

**CITY OF  
AMERICAN CANYON  
FMLA/CFRA**



**POLICY  
AND  
ADMINISTRATIVE  
GUIDELINES**

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### FREQUENTLY ASKED QUESTIONS

**1. Purpose**

To define and implement the policy to be followed with respect to administration of the Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) and City of American Canyon Human Resources Policies and Practices Section 6.9(k). To the extent that there are any inconsistencies between this policy and existing memoranda of understanding covering employees in any representation unit, the provisions of the memoranda of understanding shall prevail.

**2. Policy Summary**

FMLA and CFRA ensure paid or unpaid time off for certain family care or medical care. The FMLA is enforced by the U.S. Department of Labor. The CFRA is state law that is enforced by the Department of Fair Employment and Housing. The City's FMLA/CFRA Administrative Guidelines provide detailed information on the application of the policy.

**3. Definitions**

**3.1 Eligible Family Members**

**Child:** A "child" is defined as a son or daughter (including a biological, adopted or foster child, a step child, a legal ward or a child of a person standing in loco parentis) who is under 18 or age 18 or older if incapable of self-care because of a mental or physical disability that substantially limits one or more of the major life activities of an individual.

**Loco Parentis:** A person acting in loco parentis has or had day-to-day responsibilities to care for and financially support a child.

**Parent:** A "parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child; it does not include parents "in law." A biological or legal relationship is not necessary.

**Registered Domestic Partner:** A "registered domestic partner" is a member of a same-sex couple or a person of an opposite-sex couple if one or both of the opposite sex couple is over the age of 62 and other eligibility criteria established by California Family Code Section 297 are satisfied. In any case, there must be a Declaration of Domestic Partnership on file with the California Secretary of State.

**Spouse:** A "spouse" refers to a legally married spouse as defined by state law. It does not include a registered domestic partner.

**3.2 Health Care Provider:** A "health care provider" may be a physician, surgeon, nurse practitioner, nurse midwife, podiatrist, dentist, clinical psychologist, chiropractor, optometrist, clinical social worker, Christian Science practitioner listed with the First Church of Christian Scientist, Boston, and any health care provider recognized by the City's group health plan. The health care provider can be licensed either in the United States or any other country.

**3.3 Serious Health Condition:** A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- a) Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility (including any period of incapacity or any subsequent treatment or recovery), or any subsequent treatment in connection with the inpatient care; or

- b) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
- 1) a period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment two or more times by a health care provider, or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider;
  - 2) any period of incapacity due to pregnancy, birth or related medical condition, or for prenatal care;
- NOTE:** Under CFRA, an employee's pregnancy is not a serious health condition, but it is a serious health condition under FMLA. Under California's pregnancy disability leave law, an employee has the right to a leave of up to four months if she is disabled due to pregnancy.
- 3) any period of incapacity or treatment for incapacity due to a chronic serious health condition;
  - 4) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
  - 5) any period of absence to receive multiple treatments 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.

**NOTE:** Serious Health Condition does not ordinarily include the following: the common cold, the flu, ear aches, upset stomach, minor ulcers, or headaches other than migraine, unless they result in incapacity for more than three calendar days and the employee has received treatment in accordance with section 3.3(b) of this policy. Mere absence from work does not by itself establish incapacity.

#### 4. FMLA/CFRA Eligibility

4.1 An eligible employee is an employee who:

- a) has been employed by the City for at least 12 months, and
- b) has actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

The 12 months of service in (a) above need not be in consecutive months, and if an employee is on the payroll during any part of a week, including any periods of paid or unpaid leave during which other benefits or compensation are provided by the City (i.e., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment.

The 1,250 hours in (b) above are "hours worked" under the Fair Labor Standards Act and do not include time off, even if paid. The determination of whether an employee has worked for 1,250 hours shall be made as of the date leave commences.

4.2 Subject to Section 4.3, eligible employees may be entitled to up to 12 weeks of FMLA/CFRA leave in a 12-month period. The calculation of the 12-week FMLA/CFRA leave is on an individual basis and begins on the first day that the employee takes leave, paid or unpaid, for the qualifying medical event or new child. The commencement of the 12-month eligibility period is measured forward from the date an employee's first FMLA/CFRA leave begins. The next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. No carryover of unused FMLA/CFRA leave from one 12-month period to the next 12-month period is permitted.

FMLA/CFRA leave for eligible employees who work less than full time is calculated on a pro rata, or proportional, basis.

- 4.3 Under CFRA, an employee may be entitled to up to 12 weeks of leave to care for a registered domestic partner or child of a registered domestic partner.

However, because FMLA does not recognize registered domestic partners, the employee may still be entitled to up to 12 additional weeks of leave for an FMLA qualifying event. If an employee acts in loco parentis to the child of the employee's registered domestic partner, the employee would not be entitled to an additional 12 weeks of leave.

- 4.4 The City may require the employee to provide reasonable documentation relating to eligibility, including but not limited to a simple statement from the employee, a child's birth certificate, a court document, a Declaration of Domestic Partnership, a marriage certificate, etc.

- 4.5 Leave for mothers and fathers: The right to take FMLA/CFRA leave applies equally to male and female employees. In other words, a father, as well a mother, can take family leave for the birth, care, placement for adoption or foster care of a child.

## **5. Basis for FMLA/CFRA Leave**

- 5.1 There are four circumstances under which the City is required to grant FMLA leave:

- 1) for the birth of a child and to care for the newborn child;
- 2) for placement with the employee of a child for adoption or foster care;
- 3) to care for a child, parent, or spouse with a serious health condition; and
- 4) because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

- 5.2 The circumstances in which the City is required to grant CFRA leave are the same as in section 4.1 except that an eligible employee is also entitled to a CFRA leave:

- 1) for the birth of the child of the registered domestic partner and to care for the newborn child of the registered domestic partner; and
- 2) to care for the registered domestic partner, or child of the registered domestic partner with a serious health condition.

## **6. Time Off Under FMLA/CFRA**

- 6.1 The use of an employee's accrued leave balances runs concurrently with the use of FMLA/CFRA leave. FMLA/CFRA leave includes all time either paid or unpaid as outlined in the City's Human Resources Policies and Practices Manual.

- 6.2 Under FMLA/CFRA leave, an employee is required to use all sick leave, vacation, CTO, management leave, and holiday time off prior to the authorization of unpaid leave to care for the employee's child, spouse or parent who has a serious health condition. This rule applies also to CFRA leaves relating to registered domestic partners and their children.

An employee is required to use all available vacation, holiday, management leave, and CTO prior to authorization of unpaid leave to care for a new child, including the child of a registered domestic partner.

An employee is required to use all available sick leave, vacation, management leave, CTO, and holiday balances prior to authorization of unpaid leave for the employee's own serious health condition. Both FMLA and CFRA allow intermittent or reduced schedule leaves.

- 6.3 If both parents are City employees, the combined total of their entitled family leave to care for a new child is 12 weeks.

## 7. Coordination of Leaves

- 7.1 FMLA/CFRA – FMLA and CFRA run concurrently except for pregnancy disability leaves and leaves for the registered domestic partner. If the employee acts in loco parentis for a child of the employee's registered domestic partner, FMLA and CFRA run concurrently for a leave to care for the child of the registered domestic partner. However, if the employee does not act in loco parentis for that child, FMLA and CFRA would run separately for a leave to care for the child of the registered domestic partner.

Pregnancy Disability Leave (PDL) with FMLA: PDL and FMLA run concurrently.

PDL with CFRA: PDL does not run concurrently with CFRA; they are two separate and distinct rights. Therefore, at the conclusion of PDL, the employee is still eligible to take up to 12 workweeks of CFRA leave to the extent that CFRA leave has not previously been used in the 12-month period.

