CITY PROPOSAL #5 – LEAVES OF ABSENCE

City Proposed Language:

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
ASSOCIATION OF LEGAL PROFESSIONALS (ALP)

Leaves of Absence Policy

The City of San José (City) and the Association of Legal Professionals (ALP) hereby agree to the attached changes to the Leaves of Absence Policy. The attached changes will become effective as soon as practicable once this can be implemented for all City employees. This Side Letter will expire upon effectuation of the attached changes to the Leaves of Absence Policy.

This Agreement is considered part of the tentative agreement for a successor MOA between the parties and shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties below and approved by the City Council.

FOR THE CITY:

_____
Aram Kouyoumdjian Date
Director of Employee Relations
Director of Human Resources
City of San José

FOR THE UNION:

_____
Terra Chaffee Date
President
Association of Legal Professionals

Leaves of Absence 4.2.1

PURPOSE

It is the policy of the City of San José ("City") to comply with the provisions of Federal and State leave to which employees are entitled. Rights and obligations that are not specifically addressed in this policy are incorporated herein by reference.

Employees may also be entitled to other leave benefits to the extent they are eligible under another City policy, Memorandum of Agreement ("MOA"), or Benefit and Compensation Summary. Provisions in applicable Memoranda of Agreement (MOA) regarding leaves without pay supersede this general policy.

This policy is divided into the following sections:

- Family and Medical Leave (FMLA) and California Family Rights Act (CFRA)
- Servicemember FMLA and CFRA
- Pregnancy Disability Leave Act (PDL)
- Other leaves of absences

FAMILY AND MEDICAL LEAVE & CALIFORNIA FAMILY RIGHTS ACT

A. Authorities

1. Family and Medical Leave Act (Title 29, Part 825 of the Code of Federal Regulations)

An employee who has at least twelve (12) months of service with the City and worked at least 1,250 hours in the prior twelve (12) month period has a right to an unpaid family care or medical leave of up to twelve (12) workweeks in a twelve (12) month period for the birth, adoption or foster care placement of a child; or for his or her own serious health condition or that of a child, parent or spouse.

2. California Family Rights Act (California Code, Title 2, Division 4, §7297.0 et seq.)

An employee who has been employed for a total of at least twelve (12) months with the City and worked at least 1,250 hours in the prior twelve (12) month period, has a right to an unpaid family care or medical leave of up to twelve (12) workweeks in a twelve (12) month period for the birth, adoption, or foster care placement of a child; or for his or her own serious health condition or that of a child, parent,[1] spouse, grandparent, grandchild, sibling, registered domestic partner,[2] or designated person.[3]

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[1] "Parent" means a biological, foster, or adoptive parent, parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. "Parent-in-law" means the parent of a spouse or domestic partner.

[2] "Registered domestic partner" means a domestic partnership established under California Family Code sections 297 through 297.5, which requires both persons to file a Declaration of Domestic Partnership with the Secretary of State. The City also recognizes a domestic partnership registered with Human Resources.

[3] "Designated person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship.

Leave under the California Family Rights Act runs concurrently with any leave under the Family and Medical Leave Act of 1993, except for pregnancy disability leave, and some forms of leave for servicemembers.

B. Eligibility

1. Minimum Duration of Employment

Pursuant to the federal Family Medical Leave Act ("FMLA") and California Family Rights Act ("CFRA"), an employee is eligible for an unpaid family care or medical leave of up to twelve (12) workweeks in a twelve (12) month period if the employee has been employed for a total of at least twelve (12) months with the City and has worked for the City at least 1,250 hours during the twelve (12)-month period immediately preceding the commencement of the leave.

2. Reasons for FMLA/CFRA Leave

The twelve (12) workweek allowance during a twelve (12)-month period includes any time taken (with or without pay) for any of the following reasons:

a. For the birth of the employee's son or daughter and to care for the newborn child;
b. To care for a child placed with the employee for adoption or foster care;
c. To care for the employee's child, spouse, registered domestic partner (CFRA only), parent, parent-in-law (CFRA only), grandparent (CFRA only), grandchild (CFRA only), sibling (CFRA only) or designated person (CFRA only) who has a serious health condition;
d. The employee's own serious health condition that makes the employee unable to perform the essential functions of the employee's position; and
e. Because of any qualifying exigency arising out of the fact that the spouse, registered domestic partner (CFRA only) child, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.[4]

If an employee takes a leave of absence for any reason which is also FMLA/CFRA qualifying, the City will designate the leave of absence as running currently with the employee's twelve (12)-week FMLA/CFRA leave entitlement, including Workers' Compensation leave.

Time off from work because of an employee's disability due to pregnancy, childbirth or related medical condition, however, is not counted as time used for CFRA leave, but is counted as time used for FMLA leave. Please see the Pregnancy Disability Leave section for additional information.

If FMLA/CFRA leave is requested for the birth, adoption, foster care placement of a child of the employee, the leave must be concluded within one (1) year of the birth, adoption or placement of the child. If both parents are employed by the City, each employee will be entitled to twelve (12) workweeks of leave for the birth, adoption or foster care placement of the child.

