

		Policy # 880
Subject: Pregnancy Disability Leave		
Responsible Department: Personnel Services		
Effective Date: 10/2015	Revision Date: N/A	
David Devine Director of Personnel Services	Navdeep S. Gill County Executive	

1. Purpose

To define and implement the policy to be followed with respect to administration of Pregnancy Disability Leave (PDL) and Sacramento County Code Section 2.78.765. To the extent there are any inconsistencies between this policy and existing memoranda of understanding covering employees in any representation unit created pursuant to Chapter 2.79 of the Sacramento County Code, the provisions of the memoranda of understanding shall prevail.

2. Authority

CA Dept. of Fair Employment and Housing

3. Scope

This policy applies to all County employees.

4. Policy

PDL is state law that is enforced by the Department of Fair Employment and Housing. Under PDL, the County must allow an employee who is actually disabled due to pregnancy, childbirth, or a related medical condition to take a leave, up to a maximum of seventeen and one-third weeks (approximately four months) per pregnancy as needed for the period(s) of time an employee is actually disabled because of pregnancy. PDL also requires the County to provide reasonable accommodation for conditions related to pregnancy, childbirth or related medical conditions, if the employee so requests, at the recommendation of the health care provider. The term reasonable accommodation as used in this policy is separate and distinct from American with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). The County may, in some cases, transfer a pregnant employee to a different position during the period of

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her disability, if medically necessary. The County is required to make reasonable efforts to assist the employee in finding a different temporary position.

The County's PDL Administrative Guidelines provide detailed information on the application of this policy.

Eligibility:

A County employee (whether permanent, temporary, full-time, or part-time) is eligible for PDL, reasonable accommodation, or transfer regardless of the length of time she has worked for the County. There is no length of service requirement.

Leave Entitlement:

Disability Leave:

Pregnancy alone does not entitle an employee to PDL. Actual disability due to pregnancy, childbirth or a related medical condition is required.

Disabled means that in the opinion of the employee's health care provider, because of pregnancy the employee is:

- unable to perform one or more of the essential job functions; or
- unable to perform those functions without undue risk to herself, to her pregnancy's successful completion or to other persons.

Disability does not include time off for prenatal care.

Related medical condition means a medically recognized physical or mental condition that is related to pregnancy or childbirth.

Transfer Rights:

A pregnant employee may have the right to transfer to a different position (less strenuous or hazardous) for the duration of her pregnancy, if medically required and if the transfer can be reasonably accommodated by the County.

If an employee needs to take intermittent or reduced work schedule leave the County may require the employee to temporarily transfer to an available alternative position that meets the needs of the employee if the alternative position better accommodates the employee's leave requirements than her regular, the employee is qualified for the position

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and the alternative position has equivalent pay and benefits; the alternative position does not have to have equivalent duties.

Accommodation:

All County employees are eligible for reasonable accommodation regardless of length of service or hours worked.

The right to take pregnancy disability leave is separate and distinct from the right to take leave of absence as a reasonable accommodation.

When a reasonable accommodation is granted, it shall not affect the employee's independent right to take up to four months for PDL. If the requested reasonable accommodation, however, involves a reduction in hours worked (such as a reduced work schedule) or intermittent leave, the County may consider this a form of PDL and deduct the hours from the employee's four month leave entitlement.

Note: The term reasonable accommodation as used in this policy is separate and distinct from the American with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA).

PDL Time Off:

An employee is entitled to a maximum of four months (17 and one third weeks or 693 hours), as needed, for the period of time she is disabled by pregnancy, childbirth or a related medical condition. "Four months" means the number of days or hours that an employee would normally work within four calendar months. If an employee works less than a full-time week or works an alternate workweek, the number of working days is calculated on a pro rata basis. For employees who work more or less than 40 hours per week, or who work variable work schedules, the number of working days that constitutes "four months" is calculated on proportional basis.

Use of leave accruals: The County requires an employee to use any accrued sick leave before taking an unpaid PDL, unless the employee is receiving a wage replacement benefit (e.g. SDI or private short-term disability program) during a FMLA leave. An employee may elect, at her option, to use accrued vacation time or other accrued personal time off during the otherwise unpaid portion of the PDL. The County may not require the employee to use accrued vacation or personal leave.

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Leave increments: PDL can be taken continuously, intermittently or on a reduced work schedule basis when medically advisable as determined by the employee's health care provider.

PDL Coordination with FMLA and Related Laws:

PDL with FMLA: PDL and FMLA run concurrently.

PDL with California Family Rights Act (CFRA): PDL does not run concurrently with a CFRA leave for an employee's own serious health condition; they are two separate and distinct rights. Therefore, at the conclusion of PDL, the employee may still be eligible to take up to 12 workweeks of CFRA leave for the birth of her child if the child has been born by this date, to the extent that the employee is eligible for CFRA and CFRA leave has not previously been used in the 12-month period. If the maximum amount of both types of leave is taken, the maximum total leave entitlement is four months plus 12 work weeks.