Parental leave and PDL: Parental leave is separate and distinct from the use of PDL.

Parental leave and CFRA: Parental leave and CFRA leave time may run concurrently.

Parental leave and FMLA: Parental leave is separate and distinct from the use of FMLA leave but may run concurrently.

## 8. Notification

- 8.1 Employee Notice Requirements: The employee should contact his/her supervisor as soon as the need for FMLA/CFRA leave is realized. An employee is not required to invoke FMLA/CFRA by name to satisfy the notice obligation, but must provide sufficient specific information to the City to place the City on notice that the condition may be FMLA/CFRA-qualifying. The notice provided by the employee should include information with respect to the anticipated timing and duration of the leave. The employee notice may be either verbal or written.

For intermittent or reduced-schedule FMLA/CFRA leaves, only a single notice is required. The employee must inform the City of the schedule for any treatment, if known, and of the proposed schedule of intermittent leave or the proposed reduced-schedule leave.

If the need for a leave is foreseeable, an employee must provide the City with at least 30 days' notice of the need for leave, the reason, and dates. If 30 days' notice is not possible or if the leave is unforeseeable, the employee must provide notice as soon as practicable. In most circumstances, this means within one to two business days of learning the need for the leave.

- 8.2 Preliminary Designation: If the City knows of the reason for a leave but has been unable to confirm that the leave qualifies under the FMLA/CFRA, or if the City has requested medical certification which has not yet been received, or if the City and employee are in the process of obtaining a second or third medical opinion, the City should make a preliminary designation of FMLA/CFRA leave. In such case, the City must notify the employee at the time leave begins or as soon as the reason for the leave becomes known that the leave is being conditionally designated as FMLA/CFRA leave. Upon receipt of the necessary information from the employee or the medical certification that confirms the leave is for an FMLA/CFRA reason, the conditional designation becomes final and the City should so notify the employee. If the medical certification fails to confirm that the reason for the absence was an FMLA/CFRA reason, the City must withdraw the designation with written notice to the employee.
- 8.3 Retroactive Designation: If the City has knowledge that a leave qualifies as FMLA/CFRA leave but fails to so designate the leave and notify the employee within the time allowed, the City may not later retroactively designate the leave as FMLA/CFRA leave. However, if the City only learns after the fact that a paid or unpaid leave was for an FMLA/CFRA qualifying reason, it may retroactively designate the leave as FMLA/CFRA leave by promptly notifying the employee. If the leave is ongoing and the City had knowledge of the FMLA/CFRA qualifying reason but failed to properly designate the leave, the City may prospectively designate the remainder of the leave as FMLA/CFRA leave, starting from the date of notification to the employee of the designation.

## 9. Medical Certification

- 9.1 If an employee takes leave due to his or her own serious health condition or that of a family member (including, under CFRA only, a registered domestic partner and/or the child of the registered domestic partner), the City may require that the need for time off under FMLA/CFRA be verified by a medical certification signed by the health care provider for the employee or family member. At the time that the City requests certification, the City must advise an employee of the anticipated consequences of the employee's failure to provide adequate certification.

This certification may be requested following the employee's notice of the need for a leave due to a serious health condition. The City should give the employee written notice of the need for medical certification within two business days of the leave request or within two business days after the leave has begun if the leave was unforeseeable.

The City may request certification at some later date if the City subsequently has reason to question the appropriateness of the leave or its duration.

- 9.2 Under FMLA/CFRA, the City may not require the disclosure of a specific serious health condition (diagnosis) of an employee or family member. If the FMLA/CFRA leave is for the employee's own serious health condition, the certification may state that, in the health care provider's opinion, the employee has medical conditions which constitute a serious health condition. If the leave is to care for a family member, the City may require certification of the condition and the need for the employee's involvement in the case. The certification need not disclose the serious health condition involved, but must include a statement that, in the opinion of the health care provider, the serious health condition warrants the participation of a family member to provide care during a period of treatment or supervision.

The City can only ask for certain types of information which generally include the following:

- the date the condition commenced, if known;
- the probable duration of the condition;
- an estimate of the time period the health care provider believes the employee needs as leave to care for the child, parent, spouse, registered domestic partner, or child of the registered domestic partner and
- a statement that the employee is unable to work or to perform one or more of the essential functions of the job due to the condition.

- 9.3 For second or third medical opinions or recertification of medical condition, the following shall apply:

- If the FMLA/CFRA leave is for the employee's own serious health condition, the City may require, at its expense, a second opinion from a health care provider that the City chooses. The health care provider designated to provide a second opinion will not be one who is employed on a regular basis by the City.
- If the second opinion differs from the first opinion, the City or the employee may require, at City expense, the opinion of a third health care provider designated or approved jointly by the employer and the employee. The opinion of the third health care provider shall be considered final and binding on the City and the employee.
- Pending receipt of additional opinions, the employee's leave shall be provisionally deemed FMLA/CFRA leave and the employee shall be entitled to benefits of FMLA/CFRA leave pending resolution of the certification issues.
- The City must provide the employee with copies of the second and/or third medical opinions, at the employee's request, normally within two business days.



- The City cannot require a second or third opinion concerning the serious health condition of a child, parent, spouse, registered domestic partner or child of the registered domestic partner of an employee.
- 9.4 Recertification: If the medical certification identifies the estimated duration of the incapacity, no recertification may be requested until the expiration of that period. For intermittent or reduced schedule leaves, recertification may not be requested before the minimum period specified on the certification expires unless the employee requests a leave extension, or if circumstances from the previous certification significantly change, or if the City receives information casting doubt on the validity of the certification or reason for absence. If a leave is for a pregnancy or a chronic, permanent, or long-term condition, the City may request a recertification only if it is connected with an employee absence and is not more frequent than every 30 days. For all other circumstances, the City may ask for recertification at reasonable intervals, but no more often than every 30 days. The City may not require a second or third opinion on a recertification.

**10. Continuation of Health Benefits**

- 10.1 An employee taking paid or unpaid time off under FMLA/CFRA is entitled to continue to participate in any health benefit plan on the same basis as active employees and the City must continue the same type and level of coverage. The City is required to continue coverage for the duration of the FMLA/CFRA leave that is unpaid. If an employee exhausts CFRA leave to care for the registered domestic partner and has not used all of the FMLA leave entitlement, the City is required to provide health benefits for the duration of any remaining unpaid FMLA leave.
- 10.2 The City is required to continue coverage not only for the employee but also for family members if covered before the employee's leave under FMLA/CFRA.
- 10.3 To the extent the employee is responsible for payment of a premium, that responsibility shall continue during the FMLA/CFRA leave.

City's obligation to maintain health benefits ends upon termination of the employment relationship under the following circumstances:

- 1) Employee notifies the City that he or she does not intend to return from the FMLA/CFRA leave;
  - 2) Employee fails to return after exhausting the FMLA/CFRA leave; or
  - 3) The employment relationship would have terminated regardless of FMLA/CFRA leave.
- 10.4 If the City changes or adds health benefits or plans while an employee is on unpaid leave under FMLA/CFRA entitlement, the changes apply to the employee on leave to the same extent as if the employee were continuously employed. Any changes in premium rates, including an increase or decrease in the employee's share of the premiums, also apply.

**11. Return from Leave Under FMLA/CFRA**

- 11.1 At the conclusion of leave under FMLA/CFRA resulting from an employee's own serious health condition, the City may require a medical certification from the employee's health care provider, confirming that the employee is either able or unable to return to work with or without restrictions.
- 11.2 Upon return from FMLA/CFRA, an employee will be reinstated to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions, unless the employee is no longer able to perform one or more essential functions.
- 11.3 If an employee on FMLA/CFRA would have been laid off had he or she not been absent, or if the employee's job is eliminated during the absence and no equivalent or comparable job is available, then the employee would not be entitled to reinstatement.
- 11.4 An employee's use of FMLA/CFRA will not result in the loss of any employment benefit that the employee earned before using FMLA/CFRA.

