

**SANTA CRUZ COUNTY
PERSONNEL ADMINISTRATIVE MANUAL**

Topic: PREGNANCY DISABILITY LEAVES OF ABSENCE	Date Issued: 2/24/98
Section: LEAVES OF ABSENCE	Date Revised: 2015, 5/2022, 8/2023
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PURPOSE:

To identify regulations and procedures concerning leaves of absences without pay for reasons of pregnancy, childbirth and related medical conditions.

LEGAL BASIS:

- Federal Family and Medical Leave Act of 1993, Final Rule, January 2009 (29 C.F.R. Part 825)
- Moore-Brown-Roberti California Rights Act of 1993 (CA Government Code Sections 12945.2 and 19702.3)
- California Fair Employment and Housing Act, California Government Code, Title 2, Division 3, Part 2.8, Rev. 1/1/07
- Personnel Regulations, Section 150.1 Santa Cruz Maternity Leave Policy
- Personnel Regulations, Section 168.1 Leave of Absence Without Pay
- Personnel Regulations, Section 168.4 Family Care and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) Leaves of Absence
- Leave for Reproductive Loss, California Government Code Section 12945.6
- Pregnant Workers Fairness Act (PWFA)

See provisions of the individual Memoranda of Understanding applicable to the employee regarding continuation of insurances during leave of absence without pay.

CROSS REFERENCE:

Personnel Administrative Manual Sections:

XIII.1. A, Interrelationship of Leaves

XIII.1.B, Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) Leave of Absence

XIII.2.A, Other Medical Leave of Absence Without Pay

XIII.2.B, Personal/Educational Leaves of Absence

XIII.4, Return from Leaves of Absence

V.1.B.3, Substitute Appointments

POLICY:

Pregnant employees have several leave entitlements and options related to leave for pregnancy and care of newborn children. Such employees may be eligible for medical leave due to pregnancy under State law, and/or leave due to pregnancy and/or to care for a new baby under Federal and State law. Different types of leave may run concurrently and each type of leave may include: (1) paid or unpaid leave; (2) different eligibility and requirements; and (3) different options for benefits. Thus, an employee may be eligible for (1) Pregnancy Disability Leave (under FEHA); (2) leave under the Federal Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA), hereafter referred to as FMLA/CFRA; (3) Other Medical Leave; and/ or (4) Personal Leave of Absence Without Pay. In addition, there are benefits under the employee's group Short- or Long-Term Disability plan to consider, as well as employee payment of insurances during any any leave of absence without pay. Due to the number of options available and the interaction of these with insurances, pregnant employees should contact the Personnel Department to schedule a meeting to review options, make choices and identify insurance benefits and costs. It is recommended that the pregnant employee contact the Personnel Department by the fourth month of pregnancy to initiate this process.

I. PROVISIONS OF STATE LAW RELATED TO PREGNANCY

A. Medical Disability Arising from Pregnancy Childbirth or Related Medical Condition

A Pregnancy Disability leave of absence (paid or unpaid) is for a minimum of six weeks for a pregnancy, and a maximum of four months for disabilities arising from pregnancy, childbirth or related medical conditions. Such leave is available only when the employee is disabled from work due to pregnancy. These provisions apply to all employees, regardless of status (e.g., provisional, probationary, permanent, non-civil service).

After the period of Pregnancy Disability Leave, employees seeking additional leave to care for a newly born or adopted child must request leave of absence under FMLA/CFRA, or the Personal/Educational leave of absence policies.

B. Other provisions of State/Federal laws with respect to pregnancy:

It is unlawful employment practice, unless based upon a bona fide occupational qualification, for an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of their pregnancy, if they so requests, with the advice of her physician, where that

transfer can be reasonable accommodated. However, no employer shall be required to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

The Pregnant Workers Fairness Act (PWFA) requires employers to provide “reasonable accommodation” to an employee’s known limitations related to pregnancy, childbirth or related medical conditions unless the accommodation would cause the employer an “undue hardship”. The PWFA does not replace federal, state or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions. California is recognized as a state that provides greater protections than federal law. (Cal. Government Code 12945).

II. OTHER PROVISIONS RELATED TO PREGNANCY AND CHILDBIRTH

A. Personal Leave

The County’s Maternity Leave Policy provides that pregnant female employees may request personal leave (paid or unpaid) associated with a pregnancy. The policy provides that two months is a reasonable period for personal leave connected with maternity. The two-month period of personal leave includes any requested time off which does not meet the Pregnancy Disability Leave requirements stated above, including time taken off prior to birth when the employee is not disabled, as well as time taken off after the disability period. State law further provides that an employee who is eligible for FMLA/CFRA leave may take up to 12 weeks of leave (paid or unpaid) in conjunction with a pregnancy. An example would be leave taken to be with the employee’s newborn baby. Depending upon the circumstances, leave taken after the Pregnancy Disability Leave could be taken as Personal/Educational leave of absence without pay or as FMLA/CFRA leave.

