

ARTICLE 4.3: LEAVES WITHOUT PAY

SECTION 4.3.1: FAMILY/MEDICAL LEAVE.

- (a) Family Medical Leave (FML) shall be in accordance with the federal Family and Medical Leave Act of 1993 ("FMLA"), Public Law 103-3, 107 Stat. 6 (29 USC 2601 et seq.) as well as California Family Rights Act of 1991 ("CFRA") pursuant to Govt. Code Section 12945.2, administrative regulations promulgated by the California Fair Employment and Housing Commission, subject to the conditions set forth below. The County FML shall be governed by these federal and state provisions, and by the provisions set forth below under this Section. [Certain provisions under this Section may refer to the federal FMLA regulations under Title 29 Code of Federal Regulations (hereinafter "CFR") or to the California CFRA regulations under Title 29 of the California Code of Regulations (hereinafter "CCR").]
- (b) Definition. FML is unpaid time off under Federal law which may be granted to an eligible employee for certain qualifying events specified under subsection (c) (2) below. However, employees will be required to use applicable paid leave balances concurrently with FML.
- (c) Eligibility.
 - (1) Family Medical Leave shall apply to all biweekly rate employees who have been employed by the County for at least twelve (12) months and for at least one thousand two hundred and fifty (1,250) hours of service during the twelve (12) month period immediately preceding the commencement of the leave and who meet all the eligibility requirements of the FMLA or the CFRA.
 - (2) Qualifying Events for FML Eligibility. An appointing authority is required to grant FML to eligible employees for any of the following qualifying events required by the FMLA and CFRA:
 - (a) For birth of a child, and to care for the newborn child;
 - (b) For placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
 - (c) To care for the employee's spouse, son, daughter, or parent, with a serious health condition;
 - (d) Because of a serious health condition that makes the

employee unable to perform one or more of the essential functions of the employee's job;

- (e) Exigency Leave – To care for a covered military member serving in the Reserves, active duty, or a retired member of the Regular Armed Forces or Reserve; and
- (f) Military Caregiver Leave – To care for an employee's spouse, son, daughter, parent or next of kin, while recovering from an injury or illness suffered while on active duty or a preexisting injury that was aggravated while on active duty within the last five (5) years preceding his or her treatment, for up to 26 weeks.

(Added 10/08/10, Ord. No. 10079)

(d) Conditions.

- (1) Requesting FML. The employee shall give notice to the appointing authority of the need for FML by completing the required forms. To give such notice an employee does not need to assert rights for FML expressly or even mention FML; however, the employee must state a qualifying reason for FML. An employee who fails to demonstrate an FML qualifying reason is not eligible for FML. However, the appointing authority may consider the employee for other types of County authorized leaves. The requested leave will be counted against the employee's annual FMLA and California Family rights Act ("CFRA") entitlement as well. This notice shall refer to the leave as "FML".
- (2) Medical Certification. If an employee is requesting leave for more than three days due to their own serious health condition or a serious health condition of a family member, they must provide medical certification on the form entitled "Certification of Health Care Provider" (DOL Form WH-380-E or WH-380-F). Employees must provide proof of serious health condition within the timelines prescribed by the Department of Labor. In the event of a Pandemic illness, the medical certification may be waived by the Director. If an employee does not submit a medical certification, FML may not be granted. Under certain circumstances, recertification of the serious health condition may be required.

(Amended 10/08/10, Ord. No. 10079)

- (3) Job Retention. Following FML leave, the employee is entitled to return to the same or an equivalent job upon return from leave.

However, should the employee exhaust their FML leave and continue on some other form of County unpaid leave, they may not be entitled to return to their previous position.