11.5 Neither the cash-back subsidies nor the Plan Selection Incentive are subject to continuation during an unpaid FMLA/CFRA leave, but will be reinstated as “equivalent benefits” upon return from leave.

**12. Employee Protection**

12.1 No employee shall be denied the exercise of any right provided by FMLA/CFRA and/or suffer retaliation and/or discrimination for involvement in any proceeding under or relating to FMLA/CFRA.

# **ADMINISTRATIVE GUIDELINES**

## **INTRODUCTION**

The purpose of this manual is to provide clarification and guidance in administration of FMLA/CFRA within the City of American Canyon. This document is intended to be an administrative guideline to help Human Resources, supervisors, and managers administer provisions of FMLA/CFRA.

## **ELIGIBILITY**

Employees who have at least 12 months of service, and who have worked at least 1,250 hours during the previous 12-month period are eligible for FMLA/CFRA leave. The FMLA/CFRA leave period is calculated from the first day that the employee takes FMLA/CFRA leave, whether paid or unpaid, for the first qualifying event.

### **12 months of service:**

The 12 months of service need not be consecutive months worked and may be intermittent. For example: an employee worked three months in 2003, four months in 2003 and seven months in 2004. This employee meets the requirement of 12 months of service.

If an employee is on the payroll during any part of the week, the week counts as a week of employment. For example: an employee works two days of the workweek and takes three days off of paid or unpaid time for the remainder of the workweek. That week would count as a week of employment.

### **Worked at least 1250 hours:**

"Hours worked" includes only those hours actually worked. Unpaid leave and paid leave (vacation, CTO, HIL, or sick leave) as well as FMLA/CFRA leave time are not included in calculating the 1250 hours.

Overtime hours are included in calculating the 1250 hours worked.

The 1250 hours must have been worked during the 12-month period immediately preceding commencement of the leave.

### **Military Service:**

**12 months:** Upon return from military service, an employee should be given credit for the period of military service towards the months-of-employment eligibility requirement. Each month served performing military service counts as a month of employment by the employer. For example: an employee who has been employed for six months is ordered to active service for nine months. Upon returning, the employee must be considered to have been employed for 15 months and is considered to have more than the required 12 months for purposes of FMLA/CFRA eligibility.

**1250 hours:** An employee returning after military service should be credited with the hours of service that would have been performed but for the period of military service. In order to determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations.

For example: an employee who works 40 hours per week for the City returns to employment

following 20 weeks of military service and requests FMLA leave. To determine eligibility, the hours she/he would have worked during the period of military service (20 X 40=800) must be added to hours actually worked during the 12-month period prior to the start of the leave to determine if 1250-hour requirement was met.

### **CALCULATION OF LEAVE TIME**

Employees are entitled to up to 12 weeks of time off whether paid or unpaid for the purposes of FMLA/CFRA during a 12-month period. The commencement of the 12-month period is measured forward from the date an employee's first FMLA/CFRA leave begins.

- Full-time employees, who work an 80-hour schedule per pay-period, are entitled to up to 480 hours of FMLA/CFRA leave in a 12-month period.
- Part-time employees will have their FMLA/CFRA period prorated to the employee's regular workweek. For example: If an employee works 64 hours per pay period (4/5<sup>ths</sup> time), they are entitled to up to 384 hours of FMLA/CFRA leave. If an employee works 40 hours per pay period (half time), that employee is entitled to up to 240 hours of FMLA/CFRA leave.

#### **Example of Multiple Events:**

In February, an employee is absent from work for four weeks due to an unexpected surgery for his first FMLA/CFRA qualifying event. Upon return to work, from March to May, the employee has taken off four to six hours per week for continuing treatment, totaling 80 hours (two weeks) of sick leave used. In September, the employee has requested an additional six weeks of time away from work to care for his father who has an FMLA/CFRA qualifying illness. The employee has used only six weeks of his FMLA/CFRA time available; therefore this request should be approved.

### **TIME OFF UNDER FMLA/CFRA**

#### **Mandatory Use of Accrued Leave:**

FMLA/CFRA leave can be either paid or unpaid leave. If an employee or the employee's family member has a serious health condition, the employee must first use all available sick leave, vacation, holiday, management leave, and CTO balances during the FMLA/CFRA related absence. In the case of care for a new child (including under CFRA only, the child of an employee's registered domestic partner), an employee is required to use all available vacation, holiday, management leave, and CTO leave prior to authorization of unpaid leave to care for that child. An employee may not choose to defer the use of FMLA/CFRA leave until after his/her leave balances have been exhausted.

#### **Intermittent and Reduced Schedule Leave:**

Both FMLA and CFRA provide for leave on an intermittent or reduced-schedule basis for:

- a) the serious health condition of the employee or family member; **or**
- b) the birth or placement of a child.

Only the amount of leave actually taken while on intermittent or reduced schedule leave may be charged as FMLA/CFRA leave. Employees are not allowed to take more FMLA/CFRA leave than necessary to address the circumstances that cause the need for leave.

The City accounts for leave in increments of 15 minutes or ¼ hour.

Employees needing intermittent/reduced-schedule leave for foreseeable medical treatment must work with their supervisors/managers to schedule the leave so as not to unduly disrupt the business operations.

Example of Intermittent Leave:

An employee, who was in a car accident, has requested time off for physical therapy. The doctor's note indicates the employee will need to attend appointments two to three times per week, two hours per visit." If the employee's time off exceeds what is specified in the medical certification, additional medical certification should be obtained.

Example of Reduced Schedule:

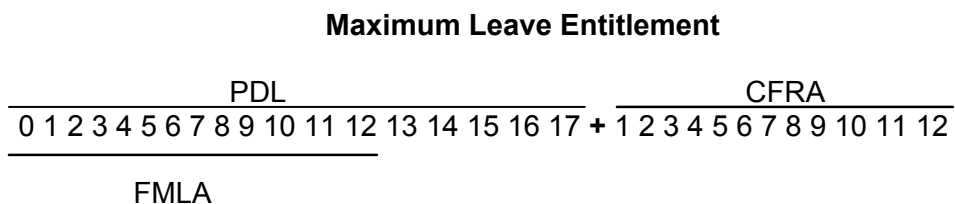
An employee requests to have every Monday and Friday off work for a period of six weeks while she takes chemotherapy treatment. Her appointments are on Friday mornings and the time off on Monday is needed for her to recuperate. The doctor's certification verifies the time is needed.

**RELATIONSHIP TO PREGNANCY LEAVE**

CFRA – Under CFRA, an employee's pregnancy is not considered a serious health condition that would allow her to take CFRA leave. However, an employee may be entitled to leave under CFRA as well as FMLA for the pregnancy disability of an employee's eligible family member. A woman who is disabled by pregnancy, childbirth, or related conditions is entitled to up to four months of leave (for a full-time employee who works five eight-hour days per week, four months means 88 working and/or paid eight-hour days of leave entitlement, based on an average of 22 working days per month for four months) under the Pregnancy Disability Leave (PDL) law. Where an employee has used all four months of PDL before the birth of a child and her health care provider determines that a continuation of the leave is medically necessary, the City may but is not required to allow an eligible employee to utilize CFRA leave prior to the birth of her child. The City is not required to provide more CFRA leave than the amount to which the employee is otherwise entitled. If the child has been born by the end of the four months of PDL, the employee may take "baby bonding time," if she has not previously exhausted CFRA leave entitlement time.