[4] Leave relating to military servicemembers and "qualifying exigency" leave under FMLA/CFRA is addressed in a separate section herein.

3. Serious Health Condition

A "serious health condition" is 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 and any subsequent treatment in connection with such inpatient care; or (2) continuing treatment by a health care provider.

A serious health condition may include injuries or illnesses qualifying for Workers' Compensation benefits and/or leaves. If a serious health condition results from injuries or illnesses qualifying for Workers Compensation benefits and/or leaves, the City will designate the leave for such serious health condition as FMLA/CFRA leave, and the leave counts against the employee's FMLA/CFRA leave entitlement. For employees covered under California Labor Code 4850, no leave of absence for a serious health condition that results from injuries or illnesses qualifying for Workers' Compensation benefits and/or leaves will run currently with FMLA/CFRA.

4. Computing the Twelve (12)-Month Period

The method for computing the twelve (12)-month period in which the twelve (12) weeks of leave entitlement occurs is based on a twelve (12)-month period measured forward from the date any employee's first FMLA/CFRA leave begins. Under this method, an employee would be entitled to twelve (12) weeks of leave during the year beginning on the first date FMLA/CFRA leave is taken, and the next twelve (12)-month period would begin the first time FMLA leave is taken after completion of any previous twelve (12)-month period.

For purposes of leave to care for a designated person with a serious health condition, employees are limited to one (1) designated person per twelve (12) month period for family care and medical leave.

C. Application Process

1. Employee Notice of Leave

Employees must provide not less than thirty (30) days' notice before any FMLA/CFRA leave is to begin for foreseeable childbirth (including leave to care or bond with a child), placement, or any planned medical treatment for the employee or his or her spouse, child, parent, registered domestic partner, grandparent, grandchild, sibling or designated person. If thirty (30) days' notice is not practicable, notice must be given as soon as practicable.

For purposes of confirmation of family relationship, the City may require the employee giving notice of the need for leave to provide reasonable documentation of family relationship. This documentation may take the form of a simple statement from the employee, a child's birth certificate, a court document or other similar documentation as requested by the City.

For purposes of leave to care for a designated person with a serious health condition, employees shall identify the designated person at the time leave is requested.

2. Documentation of Leave

A Leave of Absence Request Form is required for any FMLA/CFRA leave that exceeds two weeks. Employees' FMLA/CFRA leave requests will be reviewed by Human Resources for eligibility. If an employee exhausts their FMLA/CFRA entitlement and needs additional time off, the Department Director or designee must approve any additional time off and would be considered "unprotected leave." If the employee is unavailable to initiate the Leave of Absence Request Form, the form must be initiated by the employee's department. Please see the procedures below.

3. Medical Certification

An employee requesting FMLA/CFRA leave because of his or her own serious health condition or for the serious health condition of a child, spouse, registered domestic partner, parent, grandparent, grandchild, sibling or designated person must provide medical certification from a health care provider.

A completed Medical Certification Form, or a doctor's note containing the information requested in the Medical Certification form, must be submitted when the employee submits the Leave of Absence Request Form by uploading the documentation in eWay, or submitting directly to Human Resources Department.

The address to submit the completed Medical Certification form or equivalent doctor's note is:

The City of San José
Human Resources – Employee Benefits
200 East Santa Clara Street, 4th Floor, Tower
San José, CA 95113
Phone (408) 535-1285
Fax (408) 999-0862
Email HRBenefits@sanjoseca.gov

Medical certification must be received by Human Resources as follows:

1. For foreseeable events: An employee must provide the required medical certification before the leave begins.
2. For non-foreseeable events: An employee must provide the required medical certification within fifteen (15) calendar days after the City's request for certification.

Failure to provide the required medical certification within fifteen (15) days of the City's request may result in denial of the leave. An employee's request for an extension or early return from an FMLA/CFRA leave must also be supported by updated medical certification.

D. Use of Leave

1. Intermittent Leave or Reduced Leave Schedule

An eligible employee may take intermittent or reduced leave if the leave is for the employee's own serious health condition or that of the employee's child, parent, spouse, grandparent, grandchild, sibling, registered domestic partner, or designated person and the intermittent

leave schedule is medically necessary as determined by the health care provider of the person with the serious health condition.

If intermittent leave is taken for the birth of the employee's child or the placement of a child with the employee for adoption or foster care, the minimum duration of leave is two (2) weeks, except that the City will grant a request for FMLA/CFRA leave of less than two (2) weeks' duration on any two (2) occasions. Any FMLA/CFRA leave taken must be concluded within one (1) year of the birth or placement of the child with the employee.

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the City's operations. If leave is taken intermittently or on a reduced schedule, the City retains the discretion to transfer the employee temporarily to an alternative position with equivalent pay and benefits which better accommodates the employee's leave schedule.

