

City and County of San Francisco
Department of Human Resources

Medical Leaves and Benefits

10/412



Introduction

- Incidental Sick Pay Use
- Pregnancy, Birth and Assumption of Child Rearing Responsibilities (Bonding)
- City Paid Healthcare While on Leave
- Work v. Non-Work Related Injuries
- Intermittent Family Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)



Medical Leaves and Benefits

Incidental Sick Pay Use



Incidental Sick Pay Use

When does incidental sick leave rise to the level of a protected medical leave?

- **FMLA:** employee is out on sick leave for three or more days and the employer suspects a serious health condition (i.e., inpatient care or continuing treatment).
- **City Policy:** rebuttable FMLA presumption if on sick leave in excess of five consecutive days.



Incidental Sick Pay Use

How can I manage an employee's incidental sick leave use?

- **Sick Leave in Excess of 5 Consecutive Days:** Requests for sick leave in excess of five (5) continuous working days shall be certified by a healthcare provider (CSC Rule 120.1.3).
- **Sick Leave Restriction:** The appointing officer or designee to whom application for sick leave is made may make such independent investigation as to the necessity for sick leave as is deemed proper and may require certification for any period of sick leave, provided that the employee has been previously notified in writing that such certification for absence of less than five (5) working days shall be required (CSC Rule 120.4.1).



Medical Leaves and Benefits

Pregnancy, Birth and Assumption of Child Rearing Responsibilities (Bonding)



Pregnancy, Birth and Assumption of Child Rearing Responsibilities (Bonding)

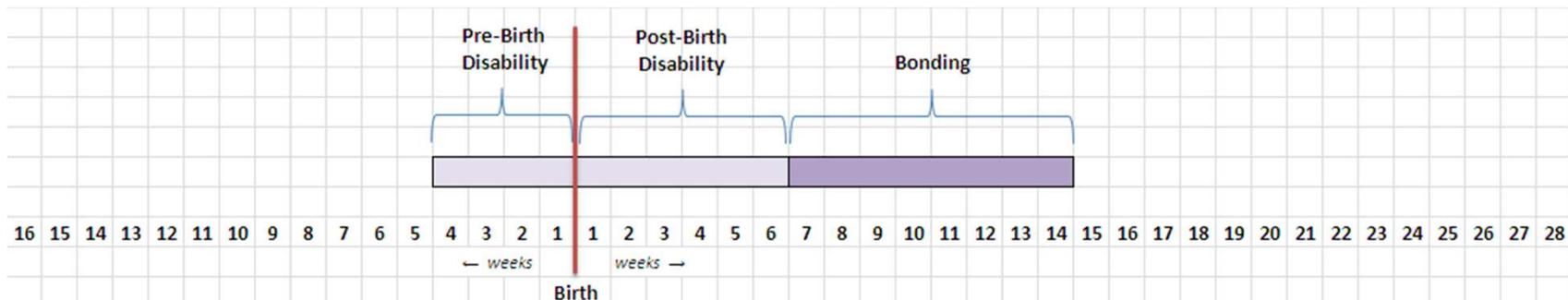
Federal	State	Local
Family Medical Leave Act (FMLA)	California Family Rights Act (CFRA)	Paid Parental Leave (PPL)
	State Disability Insurance (SDI)	
	Paid Family Leave (PFL); <i>part of SDI</i>	
	Pregnancy Disability Leave (PDL)	



Pregnancy, Birth and Assumption of Child Rearing Responsibilities (Bonding)

- Pre-birth Disability
- Post-birth Disability
- Post-birth Bonding

A typical scenario...



Disability Related to Pregnancy or Birth (Mother)

- Length: 4 months (up to 7 months with CFRA)

- Compensation:

