Subject: **FAMILY AND MEDICAL LEAVE** **Effective: 8/30/96**

Number: **5.3**

I. POLICY STATEMENT

It is the policy of the City of Long Beach (City) to comply with the provisions of the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act of 1992 (CFRA). Rights and obligations which are not specifically addressed in this policy are incorporated by reference. Employees may also be entitled to additional leave benefits to the extent they are eligible under other City policies.

Under the FMLA and the CFRA, eligible employees are entitled to take up to 12 work weeks of leave with health insurance coverage during any 12-month period for various family and medical reasons as specified in this policy.

II. PROCEDURES

A. **Eligibility** - An employee is eligible for leave if the employee has been employed for at least 12 months with the City and has worked for the City at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

B. **Reasons for Leave** - Leave is permitted for the following reasons: birth of the employee's child; to care for the employee's newborn child; the placement of a child with the employee for adoption or foster care; the care of the employee's child, parent, or spouse who has a serious health condition; or a serious health condition that makes the employee unable to perform the employee's job.

C. **Computing the 12-Month Period** - The method for computing the 12-month period for the leave is based on a rolling 12-month period measured backward from the date the employee uses any FMLA /CFRA leave. Under this rolling method, each time an employee takes leave, the remaining leave entitlement will consist of any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

D. **Computing the 12 Workweeks** - 12 work weeks means the equivalent of twelve of the employee's normally scheduled workweeks. For example, a full-time employee who averages 40 work hours per week is entitled to a maximum of 480 hours of leave. Employees who work other than 40 hours

per week shall have their leave adjusted accordingly. For part-time employees, their leave is pro-rated.

E. **Intermittent Leave or Reduced Leave Schedule** - An employee may take leave intermittently or on a reduced leave schedule for the care of an immediate family member with a serious health condition or a serious health condition of the employee when medically necessary. "Medically necessary" means there must be a medical reason for the leave and the leave can best be accomplished through an intermittent or reduced leave schedule. During intermittent or reduced leave, the City reserves the right to temporarily transfer the employee to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave.

Approval of an employee's request to take leave intermittently or on a reduced leave schedule for the birth or placement for adoption or foster care of a child is at the discretion of the employee's department head.

F. **Requirement to Exhaust Accrued Paid Leave** - Prior to taking unpaid leave, employees are required to use all of their accrued paid leave time concurrently with their Family and Medical Leave as appropriate for covering their particular circumstances (such as sick leave, vacation, personal holiday leave, banked overtime, or banked holiday; refer to Section G for exceptions for employees absent due to a pregnancy disability). However, employees may retain accrued paid leave time as specified in the applicable memorandum of understanding.

G. **Pregnancy Disability** - Under state law, employees are entitled to four months maximum leave per year due to a disability related to pregnancy, childbirth, or related medical conditions. Pregnancy disability leave is designated to run concurrently with the FMLA leave. Employees are not required to use their accrued sick leave, vacation, or other accrued paid leave during their pregnancy disability period. However, employees may choose to use their accrued sick leave, vacation or other accrued paid leave during their pregnancy disability period.

Employees who are absent up to four months for a pregnancy disability may also be absent up to an additional 12 weeks to care for their newborn child under the CFRA. The City's obligation to pay for health insurance is limited to 12 weeks over a 12-month period for both pregnancy disability leave and leave to bond with her newborn. If employees are absent beyond their pregnancy disability period to care for their newborn child, they are required

to first use all accrued paid leave, excluding sick leave, prior to taking unpaid leave. However, employees may retain accrued paid-leave time as specified in the applicable memorandum of understanding.

H. **Limitations on Leave for Birth, Adoption or Foster Care Placement** - 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.

If both spouses work for the City, their total leave in any 12-month period may be limited to an aggregate of 12 work weeks when the leave is taken either for the birth or placement for adoption or foster care of the employees' child. This limitation does not apply to any other type of leave under this policy.

I. **Employee Notice of Leave** - Employees are required to provide their departments as much advance notice as reasonably possible of the need for leave, including when and how long the leave is needed. If the leave is foreseeable, at least 30 days notice is required using the City's Family and Medical Leave Request form. If the leave is not foreseeable, the employee is required to provide at least verbal notice as soon as possible, but no later than three working days after becoming aware of the need for the leave. If the employee provides a verbal notice, the employee's department may complete a Family and Medical Leave Request form on behalf of the employee and notify the employee accordingly.

Employees are required to provide the same advance notice as described above for any extensions or other changes to their previous notice of leave.

Employees are required to consult with their supervisor regarding the scheduling of any planned leave to minimize disruption to their departmental operations.

J. **City's Right to Designate Absence as Family and Medical Leave** - If an employee requests to use paid or unpaid leave and the City determines that the reasons for the needed leave qualify for Family and Medical Leave, the City may designate the leave to be appropriately counted towards the employee's 12-week Family and Medical Leave entitlement and advise the employee accordingly.

The City may designate a workers' compensation injury as Family and Medical Leave when it also constitutes a serious health condition as verified by the Occupational Health Services Officer.

K. **Medical Certification** - Employees requesting leave for their own serious health condition, the birth of their child, or for the care of an immediate family member who has a serious health condition must provide to their department a "Medical Certification for Family and Medical Leave" form completed by the health care provider of the individual requiring care. When the leave is foreseeable and at least 30 days notice has been provided, the employee must provide the medical certification prior to the beginning of the leave. When the leave is not foreseeable, the medical certification must be provided to the employee's department within 15 calendar days after notification of leave. If an employee fails to provide timely medical certification as required, the leave may be denied until the required certification is provided.

