



DATE: January 28, 2021

TO: Transportation Authority of Marin Board of Commissioners

FROM: Anne Richman, Executive Director *Anne Richman*
Li Zhang, Chief Financial Officer/Deputy Executive Director

SUBJECT: Acceptance of Revisions to the TAM Human Resources Policies and Procedures (Action),
Agenda Item No. 7e

RECOMMENDATION:

The TAM Board reviews and accepts the following recommended revisions to the TAM Human Resources Policies and Procedures:

- Under Policy 304 Holidays, added Christmas Eve Day (December 24) as a paid holiday,
- Under Policy 307 Leave of Absence, clarify that as an agency with less than 50 employees, TAM is not subject to the Federal Family and Medical Leave Act (FMLA) but is under the California Family Rights Act (CFRA) effective January 1, 2021, and update the language within this policy to meet the requirements of CFRA.

BACKGROUND:

The Board adopted the first TAM Human Resources Policies and Procedures on November 30, 2017, in preparation for the agency's transition to become an employer on record on January 1, 2018. The first revisions to the Human Resources Policies and Procedures were approved at the June 28, 2018 TAM Board meeting. The second round of revisions to the Human Resources Policies and Procedures was approved by the TAM Board on February 28, 2019.

DISCUSSION/ANALYSIS:

Recommended Revisions under Policy 304:

Prior to July 1, 2020, TAM observed 10 paid holidays per calendar year. As part of the FY2020-21 Annual Budget development process, staff recommended adding December 24, Christmas Eve, as an additional paid holiday since a survey showed that most of comparable public agencies observe 11 or more holidays. The additional holiday was approved by the Board as part of the FY2020-21 Annual Budget adoption process at its June 25, 2020 meeting.

Recommended Revisions under Policy 307:

Policy 307 of the TAM Human Resources Policies and Procedures addresses all policies and procedures related to the leave of absence of an employee. As a public agency with less than 50 employees, TAM is not subject to FMLA, but effective January 1, 2021, is subject to CFRA due to the signing of Senate Bill (SB) 1383 on September 17, 2020. However, TAM has elected to offer FML benefits similar to what are offered under both FMLA and CFRA since it became an employer on record as of January 1, 2018.

The following are the main revisions proposed to Policy 307:

- Clarification that TAM is now subject to the provisions of CFRA.
- Expand the definition of immediate family members to include grandparent, grandchild, and sibling, as well as adult child over 18 years of age and child of registered domestic partner.
- Expanded qualifying event for leave to include qualifying exigency related to the covered active duty or call to active duty of an employee's spouse, registered domestic partner, child or parent in the United States Armed Forces.
- Change the leave allowed to a total of 12 weeks each, instead of combined, if both spouses, or registered domestic partners work for TAM.

FISCAL CONSIDERATION:

This round of revision has no direct fiscal impacts on TAM's salary and benefit costs.

NEXT STEPS:

New Revisions will be effective once approved by the TAM Board.

ATTACHMENTS:

Cover and Policy 304 and 307 of the TAM Human Resources Policies and Procedures with Revisions Highlighted.

The full Human Resources Policies and Procedures document is available upon request.



HUMAN RESOURCES POLICIES & PROCEDURES

Adopted November 30, 2017
1st Revision June 28, 2018
2nd Revision February 28, 2019
3rd Revision January 28, 2021



POLICY# 304

SECTION: BENEFITS
SUBJECT: HOLIDAYS

For purposes of holiday, a day is defined as eight (8) hours unless otherwise stated.

Regular full-time employees receive ten (10) paid holidays per year:

New Year's Day	January 1
Martin Luther King, Jr. Birthday	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Eve Day	December 24
Christmas Day	December 25

When any of the holidays identified above fall on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day normally observed. When any of the holidays above fall on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day normally observed.

GUIDELINES

1. Employees are required to work on their regularly scheduled workday preceding and following the holiday to receive payment for the holiday, unless the employees are on approved leave or a regularly scheduled day off.
2. Holiday pay is at straight time wages.



