

**HUMAN RESOURCE  
POLICIES AND PROCEDURES**



<b>Policy:</b>	Family & Medical Care Leave	
<b>Date:</b> December 6, 2000	<b>Revision Date:</b> July 24, 2016	<b>Approved by:</b> Human Resources

**I. POLICY STATEMENTS**

To the extent not already provided for under current leave policies and provisions, the Eastern Municipal Water District (District) will provide family and medical care leave for eligible employees as required by State and Federal Law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulation of the California Family Rights Act (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

**II. DEFINITIONS**

- A. “12-Month Period” means a 12-month period measured forward from the date any employee's first FMLA leave begins.
- B. “Child” means a biological, adopted, foster or step-child, legal ward, or a child of a person standing in “loco parentis” (in place of a parent) who is a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability (there is no age limit for military family/qualifying exigency leave).

A child is “incapable of self-care” if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as, caring for grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

- C. “Parent” means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- D. “Spouse” means a husband or wife as defined or recognized under California State Law for purposes of marriage.
- E. “Domestic Partner” is defined by the California Domestic Partner Rights and Responsibilities Act.
- F. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:

- 1. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential

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medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or any subsequent treatment in connection with such inpatient care; or

2. 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:
  - a. A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment or recovery) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - b. 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., a physical therapist) under orders of, or on referral by, a health care provider; or
  - c. 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. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it is not, by itself, sufficient to constitute a regimen of continuing treatment.
  - d. Any period of incapacity due to pregnancy or for prenatal care. (The right to take Family & Medical Care Leave is separate from the right to take pregnancy disability leave. State law allows an employee to take up to four months of pregnancy disability leave. If an employee exhausts her pregnancy disability leave prior to the birth of the child, and her physician certifies that continued leave is medically necessary, the employee may use Family & Medical Care Leave prior to the birth of the child. The maximum possible combined leave for pregnancy disability/CFRA/FMLA is four months and 12 workweeks.) (This entitles the employee to FMLA Leave, but not CFRA Leave.
  - e. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - f. 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

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provider;

- g. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- h. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts less than one day.
- i. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's disease, a severe stroke or the terminal stages of a disease.
- j. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or, kidney disease (dialysis).

G. "Health Care Provider" means:

- 1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or
- 2. Any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.
- 3. Others "capable of providing health care services" as determined by the U.S. Secretary of Labor include only:
  - a. Podiatrists, dentists, clinical psychologist, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law;
  - b. 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;
  - c. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee

may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable state or local law or collective bargaining agreement.

- d. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
- e. A health care provider listed above who practices in a country other than the United States, who is performing within the scope of his or her practice as defined under such law and who is authorized to practice in accordance with the law of that country.
- f. The phrase "authorized to practice in the state" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

H. "Qualifying Exigency" means a need to take military family leave arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. This is intended to assist families with non-medical needs such as:

- 1. Short-notice deployment
- 2. Military events and related activities (before or during deployment)
- 3. Childcare and school activities (e.g., arrange for alternate childcare)
- 4. Financial and legal arrangements
- 5. Counseling (non-medical for oneself, the service member, or child)
- 6. Rest and recuperation (up to 5 days for each)
- 7. Post-deployment activities (ceremonies or briefings)
- 8. Additional activities agreed to by the employer and employee

### **III. REASONS FOR LEAVE**

Leave is only permitted for the following reasons:

- A. The birth of a child or to care for a newborn of an employee;
- B. The placement of a child with an employee in connection with the adoption or foster care of a child;

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- C. Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition (Note: An employee who is temporarily free from providing care for a child, parent or a spouse as authorized for a period long enough to permit him to perform his District duties for four or more hours during any day or days during his term of Family & Medical Care Leave must perform such District duties in order to continue to be protected by FMLA or CFRA); or
- D. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.
- E. Leave due to a qualifying exigency arising out of the fact that an employee's spouse/domestic partner, son/daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty status.
- F. Leave of up to 26 weeks to care for an employee's spouse/domestic partner, son/daughter, parent, or next of kin who is a covered service member with a serious injury or illness

**IV. EMPLOYEES ELIGIBLE FOR LEAVE**

An employee is eligible for leave if the employee:

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

**V. AMOUNT OF LEAVE**

Eligible employees are entitled to a total of 12 workweeks of family medical leave during any 12-month period, and are entitled to military family leave which, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during a 12 month period.