B. Relationship of Pregnancy Disability Leave to FMLA/CFRA Leave

The right to a six-week period for a pregnancy or up to four months for disabilities arising from pregnancy, childbirth or a related medical condition is *in addition to and separate from* the right to a period of up to 12 weeks of FMLA/CFRA Leave for an eligible employee. For example, an eligible employee could take Pregnancy Disability Leave for six weeks as a result of a pregnancy, and then take an additional 12 weeks of FMLA/CFRA Leave to care for her newborn baby.

C. Eligibility for Pregnancy Disability Leave

1. Other Medical Leave

The provisions of State law which require an employer to grant a minimum of six weeks of leave for a pregnancy and a maximum of four months of leave due to pregnancy, childbirth or a related medical condition apply to all employees (e.g., provisional, probationary, permanent, non-civil service) regardless of status. Pregnancy Disability Leave must be certified as such by an authorized health care provider.

2. FMLA/CFRA Leave

To be eligible for FMLA/CFRA Leave, an employee must meet both of the following criteria: (1) have worked for the County for a total of 12 calendar months; AND (2) have a total of 1000 hours of a combination of time worked and paid leave within the 25 pay periods preceding the requested leave.

III. REPRODUCTIVE LOSS LEAVE

An employee is eligible for reproductive loss leave after at least 30 days of employment.

An eligible employee is entitled to take up to five days reproductive loss leave (which may be taken nonconsecutively) per reproductive loss event, up to a total amount of 20 days of reproductive loss leave within a 12-month period.

A reproductive loss event means “the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction” (i.e., an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure). Employees under the following circumstances related to a reproductive loss event are eligible for reproductive loss leave:

A. A failed adoption event applies to an employee who would have been a parent of the adoptee if the adoption had been completed.

B. A failed surrogacy event applies to an employee who would have been a parent of a child born as a result of the surrogacy.

C. A miscarriage event applies to an employee who experienced a miscarriage, who is the current spouse or domestic partner of a person who experienced a miscarriage, or who would have been a parent of a child born as a result of a pregnancy that resulted in miscarriage.

D. A stillbirth even applies to an employee whose pregnancy resulted in a stillbirth, who is the current spouse or domestic partner of a person whose pregnancy resulted in a stillbirth, or who would have been a parent of a child born as a result of a pregnancy that resulted in stillbirth.

E. An unsuccessful assisted reproduction event applies to an employee who experienced such event, who is the current spouse or domestic partner of a person who experienced such event, or who would have been a parent of a child born as a result of a pregnancy had the assisted reproduction been successful.

Reproductive loss leave must be taken within three (3) months of the reproductive loss event. However, if, prior to or immediately following a reproductive loss event, an employee is on or chooses to go on Pregnancy Disability Leave, leave under CFRA, or any other leave entitlement under state or federal law, the employee must complete their reproductive loss leave within three (3) months of the end date of the other leave.

The reproductive loss leave is unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

IV. REQUESTS FOR LEAVE/DOCUMENTATION REQUIRED

- A. The maximum of any period of leave of absence without pay is one year. The one year maximum applies to any type of absence or combination of types (e.g. FMLA/CFRA Leave, Pregnancy Disability Leave, Other Medical Leave, or Personal/Educational Leave).
- B. Any leave of absence without pay of less than 160 hours for a full-time employee (prorated for part-time employees, e.g. less than 80 hours for a half-time employee) must be requested by the employee on a PER1082 form (Employee Request for Time Off-Departmental), which shows the beginning and ending dates of the leave.
- C. Any period of leave of absence without pay of 160 or more hours (prorated for part-time) must be requested by the employee on a PER1083 form (Employee Request for Leave Without Pay Over 160 Consecutive Hours), showing the beginning and ending dates of the leave. These dates should be consistent with those on the PER1081A (physician's certification form).
- D. Leave requests for medical reasons MUST be accompanied by a PER1081A form (Physician's Certification for Medical Leave) completed in full, by each attending physician.

- E. While an employee may submit physician's statements in conjunction with an application for Short- or Long-Term Disability Insurance, or submit a physician's statement with a claim for Workers' Compensation, this does not relieve the employee of the obligation under County regulations to request a leave of absence without pay through their department and to submit the documentation required to paragraphs B, C, and D above.
- F. An employee granted a leave of absence without pay is obligated to immediately inform their department of any changes in circumstances which affect the purpose or the duration of the leave of absence without pay.