Employees may also be required to provide any subsequent recertifications, if necessary. The City reserves the right to a second opinion from the Occupational Health Services Officer, when there is doubt concerning the validity or authenticity of the certification.

L. **Health Insurance Benefits While on Leave -** While on leave, employees will continue to be covered by the City's group health insurance program to the same extent that coverage is provided while the employee is on the job.

Employees may choose to waive insurance coverage during their unpaid Family and Medical Leave by submitting to their department a signed Waiver of Health/Dental/Life Insurance During Family and Medical Leave form.

While on leave, employees will be responsible for payment of employee contributions for the insurance premiums either through payroll deduction or by direct payment to the City. The employee will be advised in writing by the employee's department as to the amount and method of payment. If an employee's payment for insurance premiums is more than 30 calendar days late, the City may terminate the employee's insurance coverage. However, a notice will be sent to the employee at least 15 days before coverage is terminated, advising the employee that his/her insurance coverage will cease if the premium payment is not received by a certain date. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.

Generally, the City shall have the right to recover the insurance premiums paid by the City during the period of unpaid leave if the employee fails to return to work after the employee's leave entitlement has been exhausted or expires. The City cannot recover its share of the premiums if the employee used paid leave or if the employee does not return because of the

continuation, recurrence, or onset of a serious health condition of the employee or a covered family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. Medical certification or other documentation is required within 30 calendar days of failure to return for either reason. The City shall have the right to recover any premiums through deduction from any sums due the employee (e.g., unpaid wages, accrued vacation pay, banked overtime, etc.).

M. **Responding to a Leave Request** - With the exception of an unforeseen emergency, the City shall attempt to respond to the leave request as soon as possible before the effective date of the leave, but no later than 10 days after receiving the request. The City may defer or deny the request until the employee complies with all the requirements for leave under this policy.

N. **Reinstatement Upon Return from Leave** - Upon return from leave, an employee must be restored to the employee's original position, or to an equivalent position with equivalent pay, benefits, and other employment terms and conditions.

O. **Failure to Return from Leave** - The failure of an employee to return to work after the expiration of a leave of absence will subject the employee to immediate termination unless an extension is granted pursuant to this policy (refer to Section II-I for notification requirements).

P. **Denying Reinstatement for Key Employees** - The City may deny reinstatement to a "key" employee (i.e., salaried employees who are exempt from FLSA and who on the date of the request for leave are among the top 10% of the employees in terms of gross salary) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City. Contact the Human Resources Department for assistance when considering denying reinstatement.

Q. **Return to Work Medical Certification** - Employees who have been on leave due to a serious medical condition must provide to their department a "Return to Work Medical Certification" form completed by their health care provider prior to returning to work.

R. **Return to Work Medical Examination** - Employees who have been on leave for 180 consecutive days must be examined by the Occupational Health Services Officer prior to returning to work.

S. **Confidentiality and Records Retention** - Medical certifications shall be maintained separately and treated as confidential medical records. All written materials containing medical information shall be transmitted in confidential envelopes. All records pertaining to compliance with the FMLA and CFRA shall be kept for not less than three years.

III. DEFINITIONS

A. **Child** - means 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. An employee's child is one whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in “loco parentis” (i.e., in place of a parent).

B. **Parent** - means biological parent of an employee or an individual who stands or stood in loco parentis (i.e., foster, or adoptive parent, a stepparent, or legal guardian) to an employee when the employee was a child. This term does not include parents-in-law.

C. **Spouse** - means a husband or wife as defined or recognized under California State law for purposes of marriage. This term does not include unmarried domestic partners.

D. **Serious Health Condition** - means an illness, injury (including job-related illness or injury), impairment, or physical, or mental condition involving any of the following:

1. A period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

2. A period of incapacity requiring absence from work, school, or other regular daily activities for at least three days and involving continuing treatment by (or under supervision of) a health care provider;

3. Continuing treatment (i.e., two or more treatments) by (or under supervision of) a health care provider for a chronic or long term health condition that is incurable or so serious that if it is not treated it will likely result in a period of incapacity of more than three days;

4. Prenatal care.

Voluntary or cosmetic treatments that are not medically necessary are not serious conditions unless inpatient hospital care is required.

E. **Health Care Provider** - means a doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices, and other persons authorized to practice and performing within the scope of their practice as required under state law which includes only the following: podiatrists; dentists; clinical psychologists; optometrists; chiropractors (limited to treatment that is manual manipulation of the spine to correct a subluxation show to exist by x-ray); nurse practitioners; nurse midwives; and Christian Science practitioners listed with the First Church of Christ, Science, in Boston, MA.

IV. REFERENCES

A. Family and Medical Leave Act of 1993 (FMLA) 29 C.F.R. Part 825

B. California Family Rights Act of 1993 (CFRA) Government Code Section12945.2

C. Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.)

D. Fair Employment and Housing Act (FEHA) Government Code Section 12940

E. 1993-96 Memorandum of Understanding between the City of Long Beach and Long Beach City Employees' Service Lodge 1930, District Lodge 777, AFL-CIO (MOU), Article Three, Section II-C -Sick Leave

F. Ordinance No. C-3548 as amended (Personnel Ordinance)

V. APPENDICES/FORMS

A. Return to Work Medical Certification Form