

## APPENDIX D



### Family and Medical Leave Policy

#### **Section 1. Statement of Policy**

The federal Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA")<sup>1</sup> provide eligible employees the opportunity to take unpaid, job-protected leave for certain medical and nonmedical needs for themselves and family members. This policy outlines and explains how the City of Newport Beach ("City") administers each of these leaves. Employees who misuse or abuse this policy may be disciplined up to and including termination. For more information regarding leave under this policy, employees should contact Human Resources. Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA and CFRA.

#### **Section 2. Definitions**

- A. **"Twelve (12)-Month Measurement Period Method"** Under this policy, the City of Newport Beach uses the rolling 12-month period measured backwards from the date employee begins leave to determine benefit eligibility. Benefit eligibility is based on hours actually worked.
- B. **"Covered Call to Active Duty"** Refers to a federal call to active duty, and state calls to active duty are not covered unless under order of the president of the United States pursuant to certain laws.
  - 1. In the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
  - 2. In the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.
- C. **"Covered Servicemember"**
  - 1. A current servicemember 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; or

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<sup>1</sup> Effective January 1, 2021, pursuant to SB 1383, CFRA will now be applicable to all employees who work for an employer with five or more employees, expands the scope of "family members" for whom employees can take leave to include additional categories, places less restrictions on the amount of leave if both parents work for the same employer in connection with the birth, adoption or foster care placement of a child, and modifies reinstatement rights. Accordingly, this policy incorporates the CFRA's amendments, which provide more expansive protections to employees than the FMLA.

2. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- D. **“Family Member”** FMLA and CFRA have differing definitions of “family member,” and only the FMLA allows employees to take up to 26 weeks of leave to provide care for an injured military family member.
1. **“Child”** Any biological, adopted, or foster child, stepchild, legal ward, child of a domestic partner, or a person to whom the employee stands in loco parentis. The eligibility for a child differs under CFRA and FMLA, as CFRA expands child eligibility to those over the age of 18 and who are a child of the employee’s registered domestic partner.
  2. **“Grandchild”** A child of the employee’s child. Covered under CFRA only.
  3. **“Grandparent”** A parent of the employee’s parent. Covered under CFRA only.
  4. **“Parent”** A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis when the employee was a minor.
  5. **“Parent in Law”** The parent of the employee’s spouse or domestic partner. Covered under CFRA only.
  6. **“Registered Domestic Partner”** An adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. Covered under CFRA only.
  7. **“Sibling”** A person related to the employee by blood, adoption, or affinity through a common legal or biological parent. Covered under CFRA only.
  8. **“Spouse”** A person with whom the employee entered into marriage as defined or recognized under state law, including those in same-sex marriage.
- E. **“Health Care Provider”**
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, 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.
- F. **"Next of Kin of a Covered Servicemember"** The nearest blood relative other than the covered servicemember's spouse, domestic partner, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- G. **"Outpatient Status of a Covered Servicemember"** 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.
- H. **"Qualifying Exigencies"** Includes:
1. **Short-notice deployment:** To address any issue that arises out of short notice (within seven (7) days or less) of an impending call or order to active duty.
  2. **Military events and related activities:** To attend any official military ceremony, program or event related to active duty or a call to active duty status, or to attend certain family-support or assistance programs and informational briefings.
  3. **Child care and school activities:** To arrange for alternative child care; to provide child care on an urgent, immediate-need basis; to enroll a child in or transfer a child to a new school or day care facility; or to attend meetings with staff at a school or day care facility.
  4. **Financial and legal arrangements:** To make or update various financial or legal arrangements or to act as the covered military member's representative before a federal, state or local agency in connection with service benefits.

5. **Counseling:** To attend counseling (provided by someone other than a health care provider) for the employee, the covered military member, or a child or dependent when necessary as a result of duty under a call or order to active duty.
  6. **Temporary rest and recuperation:** To spend time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to fifteen (15) days of leave for each instance of rest and recuperation.
  7. **Post-deployment activities:** To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of up to ninety (90) days following termination of the covered military member's active duty status. This also encompasses leave to address issues that arise from the death of a covered military member while on active duty status.
  8. **Mutually agreed leave:** Other events that arise from the close family member's call or order to active duty, provided that the City of Newport Beach and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.
- I. **"Serious Health Condition"** An illness, injury, impairment, or physical or mental condition that involves:
1. Inpatient Care (i.e., an overnight stay) in a medical facility. A person is considered "inpatient" when a health care facility admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or
  2. Continuing treatment by a health care provider and either prevents the employee from performing the functions of his or her job or prevents the qualified family member from participating in school or other daily activities.
    - a) A period of incapacity which is more than three consecutive calendar days; and
    - b) Subsequent treatment or period of incapacity relating to the same condition and also involves:
      - i. Two or more treatments by a health care provider; or
      - ii. At least one treatment by a health care provider, the first of which must occur within seven days of incapacity, and results in a regimen of continuing treatment under the supervision of the health care provider, 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.

