

## Leaves of Absence

## 4.2.1

### PURPOSE

Leaves of absence without pay allow employees to take time off from their jobs for specific reasons, with the approval of the appointing authority, and return to their jobs at a later date. The City Manager is the Appointing Authority for all City employees, excluding professional employees in the City Attorney's Office, employees of the City Auditor's Office employees of the Independent Police Auditor's Office, and employees appointed by the Mayor and City Council.

### AUTHORITIES

Provisions in applicable Memoranda of Agreement (MOA) regarding leaves without pay supersede this general policy.

San Jose Municipal Code, §3.04.1250

Each and every leave...shall specify clearly the date of commencement and the date of termination thereof.

San Jose Municipal Code, §3.04.1260

An initial leave [may be granted]...for a period not to exceed twelve (12) months. Extensions may be granted...not to exceed a total of twelve (12) months. Any leave granted ...may be revoked or canceled at any time by the appointing authority by notice in writing....

San Jose Municipal Code, §3.04.1270

The provisions in a memorandum of understanding [Memorandum of Agreement]...concerning leaves of absence without pay shall supersede...the provisions of this code.

San Jose Municipal Code, §3.04.1280

[An employee returning from leave of absence without pay] is entitled to return to the position [classification] held by him before the...leave; or [if that position has been eliminated] to a position of like status and pay if such position exists...[unless the] employee does not return to his employment on the first working day following expiration of such leave. [If an employee returns] after the first working day and before the 60th working day...the city manager may return said employee to duty upon showing of good cause therefor.

Family and Medical Leave Act of 1993 (Title 29, Part 825 of the Code of Federal Regulations)

An employee who has more than twelve (12) months of service with the City and worked at least 1,250 hours in the prior twelve (12) month period has a right to a paid or unpaid family care or medical leave of up to twelve (12) work weeks in a twelve (12) month period for the birth, adoption or foster care placement of a child; or for his or her own serious health condition or that of a child, parent or spouse.

California Family Rights Act of 1993 (California Code, Title 2, Division 4, §7297.0 et seq.)

An employee who has more than twelve (12) months of service with the City and worked at least 1,250 hours in the prior twelve (12) month period, has a right to an unpaid family care or medical leave of up to twelve (12) work weeks in a twelve (12) month period for the birth, adoption, or foster care placement of a child; or for his or her own serious health condition or that of a child, parent or spouse. This leave is concurrent with any leave under the Family and Medical Leave Act of 1993 (see above) except for pregnancy disability leave (see below).

## Leaves of Absence

## 4.2.1

California Pregnancy Disability Act of 1995 (California Code, Title 2, Division 4, §7291.2 et seq.) An employee who is disabled by pregnancy, childbirth or related medical conditions, is entitled to take a pregnancy disability leave of up to four (4) months, depending on the period of actual disability. Pregnancy disability leave counts against the twelve (12) week entitlement under the Family and Medical Leave Act of 1993, but does not count against the twelve (12) week entitlement under the California Family Rights Act of 1993.

### POLICY

#### 1. Granting of Leaves.

The appointing authority or designated representative may grant an employee a leave of absence without pay not to exceed twelve (12) months for good and sufficient reason.

*Exception:* Military Leave is addressed as a separate subject in this manual.

#### 2. Extensions.

An extension beyond a twelve (12) month leave of absence without pay may be granted to the extent that such an extension is permitted under the applicable MOA. Any extension must be requested in writing before the end of the approved leave. No extension is permitted for police officers.

#### 3. Documentation of Leave.

Any unpaid absence from work that extends beyond one pay period must be requested on a Request for Leave of Absence form (Form 100-21). Leave which qualifies under the Federal Family and Medical Leave Act of 1993 must be requested on a Family and Medical Leave Application form. The department head must approve both forms. The Director of Human Resources must also approve the Request for Leave of Absence form.

If the employee is unavailable to initiate either the Request for Leave of Absence form or the Family and Medical Leave Application form (or both), the leave request forms must be initiated by the employee's department and forwarded to the Director of Human Resources. *Exception:* Any absence that is due to a job-related illness or injury is excluded from the Request for Leave of Absence form process.

#### 4. Beginning and Ending Dates.

Each request for a leave of absence without pay must specify the beginning and ending dates of the leave. This period excludes dates for which sick, vacation, compensatory time or other paid leave is used.

#### 5. Cancellation of Leave.

The appointing authority may cancel a leave of absence without pay upon thirty (30) days written notice sent by registered mail to the employee.