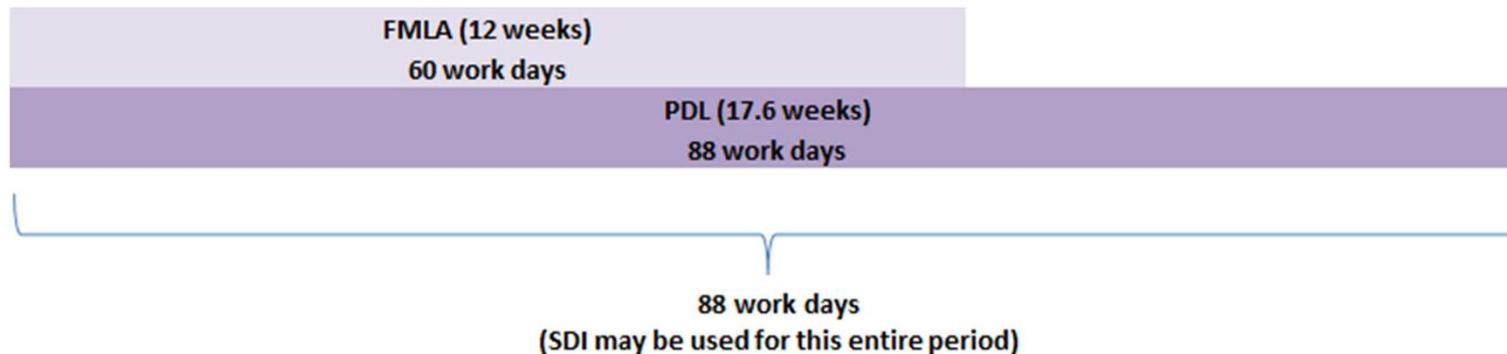
- c
o
n
c
u
r
r
e
n
t
- **State Disability Insurance** (Admin. Code §16.9-31)
 - Duration of medical leave (*paid*)
 - **Paid Parental Leave** (Charter §A8.365)
 - 16 weeks (i.e., 80 work days) (*paid*)
 - **Pregnancy Disability Leave**
 - 4 months (i.e., 88 work days) (*unpaid*)
 - **California Family Rights Act**
 - 12 additional weeks (*unpaid*)



Disability Related to Pregnancy or Birth: Disability (Mother)

Leave: up to 17.6 weeks (4 months/88 days)

- **Family Medical Leave Act (FMLA)**
- **Pregnancy Disability Leave (PDL)**



Disability Related to Pregnancy or Birth: **Disability (Mother)**

Compensation:

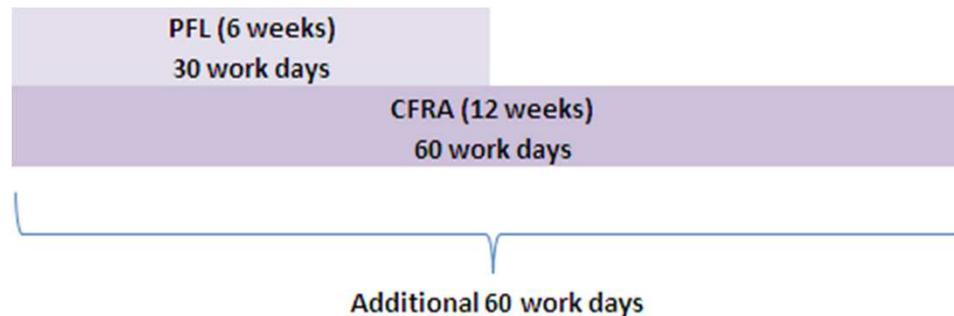
- **State Disability Insurance:** encourage use for the duration if enrolled in SDI; may be supplemented
- **Sick Pay, Floating Holidays, Compensatory Time and Vacation:** may be used in whole or to supplement for the duration
- **Paid Parental Leave:** may use if have exhausted all paid leave for the first 16 weeks



Disability Related to Pregnancy or Birth: Bonding Subsequent to Disability (Mother)

Leave: even if exhausted FMLA, PPL and PDL

- **Paid Family Leave (PFL)**
- **California Family Rights Act (CFRA)**: Upon cessation of Pregnancy Disability Leave, if the child is then born, may take an additional 12 weeks off for child bonding



Disability Related to Pregnancy or Birth: Bonding Subsequent to Disability (Mother)

Compensation: even if exhausted PPL

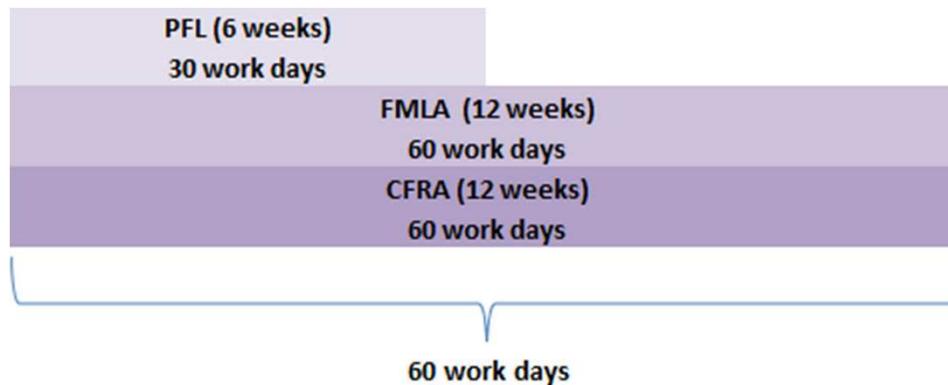
- **Paid Family Leave:** encourage use for the first 6 weeks if enrolled in SDI; may be supplemented
- **Sick Pay, Floating Holidays, Compensatory Time and Vacation:** may be used in whole or to supplement for the duration
- **Paid Parental Leave:** may use if did not exhaust during disability