2. Use of Paid Leave During FMLA/CFRA Leave

Generally, FMLA/CFRA leave is unpaid leave. The FMLA/CFRA, however, allows the City to require that employees use accrued paid leave during FMLA/CFRA leave, i.e., have the accrued paid leave run currently with unpaid FMLA/CFRA leave, pursuant to the City's sick, vacation, personal and/or executive paid leave policies. Depending on the reason for the FMLA/CFRA, the substitution of accrued paid leave occurs as follows:

a) For the employee's own serious health condition paid leave must be used in the following order:

1) An employee MUST use and exhaust all accrued sick leave and then use and exhaust all accrued vacation leave at the beginning of any otherwise unpaid FMLA/CFRA leave. This requirement is waived during the period the employee is on FMLA/CFRA leave for his or her own serious health condition and is receiving wage replacement benefits, including voluntary Long Term Disability Insurance benefits.
2) An employee MAY elect to use accrued sick leave and vacation leave during the period of receipt of wage replacement benefits, including voluntary Long Term Disability Insurance benefits, unless otherwise prohibited by law.
3) An employee MAY elect to use executive leave, personal leave, or compensatory time during any portion of otherwise unpaid FMLA/CFRA leave.
4) An employee on FMLA/CFRA and receiving Workers Compensation temporary disability benefits ~~MUST integrate any accrued leave balances in the following order: (1) accrued vacation, (2) accrued compensatory time, (3) accrued sick leave.~~ MAY elect to use any accrued leave balance during the period of receipt of wage replacement benefits.

b) For the non-medical care of employee's newborn child or child placed with employee for adoption or foster care (commonly for the purpose of bonding with the child) paid leave must be used in the following order:

1) An employee MUST use and exhaust all accrued vacation leave at the beginning of any otherwise unpaid FMLA/CFRA leave.

2) An employee MAY elect to use executive leave, personal leave or compensatory time during any portion of otherwise unpaid FMLA/CFRA leave.
3) All leave for the non-medical care of an employee's newborn child or child placed with employee for adoption or foster care (bonding) must conclude within one year of the birth of the child, or one year from the date the child was placed with the employee for adoption or foster care.
4) Employees may be eligible for City-Paid Parental Leave. Please refer to City Administrative Policy Manual, Section 4.2.7, City-Paid Parental Leave Policy for more information. The requirement to use vacation is waived when an employee is using approved City-Paid Parental Leave.

c) For the care of an immediate family member (employee's child, spouse, registered domestic partner, parent, grandparent, grandchild, sibling, or designated person) who has a serious health condition paid leave must be used in the following order:

1) An employee MAY elect to use accrued sick leave pursuant to the terms and conditions under the applicable MOA or Benefits and Compensation Summary for Management/Professional Employees.
2) If an employee does not elect to use accrued sick leave or after all accrued sick leave is exhausted, an employee MUST use and exhaust all accrued vacation leave at the beginning of any otherwise unpaid FMLA/CFRA leave.
3) An employee MAY elect to use executive leave, personal leave, or compensatory time during any portion of otherwise unpaid FMLA/CFRA leave.

The substitution of paid leave for FMLA/CFRA leave does not extend the total duration of such leave to which an employee is entitled to beyond twelve (12) weeks in a twelve (12)-month period.

Employees on leave accrue employment benefits, such as sick leave, vacation benefits, and retirement service credit, only when paid leave from the City is being substituted for unpaid leave and only if the employee would otherwise be entitled to such accrual.

E. Health Benefits and Insurance Premiums

While an employee is on FMLA/CFRA leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee continued to work. The employee is responsible for his or her portion of health benefits and insurance premiums. If accrued vacation leave, accrued sick leave, personal leave, executive leave and/or compensatory time are used during a FMLA/CFRA leave, the City will make payroll deductions to collect the employee's portion of health benefits and insurance premiums. If the employee is on unpaid leave, including during the receipt of voluntary Long Term Disability wage replacement benefits, the employee must continue to make payments of his or her share of health benefits and insurance premiums, either in person or by mail. The payment must be received by the first day of each month. If the payment is more than thirty (30) days late, the employee's health and insurance benefits will be dropped for the duration of the leave because of the employee's failure to pay the employee's contribution. The employee's health and insurance benefits coverage will be terminated effective the end of the period for which premiums were paid and the employee will be responsible for any charges incurred after such date. The City will provide at least

fifteen (15) days' notification prior to the employee's loss of health and insurance benefits coverage. Please see Procedures below.

If the employee does not return from a FMLA/CFRA leave, the City can recover its share of health benefit premiums paid by the City during unpaid periods of FMLA/CFRA leave.

Once an employee has exhausted FMLA/CFRA leave, and continues to be out on unpaid leave, the terms and conditions set forth in the Other Leaves Without Pay section of this Policy will apply to such leave.

F. Seniority

An employee on unpaid FMLA/CFRA leave remains an employee and the leave will not constitute a break in service. An employee who returns from an unpaid FMLA/CFRA leave will return with the same seniority he or she had when the leave commenced. To the extent that any accrued sick leave, accrued vacation leave, executive leave, personal leave and/or compensatory time are used during FMLA/CFRA leave, the employee will accrue seniority service credit during the portion of such paid leave.

