

APPENDIX D

CITY OF NEWPORT BEACH FAMILY CARE AND MEDICAL LEAVE POLICY

Section 1. Statement of Policy

To the extent not already provided for under current leave policies and provisions, the City of Newport Beach will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of 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 article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

Section 2. Definitions

- A. **“12-Month Period”** begins on the date of an employee’s first use of leave under this policy.
- B. **“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.

- C. **“Parent”** means the biological 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.
- D. **“Spouse”** means a husband or wife as defined or recognized under California State law for purposes of marriage.
- E. **“Domestic Partner”** is defined by Family Code §§ 297 and 299.2, shall have the same meaning as “spouse” for purposes of CFRA Leave.

- F. **“Servicemember”** means a member of the Armed Forces, including a member of the National Guard or Reserves.
- 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 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 by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider, where two of the physician’s visits occur within 30 days beginning with the initial date of incapacity and the first physician visit occurs within the first seven days of incapacity; or
 - ii) Treatment by a health care provider on at least one occasion, the first of which must occur within seven days of incapacity, which 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. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability 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 the employee to make at least two visits per year to a health care provider, or a nurse or physician's assistant under direct supervision of a health care provider, for treatment;
 - 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., 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 receiving 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.
- f) "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 treats or supervises 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 and clinical social workers 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.
- H. **“Serious injury or illness”** as applicable to “Servicemember Family Leave” (see Section 3.5. below) means an injury or illness incurred in the line of duty while the individual is on active duty in the Armed Forces, that renders the individual unfit to perform the duties of his/her office, grade, rank, or rating.

Section 3. Reasons for Leave

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
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, spouse, or domestic partner who has a serious health condition; or
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.
5. Leave to care for a child, parent, spouse, or domestic partner who is a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status through the Armed Forces, or is otherwise on the temporary disability retired list, for a “serious injury or illness” (referred to in this Policy as “Servicemember Family Leave”).

Section 4. Employees Eligible for Leave

An employee is eligible for leave for the reasons stated above 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.

Section 5. Amount of Leave

Eligible employees are entitled up to four (4) months of Family and Medical Leave for either their own serious health condition or to care for a family member as described in Section 2 of this policy and to the extent provided, and consistent with the terms and conditions imposed by law, during any 12-month period. An Employee may receive up to two (2) additional months leave due to the Employee's own serious health condition if the Employee has exhausted the initial four (4) months of Family and Medical Leave under this policy and if the employee provides the required medical certification, the Department Director is able reasonably to accommodate the absence and the City Manager approves the request.

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 to care for a child, parent, spouse, domestic partner or the employee him/herself 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. Bonding Leave

If leave is taken for the birth, adoption or foster care of an employee's child, the leave an employee may be entitled to is limited to 12 workweeks during any 12-month period.

C. Spouses Both Employed by the City of Newport Beach

In any case in which a husband and wife both employed by the City of Newport Beach are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled will be limited to 12 workweeks during any 12-month period if leave is taken for the birth or adoption or foster care of the employees' child (i.e., bonding leave). Additionally, with respect to Servicemember Leave, the aggregate number of workweeks of leave to which both may be entitled will be limited to 26 workweeks in a 12-month period to care for a servicemember. This limitation does not apply to any other type of leave under this policy.

D. Servicemember Family Leave

If leave is taken to care for a servicemember as set forth in Section 3.5 above, an eligible employee may take up to 26 workweeks of leave during a 12-month

period. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. This leave may be taken on an intermittent or reduced work schedule basis consistent with the Section 8.D of this Policy. The City may require the employee to provide certification for the serious injury or illness.

Section 6. Employee Benefits While on Leave

While on leave due to an employee's own serious health condition, employees will continue to be covered by the City of Newport Beach's group health insurance to the same extent that coverage is provided while the employee is on the job, which includes payroll deductions and taxable cash back under the City's cafeteria program.