PDL and State Disability Insurance (SDI): A pregnant employee, if she meets certain requirements, may qualify for SDI benefits.

PDL and Workers' Compensation (WC): PDL and Workers' Compensation run concurrently.

County Parental Leave and PDL: County Parental Leave is separate and distinct from PDL.

Paid Family Leave and PDL: State paid family leave benefits are not available while a woman is on PDL.

Employee Notification:

An employee must provide reasonable advance notice of the need for PDL, reasonable accommodation, or for a temporary transfer to another position. She must also notify the County of the anticipated timing and duration of the leave or temporary transfer. Though preferred, direct notice from the employee rather than a third party regarding the need for reasonable accommodation, transfer, or pregnancy disability leave is not required.

Foreseeable: If the need for the leave or transfer is foreseeable, an employee must provide the County with at least 30 days advance notice before the PDL, reasonable accommodation, or transfer begins. Although

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the employee must consult with the County and make a reasonable effort to schedule any planned medical appointment or treatment so as to minimize disruption to the County's operations, an employee's leave schedule for PDL remains subject to the approval of the employee's health care provider as it is based on medical need.

Unforeseeable: If it is not practicable to give 30 day notice (e.g. it is not known when the accommodation, transfer or leave will be required to begin, or because of a change in circumstances or medical emergency), the employee must give notice to the County as soon as practicable.

Prohibition against Denial: The County cannot deny PDL, reasonable accommodation or transfer, the need for which is an emergency or is otherwise foreseeable on the basis of failure to provide advance notice.

County Response: The County must respond in writing to the leave or transfer request as soon as practicable as and no later than 10 calendar days after receiving the request. The County shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be retroactive to the date of the first day of PDL. If the employee's leave request also qualifies for FMLA leave, the County must comply with FMLA notice requirements. See FMLA/CFRA Policy L-9.

If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the County may delay the reasonable accommodation or transfer until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. The County cannot delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her coworkers.

Employer Notice Requirements:

The County must notify the employee of the medical certification requirement each time a certification is required and provide the employee with a certification form. Notice to the employee of the need for medical certification may be oral if the employee is already out on pregnancy disability leave because the leave was unforeseeable. The County shall then mail, email, or fax the medical certification to the employee or her health care provider, whomever the employee designates. Once the County is on notice of the employee's need for reasonable accommodation, transfer, or leave, the County shall request the employee to furnish medical

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certification within two business days. In the case of unforeseen leaves, the County must notify the employee within two business days after the leave commences.

The County's notice must detail the following:

- a. Any requirements for the employee to provide medical certification, the deadline for providing certification (at least 15 calendar days after the County's request), what constitutes sufficient medical certification, and the consequences for failing to provide medical certification.
- b. If the County finds a medical certification to be inadequate or incomplete, and provide a reasonable opportunity to remedy the issue.
- c. If the County's sick or medical leave plan imposes medical certification requirements that are less stringent than the medical certification requirements and the employee or employer elects to substitute sick, vacation, or family leave for unpaid pregnancy disability leave, only the County's less stringent leave certification requirements may be imposed.

Medical Certification:

The County may require that an employee requesting PDL, reasonable accommodation, or transfer provide written medical certification of the pregnancy-related disability from a health care provider. The County must accept a complete medical certification as sufficient and cannot ask an employee to provide additional medical information.

A healthcare provider includes: A marriage and family therapist or acupuncturist, licensed in California or in another state or country, or any other persons who meet the definition of "others capable of providing health care services" under FMLA and its implementing regulations, including nurse practitioners, nurse midwives, licensed midwives, clinical psychologists, clinical social workers, chiropractors, physician assistants, who directly treats or supervises the treatment of the applicant's or employee's pregnancy, childbirth or a related medical condition, or "a condition related to pregnancy, childbirth, or a related medical condition," as set forth in Government Code section 12945.

The County cannot require a second or third medical opinion.

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A recertification of the continuing need for PDL, reasonable accommodation or transfer may be required when additional time is requested after expiration of the time estimated in the original certification.

A return to work certification may be required before an employee returns from PDL, reasonable accommodation or transfer. The return to work certification should only address whether the employee has the ability to resume her original job duties or whether she needs modified duty.

The County can only ask for certain types of information for medical certifications indicating the medical advisability of reasonable accommodation or transfer.

- a. A description of the requested reasonable accommodation or transfer;
- b. A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy; and
- c. The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer related to pregnancy.

The County can only ask for certain information on the medical certification indicating disability necessitating a leave:

- a. A statement that the employee needs to take pregnancy disability leave because she is disabled by pregnancy, childbirth or a related medical condition; and
- b. The date the employee became disabled because of pregnancy and the estimated duration of the leave.