- (4) Health Insurance Liability. The employee may be liable for the payment of health insurance premiums paid by the County during their FML leave if the employee does not return to work for at least thirty (30) days after taking FML leave as more fully set forth in Section 4.3.1(g), Maintenance of Insurance Coverage, below.
 - (5) Fitness-for-Duty. The employee will be required to provide a fitness-for-duty certification before returning to work, unless the appointing authority determines that the certification is not necessary as more fully set forth in Section 4.3.1 (i), Certification Prior to Return from Leave, below.
- (e) Duration. An eligible employee is entitled to a total of 12 workweeks of FML during a 12-month period. The 12-month period shall be measured forward from the date the employee's first FML leave begins. The next 12-month period would begin the first time FML leave is taken after completion of any previous 12-month period. The duration of FML for a husband and wife both employed by the County is governed by a special provision under 29 CFR Section 825.202. NOTE: An employee is entitled to take leave for a disability due to pregnancy, childbirth, or related medical conditions pursuant to the California Pregnancy Disability Leave provision under Government Code section 12945 which shall not constitute FML. Twelve (12) workweeks of FML may be used once an employee is no longer disabled by pregnancy.

An eligible employee is entitled up to 26 weeks of leave if they request Military Caregiver Leave (MCL).

(Amended 10/08/10, Ord. No. 10079)

- (f) Coordination with County Leave Programs. FML shall be coordinated with County paid leave and unpaid leave as follows:
 - (1) FML Paid Leave. The employee is required by the County of San Diego to substitute accrued vacation or other applicable paid leave in lieu of FML unpaid leave if the employee is eligible for the paid leave according to the County's paid leave provisions. Such paid leave usage will be counted against the employee's FML duration entitlement subject to the following exceptions:
 - (a) Paid injury leave pursuant to Compensation Ordinance section 4.2.3 shall not be counted against FML leave; and

- (b) Fair Labor Standards Act (FLSA) compensatory time off is not a form of accrued paid leave that the County may require the employee to substitute for unpaid FMLA leave. However, the employee may elect to use FLSA compensatory time for a FML reason and such time off shall not be counted as FML leave.
 - (2) FML Unpaid Leave. An employee who requests leave and is NOT eligible for paid leave under the County's paid leave provisions, but who qualifies for and is approved for FML, shall be on FML unpaid leave pursuant to the provisions of this Section.
 - (3) County Unpaid Leave. An employee who requests leave and is NOT eligible for paid leave or for FML, but who qualifies for unpaid leave under one of the County's unpaid leave provisions, may be considered for County unpaid leave (not FML unpaid leave) pursuant to the provisions of the County unpaid leave program.
- (g) Maintenance of Insurance Coverage.
- (1) General Requirement. An employee's group insurance coverage shall be maintained during approved FML on the same conditions as coverage would have been provided if the employee had been employed continuously during the entire FML period.
 - (2) Premium Payments During FML Paid Leave. The County will continue to make its regular contributions toward insurance premiums for up to twelve (12) weeks of FML in order to maintain insurance benefits.
 - (3) Premium Payments During FML Unpaid Leave.
 - (a) County Contribution Towards Employee Premium. During the period that an employee is on FML unpaid leave, the County shall continue to make its contributions required under Compensation Ordinance Sections 5.1.6(c) [Flexible Benefits Plan] and all other group insurance benefits provided by the County even though the employee is not receiving pay during this FML unpaid leave period.
 - (b) Employee Premium Payment. The employee will be required to continue to pay their share of their regular insurance premium payments during FML.
 - (c) Employee's Failure to Submit Payment While on Leave. If an

employee fails to submit the full amount of the insurance premium payments on a timely basis, the County shall pay the required amount on behalf of the employee on an advance basis in order to maintain all of the employee's insurance coverage. The employee shall continue to be obligated for these premiums and shall reimburse the County for the payments. The reimbursement shall be as follows:

- (i) During the period of the FML unpaid leave, the employee shall make payment to the County for all the required premiums which are past due.
 - (ii) Upon the employee's return to work from leave, any required premiums not paid by employee shall be entered as added payroll deductions. The amount of each added payroll deduction shall be equal to the amount of each separate premium not paid by the employee. This added payroll deduction shall be entered on each of the employee's biweekly pay warrants until the full amount of the premiums is paid in full.
- (h) Employee's Failure to Return to Work After FML Unpaid Leave. If an employee fails to return to work for at least 30 days after FML unpaid leave, except for those circumstances indicated under CFR Section 825.213(a)(1)-(3) and (c), the insurance premiums paid during FML Unpaid Leave by the County through the County's contributions and any premium amounts owed by the employee which are paid during FML unpaid leave by the County on an advanced basis are the obligation of the employee and shall be considered a debt owed by the non-returning employee to the County. The County may recover this debt through the deduction from any sums due to the employee from any required payoffs owed to the employee from vacation or sick leave balances.
- (i) Certification Prior to Return from Leave. An employee may return to work at the conclusion of FML for their own serious health condition contingent upon providing a medical release prior to returning to work. At its discretion, the Appointing Authority may determine that a certification is not necessary and the employee will be permitted to return to work.