POLICY# 307

SECTION: BENEFITS
SUBJECT: LEAVE OF ABSENCE

All regular full-time employees are entitled to the leave provisions outlined below, subject to the approval of the Executive Director/designee. Employees in other categories will be granted such leaves as are required by law. All leave time must be requested in writing and approved by the employee's supervisor prior to submitting to the Executive Director/designee for final approval.

GUIDELINES

1. General Provisions

- A. An employee may request an unpaid personal leave of absence, if needed for compelling reasons. The employee shall submit to the Authority a Leave of Absence Request Form at least thirty (30) days before the desired leave date, stating the reason for the leave and the length of time being requested. The employee must use all available accrued paid time-off as part of the total leave time requested. A leave requested by the Executive Director shall be submitted to the Authority Board for consideration and approval. Regular employees who have completed their introductory period are entitled to position guarantee if the leave does not exceed thirty (30) days. For leaves more than thirty (30) days, there is no guarantee of position upon return. If a suitable vacant position is not available within sixty (60) days of the end of the leave, the employee will be separated from the Authority. Upon return to work from an approved personal leave of absence, the Authority will make a reasonable effort to reinstate the employee in the same or a similar position.
- B. A leave of absence may include both paid and unpaid days. An employee will continue to receive health insurance benefits as long as the employee is on a paid status. An employee who is granted an unpaid leave of absence that exceeds thirty (30) days and who wishes to continue health insurance coverage may do so at his/her expense at the Authority's group rates, and shall follow the guidelines associated with the COBRA program.
- C. An authorized leave of absence does not represent a break in employment for a regular employee. The employee retains all accrued leave. Seniority, vacation, sick leave and holiday benefits do not accrue during periods of unpaid leave of absence.
- D. The length of the leave of absence shall delay scheduled salary increases. The employee shall return to the same salary step or relative placement in



the salary range upon return.

- E. If an employee's leave exceeds thirty (30) days, the performance evaluation and regular merit increase shall be delayed for the length of time for which the employee is on the leave of absence.
- F. An employee who is granted a leave of absence, which exceeds thirty (30) days leave, shall provide the Authority with two (2) weeks' notice prior to his/her anticipated return to work date.
- G. An employee who requires an extension to a leave of absence shall request the extension a minimum of two (2) weeks before the original leave expires.
- H. Depending on the type of leave, the employee shall complete the appropriate section of their time sheet and/or the appropriate Leave of Absence Request Form. The Authority may also request additional documentation explaining the need for a leave, prior to granting such leave.
- I. The introductory probationary period of a new employee granted a leave of absence will be extended for the period of the leave of absence.
- J. In accordance with the Americans with Disabilities Act (ADA), the Authority shall make every reasonable accommodation to provide a modified duty assignment to a disabled employee covered under the ADA who is unable to perform the essential functions of his/her job.
- K. Failure to return to work on the next scheduled workday following the expiration of an approved leave of absence may result in termination.
- L. The Authority will take steps to safeguard the confidentiality of medical information associated with a planned or unplanned leave and keep it separate from an employee's personnel file.

2. Bereavement Leave

In the event of a death in the "immediate family member" of an employee, the employee may request a paid leave of absence, up to twenty-four (24) hours per incident for travel within California, and forty (40) hours per incident for travel outside of California. If more time is needed, the employee may request additional days off, which may be charged to the employee's accrued vacation time or may be taken unpaid. The employee may not use sick leave for bereavement purposes.

For the purpose of the [bereavement's leave policy](#), immediate family members include father/mother, spouse, child, grandparent, father/mother-in-law, step-



father/mother, brother/sister, step-brother/sister, brother/sister in-law, stepchild, member of the household, registered domestic partner, aunt, uncle, niece, nephew, first cousin (that is, a child of an aunt or uncle) or legal guardian.

Leave in the case of death of persons other than “immediate family member” may be granted upon approval of the Authority. If granted, such leave shall be charged to the employee’s accrued vacation leave or unpaid at the employee’s option and with the approval of the Executive Director.

