner, child, parent, sibling, grandparent, grandchild, and those relationships recognized by law as in-law, half, step, adopted, and foster family members. Employees shall notify their supervisor as soon as possible after the death of an immediate family member as to which days Employee will be on bereavement leave.
 2. **Fire Employees Assigned to a 56-hour Work Week.** In the event of the death of an Employee's immediate family member, Employee shall be entitled to a period of four (4) twenty-four hour shifts of leave with pay. Such leave shall only be taken within seven (7) days after the death of the immediate family member or within seven (7) days of the date of the funeral or memorial service for the deceased.
- F. **Birth or Adoption of Child.**
1. **Permanent City Employees.** In the event of the birth of an Employee's child or adoption of a child by an Employee, such Employee shall be entitled to a leave of absence with pay for a period of three (3) consecutive work days or shifts, unless otherwise indicated in an applicable MOU or PBR. Such leave shall only be taken in accordance with FMLA/CFRA (Family Medical Leave Act/California Family Rights Act) timelines. An Employee shall be eligible for a single leave period for the event of a birth or adoption, without regard to the number of children involved. The birth or adoption of multiple children at one time shall not create eligibility for more than one birth or adoption leave period.

- G. **Jury Duty.** All employees required to serve on a jury, or subpoenaed in civil or criminal actions to which they are not a party and regarding events they did not investigate or perceive in the course and scope of their employments, shall be entitled to receive their normal compensation following written proof of court appearance. The employee shall deposit all jury or witness fees, save for paid mileage, received with the City. The subpoenaed employees should arrange for the payment of witness fees with the court or the party issuing the subpoena. All mileage fees shall be the property of the employee.
- H. **Protected Leaves of Absence.** In certain circumstances a leave of absence may be protected under Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), and/or Pregnancy Disability Leave (PDL).
1. **Eligible Reasons for Protected Leave.** Protected leave will be granted as provided by law. Examples of protected leave eligibility include:
 - a) The birth of a child or the care of said newborn child;
 - 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 spouse who has a serious health condition;
 - d) Leave to care for a domestic partner, or the child of a domestic partner, who has a serious health condition (under the CFRA only);
 - e) Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
 - f) Leave for a qualifying exigency may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation under FMLA only; or
 - g) Leave to care for a spouse, son, daughter, parent, or "next of kin" service member of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty. This leave can run up to 26 weeks of unpaid leave during a single 12-month period under FMLA only.
 2. **Employee Eligibility for Protected Leave.**
 - a) Employee has been employed for at least twelve (12) months; and
 - b) Employee has been employed for at least 1,250 hours during the twelve (12)-month period immediately preceding the commencement of the leave.
 - c) If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child.
 3. **Amount of Leave.** Pursuant to FMLA and CFRA, eligible employees are entitled to a total of twelve (12) workweeks (or 26 weeks to care for a covered service member, under FMLA only) of unpaid leave during any 12-month period. The City expands this twelve (12) workweek benefit for its FMLA/CFRA-eligible employees to provide leave for the remainder of the pay period that leave commences and up to nine (9) full additional pay periods. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.
 4. **Spouses Both Employed by City.**

- a) **Bonding Leave.** In any case in which both spouses or domestic partners are employed by the City and entitled to leave, the aggregate amount of leave to which both may be entitled is limited to ten (10) pay periods during a 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).
 - b) **Service members.** In any case in which a husband and wife both employed by the City are entitled to FMLA leave, the aggregate FMLA amount of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if taken to care for a covered service member.
5. **Employee Benefits While on Leave.** Leave under this Protected Leaves of Absence section is unpaid. While on leave, employees will continue to pay their portion of insurance premiums, and be covered by the City's group medical, dental, vision, Life and long term disability insurance plans to the same extent that coverage is provided while the employee is on the job. Should employees remain on a leave of absence after their protected leave has been exhausted, employee insurance premium contributions shall be determined by the employee's eligibility for benefits under the Affordable Care Act (ACA).

Employees may make the appropriate contributions for continued coverage by payroll deductions or direct payments to the City's Finance Office. In some cases, arrangements can be made to pay the Employee portion of premiums upon his/her return. Employee coverage on a particular plan may be dropped if premium payments are more than thirty (30) days late and no such arrangements have been made. However, Employees will receive a notice at least fifteen (15) days before coverage is to cease, advising that the Employee will be dropped if the 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 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 eligible family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).