Also, while on leave due to pregnancy, parental or family medical leave, employees will continue to be covered by the City of Newport Beach's group health insurance to the same extent that coverage is provided while the employee is on the job, which includes payroll deductions and taxable cash back under the City's cafeteria program.

Section 7. 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.

A. Employee's Right to use Paid Accrued Leaves Concurrently With Family Leave

Where an employee has earned or accrued paid vacation, administrative leave, compensatory time, flex leave or sick leave, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

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, domestic partner or child with a serious health condition, and would be permitted as sick or flex leave under the City of Newport Beach's leave policy.

B. The City of Newport Beach and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the City of Newport Beach may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City of Newport Beach denies the employee's request and the employee provides information that the requested time off is for

a FMLA/CFRA-qualifying purpose, the City of Newport Beach may inquire further into the reason for the absence.

- C. The City will notify employees out more than three (3) days, who have used sick leave or unplanned flex leave that they have been placed on FMLA.

Section 8. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent, spouse, or a domestic partner who has a serious health condition or for a servicemember who has a serious illness or injury must provide written certification from the health care provider of the individual requiring care if requested by the City of Newport Beach.

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.

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 this is not possible, the employee must provide the requested certification to the City of Newport Beach within the time frame requested by the City of Newport Beach (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

B. Consequences for Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification the employee will be given seven *days* to cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the City of Newport Beach may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Recertification

If the City of Newport Beach has reason to doubt the validity of a certification, the City of Newport Beach may require a medical opinion of a second health care provider chosen and paid for by the City of Newport Beach. If the second opinion is different from the first, the City of Newport Beach may require the opinion of a third provider jointly approved by the City of Newport Beach and the employee, but paid for by the City of Newport Beach. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions

when there is a recertification.

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 himself/herself or an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary prior to requesting the intermittent leave. "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. The City reserves the right to require employees returning from intermittent leave to undergo a fitness for duty examination prior to returning to work.

Section 9. Employee Notice of Leave

Although the City of Newport Beach 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. 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. Such notice may be orally given. The employee is required to comply with the City's usual call-in procedures for notifying a supervisor regarding sick leave. If the City of Newport Beach determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City of Newport Beach may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

Section 10. Reinstatement Upon Return From 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 of Newport Beach, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation to Periodically Report on His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Return-to-Work 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 employee must obtain and present a return-to-work certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

Section 11. Required Forms

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request For Family/Medical Leave" form prepared by the City of Newport Beach to be eligible for leave. NOTE: EMPLOYEES WILL RECEIVE A CITY OF NEWPORT BEACH'S RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;
2. Medical certification—either for the employee's own serious health condition; for the serious health condition of a child, parent, spouse, or domestic partner; or for the serious illness or injury of a servicemember; and
3. Return to Work Certification form completed by health care provider must be provided to supervisor upon returning to active status.

10/16/2008 – Amended to add Military Leave

12/30/2008 – Amended to include legislation changes effective January 1, 2009

City of Newport Beach

Request For Family/Medical Leave

Employee Name _____ Date of Request _____
 Department _____ Position Title _____
 Hire Date _____

I request a Family/Medical Leave for the following reason (check one):

- _____ A. The birth of a child and/or in order to care for such child.
- _____ B. The placement of a child for adoption or foster care.
- _____ C. In order to care for an immediate family member because such family member has a serious health condition. Check one:
- CHILD SPOUSE PARENT DOMESTIC PARTNER
- (Must submit "Physician Certification" within 15 days.)**
- _____ D. Employee's own serious health condition that makes the employee unable to perform the functions of his/her position. **(Must submit "Physician Certification" within 15 days.)**
- _____ E. In order to care for an immediate family member who is a member for the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status through the Armed Forces, or is otherwise on the temporary disability retired list, for a "serious injury or illness" Check one:
- CHILD SPOUSE PARENT
- (Must submit "Physician Certification" within 15 days.)**

Method of Leave Requested

- _____ A. Consecutive Leave
- _____ B. Intermittent or Reduced Leave Schedule (Specify schedule below)

Date leave is to begin: _____ Expected duration of leave: _____

If the duration of my family/medical leave (total of paid and unpaid time) does not exceed 4 months, I will be returned to my same or equivalent position. I understand that if my family/medical leave should exceed 4 months, I will be returned to my same or equivalent position, only if available. If my same or equivalent position is not available, I understand that I may not be entitled to reinstatement rights under FMLA.