FMLA – Under FMLA, a pregnancy is a serious health condition that would allow family leave. However, the FMLA leave runs concurrently with PDL as long as the employee is notified within the proper time frame that her PDL is also being considered as FMLA leave. This means that the employee who uses all four months of PDL will exhaust her FMLA leave entitlement during her PDL.

**The diagram below shows an employee taking the maximum time granted under PDL (4 months = 17.3 weeks) followed by CFRA leave (12 weeks) for baby bonding. CFRA does not run concurrently with FMLA/PDL.**



- PDL time available is four months, or 88 working days, or 17 weeks plus three days, or 704 hours, of which 12 weeks, or 60 days, or 480 hours is concurrent FMLA.
- Four months is the maximum leave entitlement; however, the employee must be designated as disabled because of pregnancy, childbirth, or related medical condition by her treating physician, if required by the employer.
- CFRA taken after a FMLA/PDL leave is 12 weeks/60 days/480 hours. CFRA may be taken for purposes of bonding with the baby.

**FMLA/CFRA TIME OFF FOR A REGISTERED DOMESTIC PARTNER**

FMLA/CFRA – FMLA and CFRA run concurrently except for pregnancy disability leaves and leaves for the registered domestic partner and, in some cases, the child of an employee’s registered domestic partner. If the employee acts in loco parentis to the child of the employee’s registered domestic partner, FMLA and CFRA would run concurrently. However, if the employee does not act in loco parentis, FMLA and CFRA would run separately for a leave to care for that child.

**Example 1:**

A full-time employee with five years of City service takes eight weeks off work to care for his registered domestic partner starting in February through the end of March and returns to work in April. This time is designated as CFRA leave. On October 5<sup>th</sup>, the employee needs to take six weeks off work to care for his father who suffered a serious illness. This employee would be eligible for up to 12 weeks of FMLA time to care for his father even though the employee had already used eight weeks of CFRA time to care for his registered domestic partner. The first four weeks of leave for the father is designated as FMLA/CFRA and the remaining two weeks is FMLA leave only.

<u>CFRA</u>	<u>CFRA/FMLA</u>	<u>FMLA Only</u>
8 wks	4 wks	2 wks

**Example 2:**

A full-time employee with five years of City service takes 12 weeks of FMLA/CFRA off work starting in February thru April to care for his father who suffered serious health condition. On June 1<sup>st</sup>, the employee requests to take six weeks off work to care for his registered domestic partner who suffered a serious health condition. The employee would not be eligible for additional time off under CFRA to take care of his registered domestic partner because his CFRA leave was previously exhausted by his leave to care for his father. In this case, unlike the first example, FMLA/CFRA ran concurrently.

<u>FMLA/CFRA</u>	<u>CFRA Denied</u>
12 wks	6 wks

**NOTIFICATION**

Employee Notice: There are circumstances when an employee is aware of the need for FMLA/CFRA leave in advance. For example:

- Scheduled surgery
- Continuous medical treatment
- Birth or adoption

In these circumstances, the employee must provide the City at least 30 days' advance notice of the need for leave, the reason and dates. If the 30-day notice is not possible, or the qualifying event is not foreseeable, the employee should contact his/her supervisor as soon as practical. In most cases this means within one to two business days of learning of the need for leave. The employee must request a leave but need not specifically mention FMLA/CFRA leave in order to be eligible for FMLA/CFRA leave. The City must have sufficient information to be able to understand that the employee needs leave for a qualifying reason.

The employee's request for time off may be made verbally or in writing; however, the employee is still required to complete an Absence Request Form.

The City has the responsibility to provide a written notice designating the leave as FMLA/CFRA leave and detailing the expectations and obligations of the employee during the leave period when it has sufficient information to be able to understand that the employee needs leave for a qualifying reason. This FMLA/CFRA Notification Form (see Attachment 2) should be used when the reasons for the leave clearly meet the eligibility requirements.

If an employee is absent for more than three consecutive days, the City preliminarily designates the leave time as FMLA/CFRA until acceptable medical certification has been provided. The Preliminary Designation Form (see Attachment 3) is used when the employee has been absent for more than three consecutive days and the reason for the leave is unknown but suspected to be for a serious health condition. That form requires the employee to submit a medical certification within 15 calendar days. Upon receipt of medical certification, the FMLA/CFRA Notification Form (see Attachment 2) should be issued to the employee notifying him/her whether he/she qualifies for FMLA/CFRA leave. If the medical certification form is not received within the 15-day period, a requested leave would not normally be designated as FMLA/CFRA. However, the City may determine, on a case-by-case basis, whether there is justification for approval of an FMLA/CFRA leave if the medical certification is not returned in a timely manner.

Because the employee need not specifically request FMLA/CFRA leave by name, it is important that the supervisor or manager recognize circumstances that may trigger FMLA/CFRA notification. For example: an employee who frequently calls in with migraines, chronic asthma, diabetes, or back pain may qualify under FMLA/CFRA leave for those absences. This list is not inclusive; and, the policy should be referred to for a detailed description of qualifying events.

Written notice confirming the employee's eligibility must be provided to the employee, normally within two business days. If verbal notice is given to the employee, written notice must be provided to the employee no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday.

*Retroactive Designation:*

If the City has knowledge that a leave qualifies as FMLA/CFRA leave but fails to designate the leave and notify the employee, the City may not retroactively designate the leave time as FMLA/CFRA. If the City only learns after the fact that the leave is for FMLA reason, it may retroactively designate by promptly notifying the employee. If leave is on-going and the City had knowledge of the FMLA/CFRA reason but failed to designate, it may prospectively designate the remainder of any leave by promptly notifying the employee.



## **MEDICAL CERTIFICATION**

If an employee takes leave due to a serious health condition or that of an eligible family member, the City may require that the need for time off be verified by a medical certification such as Certification of Health Care Provider form (see Attachment 4) signed by a health care provider for the employee or an eligible family member. This certification may be requested following the employee's notice of the need for a leave due to a serious health condition. The City may not require the disclosure of a specific serious health condition (diagnosis) of an employee or an eligible family member. The employee may opt to identify a serious health condition, but identification of the specific condition is not required by the City. The City may request certification at a later date if the City subsequently has reason to question the appropriateness of the need for leave or its duration.

Pending receipt of the medical certification, the City should preliminarily designate the leave time as discussed above. If the employee provides an incomplete certification, the City must advise the employee of the deficiency and provide an opportunity for the employee to correct it. The Medical Certification Clarification Form (see Attachment 5) should be sent to the employee, giving him/her an additional 15 days to provide clarification. The preliminary designation remains in effect until a complete certification form is received or until the additional time period has elapsed and no certification form has been received.

If the medical certification form is not received within the 15-day period, a requested leave would not normally be designated as FMLA/CFRA. However, the City may determine on a case-by-case basis whether there is justification for approval of an FMLA/CFRA leave if the medical certification is not returned in a timely fashion.

If an employee never provides FMLA/CFRA certification, the leave is not treated as FMLA/CFRA time and the employee's absence may be considered absent without leave. The decision to mark an employee AWOL shall be determined on a case-by-case basis based on the circumstances. For clarification or added guidance, contact Human Resources.

## **SECOND/THIRD MEDICAL OPINIONS**

If the FMLA/CFRA designation is made because of the employee's own serious health condition and the City has reason to doubt the validity of the medical certification provided, the City may require, at its expense, a second opinion from a health care provider that the City chooses. The health care provider designated to provide a second opinion must not be one who is employed on a regular basis by the City.

If the opinions of the employee's and the City's designated health care providers differ, the City may require the employee to obtain certification from a third health care provider, at the City's expense. The opinion from the third provider, who is selected jointly, is final and binding.

Pending receipt of additional opinions, the employee's leave should be preliminarily designated FMLA/CFRA leave and the employee is entitled to benefits of FMLA/CFRA leave pending resolution of the certification issues.