G. Return to Work

Before an employee will be permitted to return from a FMLA/CFRA leave taken because of the employee's own serious health condition, the employee may be requested to provide certification from his or her health care provider that he or she is able to return to work.

If the employee can return to work with limitations, the City will evaluate those limitations and, if possible, will accommodate the employee as required by law.

Employees returning from a FMLA/CFRA leave are entitled to reinstatement to the same or comparable position consistent with applicable law, MOA or Benefits and Compensation Summary.

SERVICEMEMBER FMLA & CFRA

A. Authorities

1. Family and Medical Leave Act (Title 29, Part 825 of the Code of Federal Regulations)

The Family and Medical Leave Act provides an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember the right to take up to twenty-six (26) workweeks of leave to care for the covered servicemember with a serious injury or illness.

An eligible employee also has the right to leave under the Family and Medical Leave Act because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

2. California Family Rights Act (California Code, Title 2, Division 4, §7297.0 et seq.)

An eligible employee has the right to leave under the California Family Rights Act because of any qualifying exigency arising out of the fact that the spouse, registered domestic partner, child, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Leave under the California Family Rights Act runs concurrently with any leave under the Family and Medical Leave Act of 1993, except for pregnancy disability leave, and some forms of leave for servicemembers.

B. Eligibility

1. Minimum Duration of Employment

Pursuant to the federal Family Medical Leave Act ("FMLA") and California Family Rights Act ("CFRA"), an employee is eligible for an unpaid family care or medical leave of up to twelve (12) workweeks in a twelve (12) month period if the employee has been employed for a total of at least twelve (12) months with the City and has worked for the City at least 1,250 hours during the twelve (12)-month period immediately preceding the commencement of the leave.

2. Duration of Leave

FMLA leave to care for a covered servicemember, when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) workweeks in a single twelve (12)-month period.[5] Such leave may also be taken intermittently or on a reduced leave schedule.
When both spouses are employed by the City, the aggregate number of workweeks of leave to which both that husband and wife may be entitled during servicemember FMLA leave may be limited to twenty-six (26) workweeks during the single twelve (12) month period. If a combination of leave is taken by the husband and wife to care of an injured servicemember and for the birth or adoption of a child or to care for parent with a serious health condition, the total leave is still limited to twenty-six (26) weeks.

FMLA/CFRA leave for a qualifying exigency may not exceed twelve (12) workweeks during a twelve 12-month period.

[5] The "single 12-month period" in which the 26-weeks-of-leave entitlement occurs is measured forward from the date the employee's first FMLA leave to care for the covered servicemember begins and ends twelve (12) months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during the "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

3. Qualifying Reasons for Leave

Servicemember FMLA leave provides eligible employees unpaid leave for the following reasons:

a) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty-six (26) workweeks of leave during a twelve (12)-month period to care for the covered servicemember with a serious injury or illness.

1) The term "covered servicemember" means 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 outpatient status, or is otherwise in the temporary disability retired list, for a serious injury or illness; or 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 (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
2) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released from under conditions other than dishonorable, as provided under 38 U.S.C. Section 101.
3) The term "next of kin," used with respect to an individual, means the nearest blood relative of that individual.
4) The term "serious injury or illness," in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and 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 a period described above under "covered servicemember," 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 line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

b) An eligible employee may take up to twelve (12) workweeks during a twelve 12-month period because of any qualifying exigency arising out of the fact that the spouse, registered domestic partner (CFRA only), child, or parent of the eligible employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

1) The term "covered active duty" means in the case of a member of the regular component of the Armed Forces, duty during deployment of the member of the Armed Forces to a foreign country; and in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. Section 101(a)(13)(B).
2) The term "qualifying exigencies" includes short-notice deployment; military events and related activities; childcare and school activities; financial and legal

arrangements; counseling; rest and recuperation; post-deployment activities; and any additional activities agreed to by the City and the employee. For CFRA purposes, "qualifying exigency" means activities as specified in California Unemployment Insurance Code Section 3302.2.

C. Application Process

1. Employee Notice of Leave

When the need for FMLA leave is for planned treatment for a serious injury or illness for a covered servicemember, employees must provide not less than thirty (30) days' notice for such leave. If thirty (30) days' notice is not practicable, notice must be given as soon as practicable.

When the need for FMLA/CFRA leave is because of a qualifying exigency, employees must provide notice as soon as practicable.

2. Documentation of Leave

A Leave of Absence Request Form is required for any FMLA/CFRA leave that exceeds two weeks. Employees' FMLA/CFRA leave requests will be reviewed by Human Resources for eligibility. If an employee exhausts their FMLA/CFRA entitlement and needs additional time off, the Department Director or designee must approve any additional time off and would be considered "unprotected leave." If the employee is unavailable to initiate the Leave of Absence Request Form, the form must be initiated by the employee's department. Please see the procedures below.