3. Military Leave

An employee who is a member of the uniformed services of the United States shall be allowed leave in accordance with the provisions of law governing such leaves. The provisions shown below describe some of the issues required by law. The Authority shall follow all governing laws in effect at the time of an employee’s request for Military Leave.

- A. An employee who is called to military service is entitled to up to thirty (30) calendar days per fiscal year, with full pay and benefits, provided he/she has been employed for one (1) year.
- B. An employee requiring military leave must provide advance written notice of the need for a leave, unless prevented from doing so by military necessity or if providing notice would be impossible or unreasonable. A copy of the military orders must be attached to the employee’s completed Leave of Absence Request Form.
- C. An employee returning from military leave of less than thirty-one (31) days shall report to work on the first full regularly scheduled work day following completion of service, plus time for safe transportation back to the employee’s residence plus an additional eight (8) hours. An employee whose military leave exceeds thirty (30) days must submit an application for re-employment within fourteen (14) days after the completion of service from thirty-one (31) to one hundred eighty-one (181) days. An employee whose military leave exceeds one hundred eighty (180) days must submit an application for re-employment within ninety (90) days after completion of service.
- D. An employee returning from a military leave shall be reinstated in the position held previously and at the salary he/she would have received had employment with the Authority been continuous, exclusive of step increases/shift assignments.
- E. If an employee becomes disabled as a result of military service and is no longer able to perform the essential functions of the job held previously, and if, after the Authority provides reasonable accommodation, the employee is still unable to perform the job, the Authority shall provide another position of equivalent seniority, pay and status for which the employee is qualified. If neither of these options is possible due to the



disability, the Authority shall provide another position of lesser status and pay but with full seniority.

4. Volunteer Civil Service Personnel

Employees shall not be subject to corrective action for taking time off to perform emergency duty as a volunteer firefighter, peace officer or emergency rescue personnel. They are also eligible to take unpaid leave for required training. If an employee is an official volunteer firefighter, they should alert the Authority that they might have to take time off for emergency duty. When taking time off for emergency duty, the Authority should be advised before doing so when possible.

5. Jury Duty and Witness Leave

Employee may be absent from duty with full pay for up to 10 working days per jury assignment if summoned to jury duty. If a jury assignment lasts longer than 10 working days Employee may use any accrued available leave or take leave without pay.

Any and all payment made to the employee for jury duty shall be remitted to the Authority.

For those employees who are hired prior to January 1, 2007 for the Authority by LGS/RGS, please see your offer letter for the benefit level offered.

6. School Visits Leave

Employees who are parents or guardians of any child in kindergarten or grades one to twelve are allowed up to eight (8) hours unpaid time off per month, per child, with a maximum of forty (40) hours per school year, to participate in any child's school activities.

- A. Employees must provide their supervisor with reasonable notice for the planned time off by completing the appropriate leave request form.
- B. Employees may elect to use available paid time off to cover the time taken for the school visit(s).
- C. Employees must provide, upon the Authority's request, written verification from the school of parental participation specifying the date and time of the activity.

7. Child's Suspension

If an employee who is the parent or guardian of a child facing suspension from school is summoned to the school to discuss the matter, the employee should alert his or her supervisor as soon as possible before leaving work. In accordance with California Labor Code section 230.7, no discriminatory action will be taken against an employee who takes time off for this purpose.

8. Voting Time

The Authority supports and encourages employees in their opportunities and



responsibilities as citizens to cast their ballots in general election years. Under most circumstances, it is possible for employees to vote either before coming to work or after the end of the workday. If the employee does not have sufficient time outside of working hours to vote at a state-wide election, a maximum of two-hour time off with pay at the beginning or end of the regular work-day shall be given. The employee must request this time off at least two working days before the election if this time off is necessary.

9. Family/Medical Leave (FML)

As a public agency with less than 50 employees, the Authority is not subject to the Federal Family and Medical Leave Act (FMLA), ~~but is subject to and~~ the California Family Rights Act (CFRA). However, the Authority has elected to offer FML benefits similar as what are offered under ~~the both~~ FMLA and CFRA legislation.