Date _____ Employee's Signature _____

Notice to Health Care Provider

Under Department of Labor regulations for the Family and Medical Leave Act and the State of California Family Rights Act, "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner.

Our employee has requested leave under the provisions of Federal and/or California family and medical leave statutes for:

- His or her own serious health condition; or
- For the purpose of caring for your patient who is a parent (biological, foster or adoptive parent; a stepparent a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child), child (biological, adopted or foster child; a stepchild; a legal ward; a child for whom the employee is standing in loco parentis to; or an adult dependent child), or spouse (a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in states where it is recognized) of our employee. Please note the in-laws are not covered by this provision.

In order for the City to determine whether this leave qualifies for family and medical leave under Federal and/or State law, **please complete the brief Health Care provider section on the reverse side of this form and return it to our employee.**

A Serious Health Condition is:

Any illness, injury (including on the job), impairment or physical or mental condition that involves:

- Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- Any period of incapacity requiring absence from work, school, or regular daily activities for more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or
- Prenatal care; or
- Pregnancy disability; leave taken for disability due to pregnancy, childbirth or related medical conditions.

Examples: heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, and injuries caused by serious accidents on or off the job.

A Serious Health Condition is Not:

- Allergies.
- The patient is not incapacitated for more than three calendar days, is not under the continuing care of a health care provider, and/or the patient does not have a serious long-term health condition; or
- Voluntary treatment or surgery unless inpatient hospital care is required.

DO NOT DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT CONSENT OF PATIENT

City of Newport Beach

(CONFIDENTIAL) FOR RECORDKEEPING ONLY

FAMILY AND MEDICAL LEAVE CERTIFICATION

Employee Name:

Patient (if other than employee):

Relationship of employee to patient:

If patient is a child, is he/she 18 years of age or older? yes no If yes, is child incapable of self care*? yes no
Requires certification

Beginning date of leave:

What is the employees anticipated return to work date:

Medical Status and Recommendations from Health Care Provider

Does this employee or patient have a serious health condition? (see definitions) yes no

On what date did the serious health condition commence?

Duration of medical condition:

If leave is for the employee:

Is employee able to perform the functions of his/her job? (see job description) yes no

Questions regarding the employee's job duties may be addressed to the employee's supervisor.

Employee's Supervisor: _____ Phone: _____

Can the employee work a reduced work schedule or require other medical accommodation(s)?

yes no

If yes, please include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week:

If leave is for employee's family member:

Is the employee's presence necessary to provide on-site care for the patient? or yes no

Is the employee's presence deemed beneficial to the welfare of the patient? yes no

Does the patient require full time care? yes no

If no, give an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Health Care Provider Information

Health Care Provider Signature

Date

Type of Health Care Provider (see definition):

Address

Phone

City of Newport Beach

(CONFIDENTIAL) FOR RECORDKEEPING ONLY

FAMILY AND MEDICAL LEAVE RETURN TO WORK CERTIFICATION

Under Department of Labor regulations for the Family and Medical Leave Act and the State of California Family Rights Act, "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law, or a Christian Science practitioner.

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 date.

Employee is released to work effective (date): _____

Is employee able to perform the functions of his/her job? (see attached job description)

yes yes, with restrictions/accommodations no

Questions regarding the employee's job duties may be addressed to the employee's supervisor.

Employee's Supervisor: _____ Phone: _____

Please list any functional limitations:

Are the limitations: permanent temporary, until (date): _____

Comments:

Health Care Provider Information

Health Care Provider Signature

Date

Type of Health Care Provider (see definition):

Address

Phone