3. Certification

When the need for FMLA leave is for the care of a covered servicemember with a serious injury or illness, eligible employees must provide medical certification from a health care provider on a Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave form provided by Human Resources. For foreseeable events, employees must provide the required medical certification before the leave begins. When this is not possible, employees must provide the required medical certification within fifteen (15) calendar days after the City's request for certification. Failure to provide the required certification within fifteen (15) days of the City's request may result in denial of the leave.

When the need for FMLA/CFRA leave is because of a qualifying exigency, an employee must complete a Certification of Qualifying Exigency for Military Leave form provided by Human Resources. Employees must provide the required certification within fifteen (15) calendar days after the City's request for certification. Failure to provide the required certification within fifteen (15) days of the City's request may result in denial of the leave.

For purposes of confirmation of family relationship, the City may require the employee giving notice of the need for leave to provide reasonable documentation of family relationship. This documentation may take the form of a simple statement from the employee, a child's birth certificate, a court document or other similar documentation as requested by the City.

D. Use of Paid Leave

Generally, FMLA/CFRA leave is unpaid leave. The FMLA/CFRA, however, allows the City to require that employees use accrued paid leave during FMLA/CFRA leave, i.e., have the accrued paid leave run currently with unpaid FMLA/CFRA leave, pursuant to the City's sick, vacation, personal and/or executive paid leave policies. Depending on the reason for the FMLA/CFRA, the substitution of accrued paid leave occurs as follows:

1. For FMLA leave to care for a covered servicemember with a serious illness or injury paid leave must be used in the following order:

    a) An employee on FMLA leave to care for a covered servicemember with a serious injury or illness must use all accrued vacation leave at the beginning of any otherwise unpaid FMLA leave.
    b) An employee may elect to use executive leave, personal leave, or compensatory time to care for a covered servicemember with a serious injury or illness.
    c) An employee may also elect to use accrued sick leave to care for a covered servicemember with a serious injury or illness pursuant to the terms and conditions under the applicable MOA or Benefits and Compensation Summary for Management/Professional Employees.

2. For FMLA/CFRA leave because of a qualifying exigency paid leave must be used in the following order:

    a) An employee on FMLA/CFRA leave because of a qualifying exigency must use all accrued vacation leave at the beginning of any otherwise unpaid FMLA/CFRA leave.
    b) An employee on FMLA/CFRA leave because of a qualifying exigency may elect to use executive leave, personal leave or compensatory time during any portion of otherwise unpaid FMLA/CFRA leave because of a qualifying exigency.

E. Health Benefits and Insurance Premiums

While an employee is on servicemember FMLA/CFRA leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee continued to work. The employee is responsible for his or her portion of health benefits and insurance premiums.

If accrued vacation leave, accrued sick leave, personal leave, executive leave, and/or compensatory time are used during servicemember FMLA/CFRA leave, the City will take payroll deductions to collect the employee's portion of health benefits and insurance premiums.

If the employee is on unpaid leave, including during the receipt of voluntary Long Term Disability wage replacement benefits, the employee must continue to make payments of his or her share of health benefits and insurance premiums, either in person or by mail. The payment must be received by the first day of each month. If the payment is more than thirty (30) days late, the employee's health and insurance benefits will be dropped for the duration of the leave because of the employee's failure to pay the employee's contribution. The employee's health and insurance benefits coverage will be terminated effective the end of the

period for which premiums were paid and the employee will be responsible for any charges incurred after such date. The City will provide at least fifteen (15) days' notification prior to the employee's loss of health and insurance benefits coverage. Please see Procedures below.

F. Seniority

An employee on unpaid FMLA/CFRA leave remains an employee and the leave will not constitute a break in service. An employee who returns from an unpaid FMLA/CFRA leave will return with the same seniority he or she had when the leave commenced. To the extent that any accrued sick leave, accrued vacation leave, executive leave, personal leave and/or compensatory time are used during FMLA/CFRA leave, the employee will accrue seniority service credit during the portion of such paid leave.

PREGNANCY DISABILITY LEAVE

A. Authority

Pregnancy Disability Leave Act (California Government Code §12945)

An employee who is disabled by pregnancy, childbirth, or related medical conditions, is entitled to take an unpaid pregnancy disability leave of up to four months, depending on the employee's period(s) of actual disability.

If the employee is eligible for leave under the federal Family and Medical Leave Act ("FMLA"), the employee shall receive the benefits of FMLA concurrently with the leave granted under the Pregnancy Disability Leave Act. At the end of the employee's pregnancy disability leave, a CFRA-eligible employee may request to take CFRA leave of up to twelve (12) workweeks for reason of the birth of her child.

B. Eligibility

There is no length of service requirement before an employee affected by pregnancy, childbirth, or related medical conditions, is eligible for pregnancy disability leave ("PDL").
Pregnancy-related disability leaves may be taken intermittently, or on a reduced-hours schedule when medically necessary as determined by the employee's health care provider. If leave is taken intermittently or on a reduced schedule, the City retains the discretion to transfer the employee temporarily to an alternative position with equivalent pay and benefits which better accommodates the employee's leave schedule.