A. General

Under the Authority's FML leave policy, employees who have ~~more than at least~~ 12 months of service with a covered employer, and have worked at least 1,250 hours in the preceding 12-month period, ~~may have the right to will qualify for an~~ unpaid family or medical leave.

FML leave may be taken for any of the following events:

1. To care or bond with a newborn child.
2. Placement of and bonding with an adopted or foster child with the employee and/or spouse, registered domestic partner.
3. To care for an immediate family member with serious illness. For purpose of the FML, immediate family member includes (employee's spouse, registered domestic partner, child (including an adult child over 18 years of age and registered domestic partner's child), ~~or~~ parent, grandparent, grandchild or sibling.) ~~with a serious illness.~~
4. Because of the employee's serious health condition that makes the employee unable to perform the functions of his/her position.
- 4.5. Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, registered domestic partner, child, or parent in the United States Armed Forces.

B. Calculating FML

For purposes of calculating the 12-month period during which 12 weeks of leave may be taken, the Authority uses a rolling 12-month period, which means each time an employee takes family leave, the remaining leave entitlement is any balance of the 12 workweeks that has not been used during the immediately preceding 12 months. No carryover of unused leave from one 12-month period to the next 12-month period is permitted.



For employees working more or fewer than five days a week, or working alternative work schedules, the number of working days that make up the 12 weeks of leave is calculated on a pro rata or proportional basis.

If both spouses or domestic partners are employed by the Authority and eligible for leave for the birth or placement for adoption or foster care of a child, each of them ~~the leave may be limited to a combined total of 12 weeks. both are entitled to a total of 12 weeks of leave individually.~~

C. Pregnancy Disability Leave (PDL) and FML

If an employee is disabled by pregnancy, childbirth or related medical conditions, she is entitled to take a pregnancy disability leave (PDL) of up to four (4) months, depending on the period(s) of actual disability. Leave because of the employee's disability for pregnancy, childbirth or related medical condition is not counted as time used under FML. Time off because of pregnancy disability, childbirth or related medical condition does count as FML leave. Employees who take time off for pregnancy disability and who are eligible for FML will also be placed on FML that runs at the same time as their PDL. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law.

D. Intermittent FML

Any leave taken for the birth, adoption, or foster care placement of a child does not have to be taken in one continuous period of time. FML taken for the birth or placement of a child will be granted in minimum amounts of two weeks. However, the Authority will grant a request for FML (for birth/placement of a child) of less than two weeks' duration on any two occasions. Any leave taken must be concluded within one year of the birth or placement of the child with the employee.

Employees may take FML intermittently (in blocks of time, or by reducing their normal weekly or daily work schedule) if the leave is for the serious health condition of the employee's spouse, registered domestic partner, child, parent, grandparent, grandchild or spousesibling, or of the employee, and the reduced leave schedule is medically necessary as determined by the healthcare provider of the person with the serious health condition. The smallest increment of time that can be used for such leave is one hour.

E. Notice Requirements

If possible, the employee must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or the employee's own planned medical treatment or for a family member). For events that are unforeseeable, the employee must notify the Authority, at least verbally, as soon as he or she learns of the need for the leave. Failure to



comply with these notice rules is grounds for, and may result in, deferral of the requested leave until the employee complies with this notice policy. The employee must consult with his or her supervisor regarding scheduling of any planned medical treatment or supervision in order to minimize disruption to Authority operations. Any such scheduling is subject to the approval of the healthcare provider of the employee or the healthcare provider of the employee's spouse, registered domestic partner, child, parent, grandparent, grandchild, or spouse-sibling or registered domestic partner.

F. Second Opinion

If the FML request is made because of the employee's own serious health condition, the Authority may require, at its expense, a second opinion from a health care provider that the Authority chooses. The health care provider designated to give a second opinion will not be one who is employed on a regular basis by the Authority.

