Martin Luther King, Jr.
OUTPATIENT CENTER

POLICY AND PROCEDURE

DIVISION: ADMINISTRATION	**NUMBER**: 04-015
SUBJECT: **LEAVES OF ABSENCE**	
SECTION: HUMAN RESOURCES	**PAGE**: 1 **OF:** 7
REVIEWED BY: HR ADMINISTRATOR AND PROCEDURE & POLICY COMMITTEE	**EFFECTIVE DATE:** 06/25/92
TO BE PERFORMED BY: ALL AEMPLOYEES, MANAGEMENT/SUPERVISORS, HR/INJURY AND MANAGEMENT UNIT	**REVIEWED DATE**: 04/16/07 **REVISED DATE**: 04/01/17

PURPOSE

To balance the needs of the workplace with the needs of families and to provide guidelines for leaves of absence under the Family Medical Leave Act (FMLA), California Family Rights Act (CFRA) and the California Pregnancy Disability Leave (CPDL).

This policy establishes the administrative guidelines for medical leaves of absence related to:

- A serious health condition which prevents the employee from performing the customary functions of their position;
- Disability of the female employee due to pregnancy, childbirth, or a related medical condition, including pre-natal care and severe morning sickness;
- Birth of an employee's child and care for the employee's newborn child;
- Placement of a child for adoption or foster care with the employee;
- Care for an employee's spouse, child or parent who has a serious health condition.

POLICY

All absences related to medical condition that are of thirty (30) continuous days or more require authorization pursuant to the provisions of the County Code and the statutes identified herein (FMLA, CFRA and/or CPDL). Such leaves of absence are authorized by the Department/Service Manager and the on-site Human Resources Office based upon documentation submitted by the employee as evidence of the appropriateness of such leave.

All benefits related to this policy are administered by the on-site Human Resources Office and Return to Work Unit.

ELIGIBILITY/BENEFITS:

Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA)

An "eligible employee" under FMLA and the CFRA is any employee who has completed at least 12 months of continuous County service, and has worked at least 1,250 hours during the 12-month period immediately preceding the start of the granted leave.

An employee's right to FMLA or CFRA leaves for the birth of a child, or placement of a child for adoption or foster care expires 12 months after the date of birth or placement. Child care beyond this period does not qualify for FMLA or CFRA if the child is otherwise healthy.

FMLA and CFRA limits the amount of leave that can be taken by spouses (CFRA also includes unmarried parents of a child) who work for the same employer to a combined total of 12 workweeks within the 12-month period when the leave is taken for the birth or placement of a child or to care for the employee's parent. There is no combined limit to care for a seriously ill child, spouse, or one's own serious health condition.

No employee is excluded due to his or her employment status with the County. Temporary, recurrent, and part-time employees are all eligible if the qualifying service and hour requirements are met.

Under FMLA, the County is considered to be one employer, without regard to the number of individual County departments exist. Therefore, the eligibility of an employee who, within the qualifying 12 month cycle, may have been assigned to more than one department must be determined by the aggregate "hours worked" in all such departments. The 12-month employment requirement translates into 52 weeks of employment which need not be consecutive.

If an employee is maintained on the payroll for any part of a week, including any period of paid or unpaid leave (full-pay sick leave, part-pay, vacation, annual leave, etc) during which other benefits or compensation are provided (e.g., Workers' Compensation, part-pay, STD, etc), the week is counted as a week of employment.

The definition of "hours worked" for the purpose of the FMLA's 1,250-hour eligibility test is the same as under the Fair Labor Standards Act (FLSA). Generally, FLSA limits "hours worked" to actual hours of production. This means that overtime hours are included, but hours absent such as vacation, holiday, sick leave, etc. are not considered.

FLSA-exempt employees who have worked for the County for at least 12 months are presumed to have met the 1,250-hour eligibility test. In addition, if accurate records of the actual working hours of a non-exempt employee worked are not maintained, that employee will be presumed to have met the 1,250-hour eligibility test.

An employee's work schedule shall not be manipulated so as to deny that employee eligibility for FMLA, CFRA. For example, part-time employees cannot have hours reduced solely to prevent them from being eligible for FMLA or CFRA leave. Hours may be reduced, however, for a bona fide business reason such as downsizing, restructuring, or reduction in workload. An employee's eligibility is determined from the date the FMLA or CFRA leave will begin and not the date of notice. This means that an employee can request FMLA or CFRA leave before meeting the eligibility requirements as long as the requirements are met by the date the leave begins.

Under FMLA, an employee is entitled to take a total of twelve (12) workweeks of leave during any twelve (12) month period, CFRA offers the same leave benefit with the exception that leave(s) taken for the birth, adoption, or foster care placement shall be granted at a minimum of two (2) week increments. On two occasions increments or less than two weeks may be used.

