

 <p style="text-align: center;">Orange County Sanitation District Personnel Policies</p>	Policy Number: 3.4
	Effective Date: September 26, 2018
Subject: Leave-of-Absence Without Pay	Supersedes: November 11, 2011
Approved by: General Manager	

1.0 PURPOSE

1.1 The purpose of this policy is to establish uniform guidelines and procedures for use in the administration of Orange County Sanitation District’s (OCSD) leave-of-absence without pay program.

2.0 ORGANIZATIONAL UNITS AFFECTED

2.1 This policy applies to all regular OCSD employees.

3.0 DEFINITIONS

- 3.1 **Americans with Disabilities Act (ADA)** – A federal law that prohibits discrimination against people with disabilities and requires employers to provide reasonable accommodation to employees with known disabilities when doing so does not pose an undue hardship.
- 3.2 **California Family Rights Act (CFRA)** – A state law that provides certain employees with up to twelve (12) weeks of unpaid, job-protected leave per year.
- 3.3 **Child, for purposes of FMLA/CFRA** – Means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in place of parents or instead of a parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability, at the time that FMLA/CFRA leave is to commence.
- 3.4 **Consolidated Omnibus Budget Reconciliation Act (COBRA)** – A federal law that gives employees and dependents who lose their group health insurance the right to elect to continue health insurance coverage for eighteen (18) or thirty-six (36) months under certain circumstances, such as voluntary or involuntary separation from employment for reasons other than gross misconduct, reduction in hours worked, change in employment status, death, divorce, and other life events.
- 3.5 **Covered Active Duty or Call to Covered Active Duty Status** – Means a) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country, and b) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty during a war or national emergency declared by the President or Congress.

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- 3.6 **Covered Servicemember** – Means a) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on covered active duty, or b) a veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
- 3.7 **Domestic Partner** – As defined by California Family Code §§ 297 and 299.2, shall have the same meaning as “spouse” for purposes of CFRA.
- 3.8 **Fair Employment & Housing Act (FEHA)** – A California statute prohibiting employment discrimination based on race; color; religion; national origin; ancestry; physical disability; mental disability; genetic information; medical condition; marital status; sex; gender; gender identity; gender expression; sexual orientation; age, with respect to persons over the age of 40; pregnancy, childbirth, or related medical conditions; and military or veteran status. The Act also prohibits retaliation for opposing any practice forbidden by the Act or for filing a complaint, testifying, or assisting in proceedings under the Act and requires employers to provide reasonable accommodation to employees with disabilities when doing so does not pose an undue hardship.
- 3.9 **Family and Medical Leave Act (FMLA)** – A federal law that provides certain employees up to twelve (12) weeks of unpaid, job-protected leave per year.
- 3.10 **Family Member** – For purposes of FMLA/CFRA, means an employee’s spouse, parent, or child. In addition, the definition of family member under CFRA includes an employee’s domestic partner and child of a domestic partner.
- 3.11 **Families First Coronavirus Response Act (FFCRA)** - The FFCRA provides two types of paid leave benefits to employees for specified reasons related to COVID-19: Emergency Paid Sick Leave and FMLA Public Health Emergency Leave, which is an expansion of the current FMLA law.
- 3.12 **Emergency Paid Sick Leave** - Emergency Paid Sick Leave provides employees with up to 80 hours of leave for specified qualifying reasons related to COVID-19. This leave provides 100% of the employee’s regular rate of pay (up to \$510 per day or \$5,100 total) or two-thirds of the employee’s regular rate of pay (up to \$200 per day or \$2,000 total), depending on the reason for leave.
- 3.13 **FMLA Public Health Emergency Leave** - Under current FMLA law, which still applies and will be administered according to the existing law, OCSD is required to provide up to 12 weeks of unpaid leave to eligible employees for medical reasons or to care for certain family members. OCSD employees under the current FMLA law can use accrued leave, and/or apply for short/long term disability, or a combination of both to assist in supplementing the unpaid leave. The Families First Coronavirus Response Act expanded the FMLA provisions to address child- care issues raised by school closures related to COVID-19 only. It does not increase the amount of FMLA leave entitlement for employees. If an employee has already exhausted 12 weeks of FMLA leave in the current rolling year period, they would not be eligible for additional FMLA leave under the Act.
- 3.14 **Health Care Provider**