Birth or Assumption of Child Rearing Responsibilities (Bonding- Mother & Father/ Domestic Partner)

Leave: 12 weeks (shared between spouses/domestic partners if both are City employees); maximum leave available provided no use of disability leave

- **Paid Family Leave (PFL)**
- **Family Medical Leave Act (FMLA)**
- **California Family Rights Act (CFRA)**



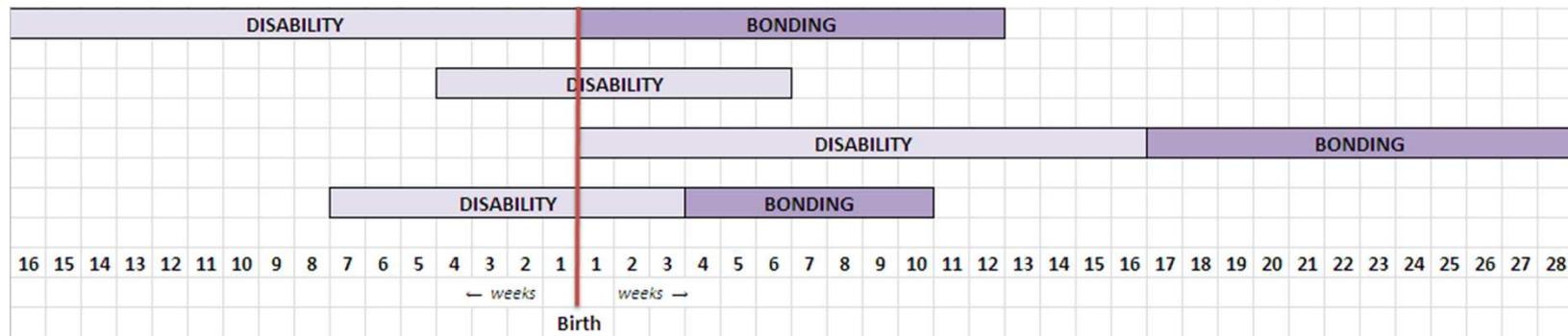
Birth or Assumption of Child Rearing Responsibilities (Bonding- Mother & Father/ Domestic Partner)

Compensation: maximum benefits available provided no use of disability leave

- **Paid Family Leave** (*part of SDI*)
 - Up to \$1,011 per week (benefit calculation tables found at www.edd.ca.gov/pdf_pub_ctr/de2589.pdf) for up to 6 weeks
 - Employee paid benefit → encourage use, but cannot be mandated
- **Sick Pay, Floating Holidays, Compensatory Time and Vacation**
 - May be used in whole or to supplement Paid Family Leave
- **Paid Parental Leave** (*Pay Code "PB"*)
 - May be used if the employee has exhausted all paid leave
 - Employees accrue VA and SP when using PB, so those should be used too when on PB
 - Generally PB is supplemental, but PB would pay in full if employee has exhausted all paid leave and did not apply for PFL



Disability Related to Pregnancy or Birth: Examples



Medical Leaves and Benefits

City Paid Healthcare While on Leave



City Paid Healthcare While on Leave

Type of Leave	Maximum Duration of Leave	Duration of City Paid Healthcare
Educational Leave (EDU)	One Year	First 12 weeks of leave
Employee Organization Leave (EOR)	Indefinite	First 12 weeks of leave
Family Care Leave (FCL)	One Year	Duration of Leave
Personal Leave Following Family Care Leave (PLF)	One Year	Duration of Leave
Personal Leave (PLV)	One Year	First 12 weeks of leave
Sick Leave with Pay	Indefinite	Duration of Leave
Sick Leave without Pay (SNP)	One Year (unless reasonable probability RTD)	Duration of Leave
Unpaid Administrative Leave (UAL)	30 days (absent exigent circumstances)	Duration of Leave
Workers' Compensation Leave (WCL)	Two Years	Duration of Leave