(Renumbered and Amended 08/01/08, Ord. No. 9946)

SECTION 4.3.1: DISABILITY LEAVE.

SECTION 4.3.2: LEAVE OF ABSENCE WITHOUT PAY.

- (a) Definition. Leave from the employee's class and position without pay, granted at the discretion of the appointing authority. A permanent employee may be granted unpaid leave, either with the right to return or without the right to return. Exception: no paid leave of any kind will be granted an employee who is on suspension as discipline.
- (b) Leave Without Pay with Right to Return. If leave without pay with right to return is granted, after such leave the employee shall be entitled to return to the same class in the same department as was occupied at the commencement of the leave.
- (c) Leave Without Pay without Right to Return. If leave without pay without right to return is granted, after such leave, the employee shall not have entitlement to return to the same class in the same department as he/she occupied at the commencement of the leave.
- (d) With Right to Return – Conditions and Duration of Leave.
 - (1) Appointing Authority Approval. Leave without pay with right to return may be granted at the discretion of the appointing authority in the following instances.
 - (a) 60 Days or Less. For a maximum of sixty (60) workdays for some purpose not otherwise covered by any other leave without pay provision.
 - (i) The employee has exhausted non-FLSA compensatory time off and vacation, unless excluded under subsection (ii) below.
 - (ii) Employees shall not be required to exhaust paid leave prior to commencing leave of 60 work days or less in classes designated: AE, AM, AS, CL, CM, CR, DA, DS, FS, HS, MM, PR, PS, RN, SM, SS and SW.
 - (b) Temporary Appointment. To accept a temporary appointment (includes provisional and certified temporary appointments) to a classified or (acting temporary) unclassified position in a County department.
 - (i) Conditions. Employees shall not be required to exhaust paid leave.

- (ii) Duration. Such leaves shall be for a maximum of twenty-six (26) biweekly pay periods, except for employees in classes designated PO, when such leave shall be for a maximum of thirteen (13) biweekly pay periods.
 - (iii) An employee granted leave without pay pursuant to this provision if not offered an opportunity to return to the same class of position in the same department at the expiration of such leave, shall be provided additional leave until a position in his/her class and department is made available to him/her, provided that such employee shall have a right to the first vacancy in his/her class and department which occurs during such additional leave, and provided further that such additional leave shall not exceed twenty-six (26) biweekly pay periods.
- (c) Disability Leave. When certified by a medical doctor to be unable to perform the duties of the employee's position.
- (i) Conditions. The employee has exhausted paid leave.
 - (ii) Duration. Such leave shall be for the duration of the disability but not to exceed one (1) year.
 - (iii) If an employee is unable to return to work at the end of one (1) year, the employee shall be placed on leave without pay without right to return for a maximum of one (1) year as provided below in section (e), Without Right to Return. While on this additional leave, employees in classes designated AM, AS, CC, CS, DA, PD, PM, PO, and SO, shall be entitled to the first vacancy in the same class in the same department as was occupied at the commencement of the leave.
 - (iv) For employees in classes designated SW, if a disability retirement application is pending with the San Diego County Employees Retirement Association (SDCERA), such leave shall continue until final determination of the application is made.
- (2) Director Approval. At the discretion of the appointing authority, and approval of the Director, Department of Human Resources, an

employee may be granted leave without pay for good cause, other than illness, up to twenty-six (26) biweekly pay periods. Good cause includes leave requested for union activity. Such leaves may be extended a maximum of twenty-six (26) biweekly pay periods by the Director if circumstances warrant.

(e) Without Right to Return – Conditions and Duration of Leave.