**Leaves of Absence****4.2.1****6. Seniority Credits.**

An employee shall not receive seniority service credit for time spent on leave without pay.

**7. Accrued Vacation and Compensatory Time.**

All accrued vacation and compensatory hours will be carried over until the employee either returns from an approved leave of absence or separates from City service, unless the employee indicates to the contrary on Form 100-21.

**8. Insurance Premiums.**

Finance will notify the employee if insurance premiums will lapse while on leave without pay, and will determine the premium payment amount(s) due. An employee who wishes to remain insured must pay the full premium(s), including the City's portion, by personal check on a biweekly or monthly basis. The City will not make its contribution to insurance programs during an unpaid leave. Coverage will be canceled if payment is not received from the employee by the date on which premiums would be paid by payroll deduction if the employee were not on unpaid leave.

*Exception:* An employee on approved Family and Medical Leave may have the City's portion of health and dental insurance premiums paid for up to 12 weeks during the leave entitlement under the Federal Family and Medical Leave Act of 1993.

**9. Reinstatement of Insurance Coverage.**

Employee benefits, which were in effect prior to a leave of absence without pay, will be reinstated upon return from leave. An employee whose health, dental and other insurances have lapsed during unpaid leave must contact Finance after returning from leave to verify that their benefits have been reinstated. The effective date of reinstated coverage will be after the appropriate premiums have been paid by payroll deduction, and may vary for each benefit.

**10. Step Increases.**

Unpaid leave will not count toward a step increase. After return from leave, the employee's anniversary date for a step increase will be changed to reflect the leave of absence without pay.

**11. Salary Continuation (Long-Term Disability) Insurance**

An employee who has salary continuation insurance and will be on leave for more than thirty (30) calendar days for medical reasons will submit their claim to the insurance carrier following the carrier's procedures.

## Leaves of Absence

## 4.2.1

### PROCEDURES

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| Employee                               | 1. Completes Form 100-21, Request for Leave of Absence (and FMLA, if the leave qualifies as family or medical leave under Federal and state laws) and submits to immediate supervisor and department head for approval.   |
| Department                             | 2. Approves or disapproves the request for leave without pay. For an approved request, Form 100-21 (and FMLA if appropriate) is forwarded to Human Resources. For a disapproved request, Form 100-21 (and FMLA if appropriate) is returned to the employee.   |
| Director of HR or Appointing Authority | 3. Approves or disapprove the request for leave without pay. For an approved request, Form 100-21 (and FMLA if appropriate) is processed as follows; for a disapproved request, Form 100-21 (and FMLA if appropriate) is returned to the department director who must return it to the employee.  |
| Human Resources                        | 4. For an approved leave request, records appropriate employee history information, files the original Form 100-21 (and FMLA if appropriate) in the Central Employee Files, and distributes copies to Finance and the employee's department.  |
| Human Resources                        | 5. Notifies the employee regarding leave eligibility under the FMLA if applicable.  |
| Finance                                | 6. Notifies the employee in writing of their options for insurance coverage while on leave of absence without pay. The employee will make payments to Finance for desired benefits during the leave period.<br><br><i>Exception:</i> Human Resources will notify the employee regarding dental insurance coverage during leave under the FMLA.  |
| Employee                               | 7. When returning from a leave of absence for medical reasons, presents written medical release to his/her supervisor.  |
| Supervisor                             | 8. If the supervisor is uncertain about the employee's ability to perform the job safely, consults with HR to determine if there is a need for additional information or evaluation.  |
| Employee                               | 10. Contacts Finance immediately upon return from leave to ensure that benefits which lapsed during unpaid leave are reinstated. Completes any necessary forms to re-enroll in any benefits which lapsed during leave within thirty (30) days of returning to work. Only those dependents who were enrolled under the employee's coverage when coverage was dropped may be re-enrolled. Any new dependents not enrolled within thirty (30) days of birth or |

**Leaves of Absence**

**4.2.1**

marriage may be enrolled during the next available open enrollment period.

- Employee 11. An employee who has salary continuation insurance and will be on leave for more than thirty (30) calendar days for medical reasons obtains claim form packets from HR and submits claim to the insurance carrier following the carrier's procedures.

/s/ Mark Danaj  
Director of Human Resources

October 31, 2006  
Date

Approved:

/s/ Kay Winer  
Chief Deputy City Manager

October 31, 2006  
Date