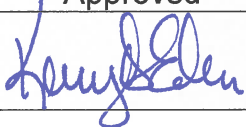





## Administrative Policy

**Title: Leave of Absence Policy Under the family Medical Leave Act, California Family Rights Act, and California Pregnancy Disability**

**Administered By: Administrative Services (Human Resources)**

New Policy No.	Issue Date (Last Revised)	Renumber Date	Department Head Approved	City Manager Approved
01400.205	06-08-10 (N/A)	01-03-17		

This Policy had been numbered Policy 200.40. Effective on the Renumber Date noted above, this Policy is hereby renumbered as the Policy Number noted above.

The latest version of the Policy is attached hereto and incorporated herein by reference.

Attachment: Policy 200.40  
 Issued: 06-08-10  
 Revised: N/A



Leave of Absence Policy under the Family Medical Leave Act, California Family Rights Act, and California Pregnancy Disability

Administered By: Human Resources

Section No.	Policy No.	Issue Date	Revision Date	Dept. Head Approved	City Manager Approved
200	40	June 8, 2010	NA	<i>[Signature]</i>	<i>[Signature]</i>

**A. PURPOSE**

The purpose of this Policy is to define the City's policies and procedures regarding family, medical and pregnancy disability leave in accordance with state and federal laws including the federal Family and Medical Leave Act of 1993 (FMLA), the California Family Rights Act of 1991 (CFRA) and the Pregnancy Disability Leave (PDL) provisions of the California Fair Employment and Housing Act.

**B. FAMILY CARE AND MEDICAL LEAVE**

**Employee Eligibility:**

Employees are eligible for family care and medical leave if, at the time leave commences, both of the following apply:

1. The employee has been employed by the City for at least 12 months (not necessarily consecutive); and
2. The employee has worked at least 1,250 hours for the City of Corona during the 12 months immediately prior to the period of FMLA and/or CFRA leave.

**Eligible Family Care and Medical Leave:**

Eligible employees may take a total of 12 workweeks (unless stated otherwise) of unpaid leave during a 12-month period (measured backward from the date an employee uses leave) for any of the following purposes:

1. The birth or adoption of a child of the employee or placement of a child in foster care with the employee (all family leave taken for one of these purposes must be concluded within one year of the event);
2. To care for the employee's child, parent or spouse ("spouse" includes registered domestic partner throughout this policy when CFRA leave is applicable), who has a serious health condition. "Parent" is the biological, foster or adoptive parent, a step parent or legal guardian but does not include parent in-laws;
3. For an employee's own serious health condition which makes the employee unable to perform the functions of the employee's position;
4. For a military-related "qualifying exigency" for an employee who has a spouse, son, daughter or parent who is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation; and/or
5. For an employee who is the spouse, son, daughter, parent or the nearest blood relative of a "covered servicemember" with a serious injury or illness, the employee may take up to a total of 26 workweeks of leave during a single 12-month period to care for the "covered servicemember" (Family Military Leave). The leave described in this paragraph will only be available during a single 12-month period. Covered servicemember is defined as:
  - a. A 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; or
  - b. 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.

Combined Leave Total: During the single 12-month period described in paragraph (5), an employee eligible for Family Military Leave will be entitled to a combined total of 26 workweeks of leave under paragraphs (1) through (5).

### **Serious Health Condition:**

A serious health condition is an illness, injury, impairment or physical or mental condition which involves:

1. Inpatient Care. Any period of incapacity or treatment in connection with or due to inpatient care in a hospital, hospice or residential medical care facility requiring an overnight stay, or any subsequent treatment in connection with such inpatient care.

2. Incapacity and Treatment. Any period of incapacity requiring absence from work, school or other regular daily activities of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: (a) treatment two or more times, within 30 days of the first day of incapacity, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or (b) treatment by a health care provider on a least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider. This does not include the common cold, flu, earaches, stomachaches, mild ulcers or similar illnesses.
3. Pregnancy or Prenatal Care. Any period of incapacity due to pregnancy, or for prenatal care.
4. Chronic Conditions. 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 (at least twice a year) for treatment by a health care provider; (b) continues over an extended period of time; and (c) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent or Long-Term Conditions. 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.g., Alzheimer's, severe stroke, or the terminal stages of a disease).
6. Conditions Requiring Multiple Treatments. Any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for: (a) restorative surgery after an accident or other injury; or (b) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (e.g., cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis)).

**Serious Injury or Illness:**

1. In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), the term "serious injury or illness" means an injury or illness that was incurred by the member in 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 may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and

2. In the case of a veteran 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, means a qualifying injury or illness that was incurred by the member in 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.