- (1) The Director, Department of Human Resources, may, with proper justification, grant a leave without pay without right to return for a maximum of twenty-six (26) biweekly pay periods.
 - (a) Leave Extension. An employee granted leave without pay pursuant to this provision, if not offered an opportunity to return to the same class of position in the same department at the expiration of such leave, shall be provided additional leave until a position in his/her class and department is made available to him/her, and provided further that such additional leave shall not exceed twenty-six (26) biweekly pay periods.
 - (b) Failure to Return from Leave. Any employee who is not returned to County employment at the expiration of the initial leave without pay and who is not returned to County employment within the next succeeding twenty-six (26) biweekly pay periods shall be deemed to be absent without leave.
- (2) PO employees. For employees in classes designated PO at the discretion of the appointing authority and upon approval of the Director, Department of Human Resources, an employee may be granted leave without pay for good cause, other than illness, up to one (1) year. Such leave may be extended a maximum of one (1) year by the Director, Department of Human Resources, if circumstances warrant. At the expiration of leave without pay without right to return an employee shall have the right to the first vacancy in the class in the department.

(Renumbered and Amended 08/01/08, Ord. No. 9946)

SECTION 4.3.3: COMPULSORY LEAVE.

- (a) Definition. Compulsory Leave means the employee's non-disciplinary absence from duty imposed by the appointing authority. When placed on such leave, paid leave and compensatory time off shall first be exhausted

before the employee is placed on compulsory leave without pay.

(b) Conditions.

(1) Required Examination. If, in the opinion of an employee's appointing authority, such employee is mentally or physically incapacitated to perform assigned duties, such employee may be required by the appointing authority to submit to examination by a licensed physician or licensed clinical psychologist designated or approved by the Commission.

(2) Report. If the report of the physician or licensed clinical psychologist shows the employee to be in a mentally or physically unfit condition to perform assigned duties, the appointing authority shall have the right to compel such employee to take sufficient leave of absence to become fit to perform assigned duties.

(3) Commission Appeal. The employee may appeal to the Commission the appointing authority's determination to place the employee on leave.

(b) Duration. For not to exceed the period necessary for the employee to become fit to perform assigned duties.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.3: MISCELLANEOUS LEAVE.

(Repealed 08/01/08, Ord. No. 9946)

SECTION 4.3.4: UNPAID MILITARY LEAVE.

(a) Definition. Unpaid military leave means that an employee is engaged in military service and has exhausted or is not eligible for paid military leave.

(b) Conditions. Unpaid military leave is automatically granted to employees engaged in active military duty who:

(1) Have exceeded the paid thirty (30) days military leave per fiscal year as defined in Section 4.2.6(a) (Military Leave); or

(2) Are ineligible for paid leave or who chose not to use paid leave accruals while on military assignment.

- (c) Duration. Shall cease when the employee returns to County paid service or is approved for another type of leave of absence.

(Added 08/01/08, Ord. No. 9946)

SECTION 4.3.5: MILITARY SPOUSE/DOMESTIC PARTNER LEAVE

- (a) Definition. Military Spouse/Domestic Partner leave (MSL) is unpaid leave granted to the spouse or domestic partner of a member of the Armed Forces, National Guard or Reserves when that member is on leave from deployment from a designated combat theater or combat zone during a period of military conflict.
- (b) Eligibility. Employees paid at a bi-weekly rate or hourly employees who work an average of twenty (20) hours per week or more are eligible.
- (c) Conditions. Upon request, MSL is automatically granted to employees who:
 - (1) Are the legal spouse or domestic partner of a military member and provide documentation verifying such relationship; and
 - (2) That military member will be on leave from a combat theater/ combat zone as designated by the President by Executive Order during a period of military conflict.
- (d) Duration. An employee may request ten (10) days of MSL per occurrence of the military member receiving qualified military leave.
- (e) Coordination with County Leave Programs. Employees may substitute accrued vacation and other applicable paid leaves in lieu of unpaid leave if the employee is eligible for the paid leave according to the County's paid leave provisions.

(Added 08/01/08, Ord. No. 9946)

SECTION 4.3.6: LEAVE WITHOUT PAY-STAFF TO ELECTED OFFICIAL

- (a) Definition. The Director, Department of Human Resources, may grant a leave without pay to a classified employee for an indefinite period of time to accept an unclassified position as staff to an elected official. This leave may be either with or without the right to return. The employee shall not be required to exhaust paid leave.