The copies of the medical opinions should be provided, if they have been requested by the employee, within two business days unless extenuating circumstances prevent such action.

If the City requires a second or third opinion, the City must reimburse the employee for any reasonable out-of-pocket travel expenses incurred to obtain the opinions.

The City cannot require a second or third opinion concerning the serious health condition of a child, parent, spouse, registered domestic partner, or child of the registered domestic partner of an employee.

## **RECERTIFICATION**

As a general rule, the City may ask for recertification at reasonable intervals, but no more often than every 30 days.

- The general rule does not apply to intermittent/reduced schedule leaves or when a minimum duration of more than 30 days is specified on the medical certification.
- If a leave is for a pregnancy or a chronic, permanent or long-term condition, the City is limited to recertification requests that extend beyond the original medical certification and not more frequently than every 30 days.

The City may request recertification more frequently than once every 30 days under any of the following circumstances:

- If the employee requests a leave extension;
- If circumstances from the previous certification have significantly changed; or
- If the City receives information casting doubt on the validity of the certification or reason for absence.

The recertification must be provided within the time frame requested by the City, but the City must allow at least 15 days after the date of the request. The employee bears any expense of the recertification.

## **CONTINUATION OF HEALTH BENEFITS**

An employee on FMLA/CFRA leave is entitled to continue to participate in employee benefits on the same basis as active employees. The City must continue the same level of coverage not only for the employee, but also for covered dependents. As a general rule, the employee is only entitled to a continuation of health benefits covering a total period of 12 weeks, but is not entitled to cash back subsidy. To the extent that an employee exhausts his/her CFRA leave entitlement to care for a registered domestic partner and has not used all of the FMLA entitlement, the City is required to provide health benefits for the duration of any remaining unpaid FMLA leave. Employees are responsible for paying their portion of the health care premiums, which includes medical, dental, flexible spending and employee assistance program (EAP). For example, if the cost of the employee's health plan is \$900 per month, but the City contribution is \$800 per month, the employee is still responsible for paying the \$100 per month difference that they would normally have deducted from a pay check.

The City may recover from an employee premiums paid to maintain health coverage if the employee fails to return to work following FMLA/CFRA leave.

On release from pregnancy disability, the employee is still entitled to a full 12 weeks of CFRA, to the extent the employee has not previously used her 12-weeks of CFRA leave, although the early use of the medical benefit entitlement may cause City paid coverage of the medical premium to cease before the completion of the CFRA leave if the employee used unpaid leave.

Continuation of health benefits for unpaid absence beyond CFRA/FMLA leaves are covered by COBRA benefits. Employees with questions on continuation of benefits should be directed to contact Human Resources.

## **RETURN FROM FMLA/CFRA LEAVE**

Upon return from FMLA/CFRA leave, the employee has the right to return to the same or equivalent position even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence. If the returning employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, there is no right to return to another position under the FMLA/CFRA. However, the ADA or FEHA may be applicable.

An equivalent job is one that is virtually identical to the employee's former job in terms of pay, benefits and working conditions, including work shift and location privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority. Equivalent pay means the same pay as before the leave, plus any COLAs or equity increases generally applicable to all employees in the employee's job.

If an employee is no longer qualified for the job because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave, the employee must be given a reasonable opportunity to fulfill those conditions upon return to work. Employees are entitled to equivalent benefits upon return from leave.

Employees may not be required to re-qualify for any benefits. No restrictions, exclusions, or waiting periods can be imposed except those that affect the entire workforce or all employees in the employee's job category.

## **EMPLOYEE PROTECTION**

An employee's use of FMLA/CFRA will not result in the loss of any employment benefit that the employee earned before using FMLA/CFRA leave, which include all benefits provided or made available to employees by the City, including group life insurance, health insurance, disability insurance, sick leave, vacation leave, educational benefits, and pensions. The employee may not be disqualified for the wellness certificate program for taking time under the FMLA/CFRA.

The City may not use the taking of FMLA/CFRA leave as a negative factor in employment actions such as hiring, promotions, placing an employee on controlled leave or disciplinary actions.

## **FMLA/CFRA PROCESS**

***TO BE USED WHEN:** This process is to be used when an employee requests leave or is absent for more than three days.*

- Step 1 – Employee completes and submits Absence Request Form with "Reason for Leave" section completed; if reason is for FMLA/CFRA/or PDL, submit to HR.
- Step 2 – HR verifies the employee and the leave reason meet the eligibility criteria specified in the FMLA/CFRA policy.
- Step 3 – Approve/Deny leave based on eligibility criteria.
- Step 4 – HR sends employee the FMLA/CFRA Notification with medical certification letter (as necessary) within two business days.
- Step 5 – Copy of Notification letter is provided to Payroll.
- Step 6 – Supervisor completes employee time sheet if employee is absent, denoting FMLA/CFRA time taken. If employee completes the time sheet, ensure timesheet has been completed accurately. Ensure the Absence Request form has been completed.

- Step 7 – Completed medical certification is returned to HR
- Step 8 – Returning to work:
  - Employee is able to return to work without restrictions: Send release to work authorization to HR when employee returns to work.
  - Employee is able to return to work, but has temporary restrictions (non-ADA/FEHA): Consult with HR.
  - Employee is able to return to work, but has permanent restrictions: Consult with HR.

Example:

Your employee requests three weeks off because she needs to care for her mother who had hip replacement surgery. Although the employee did not specifically state she needed FMLA/CFRA time, the purpose of the leave would qualify as a serious illness/injury. You should begin the process by asking the employee to submit an absence request form, if not previously completed, (Step 1) and continue through the process.

**FMLA/CFRA PROCESS**

**TO BE USED WHEN:** *This process should be used when the employee has been absent more than three days and has not provided enough information to determine if the leave qualifies as FMLA/CFRA leave.*

- Step 1 – Notify HR who will send employee Preliminary Designation Form with Medical Certification Form on the fourth day of absence.
- Step 2 – HR verifies the employee and the leave reason meet the eligibility criteria specified in the FMLA/CFRA policy.
- Step 3 – Approve/Deny leave based on eligibility criteria.
- Step 4 – HR sends employee the FMLA/CFRA Notification with medical certification letter (as necessary) within two business days.
- Step 5 – Supervisor completes employee time sheet if employee is absent, denoting FMLA/CFRA time taken. If employee completes the time sheet, ensure timesheet has been completed accurately. Also ensure the Absence Request form has been completed.
- Step 6 - Copy of Notification letter provided to Payroll.
- Step 7 - Completed medical certification returned to HR.
- Step 8 – Returning to work:
  - Employee is able to return to work without restrictions: Send release to work authorization to HR when employee returns to work.
  - Employee is able to return to work, but has temporary restrictions (non-ADA/FEHA): Consult with HR.
  - Employee is able to return to work, but has permanent restrictions: Consult with HR.

Example:

It's Tuesday and your employee has left you a voicemail message indicating he will be off work because he is sick and he will be going to see his doctor. On Wednesday, you receive a voicemail message from the same employee indicating he has a doctor's note and he will be off work through the following Monday. Although you do not know if the employee's absence qualifies as FMLA/CFRA, he will be incapacitated for more than three consecutive calendar days so there is a possibility that the leave could be FMLA/CFRA related. You should initiate the process by following the steps above.