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

- 3.14.1 A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
 - 3.14.2 Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
 - 3.14.3 Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
 - 3.14.4 Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
 - 3.14.5 Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 - 3.14.6 Any health care provider from whom OCSD or its group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- 3.15 **Incapable of Self Care** – Describes a person who requires active assistance or supervision to provide daily self-care in three (3) or more of the activities of daily living or instrumental activities of daily living — such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, and using telephones and directories, and using a post office.
- 3.16 **Next of Kin of a Covered Servicemember** – Means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
- 3.17 **Outpatient Status** means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- 3.18 **Parent, for purposes of FMLA/CFRA** – Means the biological, adoptive, step or foster parent of an employee; a legal guardian; or an individual who stands or stood in loco parentis (in place of parents or instead of a parent) to an employee when the employee was a child.
- 3.19 **Pregnancy Disability Leave (PDL)** – A state law that provides an employee, who is disabled as a result of pregnancy, childbirth, or a related condition, up to four (4) months of unpaid leave, with medical approval.

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Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.*

- 3.20 **Rolling 12-Month Period** – A period measured backward from the date an employee uses any FMLA leave. Each time an employee takes FMLA/CFRA leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken.
- 3.21 **Serious Health Condition** – Means an illness, injury, impairment, or physical or mental condition that involves:
- 3.21.1 Inpatient care (i.e., an overnight stay or expectation of an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
- 3.21.2 Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
- 3.21.2.1 A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
- 3.21.2.1.1 Treatment two (2) or more times-by a health care provider.
- 3.21.2.1.2 Treatment by a health care provider on at least one (1) occasion that results in a regimen of continuing treatment under the supervision of the health care provider. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- 3.21.2.2 Under FMLA only, any period of incapacity due to pregnancy or for prenatal care. Under state law, an employee disabled by pregnancy is entitled to PDL
- 3.21.2.3 Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
- 3.21.2.3.1 Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
- 3.21.2.3.2 Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- 3.21.2.3.3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one (1) day or less.
- 3.21.2.4 A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the treatment of a health care provider.

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

3.21.2.5 Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

3.22 **Serious Injury or Illness** – Means a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness incurred by a covered servicemember in the line of duty on covered active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating, and b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, a qualifying injury or illness that was incurred by the member in line of duty on covered active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) that manifested itself before or after the member became a veteran.

3.23 **Single 12-Month Period** – For purposes of leave to care for a covered servicemember, begins on the first day the eligible employee takes FMLA leave to care for the covered servicemember and ends twelve (12) months after that date.

3.24 **Spouse** –Means a partner in marriage as defined by state and/or federal law.

3.25 **Child-Related Activities** – Include addressing a child care provider or school emergency, a request that the child be picked up from school or child care, behavioral/discipline problems, closure or unexpected unavailability of the school (excluding planned holidays), or a natural disaster; finding, enrolling, re-enrolling a child in a school or with a licensed child care provider.

4.0 POLICY

4.14 To the extent not already provided for under current leave policies and provisions, it is the policy of OCSD to grant employees extended leave-of-absences under certain circumstances, including family and medical leave for eligible employees as required by state and federal law. The following provisions set forth the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and

***Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic
Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.***

Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”).