Administrative Code §16.701(b) - Employees referenced above in Section [16.700\(a\)](#), elected officials referenced above in Section [16.700\(b\)](#), members of the San Francisco Unified School District referenced above in Section [16.700\(d\)](#) and members of the San Francisco Community College District referenced above in Section [16.700\(e\)](#) shall receive both the Charter-determined contribution and collectively bargained contributions. Notwithstanding the foregoing, employees referenced above in Section [16.700\(a\)](#), who are not in active service for more than twelve (12) weeks, shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions or on a layoff holdover list where the employee verifies they have no alternative coverage. In accordance with the City's obligations under the Meyers-Milias-Brown Act, the Department of Human Resources shall establish rules and regulations governing whether employees who, after inclusion in the system, work less than twenty (20) hours per week, shall lose eligibility in the system or whether the employee shall be required to make additional contributions to the system.



Medical Leaves and Benefits

Work v. Non-Work Related Injuries



Work Related Injury

- **Workers' Compensation** (CSC Rule 120.24)
 - Two Years
- **CA Labor Code 4850** (*Public Safety*)
 - One Year full pay, then move to Workers' Compensation
- **Shadow Account** (*Pay Code "WS"*)
 - Mirror Sick Pay Balance
- **Long Term Disability (LTD)** – two years
 - 180 day elimination period: 60% up to \$60,000
 - 90 day elimination period: 67% up to \$90,000



Work Related Injury

- **Workers' Compensation**
- **Supplementation**
 - **Shadow Account** (*initially*) - may supplement with mirror sick pay balance
 - **Long Term Disability (LTD)** (*upon expiration of LTD elimination period (90 or 180 days)*) - may then choose to supplement with LTD in lieu of / exhaustion of Shadow Account



Non-Work Related Injury

- **State Disability Insurance (SDI)** (Admin. Code §16.9-31)
 - one year
 - 55% up to \$52,520 (\$1,011/week)
- **Catastrophic Illness** (Admin. Code §16.9-29A)
 - employees only eligible to use during LTD elimination period; employees must sign up for LTD when enrolled in Catastrophic Illness.
- **Long Term Disability (LTD)** – two years
 - 180 day elimination period: 60% up to \$60,000
 - 90 day elimination period: 67% up to \$90,000



Non-Work Related Injury

- **State Disability Insurance**
- **Supplementation**
 - **Paid Leave** (*initially*) - may supplement with paid leave
 - **Long Term Disability (LTD)** (*upon expiration of LTD elimination period (90 or 180 days)*) - may then choose to supplement with LTD in lieu of / exhaustion of paid leave



Accrual of Paid Leave While on Leave

Admin. Code §16.11(g)

- **Paid Leave:** if an employee supplements with paid leave (e.g., SP, VA), he/she does accrue SP and VA
- **State Disability Insurance (SDI):** if an employee is receiving SDI, he/she does accrue VA, but does not accrue SP for the hour value of that compensation (however, in order to accrue VA on SDI must be supplementing); unpaid paycode 'SD' used by Payroll to accommodate accruals
- **Workers' Compensation (WC):** if an employee is receiving WC, he/she does accrue SP & VA for the hour value of that compensation; unpaid paycode 'WC' used by payroll to accommodate accruals
- **Vacation:** there is no VA cap when supplementing temporary disability benefits (i.e., WC or SDI) pursuant to Admin. Code §16.15



Long Term Disability (LTD)