California Pregnancy Disability Leave (CPDL)

CPDL provides for up to four (4) months of unpaid leave for disability, as certified by a physician, due to pregnancy. Eligibility is not based on length of employment or hours of service. At the end of the pregnancy disability, the employee is then entitled to take 12 workweeks of family leave under CFRA. However, if she and the father both work for the County, there is a limitation of a combined total of 12 weeks to care for the child. The pregnancy disability leave and CFRA leave do not run at the same time, but rather run consecutively.

Continuation of Medical/Dental Coverage

During FMLA leave, an employee's group health and dental coverage must be continued on the same basis and under the same conditions as were applicable prior to the commencement of the leave.

The County has no obligation to continue medical and dental coverage if the employee was not enrolled in a medical and/or dental plan prior to the FMLA leave, waives his or her medical or dental coverage during the FMLA leave, notifies the department that (s)he will not return from FMLA leave, fails to return to work on the expected return date or exhausts his or her FMLA entitlement.

Under FMLA, the County is entitled to recover any premiums payment made on behalf of the employee if (s)he fails to return from FMLA leave after the leave entitlement has been exhausted or the leave expires.

Requests for Leave of Absence:

If the need for leave is foreseeable (e.g., expected date of birth or a planned medical treatment), the employee must provide the manager/Supervisor with at least 30 days advance notice. If it is not practical to give a full 30 days notice, the employee is required to notify the Manager/Supervisor as soon as possible, but at least within one or two business days of when the need for leave becomes known to the employee.

In the case of an *unforeseeable need for leave* (e.g., medical emergency), the employee is required to give as much advance notice as is practical based on the facts and circumstances of the case. Verbal notice of the need for leave and the anticipated time and duration is sufficient in such cases.

The employee may provide notice either in person, by telephone, telegram, "fax", or other electronic means. Notice can ales be given by the employee's spouse, family member, or other responsible party if the employee is unable to do so personally.

Notice may be given by an employee before the employee becomes eligible for FMLA leave provided the employee will be eligible by the first day of the leave.

When the leave is to be on continuous or on a reduced schedule basis, notice need only be given once. However, the employee is expected to notify the Manager/Supervisor as soon as practical if the dates are changed or extended.

The Manager/Supervisor may require that an employee requesting FMLA leave comply with the department's procedural requirement for requesting other types of paid or unpaid leave. However, the request for FMLA leave cannot be denied or delayed merely because it is not in writing if the eligible employee gave timely verbal or other notice. The Manger/Supervisor also cannot impose notification requirements which exceed those in the FMLA regulations.

Designating FMLA Leave

It is the responsibility of DHS Risk Management – Return to Work Unit to designate leave, paid or unpaid, as FMLA leave. The employee need not request FMLA, CFRA, or CPDL or even know that these laws exist. The employee is only obligated to explain that (s)he needs leave for a particular purpose and to give the expected duration to the extent that (s)he can determine at the time notice is given.

It is DHS Risk Management – Return to Work Unit responsibility to determine if the leave qualifies as family or pregnancy disability leave and, if so, to credit the absence against the maximum duration limits under the applicable law (e.g., 12 workweeks under FMLA).

DHS Risk Management – Return to Work Unit determination must be based only on the information received from the employee or the employee's spokesperson in the case where the employee is unable to communicate directly. If an employee requests to utilize accrued time off without reference to the need for family leave, CFRA does not permit management to ask whether the employee is taking time off for a family leave qualifying reason. Neither the CFRA nor FMLA permit the employee to ask for a diagnosis in regard to a request for family leave.

The employee may forfeit his or her protection under FMLA if they do not give notice to their Manager/Supervisor as to the reason for the leave. If a leave is granted the employee must give the reason for the leave within two business days of their return to work to receive the protection and benefits of the FMLA.

Once DHS Risk Management – Return to Work Unit learns that the paid or unpaid leave is being taken for a FMLA or CFRA qualifying reason, management must notify the employee within two business days that the leave will be designated as FMLA leave. This notice can be given orally or in writing. If the designation is given orally to the employee, it must be confirmed in writing by the next regular payday unless there is less than a week remaining until the next payday.

Medical Certification:

Management has the right to insist on medical certification from a health care provider if the need for leave is based on a serious health condition of the employee, as well as verify the existence of a serious health condition affecting a family member. DHS Risk Management – Return to Work Unit will request certification from the employee in writing via

completion of the form entitled "Request for Leave of Absence." Additionally, the employee's health care provider is required to complete and provide the form entitled, "Certification of Physical Condition."
If the need for leave is foreseeable and at least 30 days' notice has been provided, the certifications should be provided to DHS Risk Management – Return to Work Unit prior to commencement of the leave. If the need for leave is unforeseeable, DHS Risk Management – Return to Work Unit will allow at least 15 *calendar* days for the employee to submit the certification. Additional time may be granted if the circumstance dictate such despite the employee's good faith effort. DHS Risk Management – Return to Work Unit should grant FMLA leave on a provisional basis while waiting for the medical certification.