**A. Minimum Duration of Leave**

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, unless otherwise approved by the employee's department head, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse, domestic partner or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

B. Parents Both Employed By the District

In any case in which parents are both employed by the District are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

**VI. EMPLOYEE BENEFITS WHILE ON LEAVE**

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the District's group health insurance to the same extent that coverage is provided while the employee is on the job. Employees are responsible for benefit premiums on the same basis as employees not on leave. Employees will not continue to be covered under non-health related insurance plans (e.g., life insurance) or Paid Time Off (PTO) accruals when the employee is off payroll for more than two consecutive weeks.

Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the District will inform you whether the premiums should be paid to the carrier or to the District. Your coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least 15 days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the District shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/ her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The District shall have the right to recover premiums through deduction from any sums due the employee (e.g. unpaid wages, PTO pay, etc.).

**VII. SUBSTITUTION OF PAID ACCRUED LEAVES**

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the District may require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

A. Employee Right to Use Paid Accrued Leaves Concurrently With Family Leave

At the employee's request, where an employee has earned or accrued PTO, floating holidays or compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

- B. The District's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves.

If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the District may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

- C. The District's And Employee's Rights If An Employee Requests Accrued Leave Without Mentioning Either The FMLA Or CFRA.

If an employee requests to utilize accrued PTO leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the District may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the District denies the employee's request and the employee provides information that the requested time off is for FMLA/CFRA qualifying purpose, the District may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the District may designate that leave toward the employee's 12-week FMLA/CFRA entitlement.

#### **VIII. MEDICAL CERTIFICATION**

Employees who request leave for their own serious health condition or to care for a child, parent, spouse, or domestic partner who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by the District.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

- A. Time to Provide A Certification

When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the District within the time frame requested by the District (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

- B. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the District may delay the taking of FMLA/CFRA leave until the required certification is provided.

C. Second and Third Medical Opinions

If the District has reason to doubt the validity of a certification, the District may require a medical opinion of a second health care provider chosen and paid for by the District. If the second opinion is different from the first, the District may require the opinion of a third provider jointly approved by the District and the employee, but paid for by the District. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.

D. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

E. Subsequent Medical Recertification

Generally, the District may request recertification no more often than every 6 months. If a minimum duration for leave is specified, the District may not request recertification until that time period has expired. Recertification may be requested in less than 30 days if the employee requests an extension of leave, circumstances have changed significantly from the original certification, or the employer receives information casting doubt on the employee's stated reason for the leave, such as when leave results in a pattern of absences. If an employee has a medically certified life-long condition, and the employee's attendance record is "Meets Expectations" or better with no documented attendance related disciplinary actions on file, the employee will only be requested to provide recertification every 12 months. In all cases, a subsequent medical recertification means that new FMLA medical certification form must be completed by the employee's health care provider.

**IX. EMPLOYEE NOTICE OF LEAVE**

Although the District recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If the District determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the District may delay the granting of the leave up to 30 days until it can, in its discretion, adequately cover the position with a substitute. Calling in "sick" without providing the reasons for the needed leave will not be considered sufficient notice for FMLA leave under this policy.



**X. REINSTATEMENT UPON RETURN FROM LEAVE**

A. Right To Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and District, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation To Periodically Report On His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness For Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. This requirement does not apply to employees returning from an intermittent leave. Failure to provide such certification will result in denial of reinstatement.

D. Reinstatement Of "Key Employees"

The District may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the District) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District, and the employee is notified of the District's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

**XI. WORKER'S COMPENSATION AND FAMILY AND MEDICAL CARE LEAVE COORDINATION**

Family and Medical Care Leave will be designated by the District when an employee qualifies for such leave as a result of a District work-related injury or illness as provided for in Section 7.C. Conditions of Employment "On-the-job injury or illness" of the Memorandum of Understanding.. Up to 12-weeks of additional unpaid family leave may be granted within a 12-month period to care for a qualified child, parent, spouse or domestic partner provided such additional leave will not result in an extension of leave as provided in MOU Section 5.Y. Work-Related Disability Leave.

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**XII. REQUIRED FORMS**

Employees must fill out the applicable forms in connection with leave under this policy, and may receive all applicable forms through the District's third party FMLA administrator. Specific contact information can be located on the HR Benefits page of the Pipeline.

**AUTHORIZED SIGNATURES ON FILE**