Organization	Long Term Disability	Continuous Service Requirement	Elimination Period	Benefit Percentage
Automotive Machinists - Local 1414	Yes	N/A	180 Days	60%
Consolidated Crafts	Yes	6 Months	180 Days	60%
DA Investigators	No	N/A	N/A	N/A
Deputy Probation Officers	No	N/A	N/A	N/A
Deputy Sheriffs	No	N/A	N/A	N/A
Instit. Police (Non-Sheriffs)	Yes	6 Months	180 Days	60%
Electricians - Local 6	Yes	6 Months	180 Days	60%
Fire Fighters - Local 798 (Unit 1)	No	N/A	N/A	N/A
Fire Fighters - Local 798 (Unit 2)	No	N/A	N/A	N/A
IFPTE - Local 21	Yes	6 Months	90 Days	66%
Laborers - Local 261	Yes	6 Months	180 Days	60%
Municipal Attorneys	Yes	N/A	90 Days	66.67%
Municipal Executives	Cafeteria Selection	N/A	N/A	N/A
Operating Engineers - Local 3	No	N/A	N/A	N/A
Plumbers - Local 38	Yes	N/A	180 Days	60%
Police	No	N/A	N/A	N/A
SEIU, Local 1021 (Misc)	Yes	6 Months	180 Days	60%
SEIU Staff Nurses	Yes	6 Months	180 Days	60%
Stationary Engineers - Local 39	Yes	6 Months	180 Days	60%
Supervising Nurses - Local 856	Yes	6 Months	180 Days	60%
Supervising Probation Officers	No	N/A	N/A	N/A
Teamsters - Local 856 (Multi-Unit)	Yes	N/A	180 Days	60%
TWU - Local 200	Yes	N/A	180 Days	60%
TWU - Local 250-A (Multi-Unit)	Yes	N/A	180	60%
TWU - Local 250-A (7410)	Yes	N/A	180	60%
UAPD - Unit 8	Yes	6 Months (20+ hrs/wk)	180 Days	60%
UAPD - Unit 11	Yes	6 Months (20+ hrs/wk)	180 Days	60%
Unrepresented	Yes	N/A	180 Days	60%



State Disability Insurance (SDI)

Organization	SDI	Notes
Automotive Machinists - Local 1414	Yes	
Consolidated Crafts	Yes	Most of IATSE, not for Hodcarriers
DA Investigators	Yes	
Deputy Probation Officers	Yes	
Deputy Sheriffs	No	
Instit. Police (Non-Sheriffs)	Yes	
Electricians - Local 6	Yes	
Fire Fighters - Local 798 (Unit 1)	No	
Fire Fighters - Local 798 (Unit 2)	No	
IFPTE - Local 21	Yes	
Laborers - Local 261	Yes	
Municipal Attorneys	No	
Municipal Executives	Varies	Determined by Class
Operating Engineers - Local 3	Yes	
Plumbers - Local 38	Yes	
Police	No	
SEIU, Local 1021 (Misc)	Yes	
SEIU Staff Nurses	Yes	
Stationary Engineers - Local 39	Yes	
Supervising Nurses - Local 856	Yes	
Supervising Probation Officers	Yes	
Teamsters - Local 856 (Multi-Unit)	Yes	
TWU - Local 200	Yes	
TWU - Local 250-A (Multi-Unit)	Yes	
TWU - Local 250-A (7410)	Yes	
UAPD - Unit 8	Yes	
UAPD - Unit 11	Yes	
Unrepresented	Varies	Determined by Class



Temporary Disability Benefits

Benefit	Paid by	Eligibility	Length	Covers	Amount	Pensionable	Supplementation	Accrual of Paid Leave on Benefit	Benefit Taxable
Workers' Compensation (WC)	Employer	Immediately	Two years	Work Related	2/3rds up to \$49,722.40 (2009)	No	<u>May</u> use SP, FH, CT and VA; LTD	VA and SP	No
CA Labor Code 4850	Employer	Immediately	One year	Work Related (Peace Officer)	Full Pay	Yes	N/A	VA and SP	No
State Disability Insurance (SDI)	Employee	Immediately (8 th calendar day)	One year	Non-Work Related; Birth	55% up to \$52,520	No	<u>May</u> use SP, FH, CT and VA; LTD	VA (if supplementing), but not SP	No
Long Term Disability (LTD)	Employer (except MEA)	180 or 90 day elimin. period	Two years	Work or Non-Work Related	60% up to \$60,000 (180 day) or 67% up to \$90,000 (90 day)	No	<u>May</u> use SP, FH, CT and VA	No	Yes
Catastrophic Illness Program (CIP)	Employer (donation by other Employees)	Immediately	Indefinite (or until eligible for LTD)	Catastrophic Illness of Employee	Full Pay	Yes	N/A	VA and SP	Yes
Family Medical Leave Act (FMLA) / California Family Rights Act (CFRA)	N/A	One year and 1250+ hours in last 12 months	12 weeks	Illness of Employee or Family; Birth	N/A	N/A	<u>Must</u> use SP; <u>may</u> use FH, CT and VA	N/A	N/A
Family Care Leave	N/A	One year	One year (discretionary)	Illness of Employee or Family; Birth	N/A	N/A	<u>May</u> use SP, FH, CT and VA	N/A	N/A
Paid Parental Leave (PPL)	Employer (if all other paid leave exhausted)	1040+ hours	12 weeks (16 weeks if disability)	Disability or Birth	Full Pay	Yes	N/A	VA and SP	Yes
Pregnancy Disability Leave (PDL)	N/A	Immediately	4 months (<u>not</u> concurrent with CFRA)	Disability related to Pregnancy/Child Birth	N/A	N/A	<u>May</u> use SP, FH, CT and VA	N/A	N/A
Paid Family Leave (PFL)	Employee	Immediately (8 th calendar day)	6 weeks	Birth	55% up to \$52,520	No	<u>May</u> use SP, FH, CT and VA	VA (if supplementing), but not SP	No