- (b) Exception. This section shall not apply to classes designated PO and SO.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.7: LEAVE FROM THE CLASSIFIED SERVICE TO ACCEPT UNCLASSIFIED SERVICE COUNTY POSITIONS

- (a) Application. The provisions of this section are only applicable to employees in classes designated AE, AM, AS, CC, CE, CEM, CL, CM, CR, CS, DA, DI, DM, DS, FS, HS, MA, MM, PO, PD, PM, PR, PS, RN, SM, SO, SS, or SW.
- (b) Definition. Leave from the classified service without pay, granted at the discretion of the Director, to accept a position in the Unclassified County Service; without the right to return.
- (c) Conditions. The employee:
- (1) has accepted appointment to a position in the Unclassified Service;
 - (2) shall not be required to exhaust paid leave.
- (d) Duration. For an indefinite period.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.8: SHORT-TERM VOLUNTARY WORK FURLOUGH. Notwithstanding any other provision of this article, the appointing authority, on approval of the Chief Administrative Officer for good cause may grant a permanent or probationary employee a voluntary leave of absence without pay with right to return to the same position, subject to the following conditions:

- (a) Leave must be taken in increments of one full regular work day for the eligible employee; e.g. eight (8), nine (9), ten (10), or twelve (12) hours.
- (b) Such leave shall be available only during a period or periods of time designated by the Board of Supervisors as times of economic hardship.
- (c) The amount of leave time taken during the period authorized by the Board of Supervisors shall not exceed the total number of hours in one regular pay period of the eligible employee.
- (d) Credits toward sick leave, vacation, and holiday eligibility shall accrue as though the employee were on paid status.

- (e) Time on this special unpaid leave shall apply toward time in service for step advancement, completion of probation, and toward seniority for purposes of layoff.
- (f) Shall be granted without requiring employees to first use accumulated vacation and compensatory time off prior to taking this special unpaid leave.
- (g) Such leave is available only to employees who are on paid status the entire work day before as well as the entire work day after the work furlough day(s).
- (h) Employees on other leave without pay shall not be eligible for work furlough.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.9: LONG-TERM VOLUNTARY WORK FURLOUGH. Upon determination by the appointing authority that work force reductions may be necessary in the department, the appointing authority, with the approval of the Director, Department of Human Resources, may grant a corresponding number of permanent employees leave without pay with right to return to the same class in the same service/division in the department in which the leave was granted, for up to twenty-six (26) biweekly pay periods subject to the following conditions:

- (a) Shall be granted without requiring employees to use accumulated vacation and compensatory time off;
- (b) In the event there is no vacancy upon expiration of the leave, the employee may displace an employee in the same class who has fewer layoff points. In the event there is no vacancy, and no employee in the same class with fewer layoff rating points, an additional leave of up to twenty-six (26) biweekly pay periods shall be granted during which the employee, if still physically fit, may fill the first vacancy which occurs in the same class:
 - (1) For employees in classes designated DI, DM, DS and SM the physical fitness standard applicable upon return shall not be greater than the standard applicable to the employee at the time of the furlough request.
 - (2) For employees in classes designated PO employees may fill the first vacancy which occurs in the same class after exhaustion of the reinstatement list for that class.

- (c) The employee who is granted this type of leave shall continue to accrue seniority for purposes of calculating layoff rating points in the same manner as if on paid leave.
- (d) It is understood that employees granted this type of leave will not be eligible for unemployment compensation benefits while on leave.
- (e) It is understood that employees granted this type of leave will not accrue sick leave or vacation credits while on leave.
- (f) It is understood that the County's share of health insurance premiums for the employee will not be paid during this type of leave, but the employee may continue such coverage at his/her own expense.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.10: SPECIAL LEAVE – AM, AS, DA, PD and PM. The appointing authority, for good cause, may grant a permanent employee a voluntary leave of absence without pay with the right to return for a maximum of twenty-six (26) biweekly pay periods. Leave pursuant to a sabbatical leave program approved by the appointing authority shall be considered leave for good cause.

(Renumbered 08/01/08, Ord. No. 9946)

SECTION 4.3.11: VOLUNTARY TIME OFF.