V. USE OF PAID LEAVE DURING LEAVE RELATED TO PREGNANCY

- A. All employees must exhaust ALL accrued compensatory time prior to the effective date of any leave of absence without pay.
- B. Employees must use all earned sick leave prior to the effective date of any leave of absence without pay if leave is being taken for an employee's illness, including the period they are disabled due to pregnancy, childbirth or a related medical condition. This includes sick leave accrued by employees in the General Representation Unit prior to 7/20/79.
- C. Employees may elect to use accrued vacation or annual leave in lieu of leave of absence without pay for Family Care or Medical Leave.

VI. BENEFITS AND INSURANCES DURING LEAVE OF ABSENCE WITHOUT PAY

- A. Group Health Insurance
 - 1. Requirements for continuation of insurances are specified under the "Continuous of Insurances During Leave of Absence Without Pay" Articles of each Memorandum of Understanding between the County and employee organizations. See the particular MOU applicable to the employee.
 - 2. It is important that employees contact the Benefits Division of the Personnel Department 454-2241 PRIOR to the leave of absence to make arrangements for insurance coverage for themselves and any dependents during the leave. Any leave of absence without pay of one full pay period or longer leaves the employee and any dependents without coverage. Further, should an employee elect to do coverage for themselves or any dependents during a leave of absence without pay, certain re-enrollment provisions apply.

3. To continue County insurance benefits coverage during a leave of absence without pay of a full pay period or more, the employee must pay their insurance premiums in accordance with the provisions of their respective Memorandum of Understanding (MOU). If the leave of absence without pay is under 30 calendar days, the County will collect the amount due through payroll deductions after the employee returns to paid status in accordance with the provisions of their respective MOU.

B. Service Hours: During any unpaid leave of absence an employee will not accrue service hours for purposes of step advancement, probationary period or County service hours. Similarly, no paid leave (e.g., vacation, annual leave, sick leave, or administrative leave) will accrue during any leave of absence without pay.

VII. FAILURE TO RETURN

Any employee who fails to return upon the expiration of any leave of absence without pay shall be considered to have abandoned their position and to have automatically resigned.

VIII. REQUESTS FOR EXTENSIONS OF LEAVES OF ABSENCE WITHOUT PAY:

A. Any request for an extension of a leave of absence without pay must be submitted at least seven working days PRIOR to the expiration date of the previous leave of absence without pay. Extension requests for medical reasons (including disability due to pregnancy, childbirth or a related medical condition) must be accompanied by a current completed PER1081A form from each treating physician.

B. Upon submittal of the required documentation and upon receipt of the required approval, a leave of absence without pay for other medical reasons (or in combination with any other type of leave without pay) may be extended to a maximum of one year.

IX. MEDICAL CERTIFICATION UPON RETURN FROM LEAVE OF ABSENCE WITHOUT PAY

A. Before returning from any leave of absence without pay for medical reasons, a current PER1086 form (Physician's Certification for Return from Medical Leave) must be received from each treating physician, completed in full, and releasing the employee to return to work. The Department shall provide the employee a copy of their job description to provide the treating physician(s) (along with the PER1086) for purposes of aiding the treating physician's determination of whether the employee may be released for work. Departments should NEVER

permit an employee to return to work based on a note from a doctor or other health practitioner that simply releases the employee to return to work. There must be a completed PER1086 form where the physician/practitioner specifies that the employee is able to return to their full duties.

- B. The employee should provide the completed PER1086 form(s) to the Department at least seven working days PRIOR to the expiration of the leave of absence without pay so that the Department has time to review the situation and determine what accommodations, if any, can be made if the employee has work limitations.
- C. If the physician(s) place(s) limitations on duties or tasks to be performed, or if there is a question concerning the condition of the employee to perform assigned duties, the Department should contact the Leaves of Absence coordinator in the Risk Division of the Personnel Department BEFORE allowing the employee to return to work. A Temporary Modified Duty Agreement (TMDA) may be required.

RIGHT TO RETURN:

The right to return depends on upon the type of leave requested and whether such leave falls within the time period specified under State Pregnancy Leave Law or FMLA/CFRA Leave or the County's leave policies.

PROCEDURE:

For procedures for requesting, extending, and return from Other Medical Leave of Absence Without Pay, see Personnel Administrative Manual Section XIII.2.A.

For procedures for requesting, extending, and return from FMLA/CFRA Leave, see Personnel Administrative Manual Section XIII.1.B.

For procedures for requesting, extending, and return from Personal Leave of Absence Without Pay, see Personnel Administrative Manual Section XIII.2.B.