If medical certification is not provided to DHS Risk Management – Return to Work Unit within the stated time frame the leave may be delayed or cancelled and the employee may be liable for any County incurred health and dental care premium expenses. If fraud is involved, disciplinary action may be taken within departmental policy, Employee Evaluation & Discipline Guidelines and Civil Service rules.

Medical certification can be accepted from any health care provider recognized by the FMLA and the County sponsored or approved health care plans provided that the health care provider is acting within the scope of their license. Medical certification from a family member's health care provider need only confirm that the employee's presence would be beneficial to the ill family member.

Recertification:

DHS Risk Management – Return to Work Unit may request medical recertification at reasonable intervals, but not more than every 30 days unless:

- Circumstances described in the previous certification have significantly changed (e.g., the nature of the illness, the duration or frequency of treatment, the severity of the condition, etc.);
- Management receives information that casts doubt upon the continuing validity of the certification;
- The employee requests and extension of the leave, or
- The employee has not returned to work after the expiration of the FMLA leave in order to determine if the health plan premiums paid by the County are recoverable.

Failure to Submit Medical Certification or Recertification:

If the leave is foreseeable, DHS Risk Management – Return to Work Unit may delay the start date of the FMLA leave until the employee provides the medical certification if a formal request for the certification at the time leave was requested and there were no extenuating circumstances which, despite the good faith efforts of the employee, prevented the submission of the certification in a timely fashion.

If the leave is *not foreseeable* or is for *recertification,* the employee is expected to provide the medical certification within the time established frame (15 days) or as soon as reasonably possible.

In the case of an emergency, management may allow longer than the stipulated 15 days depending on the individual circumstances. If the employee fails to provide the medical certification within a reasonable time in light of the circumstances, DHS Risk Management – Return to Work Unit may delay the start of FMLA leave or the continuation of the leave. If the employee never produces the medical certification, the leave will not be considered as FMLA leave.

Paid Leave Versus Unpaid Leave:

California Labor Code allows the use of up to 50% of an employee's *annual* allocation of 100% sick leave benefits to attend to an ill child, parent or spouse. The law prohibits a Manager/Supervisor from denying an employee the right to use this family sick leave, or from retaliating against an employee for doing so. Note, however, that the Board of Supervisors has adopted a policy permitting the use of accrued time to cover any FMLA leave period – AND – allows an employee to use up to 6 days (48 hours) of annual 100% sick leave benefits for any personal reason, with prior management authorization. Therefore, at their option, an employee may use accrued time to cover family leave, including pregnancy which is covered by FMLA and CPDL. There are no restrictions regarding non-elective leave benefits for Megaflex employees in this regard.

FMLA/Workers' Compensation:

FMLA provides that an employee's serious health condition can be the result of an illness or injury on or off the job. In the case of a job-related illness or injury, FMLA may run concurrently with Workers' Compensation leave if the illness or injury meets the FMLA definition of a "serious health condition" and the employee is properly notified.

Since benefits are provided to employees for job-related disabilities, employees are not permitted to use accrued time when they are collecting Workers' Compensation and/or County Industrial Injury Leave benefits. It is also important to remember when FMLA and Workers' Compensation are running concurrently an employee may not be forced to return to light duty work under FMLA. If the employee returns to the light duty job, they retain the right under FMLA to be restored to the same or equivalent job and benefits until the 12-week FMLA entitlement, including the light duty work, expires.

Note: Questions regarding this section should be directed to DHS Risk Management – Return to Work Unit.

American with Disabilities Act (ADA) and FMLA:

FMLA does not modify or affect the ADA or the regulations issued under the ADA. FMAL does not limit already existing ADA rights and protections for qualified individuals. If an employee is a qualified individual under ADA, the Manager/Supervisor must make reasonable accommodations in accordance with ADA. But, at the same time, this individual is also entitled to his or her rights and protections under FMLA. Therefore, ADA and FMLA must be analyzed separately to determine which statue provides the employee with the greater benefit. The Manger/Supervisor must inform the ADA qualified employee that his or her ADA leave will also be considered as FMLA leave.

Intermittent Leave and Reduced Hours:

FMLA and CFRA gives the employee the right to take intermittent leave or leave on a reduced work schedule under the following circumstances:

- A serious health condition of the employee or a family member when medically necessary for planned or unanticipated medical treatment;
- Recovery from treatment of a serious health condition of the employee or a family member,
- Provide care or psychological comfort to a family member with a serious health condition.

If the leave is foreseeable, employees must make a reasonable effort to schedule their intermittent leave so as to not unduly disrupt the work of the department. The Manager/Supervisor must make a reasonable effort to meet the employee's needs. The ultimate resolution of the leave schedule remains subject to the approval of the health care provider and schedule established for the planned medical treatment.