- (a) Definition. Notwithstanding any other provision of this article, the appointing authority may for good cause grant an eligible permanent or probationary employee a voluntary leave of absence without pay with right to return to the same position. The employee's request for voluntary time off pursuant to this section shall be for the personal reasons of the employee to handle his or her personal affairs.
- (b) Conditions. Voluntary time off (VTO) is subject to the following conditions:
 - (1) Shall be taken in increments of one full-hour for all eligible employees.
 - (2) Credits toward sick leave, vacation, retirement, and holiday eligibility shall accrue as though the employee were on paid status. The County shall pay for each employee the required retirement contribution consisting of the County's required contribution and the employee's required contribution. The County's payment of the

employee's required contribution shall include the County's retirement contribution offset calculated pursuant to the provisions of Article 5.6.

- (3) Time shall apply toward time in service for step advancement, completion of probation, and toward seniority for purposes of layoff.
- (4) Shall be granted without requiring employees to first use accumulated vacation and compensatory time off.
- (5) Shall be available only to employees who are on paid status the entire workday immediately before as well as immediately after time taken off.
- (6) Shall not be available to employees on other leave without pay, nor shall it be used in combination with paid leave which must be exhausted prior to commencing other leave without pay. In addition, it shall not be available to employees in the same pay period they receive Pandemic Advanced Credit Leave.

(Amended 10/23/09, Ord. No. 10016)

- (7) Voluntary time off authorized per biweekly pay period shall not exceed one-half of the employee's total number of authorized hours for the biweekly pay period and, VTO shall not be used in more than two consecutive pay periods at a time.

- (c) Eligibility. Employees in classes designated AE, AM, AS, CC, CE, CEM, CL, CM, CR, CS, DA, DS, EM, FS, HS, MA, MM, NA, NE, NM, NS, PD, PM, PO, PR, PS, RN, SM, SO, SS, SW and UM are eligible for participation in this program of voluntary time off.

(Amended 04/26/96, Ord. No. 8658)
(Amended 09/27/96, Ord. No. 8720)
(Amended 06/30/00, Ord. No. 9162)
(Amended 12/04/01, Ord. No. 9405)
(Amended 06/23/06, Ord. No. 9783)
(Amended 12/21/07, Ord. No. 9910)
(Amended 08/01/08, Ord. No. 9946)
(Amended 09/26/08, Ord. No. 9955)
(Amended 06/17/11, Ord. No. 10153)

- (d) Duration of Section. This section shall only be operative through June 30, 2012 and, at that time, is repealed unless otherwise extended by ordinance action of the Board of Supervisors.

(Added 06/26/92, Ord. No. 8088)
(Amended 08/21/92, Ord. No. 8139)
(Amended 10/02/92, Ord. No. 8150)
(Renumbered from Section, 01/14/93, Ord. No. 8190)
(Amended 07/01/93, Ord. No. 8265)
(Amended 08/05/94, Ord. No. 8433)
(Amended 07/01/95, Ord. No. 8550)
(Amended 03/15/96, Ord. No. 8650)
(Amended 07/17/98, Ord. No. 8927)
(Amended 07/02/99, Ord. No. 9050)
(Amended 06/30/00, Ord. No. 9162)
(Amended 07/13/01, Ord. No. 9354)
(Amended 05/31/02, Ord. No. 9465)
(Amended 06/27/03, Ord. No. 9562)
(Amended 06/25/04, Ord. No. 9656)
(Amended 06/24/05, Ord. No. 9721)
(Amended 06/23/06, Ord. No. 9783)
(Amended 06/22/07, Ord. No. 9871)
(Amended 08/01/08, Ord. No. 9946)
(Amended 06/19/09, Ord. No. 9987)
(Amended 05/21/10, Ord. No. 10051)
(Amended 06/17/11, Ord. No. 10153)

SECTION 4.3.12: DENIAL OF LEAVE. Any question arising out of the denial of leave without pay shall be decided by the Director, Department of Human Resources.

(Renumbered 08/01/08 Ord. No. 9946)

SECTION 4.3.13: FAMILY CARE LEAVE.

(Repealed 04/16/93, Ord. No. 8226)

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