This would include 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.

3. Any period of incapacity due to pregnancy or for prenatal care.

An employee may request Pregnancy Disability Leave under the California [Pregnancy Disability Leave Law](#) [See Government Code §§12900, et. seq.] This is separate and distinct from California Family Rights Act Medical Leave.

**Amount of Leave:** An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid leave for up to the number of hours she would normally work within four calendar months (one-third of a year or 17 1/3 weeks). For a full-time employee who works 40 hours per week, "four months" means 693.33 hours of leave entitlement, based on 40 hour per week times 17 1/3 weeks. An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave.

**Notice:** Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice of the medical need for the leave. All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Human Resources Department.

**Certification:** The request for pregnancy disability leave must be supported by a written certification from the attending physician stating that: 1) the employee is disabled from working by pregnancy, childbirth or a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave.

**Compensation during PDL:** Pregnancy disability leaves are without pay. However, the employee may elect to use flex leave or any other accrued paid time off during the leave.

**Health Insurance Benefits During PDL:** An employee on pregnancy disability leave may continue to receive any group health insurance coverage that was provided before the employee's leave, beginning on the date the pregnancy disability leave begins and continuing for up to four months in a 12-month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. The City may recover premiums it paid to maintain health coverage if an employee does not return to work following pregnancy disability leave, unless the reason for the failure to return is a circumstance beyond their control.

4. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - a) Requires periodic visits for treatment to 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.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

5. 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.
  6. 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.
- I. **"Serious Injury or Illness"** The definition of "serious injury or illness" for current servicemembers and veterans is distinct from the definition of "serious health condition" for CFRA/FMLA leave.
1. An injury or illness incurred by the current servicemember in the line of duty while on active duty in the armed forces that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating or existed before the beginning of the member's active duty and was aggravated by the service in the line of duty while on active duty in the armed forces; or
  2. In the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran and is 1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the armed forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; 2) a physical or mental condition for which the covered veteran has received a VA service-related disability rating of 50 percent or greater, and such rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; 3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would absent treatment; or 4) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.



### Section 3. Reasons for Leave

	FMLA	CFRA
Covered family member	Employee's spouse (including those in same-sex marriages), child (minor or dependent adult <sup>2</sup> ) or parent	Employee's spouse (including those in same-sex marriages), registered domestic partner, child (of any age), child of domestic partner, sibling, grandparent or grandchild
Reasons for leave	<ul style="list-style-type: none"><li>▪ Birth of a child for purposes of bonding</li><li>▪ Placement of a child for adoption or foster care</li><li>▪ To care for the employee's covered family member (above) with a serious health condition</li><li>▪ The serious health condition of the employee (including pregnancy)</li><li>▪ A qualifying military exigency related to the covered active duty or call to covered active duty of an employee's spouse, child (of any age) or parent who is a member of the United States Armed Forces</li><li>▪ To care for a family member who is a current servicemember or veteran with a serious illness or injury (26 weeks)</li></ul>	<ul style="list-style-type: none"><li>▪ Birth of a child for purposes of bonding (including the child of a domestic partner)</li><li>▪ Placement of a child in for adoption or foster care</li><li>▪ To care for the employee's covered family member (above) with a serious health condition</li><li>▪ The serious health condition of the employee (excluding pregnancy)</li><li>▪ A qualifying military exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child (of any age), or parent in the United States Armed Forces, as specified in <a href="#">Section 3302.2</a> of the Unemployment Insurance Code</li></ul>

In circumstances where a leave qualifies for both FMLA and CFRA leave, the leaves will run concurrently for a total of 12 weeks<sup>3</sup>.

It is possible that an employee could qualify for 12 weeks<sup>3</sup> of CFRA leave to care for a domestic partner or grandparent (who are not considered eligible family members under the FMLA) and then qualify for 12 weeks<sup>3</sup> of FMLA to care for a child, spouse, or parent, for a total of 24 weeks<sup>3</sup>.

<sup>2</sup>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, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence or using a telephone.

<sup>3</sup>The Acts only require the City to provide 12 weeks; however, the City offers a more generous benefit of four (4) months.