- 4.15 **Reasons for FMLA/CFRA Leave** FMLA/CFRA leave is only permitted for the following reasons:
- 4.15.1 The birth of a child or to care for a newborn of an employee;
 - 4.15.2 The placement of a child with an employee in connection with the adoption or foster care of a child;
 - 4.15.3 Leave to care for a family member who has a serious health condition;
 - 4.15.4 Leave because of a serious health condition that makes the employee unable to perform the essential functions of his/her position. Under FMLA, this includes incapacity due to pregnancy (CFRA does not include incapacity due to pregnancy; PDL applies instead);
 - 4.15.5 Under FMLA only, leave for a qualifying exigency arising out of the fact that an employee’s family member is on covered active duty or called to covered active duty status in the Armed Forces. A qualifying exigency may include activities such as making arrangements for childcare, making financial and legal arrangements, attending counseling relating to the active duty of the service member, or attending to farewell or arrival arrangements for the service member;
 - 4.2.6 Under FMLA only, leave to care for a family member or “next of kin” servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty (this leave may consist of up to 26 weeks of unpaid leave during a single 12-month period).
- 4.16 **Leave Eligibility**
- 4.16.1 A full-time, or part-time employee is eligible for unpaid FMLA/CFRA leave if the employee:
 - 4.16.1.1 Has been employed for at least twelve (12) months; and
 - 4.16.1.2 Has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.
 - 4.16.2 A full-time or part-time employee disabled due to pregnancy, childbirth, or a related condition is eligible for unpaid PDL on the first date of employment, regardless of length of service with OCSD.
- 4.17 FMLA/CFRA Leave may not exceed twelve (12) weeks in a rolling twelve (12) month period. PDL may not exceed four (4) months.
- 4.18 CFRA leave shall run concurrently with FMLA leave except that an employee’s incapacity due to pregnancy is not eligible for CFRA leave.
- 4.18.1 Incapacity due to pregnancy, childbirth, or a related condition may entitle an employee to up to four (4) months of PDL, with medical approval, plus another twelve (12) weeks of CFRA leave, to care for the child, in a rolling twelve (12) month period.

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

- 4.19 **Expiration of Leaves** Upon expiration of FMLA/CFRA/PDL, OCSD will evaluate the employee's restrictions and the positions that are available at the time. If a reasonable accommodation other than unpaid leave exists, the employee may return to work as long as it does not create an undue hardship on the organization.
- 4.20 **Both Spouses Are Employed By OCSD** Employees of OCSD who are married to each other shall be limited to a combined total of twelve (12) weeks of FMLA Leave in a rolling twelve (12) month period if the leave is taken:
- 4.20.1 For birth of the employee's son or daughter or to care for the child after birth;
- 4.20.2 For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- 4.20.3 To care for the employee's parent with a serious health condition.
- 4.21 Where the spouses both use a portion of the total 12-week FMLA/CFRA leave entitlement for one of the above purposes, the spouses would each be entitled to the difference between the amount he or she has taken individually and twelve (12) weeks for FMLA/CFRA leave for a purpose such as his or her own serious health condition.
- 4.22 In any case in which spouses both employed by OCSD are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember.
- 4.23 **Both Parents Are Employed By OCSD** CFRA leave for the birth, adoption or foster care placement of the parents' child will be limited to twelve (12) workweeks in a 12-month period between the two (2) parents.
- 4.24 **California Leave for Military Spouses** An employee who works more than twenty (20) hours per week, and whose spouse is a member of the Armed Forces, National Guard or Reserves who has been deployed during a period of military conflict, may be granted ten (10) unpaid days off while the spouse is on leave from military deployment, Employees with need for this time off must provide their supervisor and Human Resources with notice that the employee wishes to take leave. This notice must be provided within at least two (2) business days of receiving official notice that the employee's spouse will be on leave from deployment. The employee must provide OCSD with written documentation certifying that the spouse will be on leave from deployment.
- 4.25 **FMLA Public Health Emergency Leave** Employees who have been employed by OCSD for at least 30 calendar days are eligible for FMLA Public Health Emergency Leave child-care due to school or child-care provider being unavailable due to the COVID-19 emergency. Employees may take up to 12 weeks of leave if the employee is unable to work or telework. The first 10 days of leave, the employee may use the Paid Sick Leave amount as authorized by the ACT (two thirds of regular rate of pay up to a maximum of \$200 per day and up to \$2,000 total for the first 10 days), or may use other leave banks, or choose to take unpaid leave. After the initial 10 days have elapsed, employees shall be paid two thirds of their regular rate of pay up to a maximum of \$200 per day and \$10,000 overall. Employees may supplement the two-thirds pay with their accrued leaves to achieve 100 percent of their regular rate of pay.
- 4.26 **Employee Benefits and Salary Adjustments While on Leave**