### **Special Rules Regarding the Employment of Spouses/Parents:**

1. Where CFRA and FMLA leave are running concurrently, and both the husband and wife are employed by the City, their combined entitlement to CFRA/FMLA leave for the birth, adoption or foster care placement of their child shall be limited to 12 workweeks in a 12-month period between the husband and wife.
2. Where CFRA leave is running separate and apart from FMLA leave (such as following PDL/FMLA leave), and both parents are employed by the City, their combined entitlement to CFRA leave for the birth, adoption or foster care placement of their child shall be limited to 12 workweeks in a 12-month period between the two parents. This provision applies to the parents of the child, regardless of their marital status.
3. Where FMLA leave is used to care for a covered servicemember with a serious injury or illness, a husband and wife who are both employed by the City will be limited to a combined total of up to 26 workweeks of leave in a 12-month period.
4. The provisions above do not affect the employees' right to use any remaining CFRA and/or FMLA leave for any other qualifying purpose(s).

### **Leave Taken for Birth or Placement of a Child:**

Leave taken for the birth or placement of an employee's child can be taken in one continuous segment of up to 12 workweeks and must be concluded within 12 months of the birth or placement of a child. If leave is broken into segments, it must be taken in two-week increments after the initial leave period; a request of less than two weeks of leave in duration will be granted on two occasions.

### **Medical Leave Certification:**

1. An employee's request for leave due to a serious health condition affecting the employee or the employee's child, parent or spouse, or Family Military Leave, must be supported by a medical certification issued by the health care provider of the individual requiring care.
  - a. For leave to care for the employee's child, parent or spouse, this certification need not identify the serious health condition involved, but shall contain: (1) the date, if known, on which the serious health condition

commenced; (2) the probable duration of the condition; (3) an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent or spouse; and (4) a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse. The City reserves the right to require proof of the familial relationship. Only (1) – (3) is required with respect to Family Military Leave

b. For leave to care for the employee's own serious health condition, this certification need not, but may, at the employee's option, identify the serious health condition involved. It shall contain: (1) the date, if known, on which the serious health condition commenced; (2) the probable duration of the condition; and (3) a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position.

2. Medical certification is not required where leave is requested for the birth, adoption or placement of a child in foster care with the employee.
3. Medical certification must be provided within 15 calendar days of the City's request and generally prior to the commencement of a foreseeable leave of absence, unless it is not practicable to do so despite the employee's diligent, good faith efforts to do so. Failure to timely provide the required certification may affect the employee's ability to take leave as requested.
4. With regard to leave due to the employee's own serious health condition:
  - a. Where the City has reason to doubt the validity of the employee's medical certification, the City may require, at the City's expense, that the employee obtain a second medical opinion from a health care provider designated by the City and who is not regularly used by the City for this purpose; and
  - b. Where the second opinion differs from the first, the City may require that the employee obtain a third and binding medical opinion, again at the City's expense, from a health care provider designated or approved jointly by the City and employee.
5. The City may require recertification only where additional leave is requested, or where continuing/intermittent leave has been authorized.
6. The City also requires certification at the time the employee is to return to work following a leave due to the employee's own serious health condition that the employee is fit for duty and able to return to work.

### **Military Active Duty Leave Certification:**

Certification of active duty or call to active duty paperwork will be required at the time of request where practicable or within 15 days after the City requests the certification.

### **C. SPECIAL RULES FOR PREGNANCY DISABILITY LEAVE**

1. All female employees, regardless of service time, are eligible to take unpaid leave on account of a disability caused or contributed to by pregnancy, childbirth or recovery for a period of up to four months.
2. The right to take CFRA leave is separate and distinct from the right to take a pregnancy disability leave. In other words, leave taken by an employee disabled by pregnancy, childbirth or related medical conditions is not family leave under the CFRA, even though it may be FMLA leave.
3. The City may require that pregnancy disability and FMLA leave run concurrently (hereinafter "pregnancy disability/FMLA leave"), but CFRA leave can never run concurrently with a pregnancy disability leave. This means that, at the end of the employee's period(s) of pregnancy disability and/or pregnancy disability/FMLA leave, whichever occurs first, a CFRA-eligible employee may take up to 12 workweeks of CFRA leave due to the birth of her child or for other family leave purposes.

a. Where an employee has exhausted her entitlement to pregnancy disability/FMLA leave prior to the birth of her child, and her health care provider certifies that continued leave is medically necessary, the City may, but is not required to, allow the employee to utilize CFRA leave prior to the birth of her child.

b. The maximum combined leave entitlement for pregnancy disability, FMLA and CFRA leave for the birth of a child is four months and 12 workweeks. This assumes that the employee was disabled by pregnancy, childbirth or related medical conditions for four months; she exhausted her entitlement to up to 12 weeks of FMLA leave during the period of pregnancy disability leave; and the employee requested and was eligible for a 12-week CFRA leave following the birth of her child.