C. Application Process

1. Employee Notice of Leave

Employees must provide notice as soon as practicable.

2. Documentation of Leave

A Leave of Absence Request Form is required for any FMLA/CFRA/PDL leave that exceeds two weeks. Employees' FMLA/CFRA leave requests will be reviewed by Human Resources

for eligibility. If an employee exhausts their FMLA/CFRA/PDL entitlement and needs additional time off, the Department Director or designee must approve any additional time off and would be considered "unprotected leave." If the employee is unavailable to initiate the Leave of Absence Request Form, the form must be initiated by the employee's department. Please see the procedures below.

Employees who require leave on a reduced work schedule basis should apply for a reduced workweek pursuant to the Temporary Reduced Workweek Schedules policy.

3. Medical Certification

An employee requesting PDL leave or transfer must provide medical certification from a health care provider.

A completed Medical Certification Form, or a doctor's note containing the information requested in the Medical Certification form, must be submitted when the employee submits the Leave of Absence Request Form by uploading the documentation in eWay, or submitting directly to the Human Resources Department. .

The address to submit the completed Medical Certification form or equivalent doctor's note is:

The City of San José
Human Resources – Employee Benefits
200 East Santa Clara Street, 4th Floor, Tower
San José, CA 95113
Phone (408) 535-1285
Fax (408) 999-0862
Email HRBenefits@sanjoseca.gov

Medical certifications must be received by Human Resources as follows:

a. For foreseeable events: An employee must provide the required medical certification before the leave begins.
b. For non-foreseeable events: An employee must provide the required medical certification within fifteen (15) calendar days after the City's request for certification.

Failure to provide the required medical certification within fifteen (15) days of the City's request may result in denial of the leave.

An employee's request for an extension or early return from a PDL leave must also be supported by updated medical certification.

D. Use of Paid Leave

Generally, PDL is unpaid leave. The PDL Act, however, allows the City to require that employees use accrued paid leave during PDL, i.e., have the accrued paid leave run currently with unpaid PDL, pursuant to the City's sick, vacation, personal and/or executive paid leave policies. The substitution of accrued paid leave occurs as follows:

1. An employee on PDL leave must use all accrued sick leave at the beginning of any otherwise unpaid PDL leave.
    a) Employees will not be required to use any accrued sick leave during the eligibility period for receipt of voluntary Long Term Disability Insurance benefits.
    b) An employee may elect to use accrued vacation leave during the eligibility period for receipt of voluntary Long Term Disability Insurance benefits.
2. An employee on PDL leave may elect to use any accrued vacation leave, executive leave, and/or personal leave during any portion of otherwise unpaid PDL leave.

The substitution of paid leave for PDL leave does not extend the total duration of such leave to which an employee is entitled.

Employees on leave accrue employment benefits, such as sick leave, vacation benefits, and retirement service credit, only when paid leave from the City is being substituted for unpaid leave and only if the employee would otherwise be entitled to such accrual.

E. Health Benefits and Insurance Premiums

While an employee is on PDL leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee continued to work. The employee is responsible for her portion of health benefits and insurance premiums. If accrued vacation leave, accrued sick leave, personal leave, executive leave and/or compensatory time are used during a PDL leave, the City will make payroll deductions to collect the employee's portion of health benefits and insurance premiums. If the employee is on unpaid leave, including during the receipt of voluntary Long Term Disability wage replacement benefits, the employee must continue to make payments of her share of health benefits and insurance premiums, either in person or by mail. The payment must be received by the first day of each month. If the payment is more than thirty (30) days late, the employee's health and insurance benefits may be dropped for the duration of the leave because of the employee's failure to pay the employee's contribution. The employee's health and insurance benefits coverage will be terminated effective the end of the period for which premiums were paid and the employee will be responsible for any charges incurred after such date. The City will provide at least fifteen (15) days' notification prior to the employee's loss of health and insurance benefits coverage. Please see Procedures below.

If the employee does not return from a PDL leave, the City can recover its share of health benefit premiums paid by the City during unpaid periods of PDL leave under certain circumstances.

F. Seniority

An employee on unpaid PDL leave remains an employee and the leave will not constitute a break in service. An employee who returns from an unpaid PDL leave will return with the same seniority the employee had when the leave commenced. To the extent that any accrued sick leave, accrued vacation leave, executive leave, and/or personal leave are used during a PDL leave, the employee will accrue seniority service credit during the portion of such paid leave.

G. Return to Work

Before an employee will be permitted to return from a PDL leave or transfer, the employee may be requested to provide certification from his or her health care provider that he or she is able to return to work.

If the employee can return to work with limitations, the City will evaluate those limitations and, if possible, will accommodate the employee as required by law.

Employees returning from a PDL leave are entitled to reinstatement to the same or comparable position consistent with applicable law, Memorandum of Agreement or Benefits and Compensation Summary.

OTHER LEAVES OF ABSENCE

Leaves of absence with or without pay allow employees to take time off from their jobs for specific reasons, non-medical reasons with the approval of the appointing authority and return to their jobs at a later date.