4.26.1 **Medical, Dental and Vision Premiums**

4.26.1.1 During FMLA/CFRA/ leave, OCSD shall pay for medical, dental and vision benefits at the same level as coverage would have been provided if the employee was not on leave for up to twelve (12) weeks each leave year. During PDL Leave, coverage will continue to the same extent for up to four (4) months for each pregnancy. The employee shall be required to pay his or her share of medical and dental premiums. Failure to submit a monthly co-payment, in full, within forty-five (45) days, unless otherwise stipulated in the employee's affiliated bargaining unit Memorandum of Understanding (MOU), of the invoice date will result in loss of group coverage . Coverage will be reinstated upon return to active employment.

4.26.1.2 Employees who have exhausted their paid leave accruals and FMLA/CFRA/PDL leave rights may be placed on a general leave-of-absence. During a general leave-of-absence, the employee shall be required to pay both OCSD's and the employee's share of medical, dental and vision premiums. Failure to submit a monthly payment, in full, within forty-five (45) days (unless otherwise stipulated in the employee's affiliated bargaining unit MOU) of the invoice date will result in loss of group coverage. Coverage will be reinstated upon return to active employment.

4.26.2 Employees may make the appropriate contributions for continued coverage under non-health benefit plans by payroll deductions or by arranging payment in coordination with the Human Resources Department.

4.26.3 If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, OCSD shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. OCSD shall have the right to recover premiums through deduction from any sums due OCSD (e.g. unpaid wages, vacation pay, etc.).

4.26.4 While an employee is on FMLA/CFRA/PDL leave, salary range and annual merit increases will be applied as long as the employee is in a paid payroll status. Applicable salary range and annual merit increases not applied because of leave will be applied when the employee returns to a paid payroll status.

4.26.5 Employees who are on a General Leave of absence do not receive Development Pay.

4.27 **Substitution of Paid Accrued Leaves**

4.27.1 While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves for his or her own serious health condition. OCSD requires that an employee use paid leave accruals during FMLA/CFRA leave for all reasons other than the employee's own serious health condition.

4.27.2 An employee may use sick leave while taking a leave under this policy if:

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

- 4.27.2.1 The leave is for the employee's own serious health condition; or
- 4.27.2.2 The leave is needed to care for a family member with a serious health condition, and the employee would be permitted to use sick leave under OCSD policy.
- 4.27.2.3 Employees must comply with all requirements for receiving sick leave in order to receive pay during this period. A failure to comply with these requirements will only impact an employee's ability to receive sick pay and will not affect his or her right to FMLA/CFRA/PDL leave.
- 4.27.3 **OCSD's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently With Other Leaves.** If an employee takes a leave of absence for any reason which is also FMLA/CFRA-qualifying, OCSD may designate that leave as FMLA/CFRA and may run the leaves concurrently with each other.
- 4.27.4 **OCSD and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA.** If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, OCSD may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if OCSD denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, OCSD may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, OCSD may require the employee to exhaust accrued leave as described above.
- 4.27.5 **Paid Time Off Accruals** Paid time off shall not accrue during any pay period that an employee is absent without pay for more than one day.
- 4.28 **Medical Certification** As a condition of FMLA or CFRA leave because of a "serious health condition," OCSD may require certification by the employee's attending health care provider. Employees who request FMLA/CFRA/PDL leave for their own serious health condition or to care for a family member who has a serious health condition must provide written certification from the attending health care provider of the individual requiring care as a condition of receiving FMLA/CFRA/PDL leave. OCSD may require that a new medical certification be submitted depending on the circumstances.
 - 4.28.1 If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.
 - 4.28.2 Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.
 - 4.28.3 The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's covered active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

*Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic
Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.*