An employee may take intermittent leave during all or any portion of the 12-month period as long as the total amount of leave does not exceed the 12 workweeks in one 12-month period. However, only the actual time taken can be charged against the employee's entitlement. This means that the employee cannot have his or her entitlement reduced by any time the employee would otherwise not be required to report for duty. In other works if the employee was not scheduled to work (e.g., RDO, weekend, etc.) the time cannot be counted as FMLA time.

Care of a Newborn or Placement of a Child:

Under FMLA, intermittent leave or a reduced work schedule for the care of a newborn or a child placed for adoption or foster care can only be taken if management agrees. However, CFRA allows the employee to take intermittent leave for minimum two-week duration for the birth, adoption, or a placement of a child in foster care without management agreement. CFRA also requires management to grant intermittent leave for less than two weeks duration on any two occasions. These limitations under FMLA and CFRA do not apply if the employee chooses to take full-time FMLA/CFRA leave.

FMLA and CFRA limits on intermittent leave do not apply to leave taken due to the mother having a serious health

condition in connection with the birth of the child or if the child has a serious health condition.

Assignment to an Alternate Position:

An "alternate position" for this purpose mean another position which has equivalent pay and benefits, but not necessarily equivalent duties. An existing job may be altered to better accommodate the need for leave provided the modification is in compliance with other state or federal laws, County ordinance, and/or labor agreements.

The Manager/Supervisor may also transfer the employee to a part-time position so long as the employee receives at the same hourly equivalent in terms of pay and benefits. However, if the transfer to the part-time position would result in the employee taking more time than (s)he requires for FMLA leave, the Manager/Supervisor would be prohibited from making such a transfer. The Manager/Supervisor may assign an employee who needs intermittent leave or a reduced schedule to an available alternate position for which the employee is qualified and which better accommodates the recurrent periods of leave. However, the Manager/Supervisor may not transfer an employee to an alternate position in order to discourage the employee from taking the leave or otherwise created a hardship for the employee. Assignment to an alternate position must comply with governing Civil Service Rules, applicable MOU's, and the ADA.

When the employee no longer needs FMLA leave, the employee must be returned to his or her same position or an equivalent full-time position.

Equivalent Part-Time Benefits:

Although the Manager/Supervisor can assign the employee to a part-time position as an alternate position, it is against the Department of Labor regulations to disadvantage the employee so that (s)he loses his/her County cafeteria contributions.

Reduced Work Schedule for FLSA-Exempt Employees:

FLSA-exempt employees cannot be docked in less than full day increments. However, under FMLA, exempt employees on intermittent leave or a reduced schedule can be docked on an hourly basis without affecting their status under the following circumstances:

- The time is taken for a FMLA qualifying reason and is designated as FMLA leave by management.
- The "docking" does not take place prior to the first day of the FMLA intermittent leave or reduced schedule.

If the above conditions are met, exempt employees are to be docked on an hourly basis, or allowed to use accrued time on an hourly basis. However, if the above conditions are not met, the employee must definitely receive a full day's pay for any fractional day worked.

Time taken for a reason other than a FMLA qualifying reason may not be deducted from the employee's salary even if the time is taken during the FMLA intermittent leave.

Employee's Right to Return to Work:

The employee must be returned to their same position or an equivalent position, except in the following instances:

- Layoff. However, Civil Service rules and MOUs regarding re-employment after layoff apply to employees on FMLA leave who are laid-off to the same degree and extent as to laid-off employees not on FMLA leave.
- Seasonal Workers. If the department maintains a list of seasonal workers for re-employment each year, the seasonal worker must be placed on the list in the same manner as if (s)he never was on FMLA leave.
- The 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. However, it is important to research ADA regulations to determine if the County has obligations regarding the employee under that federal law (e.g., reasonable accommodation).

Workers from Temporary Agencies:

The Manager/Supervisor must accept the temporary worker returning from FMLA leave back in place of the replacement worker **if** the County continues to use the agency **and** the agency chooses to place the returning worker with the County. In addition, the Manager/Supervisor is prohibited from preventing a temporary worker from exercising his or her rights under FMLA, or of discharging or discriminating against a temporary worker who requests/takes FMLA.

AUTHORITY:

County of Los Angeles, Department of Human Resources, Family Leave Policy Guidelines
California Labor Code, §233
California Government Code, §12945
United States Code, Chapter 29, §2654
DHS Employee Evaluation & Disciple Guidelines

NOTED AND APPROVED:

_____ _____
Cynthia M. Oliver, Chief Executive Officer Date

_____ _____
Ellen Rothman, M.D., Chief Medical Director Date

_____ _____
Regina D. Pierre, Human Resources Administrator Date

Signature(s) on File.