## SUPERVISOR CHECKLIST

Action	Yes	Date
Employee has requested FMLA/CFRA leave <b>or</b> employee has been off work for more than three days and the reason for the leave is unknown but may qualify under FMLA/CFRA.		
Received or completed Absence Request Form		
Informed HR		
HR sent Notification letter and medical cert form to employee		
Completed medical certification received from the employee		
Completed or verified timesheet		
If leave is extended, requested recertification		
Received Release Authorization for employee to return to work		
Employee returned to work		
Employee did not return to work. Contact HR		
Employee requested intermittent or reduced schedule leave and provided medical verification; forwarded to HR		

Employee Name: \_\_\_\_\_

Date of first qualifying event: \_\_\_\_\_

Planned return date: \_\_\_\_\_

**ACTUAL RETURN DATE:** \_\_\_\_\_

# **ATTACHMENTS**

# Attachment 1

## CITY OF AMERICAN CANYON

<<Enter Department Name>>

*Certified and Regular Mail*

*Return receipt requested*

**DATE:** <<Enter Date Notice Prepared>>  
**TO:** <<Enter Employee's Name>>  
**FROM:** <<Human Resources>>  
**SUBJECT:** *Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA) Notification*

On <<Enter the date you issued the preliminary designation>> we designated your leave as FMLA/CFRA pending further medical information. This letter is to clarify your eligibility.

**OR**

On <<Enter the date you were notified that employee was absent or informed you that s/he needs FMLA/CFRA leave>> we were notified that you needed to be off your job due to:

- the birth of your child or the placement of a child with you for adoption or foster care; **or**
- a serious health condition affecting your spouse, child or parent, for which you are needed to provide care; **or**
- a serious health condition of your own that makes you unable to perform the essential functions of your job with or without accommodation.

### **This is to inform you that:**

1. You are not eligible for leave under the FMLA/CFRA for the following reasons:

- Less than 1250 hours worked \*
- Less than 12 months of employment
- Not a qualified reason
- No FMLA/CFRA entitlement remaining

\*As of pay period <<enter pp>>, you have worked <<enter hours>> hours in the last 12 months.

2. You are eligible for FMLA/CFRA during 12 months from <<enter date of first absence of first incident where notification was given >>.

As of pay period <<enter pp>>, you have <<enter hours>> hours remaining of FMLA/CFRA leave.

The requested leave will count towards your FMLA/CFRA entitlement. Your leave year begins on the first day of the first claim for FMLA/CFRA.

3. You  will  will not be required to furnish medical certification of a serious illness. Please have your health care provider complete the enclosed medical certification and return it to Human Resources with 15 days of receipt of this FMLA/CFRA notice. No other note will be sufficient to authorize your FMLA/CFRA entitlement. If this medical certification is not submitted on time, we may delay the commencement of your FMLA/CFRA entitlement until the certification is submitted.

**Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA) Notification**

4. During your FMLA/CFRA leave, you will be required to use your applicable accrued paid leave prior to unpaid leave.
5. If the leave is for your own serious health condition, you may be required to present a medical release from your health care provider prior to returning to work. If such certification is required but not received, your return to work may be delayed until such certification is provided.
6. While on leave, you may be required to furnish us with periodic reports of your status and intent to return to work. If the circumstances of your leave change, you must notify us prior to the date you intend to report for work. This is necessary in order for us to determine if arrangements can be made to accommodate your early return to work.
7. While on leave, it may become necessary for you to extend your leave. You must notify us prior to the original date of your return and provide us with appropriate additional certification from your health care provider.
8. Any absence or leave request that extends beyond the 12 weeks covered by the FMLA/CFRA must be requested in writing to Human Resources and may be granted or denied based on individual circumstances.

Under FMLA/CFRA, you are entitled to up to 12 weeks of leave in a 12-month eligibility period, which begins on the first day of the first qualifying FMLA/CFRA event. FMLA/CFRA leave includes all time off work, paid or unpaid, as outlined in the City leave policy. All available sick leave, vacation, management leave, CTO, or holiday-in-lieu hours must be exhausted prior to authorization of unpaid time off under FMLA/CFRA to attend to the serious health condition of yourself or a family member. An employee is required to use all available vacation, holiday-in-lieu, management leave, and CTO prior to authorization of unpaid leave to care for a new child.

If you are a regular employee and qualify for FMLA/CFRA, your health benefits will be maintained during any period of unpaid time off under the same conditions as if you continued to work. If you normally pay a portion of the premiums for your health insurance, you must make these payments during the period of FMLA/CFRA leave. Payments may be arranged through the Payroll Office at 647-4365. Failure to pay premiums may result in cancellation of your health benefits. If you do not return to work at the end of your leave period, you may be required to reimburse the City for the share of premiums paid on your behalf during your unpaid time off.

Assuming that you return to work at the end of your protected leave and except in very limited circumstances, you will be reinstated to the same or an equivalent position in your job class with the same or equivalent pay, benefits, and terms and conditions of employment on your return from leave. Should you fail to return to work at the end of your approved leave, the City cannot guarantee reinstatement to your position, nor that a job will be available for you upon your return.

If you have any questions about the contents of this notice, please contact Human Resources at 647-4577.

cc: Medical File  
Payroll

Enclosure: Medical Certification Form

Copies of the FMLA/CFRA policy are available upon request

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**ATTACHMENTS**



## Attachment 2

**CITY OF AMERICAN CANYON**  
**<< Enter Department Name Here >>**  
***Certified and Regular Mail***  
***Return receipt requested***

**DATE:** <<*Enter Date Notice Prepared*>>  
**TO:** <<*Enter Employee's Name*>>  
**FROM:** Human Resources  
**SUBJECT:** Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA) Preliminary Designation

You have been off work <*periodically*> since <*enter date absence began*>. As of today, we are unsure if your absence qualifies as FMLA/CFRA leave. Until it is determined whether your absence is a qualifying event under FMLA/CFRA, your absence will be preliminarily designated as FMLA/CFRA time and counted toward your 12 weeks of available FMLA/CFRA leave. Enclosed is a Medical Certification form for you to give to your health care provider to complete. **Please return the completed form to me within 15 days from the receipt of this notice.** You will be notified again at a later date whether or not you qualify for FMLA/CFRA leave based upon the medical certification. If you qualify under FMLA/CFRA, you are entitled to up to 12 weeks of leave in a 12-month eligibility period, which begins on the first day of the first qualifying FMLA/CFRA event. FMLA/CFRA leave includes all time off work (either paid or unpaid) as outlined in the City leave policy. All available sick leave, vacation, management leave, CTO, or holiday-in-lieu hours must be exhausted prior to authorization of unpaid time off under FMLA/CFRA to attend to the serious health condition of yourself or a family member. Any absence or leave request that extends beyond the 12 weeks available under FMLA/CFRA must be requested in writing to <*enter Department preference*> and may be granted or denied based on individual circumstances.

If you are a regular employee and qualify for FMLA/CFRA, your health benefits will be maintained during any period of unpaid time off under the same conditions as if you continued to work, as long as you have not previously exhausted this benefit under the FMLA. If you normally pay a portion of the premiums for your health insurance, you must make these payments during the period of FMLA/CFRA leave. Payments may be arranged through the Payroll Office at 647-4365. Failure to pay premiums may result in cancellation of your health benefits. If you do not return to work at the end of your leave period, you may be required to reimburse the City for the share of premiums paid on your behalf during your unpaid time off.

Assuming that you return to work at the end of your protected leave and except in very limited circumstances, you will be reinstated to the same or an equivalent position in your job class with the same or equivalent pay, benefits, and terms and conditions of employment on your return from leave. Should you fail to return to work at the end of your approved leave, the City cannot guarantee reinstatement to your position, nor that a job will be available for you upon your return.

If you have any questions about the contents of this notice, please contact Human Resources at <*enter phone number*>.

cc: Medical File  
Payroll Office  
Enclosure: Medical Certification Form

### Attachment 3

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## Certification of Health Care Provider

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### Employee/Patient Authorization

I authorize my health care provider \_\_\_\_\_ to release the below information to \_\_\_\_\_ to enable the City to determine whether my leave request qualifies for an FMLA/CFRA leave.