- 4.28.4 **Time to Provide a Certification** When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to OCSD within fifteen (15) calendar days of OCSD's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
- 4.28.5 If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency.
- 4.28.6 **Consequences for Failure to Provide an Adequate or Timely Certification**
- 4.28.6.1 If an employee fails to provide a medical certification within the time frame established by this policy, OCSD may delay the taking of FMLA/CFRA leave until the required certification is provided.
- 4.28.6.2 Failure to provide complete medical certification may result in the denial of FMLA/CFRA/PDL leave.
- 4.28.7 **Second and Third Medical Opinions** If OCSD has reason to doubt the validity of a medical certification, OCSD may require a medical opinion of a second health care provider chosen and paid for by OCSD. If the second opinion is different from the first, OCSD may require the opinion of a third provider jointly approved by OCSD and the employee, but paid for by OCSD. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.
- 4.28.8 **Intermittent Leave or Leave on a Reduced Leave Schedule** If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. OCSD permits intermittent leave to be taken in increments as small as fifteen (15) minutes. When planning medical treatment, the employee must consult with a supervisor and/or Human Resources and make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations, subject to the approval of the health care provider. Such consultations must take place prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both OCSD and the employee.
- 4.29 **Employee Notice of Leave** Where the need for leave is foreseeable, OCSD requires thirty (30) days advance notice. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as practicable that such leave will be needed, but no less than 30 days prior to the event. Such notice may be orally given. For leave that is not foreseeable, barring unusual circumstances, employees must provide notice that they need leave prior to the start of the shift on the day that leave is requested. Written notice must also be provided which sets forth the reason for leave, the expected duration of the leave, and the anticipated start of the leave.

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

4.29.1 For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

4.30 **Return to Work Policy for Non-Work-Related Leave**

4.30.1 **Right to Reinstatement** Upon expiration of FMLA/CFRA/PDL leave, an employee shall be entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement to the same or equivalent position unless the employee would not otherwise have been entitled to that position for reasons unrelated to such leave (e.g., lay-offs), in which case OCSD's obligation to continue health and dental or other benefits shall cease. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA/PDL period.

4.30.2 If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and OCSD the employee will be reinstated within two (2) business days, where feasible, after the employee notifies the employer of his/her readiness to return.

4.30.3 **Employee's Obligation to Periodically Report on His/Her Condition** Employees will be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

4.30.4 **Fitness-for-Duty Certification** As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee may be forced to obtain and present a fitness-for-duty certification from the attending health care provider that the employee is able to resume work. Failure to provide such certification, when required, will result in denial of reinstatement.

4.30.5 **Medical Evaluation** An employee who has been absent from work due to a medical, non-work-related reason shall be required to submit to a Return-to-Work medical evaluation.

4.30.6 **Compatibility of Employee Restrictions and the Job Demands of the Position**

4.30.6.1 If it is determined that the job demands of the position last held by the employee are not compatible with the employee's restrictions (with reasonable accommodation if the employee is disabled within the meaning of the ADA or FEHA) and the employee is willing to return to work, placement in an alternative position, if available, will be considered. The employee shall be re-classified as medically disqualified while alternative positions are being considered. Such time off shall be without pay; however, the employee may elect to use accrued leave hours, such as vacation, sick, or personal, to receive compensation. Placement of an employee in an alternative position requires a pre-placement medical evaluation for the alternative job.

*Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic
Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.*

4.30.6.2 If it is determined that the job demands of the position last held by the employee are not compatible with the employee's restrictions (and cannot be reasonably accommodated if the employee is disabled within the meaning of the ADA or FEHA) and there is not an alternative position, or the employee's restrictions are not compatible with an alternative position, or the employee is not willing to return to work, the employee shall be re-classified as medically disqualified and not permitted to work. Thereafter, the employee shall be retired for disability, if eligible, or dismissed. Such dismissal will not constitute disciplinary action for cause. If requested, the employee's file will indicate the employee left for personal reasons.

4.30.7 **Failure to Return to Work** If, upon the expiration of FMLA-/CFRA/PDL Leave, or any OCSD -approved extension thereof, an employee fails to return to work, and no additional leave has been authorized, the employee shall be considered to have automatically resigned from his/her position. If, upon expiration of FMLA/CFRA/PDL Leave, or any OCSD-approved extension thereof, an employee is unable to perform the essential functions of the employee's position due to disability, OCSD shall review vacancies to determine whether or not a vacant position exists that the employee is qualified to perform with or without reasonable accommodation. If the employee is still unable to perform the essential duties of such a position, the employee shall be considered to have automatically resigned from his/her position, unless eligible for disability retirement.