Benefits & Seniority:

Benefits:

When an employee uses accrued leave balances during PDL, her health, dental, and life insurance are maintained by the County.

The County will continue to provide health, dental, and Basic Life insurance benefits for an employee who takes PDL for the duration of the leave (not to exceed four months per pregnancy) beginning on the date the PDL begins, at the same level and under the same conditions that coverage

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would have been provided if the employee had continued in employment continuously for the duration of the leave.

The time that the County maintains and pays for the group health coverage during PDL shall not be used to meet the County's obligation to pay for 12 weeks of group health coverage during leave taken under CFRA. This is true even when the County designates PDL as FMLA. The entitlements to the County paid group health coverage during PDL and during CFRA are two separate and distinct entitlements.

If an employee is eligible for FMLA leave while on PDL, but exhausts all applicable leave balances, the County will continue to pay the employer portion of the health, dental, and Basic Life premium cost during the FMLA leave. The employee is required to pay her regular employee portion toward medical coverage when an employee contribution is necessary to maintain the coverage. In order to continue Optional life insurance coverage, the employee must pay the entire Optional Life premium. When paid leave and FMLA are exhausted, the employee's benefits will continue through the end of the month.

If an employee takes unpaid PDL and is not eligible for FMLA or has exhausted the FMLA entitlement, the County will continue to pay the employer portion of the health, dental and Basic Life insurance premium cost during the PDL at the same level that was in existence prior to PDL. The County will continue to pay the employer portion of benefits for the duration of the PDL as long as the employee continues to pay her portion of the premiums where required. In order to continue Optional Life insurance coverage, the employee must pay the entire premium cost.

Once the FMLA and PDL benefits are exhausted, if the employee is eligible for unpaid CFRA, the County will continue to provide the employer portion of the health, dental and basic life insurance benefits for the duration of CFRA as long as the employee continues to pay her portion of the premiums where required. In order to continue Optional life insurance under CFRA, the employee must pay the entire premium cost. If the employee is not eligible for CFRA once FMLA and PDL benefits are exhausted, the employee is eligible to continue her health, dental and life insurance benefits under the provisions of COBRA. The County will notify employees of eligibility for COBRA upon learning of an unpaid absence without a mandated benefit protection requirement (such as under FMLA, CFRA or PDL).

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The County may recover from the employee the premium paid while the employee was on pregnancy disability leave if both of the following conditions occur:

- a. The employee fails to return at the end of her pregnancy disability leave.
- b. The employee's failure to return from leave is for a reason other than one of the following:
 1. Taking CFRA leave, unless the employee chooses not to return to work following the CFRA leave.
 2. The continuation, recurrence or onset of a health condition that entitle the employee to PDL leave, unless the employee chooses not to return to work following the leave.
 3. Non-pregnancy related medical conditions requiring further leave, unless the employee chooses not to return to work following the leave.
 4. Any other circumstance beyond the control of the employee, including, but not limited to circumstances where the employer is responsible for the employee's failure to return (e.g. the employer does not return the employee to her same position or reinstate the employee to a comparable position), or circumstances where the employee must care for herself or a family member (e.g., the employee gives birth to a child with a serious health condition).

Reinstatement of Benefits:

If an employee has been on unpaid PDL and has not received benefits during this period, when she returns from leave, she must receive the same health, dental, Basic and Optional Life insurance benefits as before the leave with no new qualification period, physical examination requirement, or exclusions for pre-existing conditions.

Seniority:

An employee retains employee status during the period of PDL. The leave does not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan.

Rights Upon Return to Work:

Employee's Right to Same or Comparable Position:

Following PDL, the County must return the employee to either the same position that she held before the leave or to an available comparable position. Upon the employee's request, this right must be guaranteed in writing by the County. An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated.

If the employee is on both PDL and FMLA, the FMLA rules for returning an employee to work apply; see FMLA/CFRA Policy L-9.

If the employee takes CFRA baby-bonding leave after her PDL, then the CFRA rules for returning an employee to work apply. See FMLA/CFRA Policy L-9.

Non-Return of Employee to Same Position:

The County is excused from returning the employee to the same position or duties due to legitimate business reasons unrelated to the employee taking PDL or transfer and the employee would not otherwise have been employed in the same position at the time she returns to work.

Right to Return to a Comparable Position:

If an employee cannot be reinstated in the same position, she has the right to be reinstated to an available comparable position unless the County would not have offered a comparable position to the employee if she would have been continuously at work during the pregnancy disability leave or transfer period; or if there is no comparable position available.

If PDL is also FMLA leave, the FMLA reinstatement rights apply and the employee must be returned to an equivalent job. See FMLA/CFRA Policy L-9.

CFRA leave following PDL: If an employee takes CFRA (baby bonding) leave immediately following PDL, without returning to work, the CFRA governs reinstatement rights of the employee. See FMLA/CFRA Policy L-9.

5. Review Not Applicable