The appointing authority or designated representative may grant an employee a leave of absence without pay not to exceed twelve (12) months for good and sufficient reason. The City Manager is the Appointing Authority for all City employees, excluding professional employees in the City Attorney's Office, employees of the City Auditor's Office, employees of the Independent Police Auditor's Office, and employees appointed by the Mayor and City Council.

A. Authorities

Provisions in applicable Memoranda of Agreement (MOA) regarding leaves without pay (excluding leaves qualifying under the Family and Medical Leave Act, California Family Rights Act, and Pregnancy Disability Leave Act) supersede this general policy.

San José Municipal Code, §3.04.1250
Each and every leave...shall specify clearly the date of commencement and the date of termination thereof.

San José Municipal Code, §3.04.1260
An initial leave [may be granted]...for a period not to exceed twelve (12) months. Extensions may be granted...not to exceed a total of twelve (12) months. Any leave granted ...may be revoked or canceled at any time by the appointing authority by notice in writing....

San José Municipal Code, §3.04.1270
The provisions in a memorandum of understanding [Memorandum of Agreement]...concerning leaves of absence without pay shall supersede...the provisions of this code.

San José Municipal Code, §3.04.1280
[An employee returning from leave of absence without pay] is entitled to return to the position [classification] held by him before the...leave; or [if that position has been eliminated] to a position of like status and pay if such position exists... [unless the] employee does not return to his employment on the first working day following expiration of such leave. [If an employee returns]

after the first working day and before the 60th working day...the city manager may return said employee to duty upon showing of good cause therefore.

B. Application Process

Any unpaid absence from work that exceeds two weeks must be requested on a Leave of Absence Request Form, must specify the beginning and ending dates of any unpaid leave, and must be approved by the Department Director or designee.

If the employee is unavailable to initiate the Leave of Absence Request Form, the form must be initiated by the employee's department.

C. Extensions

An extension beyond a twelve (12) month leave of absence without pay may be granted to the extent that such an extension is permitted under the applicable MOA. Any extension must be requested in writing before the end of the approved leave. No extension is permitted for police officers.

D. Cancellations

The appointing authority may cancel a leave of absence without pay upon thirty (30) days written notice sent by registered mail to the employee.

E. Health Benefits and Insurances Premiums

Once an employee has exhausted their leave entitlements under FMLA/CFRA/PDL, they will be eligible for the continuation of benefits as follows:

1. Health Insurance: Coverage under the health plans may only be continued through COBRA. Under COBRA, the employee is responsible for paying both the employee's and City's portions of health and insurance premiums, as well as any applicable COBRA administrator fees.

2. Life, LTD, AD&D Insurance: Coverage of Basic and/or Voluntary Life, and/or Voluntary Long-Term Disability and/or Voluntary AD&D insurance can be continued under the terms of the corresponding policies. The full premiums must be paid monthly by the employee by the first day of each month.

   If the payment for continued health insurance, Basic and/or Voluntary Life insurance and/or Voluntary Long-Term Disability, and/or Voluntary AD&D insurance is more than thirty (30) days late, coverage will be dropped for the duration of the leave.

Employee benefits that were in effect prior to a leave of absence without pay will not be automatically reinstated upon return from leave. An employee whose health, dental, and other insurances have lapsed during unpaid leave must contact Human Resources after returning from leave to reinstate benefits. The effective date of reinstated coverage will be after required enrollment form(s) are submitted and the appropriate premiums have been paid by payroll deductions and may vary for each benefit.

F. Seniority

An employee shall not receive seniority service credit for time spent on leave without pay.

G. Accrued Vacation and Compensatory Time

All accrued vacation and compensatory hours will be carried over until the employee either returns from an approved leave of absence or separates from City service, unless the employee indicates to the contrary on the Request for Leave of Absence Application.

H. Step Increases

Unpaid leave will not count toward a step increase. After return from leave, the employee's anniversary date for a step increase will be changed to reflect the leave of absence without pay.

I. Salary Continuation (Long-Term Disability) Insurance

An employee who has salary continuation insurance and will be on leave for more than thirty (30) calendar days for medical reasons will submit their claim to the insurance carrier following the carrier's procedures.

PROCEDURES

Employee	Employee notifies immediate supervisor and/or HR Department Liaison for the need to take leave of absence that extends beyond two weeks, including a leave of absence due to a job-related illness or injury. Notification may be provided by submitting a Leave of Absence Request Form for absences related to FMLA, CRFA, PDL, and other leaves of absence. When form submission is not practicable, notification may be given verbally to the employee's supervisor. Ideally, employees should submit a Leave of Absence Request Form 30 days ahead of leave. Employee is required to code paid leave hours for their normal working schedule per the use of accruals for the type of leave as noted in the leave policy.
Supervisor	Supervisor provides the employee information on how to submit a Leave of Absence Request Form. If the employee is unavailable, the supervisor will complete the Leave of Absence Request Form upon learning of the employee's need for leave. Supervisor provides employee with the City's Leaves of Absence Policy and obtains information as needed to answer employee's questions, if any. Upon an employee's submission of the Leave of Absence Request Form, the supervisor is immediately made aware of the request.

