CITY OF CHICO
Administrative Procedure and Policy Manual

Subject: FAMILY MEDICAL LEAVE ACT (FMLA) AND CALIFORNIA FAMILY RIGHTS ACT (CFRA)	Number: 13-48
	Effective Date: August 6, 2012
Department(s) Affected: All Departments	Supersedes: DNA
Authority: Sec. 2.12.010 CMC, Family and Medical Leave Act (29 U.S.C. § 2600 et seq.), and California Family Rights Act (CA Gov Code § 12945 et seq.)	File Reference:
	Approved:

I. PURPOSE

To the extent not already provided for under current leave policies and provisions, the City of Chico ("City") will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided by this policy, "leave" under this policy shall mean leave pursuant to the FMLA and CFRA.

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. "Single 12-month period" means a 12-month period which begins on the first day the eligible employee takes FMLA leave and ends 12 months after that date.

C. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

A child is "incapable of self care" if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

D. "Parent" means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.

E. "Spouse" means a husband or wife, as defined or recognized under Federal and State of California law, for purposes of marriage.

F. "Registered Domestic Partner," as defined by State of California Family Code §§ 297 and 299.2, shall have the same meaning as "Spouse" for purposes of CFRA Leave. Federal law does not currently recognize "Domestic Partner" as defined herein.

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

1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or

2. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

a) A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

i) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity; or

ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

b) Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave.

c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;

ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

iii) May cause episodic rather than a continuing period of incapacity (e.g., severe asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

d) 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.

e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

H. "Health Care Provider" means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;

2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;

3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

4. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

6. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

I. "Active Duty or Call to Active Duty Status" means a duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation for members of the Reserve components, the National Guard, and certain retired members of the Regular Armed Forces and retired Reserve while serving on active duty status during a war or national emergency declared by the President or Congress.

J. "Contingency Operation" means a military operation that is (1) designated by the Secretary of Defense as an operation in which members of the United States Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (2) that results in the call to order to, or retention on, active duty members of the United States Armed Forces by law or any other provision of law during a war or national emergency declared by the President or Congress.

K. "Covered Service Member" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty while on active military duty.

L. "Outpatient Status" means, with respect to a covered service member, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

M. "Next of Kin of a Covered Service Member" means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA.

N. "Serious Injury or Illness" means an injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of the member's office, grade, rank, or rating.

III. REASONS FOR LEAVE

Leave is only permitted for the following reasons:

1. The birth of a child or the care of said newborn child;

2. The placement of a child with an employee in connection with the adoption or foster care of a child;

3. Leave to care for a child, parent, or spouse who has a serious health condition;

4. Leave to care for a domestic partner, or the child of a domestic partner, who has a serious health condition (under the CFRA only);

5. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;

6. 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

7. 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.

IV. EMPLOYEES ELIGIBLE FOR LEAVE

An employee is eligible for leave if the employee:

1. Has been employed for at least 12 months; and

2. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

V. AMOUNT OF LEAVE

Pursuant to FMLA and CFRA, eligible employees are entitled to a total of 12 workweeks (or 26 weeks to care for a covered service member, under FMLA only) of leave during any 12-month period. The City expands this 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 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.

A. Minimum Duration of Leave

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. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested for the Employee or to care for a child, parent, spouse, or domestic partner with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

B. Spouses Both Employed By City

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 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).

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.

VI. EMPLOYEE BENEFITS WHILE ON LEAVE

Leave under this policy is unpaid. While on leave, employees will continue to pay their portion of insurance premiums, and be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. The entire life and long-term disability insurance premiums are to be paid by the employee while on leave.

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 30 days late and no such arrangements have been made. However, Employees will receive a notice at least 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.).

VII. 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

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

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 or CTO 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 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.

C. City's and Employee's Rights If An Employee Requests Accrued Leave, Other than Accrued Sick Leave, Without Applying Either the FMLA or CFRA

If an employee requests to utilize any accrued leave, other than accrued sick leave, without reference to a FMLA/CFRA-qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off qualifies as FMLA/CFRA leave, the City may inquire further into the reason for the absence.

VIII. MEDICAL CERTIFICATION

Employees who request leave for their own serious health condition must provide written certification from a health care provider. 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. This information is to be provided on a "City of Chico Physician Letter" (Exhibit "1").

Employees who request leave to care for a child, parent, spouse or registered domestic partner who has a serious health condition must provide written certification from the health care provider of the individual requiring care.

Employees who request leave to care for a covered service member who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured service member's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency regarding a service member, the City may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or called to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.

A. Time To Provide A Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When 30 day notice is not possible, the employee must provide the requested certification to the City within the time frame requested by the City, unless it is not possible under the particular circumstances to do so despite the employee's diligent, good faith efforts. Employee shall have at least 15 calendar days after the City's request to provide certification.

B. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides a deficient medical certification, the employee will be given a reasonable opportunity to correct any such deficiency.

If an employee fails to provide a medical certification within the time frame established above, the City may delay granting FMLA/CFRA leave until the required certification is provided.

C. Second and Third Medical Opinions

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.

D. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule 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. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

IX. EMPLOYEE PROVIDED NOTICE OF LEAVE

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. 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.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as possible, regardless of how far in advance such leave is foreseeable.

X. REINSTATEMENT UPON RETURN FROM FMLA/CFRA 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.