



City of Palo Alto

City Council Staff Report

(ID # 9632)

Report Type: Consent Calendar

Meeting Date: 12/10/2018

Summary Title: City of Palo Alto's Employee Paid Parental Leave

Title: Approval of City of Palo Alto's Employee Paid Parental Leave Policy and Amendment to City Merit System Rules and Regulations Chapter 7-705(c)

From: City Manager

Lead Department: Human Resources

Recommended Motion

Staff recommends the City Council approve the proposed Paid Parental Leave Policy and update the City's Merit Rules Chapter 7-705(c) to eliminate the wait period for employees to use accrued vacation time.

Executive Summary

The proposed policy institutes a new program offered by the City which provides six weeks of Parental Leave at 100% of salary, for the birth, adoption or foster placement of a child, regardless of the gender, marital status or sexual orientation of the parent. Paid Parental Leave may be taken at any time during the twelve-month period immediately following the birth, adoption or placement of a child with the employee.

Background

In a series of meetings with the City Manager over the past year, employees expressed significant concerns a Paid Parental Leave policy is a top priority for the workforce and that the absence of such a policy is negatively impacting recruitment, retention and employee morale.

Based on this employee feedback, the City Manager directed Human Resources staff to consult with policy experts, conduct a thorough literature search and review benchmark studies to evaluate parental leave options. Through these efforts, staff found that Palo Alto's lack of a Parental Leave policy is contrary to best practices for both public and private employers. Further, the lack of a Parental Leave policy is misaligned with growing efforts statewide and nationally for gender equity and family-supportive work cultures.

It is within this context that the City Manager directed staff to draft a policy that is responsive these factors and also helps the City to be a more competitive employer in a difficult labor market. The City Manager directed that the proposed policy include the following elements:

- Equal treatment for all parents regardless of gender, marital status or sexual orientation;
- Coverage for birth, adoption and foster placement;
- Match or exceed the benefit provided through State Disability Insurance (SDI); and
- Sustainable in the budget, considering the City's escalating costs for health coverage, pension and other benefits.

The proposed policy meets the elements as outlined above.

Human Resources staff have provided appropriate notice to the employee unions and necessary meet and confer obligations have been met.

Analysis

The proposed policy provides **Parental Leave at 100% of salary* for six weeks** and can be supplemented with additional leaves as accrued by the employee. The proposed policy is generally better than the benefit currently provided by other local government employers and is progressive in that it is gender-neutral and not impacted by the employee's marital status or sexual orientation.

Current Practice in Palo Alto

Current federal and state laws provide job protection and the continuation of benefits for new parents to take up to 12 weeks for the birth, adoption or foster placement of a child¹. Although these laws provide job protections and continued benefits, there is no requirement to provide pay for employees during their leave.

Palo Alto's existing policies align with federal and state laws, which means that parental leave is unpaid unless the employee uses their banked vacation, sick leave or other saved time, just as they would for other absences. Under these circumstances, employees who have not banked enough time will find themselves making the difficult choice of taking time off without pay or returning to work sooner than desired.

Options Considered

State Disability Insurance (SDI) Program - After researching parental leave policies for local governments in the region, staff found that most cities provide parental leave based on long-standing participation in the California State Disability Insurance (SDI) program. SDI is paid by employees at approximately 1% of their income. SDI provides up to six weeks of paid time for parental leave and the benefit is capped at 70% of salary, with a maximum benefit of \$1,216 per week.

Based on current salaries, the cost to participate in SDI for Palo Alto is estimated at \$1.3 million annually. The City would be obligated to meet and confer with all seven bargaining units to reach consensus for employees to pay for the insurance. If consensus is not reached, the bargaining groups

¹ The federal Family and Medical Leave Act and the California Family Rights Act (FMLA/CFRA) provide eligible employees the opportunity to take unpaid, job-protected leave for certain specified reasons. The maximum amount of leave employees may use under this policy is 12 weeks within a 12-month period.

that do not agree could bargain for differing benefits or exempt their members from participation. This would result in an unequal policy that might not be accessible to all employees. As an alternative, the City could implement SDI by bearing the full cost of the insurance at \$1.3 million per year.