If the second opinion differs from the first opinion, the Authority may require, at its expense, the employee to obtain the opinion of a third health care provider designated or approved jointly by the Authority and the employee. The opinion of the third health care provider shall be considered final and binding on the Authority and the employee.

G. Certification Requirements

The Authority requires the employee to provide certification within 15 days of any request for FML, unless it is not practicable to do so. The Authority may require re-certification from the health care provider if additional leave is required.

If the leave is needed to care for a sick ~~child,~~ spouse, registered domestic partner, child, parent, grandparent, grandchild or sibling or parent, the employee must provide a certification from the health care provider stating:

- Date of commencement of the serious health condition;
- Probable duration of the condition;
- Estimated amount of time for care by the health care provider; and
- Confirmation that the serious health condition warrants the participation of the employee.

If an employee cites his/her own serious health condition as a reason for leave, the employee must provide a certification from the health care provider stating:



- Date of commencement of the serious health condition;
- Probable duration of the condition; and
- Inability of the employee to work at all or perform any one or more of the essential functions of his/her position because of the serious health condition.

The Authority will require certification by the employee's health care provider that the employee is fit to return to his or her job. Failure to provide certification by the health care provider of the employee's fitness to return to work will result in denial of reinstatement for the employee until the certificate is obtained.

H. Continuation of Health Benefits

An employee taking FML will be allowed to continue participating in any health and welfare benefit plans in which he/she was enrolled before the first day of the leave (for a maximum of 12 workweeks) at the level and under the conditions of coverage as if the employee had continued in employment for the duration of such leave. The Authority will continue to make the same premium contribution as if the employee had continued working. Employees must make arrangements with the Authority to pay their share of group health plan premiums while on unpaid leave.

I. Using Accrued Paid Leave

Paid leave may be substituted for unpaid leave in the following circumstances:

- Accrued sick leave may be used by the employee for the employee's own serious health condition.
- Accrued sick leave may be used for the care of a family member.
- Vacation and other accrued time may be used for any FML qualifying event.

Employees on FML will not continue to accrue vacation, sick leave, or paid time off during unpaid time off.

J. Return to Work

Under most circumstances, upon return from FML, an employee will be reinstated to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. However, an employee has no greater right to reinstatement than if he or she had been continuously employed rather than on leave. For example, if an employee on FML would have been laid off had he or she not gone on leave, or if the employee's job is eliminated during the leave and no equivalent or comparable job is available, then the employee would not be entitled to



reinstatement. In addition, an employee's use of FML will not result in the loss of any employment benefit that the employee earned before using family/medical leave.

10. Pregnancy Disability Leave (PDL)

Pregnancy, childbirth, or related medical conditions will be treated like any other disability, and an employee on leave will be eligible for temporary disability benefits in the same amount and degree as any other employee on leave.

Any female employee planning to take PDL should advise the Authority as early as possible. The individual should make an appointment with the Authority to discuss the following conditions:

- A. Employees who need to take PDL must inform the Authority when a leave is expected to begin and how long it will likely last. If the need for a leave or transfer is foreseeable, employees must provide notification at least 30 days before the PDL or transfer is to begin. Employees must consult with the Authority regarding the scheduling of any planned medical treatment or supervision in order to minimize disruption to the operations of the Authority. Any such scheduling is subject to the approval of the employee's healthcare provider. If 30 days' advance notice is not possible, notice must be given as soon as is practical.
- B. Upon request of an employee and written recommendation of the employee's physician, the employee's work assignment may be changed if necessary to protect the health and safety of the employee and her child.
- C. Requests for transfers of job duties will be reasonably accommodated if the job and security rights of others are not breached.
- D. Temporary transfers due to health considerations will be granted when possible. However, the transferred employee will receive the pay that accompanies the job, as is the case with any other temporary transfer due to temporary health reasons.
- E. PDL usually begins when ordered by the employee's physician. The employee must provide the Authority with a certification from a health care provider. The certification indicating disability should contain:
 - The date on which the employee became disabled due to pregnancy;
 - The probable duration of the period or periods of disability; and
 - A statement that, due to the disability, the employee is unable to perform one or more of the essential functions of her position



without undue risk to herself, the successful completion of her pregnancy, or to other persons.