	The HRIS system will route the request form for department approvals as needed. Supervisor shall confirm with the timekeeper how the employee's scheduled leave should be coded.
Supervisor/Timekeeper	Upon request by Supervisor or assigned in the Timekeeper duties, Timekeepers work with employee to complete Leave Schedule Form. Review leave schedule for accuracy, ensuring that all absence periods have the correct Time Reporting Codes (TRC) applied in order of the city policy requirements. Contact HR for assistance determining what codes to use if entering time prior to HR response on eligibility. Timecard reporting codes must accurately reflect the hours and type of leave taken.
Department Liaison	Department Liaison receives the Leave of Absence Request Form and eligibility notes completed by HR. The Department Liaison approves and obtains leave approval from the Department Director or designee, as applicable.
Department Director	As applicable, Department Director or designee reviews, approves Leave of Absence Request Form.
Department Liaison	Department Liaison responds to questions regarding the approved Leave of Absence Request Form, required Medical Certification, and Leave Schedule Form. The approved Leave of Absence Request Form is provided to the employee automatically via e-mail and Department Liaison will provide a copy to the employee upon request. If employee is requesting leave for their own serious health condition and is eligible to file a claim with their Long-Term Disability (LTD) plan provider, the Department Liaison will provide an LTD Claims Flyer to the employee, which includes instructions for LTD claim submission.
Employee	Employee is responsible for reading the information that is contained in the Leave of Absence Request Form and all subsequent emails following initial submission and responding to City's request for information. Employee is required to submit medical certification (either in a completed Medical Certification form or a doctor's note containing the information requested in the Medical Certification form) to the Human Resources Department before the leave begins or within 15 days after City's request for medical certification. Employee shall contact supervisor/department immediately regarding any need for an extension of the duration of leave, early return from leave, or to report changes to the original reason for requesting leave.

HR/Employee Benefits	HR/Employee Benefits reviews the Leave of Absence Request Form. Upon review and determination of eligibility, Timekeeper and/or Liaison, will receive an email notification that Human Resources has completed the review and eligibility details of the Request, which indicates what portion of the leave time will be designated as protected and/or unprotected. For a leave of absence request not covered by FMLA/CFRA, PDL, or any other protected leave, the department can approve, deny, and/or suggest alternative timing. HR/Employee Benefits notifies employee by mailing or emailing to the employee's preferred address the FMLA, CFRA, and PDL Notice of Eligibility, Rights and Responsibilities and/or FMLA, CFRA, and PDL Designation Notice. HR/Employee Benefits will advise employee of the employee's share of cost for benefits continuation while on leave.
Employee	Employee shall provide instruction to HR/Employee Benefits staff regarding the continuation of benefits while on unpaid leave. If the employee provides incomplete information in the Continuation of Benefits section of the Leave of Absence Request Form, the City will continue to pay for the benefits received by the employee until such time that the City is notified by the employee to lapse their benefit coverage and the employee will be responsible for paying the employee's share of premiums during this time. Employee is responsible for paying the employee's share of premium while on unpaid leave. Failure to submit payment within 30 days of premium due date will result in notification of pending termination of benefits. The City will provide 15 days' notification prior to the employee's loss of coverage. If no payment is received within 15 days of the pending termination of benefits notice, the employee's coverage will be terminated for failure to pay premiums. Once an employee has exhausted FMLA/CFRA leave, and continues to be out on unpaid leave, the terms and conditions set forth in the Other Leaves Without Pay section of this Policy will apply to such leave.
Supervisor/ Timekeeper	Upon conclusion of leave, supervisor/department, or Timekeeper submits a Return from Leave date within the Leave of Absence Request Form. Supervisor/department shall consult with the City's Return to Work Coordinator regarding any return to work issues, if any.

Employee	Employee shall contact HR/Employee Benefits immediately upon return from leave to discuss benefit enrollment options if benefits were discontinued during the Leave of Absence. Benefits will not automatically be reinstated. Failure to contact HR/Employee benefits within the first 30 days after return from leave date may result in the employee's inability to enroll in benefit programs. The effective date of reinstated coverage will depend upon each insurance plan.

For additional information or assistance:

Internet Website:	https://www.sanjoseca.gov/your-government/departments-offices/human-resources/leaves-of-absence
City's Intranet Website:	http://www.sjcity.net
E-mail:	HRBenefits@sanjoseca.gov
Phone:	Human Resources Main Number: (408) 535-1285

Approved:

/s/ ~~Jennifer Schembri~~Aram Kouyoumdjian Director of City Manager's Office of Employee Relations/ ~~Director of~~ Human Resources Department	~~2/5/24~~Month, day, 2026 Date

Approved for posting:

/s/ Jennifer A. Maguire City Manager	~~2/5/24~~Month, day, 2026 Date