### Section 4. Employees Eligible for Leave

An employee is eligible for leave for the reasons stated above if the employee:

- A. Has been employed with the City of Newport Beach for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and

- B. Has been employed with the City of Newport Beach for at least 12 months. The 12 months of employment are not required to be consecutive in order for the employee to qualify for FMLA leave. In general, only employment within seven years is counted unless the break in service is (1) due to an employee's fulfillment of military obligations, or (2) governed by a collective bargaining agreement or other written agreement.

## **Section 5. Amount of Leave**

The FMLA and CFRA offer 12 workweeks of unpaid job protections. However, under the City's policy, eligible employees may receive up to four (4) months of protected leave for reasons as described in Section 3 (Reasons for Leave).

For an employee who is on approved FMLA/CFRA leave due to their own serious health condition, an additional two (2) months may be approved if the employee provides the required medical certification, the employee's Department Director is able to reasonably accommodate the absence and the City Manager approves the request.

For military caregiver leave, an eligible employee may take up to 26 workweeks of leave in a single 12-month period. The single 12-month period begins on the first day leave is taken to care for a covered servicemember and ends 12 months thereafter, regardless of the method used to determine leave availability for other FMLA/CFRA-qualifying reasons.

### **A. Minimum Duration of Leave**

1. 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. 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.
2. 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 in compliance.

### **B. When Both Spouses Are Employed by the City of Newport Beach**

In any case in which both parents of a child, adoptee, or foster child are both employed by the City and are entitled to leave:

If leave is taken for the birth of a child (see Section 2 or 3 for each Leave's definition of "child") for purposes of bonding; under CFRA, *each* parent is entitled to take four (4) months of leave during any 12-month period for bonding leave. If an employee is taking leave available under FMLA, then the aggregate total for both spouses is four months during any 12 month period.

With respect to servicemember leave, if both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered , 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.

**C. Servicemember Family Leave**

If leave is taken to care for a servicemember as set forth in Section 3 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 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**

**A. Group Health Insurance During Unpaid Leave**

Under this policy, the FMLA and CFRA provide for unpaid, job-protected leave. Employees may remain in paid status by substituting their unpaid absence with their own paid leave (see Section 7 Substitution of Paid Leaves). However, if an employee is not in paid status or receiving disability due to their own serious health condition, the employee will continue to be covered by the City's group health insurance for up to six (6) months each leave year 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.

**B. Recovery of Premium if the Employee Fails to Return from 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 family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

**Section 7. Substitution of Paid Leaves**

While on unpaid leave under this policy, as set forth herein, an employee may use all paid leaves to remain in paid status during family and medical leave as described below. Remaining in paid status will ensure the employee's pay continues to be reported to CalPERS and they continue to accrue leave time.

**A. Employee's Right to Use Paid Leaves Concurrently with Family Leave**

An employee may substitute their own paid leave time for all or part of any otherwise unpaid leave under this policy.

Employees who have and want to use sick leave to substitute for the otherwise unpaid leave, may do so in compliance with the Employee Policy Manual and the following stipulations:

- i. The leave is for the employee's own serious health condition; or

- ii. 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's leave policy.

**B. The City of Newport Beach and An Employee's Rights: If an Employee Requests a Leave Without Mentioning FMLA or CFRA**

If an employee requests to utilize paid leave for time off 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 is for a FMLA/CFRA-qualifying purpose, the City may inquire further into the reason for the absence.

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

**Section 8. Medical Certification**

Employees who request leave must provide written certification and/or recertification from the health care provider of the individual requiring care if requested by the City as described below:

**A. Employee's Own Serious Health Condition**

If the leave is requested because of the employee's own serious health condition, the certification must include: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position. Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested.

**B. Family Member with Serious Health Condition**

If leave is requested because of the employee's need to care for a family member, as described in Section 3, who has a serious health condition, the certification must include: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the family member and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision family member. The term "warrants the participation of the employee" includes, but is not limited to, providing psychological comfort and arranging third-party care for the covered family member, as well as directly providing, or participating in, the medical care. Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested.

**C. Pregnancy**

Pregnancy disability leave must be supported by a written certification from the attending physician stating that: the employee is disabled from working by pregnancy, childbirth or



a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave.

#### **D. Qualifying Exigency**

The first time an employee requests leave because of a qualifying exigency; the City may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military. The documentation must indicate that the military member is on covered active duty or call to active duty status in a foreign country and the dates of the military member's active duty service. A copy of the 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 military member. The City will verify the certification as permitted by the FMLA/CFRA.