- F. A return from leave will be allowed only when the employee's physician sends a release.
- G. An employee will be allowed to use accrued sick time (if otherwise eligible to take the time) during a PDL. An employee will be allowed to use accrued vacation or other personal time (if otherwise eligible to take the time) during a PDL.
- H. Duration of the leave will be determined by the advice of the employee's physician, but an employee disabled by pregnancy may take up to 17 1/3 weeks (693 hours). Part-time employees are entitled to leave on a pro rata basis. The four months of leave includes any period of time for actual disability caused by the employee's pregnancy, childbirth, or related medical condition. This includes leave for severe morning sickness and prenatal care.
- I. Leave does not need to be taken in one continuous period of time and may be taken intermittently, as needed. Leave may be taken in increments of one hour.
- J. Employees on PDL -are also eligible to maintain group health insurance coverage for up to a maximum of 16 workweeks (if such insurance was provided before the leave was taken) on the same terms as if the employee had continued to work. In some instances, the Authority may recover premiums it paid to maintain health coverage if the employee fails to return to work following pregnancy disability leave.
- K. If the employee is on PDL and not eligible for continued paid coverage, or if paid coverage ceases after 16 workweeks, the employee may continue her group health insurance coverage through the Authority in conjunction with federal COBRA guidelines by making monthly payments to the Authority or the amount of the relevant premium.
- L. Under most circumstances, upon submission of a medical certification that the employee is able to return to work from a PDL, the employee will be reinstated to her same position held at the time the leave began or to an equivalent position, if available. An employee returning from a PDL has no greater right to reinstatement than if the employee had been continuously employed.

11. Victims of Domestic Violence

Employees who are victims of domestic violence are eligible to use their personal or unpaid leave for recovery. The employee may request leave if he/she is



involved in a judicial action, such as obtaining restraining orders, or appearing in court to obtain relief to ensure his/her health, safety, or welfare, or that of his/her child.

The employee should provide notice and certification of his/her need to take leave under this policy. Certification may be sufficiently provided by any of the following:

- A. A police report indicating that the employee was a victim of domestic violence;
- B. A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee appeared in court; or
- C. Documentation from a medical professional, domestic violence advocate, health-care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

The Authority will, to the extent allowed by law, maintain the confidentiality of an employee requesting leave under this provision.

The length of unpaid leave an employee may take is limited to 12 weeks. Rather than taking unpaid time, an employee may use vacation, personal leave or compensatory time off that is otherwise available to him/her.

If the time off is an unscheduled absence, the employee may be required to notify their supervisor as soon as possible of their absence and provide documentation to the Authority within a reasonable time after the absence.

12. Victims of Violent Crimes

An employee who is a victim or who is the family member of a victim of a violent felony or serious felony may take time off from work under the following circumstances:

- A. The crime must be a violent or serious felony, as defined by law; and
- B. The employee must be the victim of a crime, or be an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a victim. An immediate family member for this policy is defined as: a spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father or stepfather. A registered domestic partner means a domestic partner who is registered in accordance with California state law.

The absence from work must be in order to attend judicial proceedings related to a crime listed above. Before the employee is absent for such a reason, he/she must provide documentation of the scheduled proceeding. Such notice is typically given to the victim of the crime by a court or government agency setting the



hearing, a district attorney or prosecuting attorney's office or a victim/witness office.

If advance notice is not possible, the employee must provide appropriate documentation within a reasonable time after the absence. Any absence from work to attend judicial proceedings will be unpaid, unless the employee chooses to take paid time off, such as accrued vacation, personal leave time, or sick leave.

13. Catastrophic Leave

The Authority shall allow the transfer of accrued vacation as a donation from an employee to another employee who has suffered from a catastrophic event. The donating employee shall provide a signed release stating the recipient of the leave, and the number of hours transferred.

The catastrophic event shall be determined eligible by the Executive Director or his/her designee.