6. **Substitution of Paid Accrued Leaves.** While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave.
- a) **Employee's Right to Use Paid Accrued Leaves Concurrently With FMLA/CFRA/PDL.** Where an employee has accrued paid leave or accrued sick leave, all or part of that paid leave may be utilized to remain in active status before transitioning to leave without pay. Such leave shall not be used intermittently to extend active status.

As for sick leave, 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, child, or registered domestic partner with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.

Once leave without pay is utilized for one (1) full pay period, Employees are no longer considered to be in active status and will not be eligible to use or accrue leave time, or be paid for holidays. An employee may resume "active status" by utilizing leave accruals at a later date; however, it is not the intent of this policy to allow employees to fluctuate between being

in an “active” and “inactive” status.

While in a leave without pay (inactive) status employees may request payment for accrued paid leave or accrued sick leave without being re-instated to active status. Such paid leave does not need to be in full-day increments and will be paid with the next regular paycheck following receipt of the employee’s written request for such payment by the Finance Office Payroll staff. Any such payment shall not constitute return to active status.

- b) **City’s Right to Require An Employee to Exhaust FMLA/CFRA/PDL Leave Concurrently With Other Leaves.** If an employee takes a leave of absence for any reason and such leave qualifies as FMLA/CFRA leave, the City may designate that the employee’s FMLA/CFRA leave entitlement run concurrently with such non-FMLA/CFRA leave. The only exception is for peace officers and firefighters who are on leave pursuant to Labor Code ' 4850.

7. Reinstatement Upon Return from FMLA/CFRA/PDL Leave.

- a) **Right to Reinstatement.** Upon expiration of leave, 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 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 City of his/her readiness to return.

- b) **Employee’s Obligation to Periodically Report on His/Her Condition.** An employee may be required to periodically report on his/her status and intent to return to work. This periodic reporting will avoid any delays in 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 City may request the employee obtain and present a fitness-for-duty certification from a health care provider stating the employee is able to return to work. Failure to provide such certification, upon request of the City, will result in denial of reinstatement of the Employee.

- 8. **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 to care for a child, parent, spouse or registered domestic partner with a serious health condition, the employee must provide medical certification that such leave is medically necessary.

For unpaid absences, accruals and insurance premiums shall be calculated pursuant to Section II.A.1 above, entitled “Partial Leave of Absence Without Pay.”

III. PROCEDURE

- A. All absences for three (3) or more days, that qualify as a “serious health condition” under FMLA/CFRA, will be designated as the applicable protected leave for eligible employees.
- B. All written requests for leaves of absence shall be made on the City Leave of Absence Request Form (LOA-1) (Exhibit "1"), copies of which may be obtained from the Human Resources and Risk

Management Office. Forms must be approved by the employee's Department Head before being considered by the Human Resources & Risk Management Office.

- C. In order to monitor the eligibility of City employees for qualifying leaves under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), the City reserves the right to require a Certification of a Serious Health Condition (LOA-2) (Exhibit "2"), Physician Letter (Exhibit "3"), or other written documentation.
- D. If leave is foreseeable, at least 30 days' notice is required. In cases where leave is not foreseeable, employees shall notify their immediate supervisor as soon as they are aware of their inability to report for their scheduled duties due to the illness, injury, or pregnancy of themselves or an approved family member. Employees shall also notify their immediate supervisor as soon as it is determined by the physician the employee requires a modified or restricted schedule in order to accommodate illness, injury or pregnancy. If the City determines that an employee's notice is inadequate or the employee knew about the requested 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.
- E. 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 health care provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third health care provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.
- F. Employees who are required to file a LOA-2 or Physician Letter for their own illness or injury may only return to work upon certification from their attending physician that they may do so. The certification should be submitted to the City on the City's Return to Work Authorization (LOA-4) form (Exhibit "4").
- G. If City employees need to obtain a medical clearance in order to return to work, and do not wish to see their primary care physician, they are permitted to visit the City's designated physician, which can provide such a clearance.
- H. Notwithstanding the above, the City may, at any time, require a Physician Letter for sick leave usage and return to work purposes, for reasons including but not limited to suspicion of abuse or identifying work restrictions.