#### **E. Servicemember with Serious Injury or Illness**

If leave is requested because of the employee's need to care for a covered servicemember who is a child, spouse, parent or "next of kin" of the employee, the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness. The City will verify the certification as permitted by the FMLA regulations.

#### **F. Time to Provide a Certification**

When an employee's leave is foreseeable and at least 30 days notice has been provided, the employee must provide a medical certification, if requested, before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (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.

#### **G. Consequences for Failure to Provide an Adequate or Timely Certification**

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity 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 may delay the FMLA/CFRA leave until the required certification is provided or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification.

#### **H. Recertification**

If the City has a good faith objective 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 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 provider's opinions when there is a recertification.

#### **I. Intermittent Leave or Leave on a Reduced Leave Schedule**

If an employee requests leave intermittently (not consecutive days/hours) or on a reduced leave schedule to provide self-care or to care for 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. The City may also require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternative position of equivalent pay and benefits that better accommodates the leave schedule.

### **Section 9. Employee 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. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows of an upcoming leave, 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 their supervisor as soon as possible that such leave will be needed. For foreseeable military leave duty to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable. 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 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.

### **Section 10. Reinstatement Upon Return from Leave**

#### **A. Reinstatement to Same or Equivalent Position**

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.

#### **B. Date of Reinstatement**

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 employer of his/her readiness to return.



### C. 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.

### D. 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 and submit to Human Resources the following applicable forms in connection with leave under this policy:

- A. A "Request for Family/Medical Leave" form approved by the City to be eligible for leave.  
***Note: Employees will receive a response to their request which will set forth certain conditions of the leave;*** and
- B. 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.

10/16/2008 – Amended to add Military Leave

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

10/25/2022 – Amended to include legislation changes effective January 1, 2021



### 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 adoption or placement of a child for foster care.
- \_\_\_\_\_ C. In order to care for a family member because such family member has a serious health condition. Check one:
- ☐ CHILD   ☐ SPOUSE   ☐ DOMESTIC PARTNER   ☐ PARENT
- ☐ GRANDPARENT (CFRA)   ☐ GRANDCHILD (CFRA)   ☐ SIBLING (CFRA)
- (Must submit "Physician Certification" within 15 calendar 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 calendar days.)**
- \_\_\_\_\_ E. For a "qualifying exigency" arising out of the fact that Employee's spouse, domestic partner, child, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation. Check one:
- ☐ CHILD   ☐ SPOUSE   ☐ PARENT   ☐ DOMESTIC PARTNER (CFRA)
- \_\_\_\_\_ F. 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   ☐ DOMESTIC PARTNER   ☐ PARENT
- ☐ NEXT OF KIN: \_\_\_\_\_
- (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: _____	
<p>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 plus an additional 2 months (if approved), 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.</p> <p>Date _____ Employee's Signature _____</p>	

### 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, a Christian Science practitioner or other health care providers as outlined in Section 2 of the Family and Medical Leave Policy.

Our employee has requested leave under the provisions of Federal Family and Medical Leave Act and/or California Family Rights Act statutes for:

- His or her own serious health condition; or
- For the purpose of caring for your patient who is a qualified family member under the Acts or as outlined in Section 2 of the Family and Medical Leave Policy. 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
- 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 treated by over the counter or prescribed medication which may be administered by the patient/employee;
- 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? <input type="checkbox"/> yes <input type="checkbox"/> no If yes, is child incapable of self care*? <input type="checkbox"/> yes <input type="checkbox"/> no <small>*Requires certification</small>
Beginning date of leave:
What is the employees anticipated return to work date: (If unknown or ongoing, provide earliest estimated return to work date)

### Medical Status and Recommendations from Health Care Provider

Does this employee or patient have a serious health condition? (see definitions) <input type="checkbox"/> yes <input type="checkbox"/> no
On what date did the serious health condition commence? Duration of medical condition:
<b>If leave is for the employee:</b> Is employee able to perform the functions of his/her job? (see job description) <input type="checkbox"/> yes <input type="checkbox"/> 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)? <input type="checkbox"/> yes <input type="checkbox"/> 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:  <b>If leave is for employee's family member:</b> Is the employee's presence necessary to provide on-site care for the patient? or <input type="checkbox"/> yes <input type="checkbox"/> no Is the employee's presence deemed beneficial to the welfare of the patient? <input type="checkbox"/> yes <input type="checkbox"/> no Does the patient require full time care? <input type="checkbox"/> yes <input type="checkbox"/> 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, a Christian Science practitioner or other health care providers as outlined in Section 2 of the Family and Medical Leave Policy.

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 \_\_\_\_\_