### **D. COORDINATION OF FMLA, CFRA AND PDL**

In most cases, family and medical care leave will count concurrently against an employee's entitlement to both FMLA and CFRA. This means that most eligible employees taking family and/or medical care leave will exhaust their entitlement to protected leave under both FMLA and CFRA at the same time, with the following exceptions:

1. An employee's own incapacity due to pregnancy, childbirth or related conditions will be counted against an employee's entitlement to FMLA as a serious health condition, but not against CFRA leave.
2. Leave taken for a "qualifying exigency" will be counted against an employee's entitlement to FMLA, but not against CFRA leave.
3. Leave taken to care for a covered servicemember will be counted against both FMLA and CFRA for up to the first 12 workweeks of leave if the servicemember is a family member covered by CFRA (in other words, a child, parent or spouse). If, on the other hand, the servicemember is a "next of kin" (not covered by CFRA), the leave will count against an employee's entitlement to FMLA, but not against CFRA leave.
4. Leave taken to care for a registered domestic partner with a serious health condition will be counted against an employee's entitlement to CFRA leave, but not against FMLA leave.

#### **E. CONTINUATION OF HEALTH AND OTHER BENEFITS WHILE ON LEAVE**

1. The City will continue group health care benefits during the period of leave, up to a maximum of 12 workweeks in any 12-month period, on the same terms and conditions as applied prior to the commencement of leave. For the purposes of continued group health coverage, the 12 workweeks commence on the first day of CFRA and/or FMLA leave, whichever occurs first. Thereafter, the employee is responsible for payment of all healthcare premiums unless the City is required to continue its contribution toward the employee's health care coverage under another statutory requirement, City Policy, or Memorandum of Understanding provision.
2. During any period of leave which is unpaid, the City shall discontinue payments made on behalf of the employee to a non-group health plan, employee retirement plan or other benefit plan, and the leave period shall not be counted for purposes of time accrued under a retirement plan unless the City is required to under another City Policy, Memorandum of Understanding, or statutory requirement.
3. In the event that the employee is responsible for any portion of the group health insurance premium or for any other premium payment(s), the employee should, prior to the commencement of leave, make arrangements with the City for the submission of such payments. In such cases, the City will cease to maintain the employee's health coverage if the employee's premium payment is more than 30 days late. The City will notify the employee 15 days before coverage ends.
4. If the employee fails to return after the period of leave has expired, the City may be entitled to reimbursement for any benefit premiums paid by the City during a period of unpaid family leave, unless:



a. The reason for the employee's failure to return is due to the continuation, recurrence or onset of a serious health condition of the employee or the employee's child, spouse or parent; or

b. Other circumstances beyond the control of the employee as set forth in applicable law and regulations.

5. Employees who are not eligible for continued paid coverage or whose entitlement to continued paid coverage has expired may continue their group health insurance coverage through the City pursuant to federal COBRA guidelines by making monthly payments for the applicable amounts directly to the health insurance provider for medical insurance coverage and to the City for dental, vision, and health savings accounts.

#### **F. ACCRUED CITY SERVICE AND BENEFITS ACCRUAL**

The leave period is treated as continued service for purposes of City employment. An employee's hire date and job entry date will not be adjusted as a result of the leave. However, employees on short term disability or unpaid family or medical care leave do not accrue annual leave or other seniority based benefits. Such benefit accruals commence upon the employee's return to work.

#### **G. REINSTATEMENT**

An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period. Employees will retain their same seniority level in relation to shift assignments and vacation requests. The City cannot guarantee that an employee will be returned to his or her original assignment.

With certain exceptions, an employee returning from leave will be reinstated to the same or a comparable position with identical pay, benefits and other terms and conditions of employment, unless the employee's position ceases to exist because of legitimate business reasons unrelated to the leave. A determination as to whether a position is a "comparable position" will be made by the City.

The City may refuse to reinstate an employee returning from family and medical leave (but not from pregnancy disability leave) to the same or a comparable position if all of the following apply:

1. The employee is a salaried employee who is among the highest paid 10 percent of the City's employees.
2. The refusal is necessary to prevent substantial and grievous economic injury to the operation of the City.
3. The City notifies the employee of the intent to refuse reinstatement at the time the City determines the refusal is necessary under subparagraph (2).

4. In any case in which the leave has already commenced, the City shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (2).

The City may refuse to reinstate an employee for any other reasons permitted under federal or state law, including where an employee gives notice that he or she no longer desires to return to employment with the City, or an employee fails to provide certification that he or she is fit for duty and able to return to work after taking family leave based on the employee's own serious health condition.

#### **H. RETURN FROM LEAVE**

An employee on leave is expected to return to work on the next work day following the last day of the approved leave period. If an employee wishes to return to work prior to the expiration of a leave, notification must be given to Human Resources at least five working days prior to the employee's revised return date.

Before returning from leave, for the employee's own serious health condition or pregnancy disability, the employee must submit to Human Resources a Medical Certification Form from his/her health care provider stating that the employee is able to return to work. The Medical Certification must be approved by the City before the employee may return to work. Employees may be required to undergo and pass a fitness for duty exam by the City's Industrial Medical Clinic at the City's expense before returning to work.

#### **I. FAILURE TO RETURN FROM LEAVE**

The failure of an employee to return to work upon the expiration of an authorized leave of absence will subject the employee to disciplinary action up to and including termination.