This authorization expires one year from the date of signature. By signing this form, I am allowing my health care provider to release the health information contained in the attached certification.

I understand that I can revoke this authorization at any time by submitting a written revocation to my health care provider. I understand that a revocation will not apply to information that has already been used or disclosed in relevance on this authorization. Once the information is disclosed pursuant to this authorization, it may be re-disclosed by the recipient and the information will no longer be protected under HIPAA, although other confidentiality laws may apply.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

To be completed by the patient's health care provider:

1. Employee's Name: \_\_\_\_\_

2. Patient's Name: \_\_\_\_\_

IF OTHER THAN EMPLOYEE

3. Date health condition or need for treatment commenced:

\_\_\_\_\_  
**(NOTE: The health care provider is not to disclose the underlying diagnosis without the consent of the patient.)**

4. Probable duration of health condition, need for treatment, or period of incapacity:

\_\_\_\_\_

5. If the employee is asking for intermittent leave or a reduced work schedule, please indicate the estimated number of doctor's visits, and/or estimated duration of medical treatment. (EXAMPLE: For the next three months, the employee will need to accompany family member to a one hour physical therapy appointment on two weekdays per week.) Estimate:

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6. Attached (Attachment A, page 3) is a description of what is meant by a "serious health condition" under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the employee's or the employee's family member's health condition qualify under any of the categories described?

Yes  No

7. If yes, please circle the appropriate category (See Attachment A for more details).

- (1) Inpatient Care                      (2) Absence (>3 days) plus Treatment                      (3) Pregnancy  
(4) Chronic Condition                      (5) Permanent/Long-Term Condition                      (6) Multiple Treatments (Non-Chronic)

8. If the certification is for the health condition of the employee, please answer the following:

a. Is the employee able to perform the essential functions of the employee's position? Please answer this question after reviewing the attached employer's job description or duties statement, which include the essential functions of the employee's position or, if none provided, after discussing the position with the employee.

Yes  No

b. If there are any restrictions, please identify them below.

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9. If the certification is for the care of the health condition of the employee's family member, please answer the following:

a. Does or will the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?

Yes  No

b. Does the condition warrant the participation of the employee in the family member's medical treatment? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

Yes     No

10. If yes, please estimate the period of time that care will be needed for the family member:

Thank you for your cooperation.

\_\_\_\_\_  
Print Name of Health Care Provider

\_\_\_\_\_  
Address of Health Care Provider

\_\_\_\_\_  
Signature of Health Care Provider

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

## **ATTACHMENT A**

### **Definition of a Serious Health Condition and Other FMLA Definitions (Attach to Certification of Health Provider)**

A “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy

**NOTE: An employee’s own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA.**

A period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatment

A chronic condition which:

- a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
- b. Continues over an extended period to time (including episodes of a single underlying condition); and
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
- d. Treatment for allergies, stress or substance abuse is a “serious health condition” provided all other conditions are met.

5. Permanent/Long-term Conditions Requiring Supervision by Health Care Provider

A period of incapacity that 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. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery from there) 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, such as cancer, (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

**Definitions**

**Child**

A "child" is defined as a son or daughter (including a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis) who is under 18 or age 18 or older if incapable of self-care because of a mental or physical disability that substantially limits one or more of the major life activities of an individual.

**Loco Parentis**

A person acting in loco parentis has or had day-to-day responsibilities to care for and financially support a child.

**Parent**

A "parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child; it does not include parents "in law." A biological or legal relationship is not necessary.

**Registered Domestic Partner**

A "registered domestic partner" is a member of a same-sex couple or a person of an opposite-sex couple if one or both of the opposite-sex couple is over the age 62. In either case, there must be a Declaration of Domestic Partnership on file with the California Secretary of State.

**Spouse**

A "spouse" refers to a legally married spouse as defined by state law. It does not include a registered domestic partner.

## **Health Care Provider**

The FMLA defines "health care provider" as:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct of subluxation visible by x-ray) authorized to practice in the state performing within the scope of their practice as defined under state law;
- Nurse practitioners, nurse-midwives, and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
- Christian Science practitioners listed with the First Church of Christ, Scientist, in Boston, Massachusetts;
- Any health care provider who 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; and
- A health care provider who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

## **Intermittent**

Under certain circumstances, leave may be taken intermittently or on a reduced schedule. "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason, rather than for one continuous period of time.

## **Reduced Leave Schedule**

A reduced schedule means a leave schedule that reduces the employee's usual number of hours per work week or workday, usually from full to part-time.

**Attachment 4**

**CITY OF AMERICAN CANYON**

**DATE:** <<*Enter Date Notice Prepared*>>  
**TO:** <<*Enter Employee's Name*>>  
**FROM:** Human Resources  
**SUBJECT:** Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA)  
Medical Certification Clarification

On <<*Enter the date you received medical certification*>> we received your medical certification that you needed to be off your job due to:

- the birth of your child or the placement of a child with you for adoption or foster care which includes state action; **or**
- a serious health condition affecting your spouse, child or parent for whom you are needed to provide care; **or**
- a serious health condition that makes you unable to perform the essential functions of your job with or without accommodation.

This is to notify you that we need clarification on the following information <<*Enter the information needed by the health care provider*>> by <<*Enter the date you require the clarification on the medical certification*>>. Attached is a copy of the certification form you returned to us, for your review.

If you have any questions about the contents of this notice, please contact <<*enter preference*>> at <<*enter phone number*>>.

cc: Medical File  
Human Resources Department

Enclosure: Medical Certification Form <*if appropriate*>



# **FREQUENTLY ASKED QUESTIONS**

## GENERAL INFORMATION

### What is FMLA? What is CFRA?

The Family and Medical Leave Act (FMLA) is a federal law which entitles eligible employees to up to 12 weeks of paid or unpaid leave per a 12-month period for the birth or adoption of a child, to care for the serious health condition of a family member, or for the employee's own serious health condition. The California Family Rights Act (CFRA) is the California version of the family medical leave law which, unlike FMLA, covers registered domestic partners and the child of a registered domestic partner. CFRA does not cover disability due to an employee's own pregnancy, childbirth or related medical conditions. That type of leave is covered under California's Pregnancy Disability Leave and FMLA. However, CFRA does cover an employee's leave to care for the pregnancy disability of an eligible family member. Following a pregnancy disability leave, CFRA leave of up to 12 weeks may be taken for reason of the birth of an employee's child, if the child has been born by that date. This assumes that the employee has not previously exhausted her CFRA leave entitlement.

## ELIGIBILITY

### Which employees are eligible for family or medical leave under FMLA/CFRA?

To be eligible for family or medical leave, an employee must have been employed by the City for at least 12 months and actually worked for at least 1,250 hours during the preceding 12 months.

### How do you define "family member" for purposes of taking FMLA leave?

An employee's spouse, registered domestic partner, child or child of registered domestic partner, and parents are immediate family members for purposes of FMLA/CFRA. The term "parent" does not include a parent "in-law." Siblings, non-disabled adult children, and "significant others" are not covered.

**Child:** A "child" is defined as a son or daughter (including a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis) who is under 18 or age 18 or older if incapable of self-care because of a mental or physical disability that substantially limits one or more of the major life activities of an individual.

**Parent:** A "parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child; it does not include parents "in law." A biological or legal relationship is not necessary.

**Registered Domestic Partner:** A "registered domestic partner" is a member of a same-sex couple or a person of an opposite-sex couple if one or both of the opposite-sex couple is over the age 62. In either case, there must be a Declaration of Domestic Partnership on file with the California Secretary of State.

**Spouse:** A "spouse" refers to a legally married spouse as defined by state law. It does not include a registered domestic partner.

## **How do you define "family member" for purposes of taking CFRA leave?**

A family member under CFRA is the same as FMLA and also includes a registered domestic partner and the child of a registered domestic partner.