4.30.8 **Bridge of Service** If an employee automatically resigns from his/her position as a result of a "bona-fide" injury or illness, and then is rehired to a position within OCSD within one (1) year, OCSD shall bridge the employees' service date. "Bridging of service" means adding the total number of days away from work to the employees' original date of hire.

4.31 **General Leave**

4.31.1 Employees who have exhausted all paid time off accruals may be granted a general leave-of-absence to attend to personal matters, or for FMLA or CFRA qualifying events, after the expirations of previously authorized leave, if the Human Resources Department determines that an extended period of time away from the job shall be in the best interests of the employee and OCSD.

4.31.2 During a general leave-of-absence, the employee shall be required to pay both OCSD's and the employee's share of medical, dental and vision premiums. Failure to submit a monthly payment, in full, within forty-five (45) days (unless otherwise stipulated in the employee's affiliated bargaining unit MOU) of the invoice date will result in loss of group coverage. Coverage will be reinstated upon return to active employment.

4.31.3 Employees will not be granted an unpaid leave of absence prior to exhausting all paid leave accrual balances, excluding employees protected by PDL/FMLA/CFRA for their own serious health condition.

4.32 **Workers Compensation Leave**

Temporary Policy Amendments in Response to the COVID-19 (Coronavirus) Pandemic Effective 3/25/2020 through 12/31/2020 or as soon as the national emergency is lifted.

- 4.32.1 Employees who are injured in the course of their employment are placed on Workers' Compensation Leave, and receive wage loss benefits to which they are entitled under the Workers' Compensation Act.
- 4.32.2 During Workers' Compensation Leave, employees may request to concurrently use available paid leave accruals to supplement their Workers' Compensation payments in an amount such that the sum of both is equal to or less than the employee's regular base pay.
- 4.32.3 OCSD may designate Workers' Compensation Leave as FMLA/CFRA and may run the leaves concurrently with each other.
- 4.32.4 During Workers' Compensation Leave, employees' medical, dental, and vision insurance premium payments are subject to the provisions provided in Section 4.12.1.

4.19 **Protected Child-Related Activities Leave** As prescribed under California Labor Code section 230.8, an employee who is a parent with one (1) or more children attending kindergarten, grades one (1) to twelve (12), or is a licensed child care provider, may take up to 40 hours of unpaid leave per calendar year for the following child-related activities:

- 4.19.1 To find, enroll, or reenroll his or her child in a school or with a licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child. Time off for this purpose shall not exceed eight (8) hours in any calendar month of the year.
- 4.19.2 To address a child care provider or school emergency.

5.0 PROCEDURE

- 5.1 Employees must fill out the following prescribed forms in connection with leaves under this policy:
 - 5.1.1 Leave of Absence Request form (Available on MyOCSD) – Required for all medical, pregnancy, family care, military, and general leaves of absence.
 - 5.1.2 Medical Certification of Health Care Provider form (Available on MyOCSD) – Required for leave due to employee's own serious health condition, pregnancy, or the employee's need to care for a family member with a serious health condition.
 - 5.1.3 Fitness-for-Duty to Return from Leave form (Available on MyOCSD) - If leave is taken for the employee's own serious health condition.

6.0 EXCEPTIONS

- 6.1 **Reinstatement of "Key Employees"** OCSD may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10% of all employed by OCSD (within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of OCSD, and the employee is notified of OCSD's intent to deny reinstatement on such basis at the time OCSD determines that such injury would occur.

7.0 PROVISIONS AND CONDITIONS

8.0 RELATED DOCUMENTS

- 8.1 Policy 3.3, Leave of Absence with Pay
- 8.2 Policy 3.3.1, Military Leave
- 8.3 Leave of Absence Request Form
- 8.4 Medical Certification of Health Care Provider Form
- 8.5 Fitness-for-Duty to Return from Leave Form