Medical Leaves and Benefits

Intermittent FMLA



Intermittent FMLA

- Advance Notice: employee should provide 30 days' notice unless not practicable [29 CFR § 825.302(a)] or unforeseeable [29 CFR § 825.303(a)]
- Certification: employer should insist upon a complete medical certification from the employee's doctor
 - must contain the following: [29 CFR § 825.306(a)]
 - name, address, telephone number of health care provider
 - approximate date serious health condition commenced and probable duration of the condition
 - description of appropriate medical facts (e.g., symptoms, impairments)
 - information sufficient to determine that employee cannot perform essential functions of employee's job or need to care for employee's family member
 - information sufficient to establish medical necessity for intermittent leave or reduced work schedule
 - must be provided within 15 calendar days of the employer's request [29 CFR § 825.305(b)]; if information is "vague, ambiguous, or non-responsive", employee must cure within 7 calendar days. Employer may contact health care provider if the employee does not cure [29 CFR § 825.307(a)].



Intermittent FMLA

- Second Opinion: “An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer’s expense” [29 CFR § 825.307(b)(2)]. Employer may designate the health care provider as long as not regularly employed/contracted with by the employer. If the opinions differ, a third opinion may be obtained that will be final and binding [29 CFR § 825.307(b)(3)].
- Recertification: Paid for by employee
 - after 30 days if certification does not state a specific end date [29 CFR § 825.308(b)]
 - after 6 months in connection with an absence [29 CFR § 825.308(b)]
 - after one year with or without an absence [29 CFR § 825.305(e)]
 - employee requests an extension [29 CFR § 825.308(c)(1)]
 - circumstances described in previous certification have changed significantly [29 CFR § 825.308(c)(1)] (e.g., is there a reason the employee's incapacity due to the chronic condition is routinely falling on Mondays and Fridays?)



Intermittent FMLA

- Scheduling of Planned Medical Treatments: “When planning medical treatment, the employee must consult with the employer and make a *reasonable effort* to schedule the treatment so *as not to disrupt unduly the employer's operations*, subject to the approval of the health care provider.” [29 CFR § 825.302(e)].
- Transferring to Another Position: if better accommodates employee’s intermittent leave and no impact on benefits and pay [29 CFR § 825.117]; liability if deemed punitive.
- Employee’s Failure to Comply with FMLA Requirements: denial of FMLA leave [29 CFR § 825.305(d)]



Medical Leaves and Benefits

Americans with Disabilities Act (ADA)



Americans with Disabilities Act (ADA)

CCSF's Reasonable Accommodation Policy

In accordance with the law, it is the policy of the CCSF to provide equal employment opportunities to qualified individuals with disabilities. The City is committed to providing reasonable accommodation to the known physical or mental disabilities of a qualified individual, unless to do so would pose an undue hardship or direct threat to the health or safety of the disabled individual or others.



Americans with Disabilities Act (ADA)

When returning from a medical leave, an employee may request a reasonable accommodation (RA), which:

- Is any change in work environment or employment practice
- Enables them to perform the essential functions of their position
- Is arrived at through an **interactive process** with the employer
- Does not cause undue hardship to the employer or create a direct threat to the health and safety of the employee or others



Americans with Disabilities Act (ADA)

Key points of the interactive process—

- **Communicate!** with the employee, their health care provider, their representative
- **Document!** by keeping notes of conversations & meetings, emails, letters, your research



Americans with Disabilities Act (ADA)

Key aspect of reasonable accommodation—

- If RA can't be made for his/her position, then need to search for another vacant position, with or without RA (any position whose top salary does not exceed 5% of the top salary step of the employee's current class and it can also be a position below his/her pay status)
- If nothing is found, then ask for DHR's help in seeking RA in another class within the department, or City-wide (60 day search)
- If nothing found, then possible medical separation