## **LEAVE ENTITLEMENT**

### **When may an eligible employee be entitled to family or medical leave under FMLA?**

Eligible employees are entitled to family and medical leave for the following reasons:

1. To care for the employee's own "serious health condition" which makes him or her unable to perform the essential functions of the job;
2. To care for a spouse, child, or parent who has a "serious health condition;"
3. To attend the birth of a child, and to care for that child; or
4. To care for a child placed with the employee for adoption or foster care.

### **When may an eligible employee be entitled to family or medical leave under CFRA?**

The circumstances in which the City is required to grant CFRA are the same as for FMLA except that an eligible employee is also entitled to a leave:

1. for the birth of the child of the registered domestic partner and to care for the newborn child of the registered domestic partner; and
2. to care for the registered domestic partner or child of the registered domestic partner with a serious health condition.

### **What types of conditions are considered "serious health conditions"?**

A "serious health condition" must involve:

1. Inpatient care in a hospital or medical care facility, or
2. Continuing treatment by a health care provider.

### **I understand what "inpatient care" is, but what does "continuing treatment by a health care provider" mean?**

Under FMLA, "continuing treatment by a health care provider" means:

1. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that involves either (a) treatment two or more times by a health care provider; or (b) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
2. Any period of incapacity due to pregnancy or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a "chronic serious health condition," which is a condition that (a) requires periodic visits for treatment by a health care provider, or, (b) continues over an extended period of time (including recurring periods of a single underlying condition), and may cause episodic rather than a continuing period of incapacity (e.g., asthma, epilepsy, diabetes, etc.);

4. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
5. Any period of absence to receive multiple treatments (including any period of recovery) 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 (e.g., chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

**I understand that I get up to 12 weeks of FMLA/CFRA leave during a 12-month period, but when does the 12-month period start?**

The 12-month eligibility period begins on the date an employee's first FMLA/CFRA leave begins. The next 12-month period would begin the first time the employee takes FMLA/CFRA leave after completion of any previous 12-month period.

**If I have more than one qualifying event during my 12-month eligibility period, do I get a separate 12 weeks of FMLA/CFRA leave for each event?**

No. Eligible employees are entitled to up to 12 weeks of FMLA/CFRA leave total during the 12-month eligibility period, regardless of the number of qualifying events that occur during that period.

**Do parents who work for the City each get 12 weeks off to care for a new child?**

If both parents are City employees, the combined total of their entitled family leave to care for a new child is 12 weeks.

**Will my benefits continue while I'm on FMLA/CFRA leave?**

While you are on FMLA/CFRA leave, your health benefits – including medical, dental, vision, and Employee Assistance Program benefits – will continue. You must also continue to pay your share of the coverage premiums, if applicable. If you do not qualify for FMLA/CFRA leave, or if you remain off work after your FMLA/CFRA leave is exhausted, your health benefits will terminate unless you make arrangements with the Human Resources to pay for your coverage.

**Will I be able to return to my job when I return from FMLA/CFRA leave?**

Upon return from FMLA/CFRA leave, an employee will be reinstated to his or her original job or to an equivalent job with the same or equivalent pay, benefits, and other employment terms and conditions, unless the employee is no longer able to perform one or more essential functions.

If an employee on FMLA/CFRA leave would have been laid off had he or she not been absent, then the employee would not be entitled to reinstatement.

## **LEAVE USE**

**Can I take FMLA/CFRA leave intermittently or by working a reduced schedule?**

Yes. If you have a serious health condition (e. g., epilepsy, asthma) which causes absence for a short time period or are caring for a family member with such a condition, you can be approved for intermittent or reduced-schedule FMLA/CFRA leave by requesting it and providing medical certification per the City's FMLA/CFRA Policy.

**What if I don't want to use and/or I didn't request my 12 weeks of FMLA/CFRA leave?**

The City is required to initiate FMLA/CFRA for eligible employees regardless of a specific request. An employee may not elect or choose whether FMLA/CFRA leave applies.

**Can I take unpaid leave or just sick leave instead?**

No. You can't "save" FMLA/CFRA leave for later. If your reason for needing time off is one of the four circumstances under which the City is required to designate the time as FMLA/CFRA leave (birth, adoption, family care, or serious health condition), you are required to use accrued leave balances as specified in Section 6 of the City's FMLA/CFRA Policy, and the City is required to deduct the time from your entitlement, if eligible, of up to 12 weeks of family medical leave.

**If I only use six weeks of FMLA/CFRA this year, can I carry over six weeks into next year?**

No. Carryover of unused FMLA/CFRA leave from one 12-month period to the next is not permitted.

**Can I use my vacation balances before my sick leave balances for my own serious health condition?**

No. You must use sick leave balances for FMLA/CFRA leave prior to vacation or CTO.

**EMPLOYEE RESPONSIBILITIES**

**How much notice must an employee give of his or her intention to take family or medical leave?**

If leave is foreseeable based on a birth, adoption, or planned medical treatment, an employee must give the City 30 days' notice of his or her intention to take leave. If leave is not foreseeable, the employee must provide such notice "as is practicable." In most circumstances, this means within one to two business days of learning the need for the leave.

**What type of notice is sufficient to make the City aware of the employee's need for family or medical leave?**

The employee shall provide at least verbal notice sufficient to make the City aware that the employee needs family or medical leave, and the anticipated timing and duration of the leave. The employee does not have to expressly assert rights under FMLA/CFRA, or even mention FMLA/CFRA, to meet the notice requirement. However, the employee must state the reason the leave is needed. It is then up to the City to inquire further of the employee if it is necessary to have more information about whether family or medical leave is being sought by the employee and to obtain the necessary details of the leave to be taken.

**How can the City verify an employee's need for leave because of a "serious health condition"?**

The City may require an employee to obtain certification of a "serious health condition" from the employee's health care provider. The City can pay for a second opinion if it doubts the validity of the original certification. If the second opinion conflicts with the first, the City may pay for a third opinion. The provider of the third opinion must be jointly preliminary designated or approved by both the City and the employee. The third opinion will be final.

**Is my health care provider required to disclose my diagnosis to the City?**

Your health care provider is not permitted to disclose your diagnosis without first obtaining your consent. Under FMLA/CFRA, the City may not require the disclosure of a specific serious health condition (diagnosis) of an employee or family member.

**CITY RESPONSIBILITIES**

**Is the City required to notify me when it designates my leave as FMLA/CFRA?**

Yes. When you request leave for an FMLA/CFRA qualifying reason, or when the City learns that your leave is for an FMLA/CFRA qualifying reason, the City must notify you that your leave has been preliminarily designated as FMLA/CFRA and will be counted against your FMLA/CFRA leave entitlement. The City may give you either oral or written notice of the designation; if the City gives you oral notice, it must be confirmed in writing. See Section 8.2 of the City FMLA/CFRA Policy for specific information regarding the City's FMLA/CFRA designation notice requirements.

**If I have already taken leave, can the City designate it as FMLA/CFRA after the fact?**

If the City had knowledge that your leave was for an FMLA/CFRA qualifying reason but did not designate the leave as FMLA/CFRA and notify you of the designation within the time allowed, then the City may not retroactively designate your leave as FMLA/CFRA. However, if the City only learns after the fact that your leave was for an FMLA/CFRA qualifying reason, it may retroactively designate your leave as FMLA/CFRA by promptly notifying you.

If your leave is ongoing, and the City had knowledge that the leave was for an FMLA/CFRA qualifying reason but failed to properly designate the leave, then the City may only designate the remainder of your leave as FMLA/CFRA, starting from the date the City notifies you of the designation.

**ADDITIONAL INFORMATION**

**Where can I get additional information about FMLA/CFRA?**

For additional information, contact Human Resources.