At this time staff does not recommend pursuing SDI, as it is likely to result in unequal coverage under a bargaining scenario or would be cost-prohibitive for the City to absorb on an ongoing basis.

Private Disability Insurance Programs - Another option researched by City staff is the purchase of a private disability insurance program. Such plans are offered by insurance providers such as AFLAC and Cigna. After considerable research with the City's insurance brokers to evaluate the market, staff concluded that this is not a recommended option. Concerns include the instability of the insurance market in California and the potential for large premium increases in the future. Additionally, these private policies differentiate between a "maternity" benefit and a "paternity" benefit and do not meet the City's criteria for a gender-neutral policy.

The Equal Employment Opportunity Commission ([EEOC](#)) alleged in a lawsuit that Estee Lauder Companies Inc., one of the world's leading manufacturers and marketers, violated federal law when it implemented a parental leave program that provided male employees a lesser benefit than provided to female employees. The company and EEOC agreed to settle the case earlier this year. Although the lawsuit and settlement are not intended to deter employers from implementing parental leave policies, the current guidance is that employers should ensure that benefits apply equally to all new parents regardless of gender.

Competitive Policy

Staff's research of other government and private employers indicates that current parental leave practices vary, and an industry standard does not yet exist. A sample of government employers outside of California with parental leave policies include:

- City of Austin - 30 days at 100% pay;
- New York State - phased-in program up to 12 weeks at 67%; and
- State of Massachusetts - 12 weeks at 80% pay.

As discussed earlier in this report, most local governments in our region utilize State Disability Insurance to provide employees with up to 70% of salary for up to six weeks (capped at a maximum of \$1,216 per week.) The proposed Parental Leave Policy for Palo Alto is 100% of salary for six weeks. By adopting this policy, the City of Palo Alto would provide a better benefit than the following competitor employers:

- Alameda
- Mountain View
- Redwood City
- San Jose
- City of Santa Clara
- County of Santa Clara
- Sunnyvale
- Stanford University

Recommendation

Staff is recommending a new Citywide policy to provide 6 weeks of paid leave at 100% of the employee's salary (proposed policy attached.)

Additionally, to allow new employees to access their leave accruals, it is necessary to remove the waiting period for vacation usage in the City's Merit Rules Chapter 7 section 705(c), as the waiting period is a conflicting restriction to the proposed Paid Parental Leave Policy.

Resource Impacts

Based on a five-year review of new child dependent benefits enrollments, it is anticipated that approximately 36 parental leaves will be taken on an annual basis. The salaries and benefits for employees who take family leave are already budgeted. Additional costs are incurred only when there is a backfill, meaning that a temporary employee is hired or another employee is paid overtime to fill in during the leave. Due to the safety-sensitive nature of the work in Police, Fire and Utilities, it is anticipated that parental leaves for relevant positions in those departments will be backfilled². The majority of leaves will not need to be backfilled.

Backfilling must also occur under our current practice, so the City already absorbs and covers those costs. The potential direct cost increase that could occur under this program would be due to employees who currently would not choose to take leave, because they don't have it, or have enough. We should anticipate there will be an increase in time off for parental leave. We would estimate that could be in the range of \$100,000-200,000. We will monitor the usage in this program and its costs and any incurred costs beyond budgeted levels will be evaluated on an annual basis. Most likely, staff will be able to recommend program costs be absorbed in the annual budget, primarily through departmental vacancy savings. There are also short term productivity impacts, when people are out of the office and positions are not backfilled. We are convinced that the positive benefits of this program outweigh that impact.

Attachments

- 1) DRAFT Parental Leave Policy
- 2) Survey: Local Agencies' Parental Leave
- 3) Merit Rules: Chapter 7

Attachments:

- Merit Rules: Chapter 7
- Public Agencies Parental Leaves Survey 2018
- Final Draft Parental Leave Policy

² Shifts backfilled with overtime will cost 1.5x the normal hourly rate; however, overtime shifts do not incur additional benefit costs such as retirement contributions or medical premiums. Backfill for all other groups are assumed to cost 1.0x the rate by hourly/contract roles.

CHAPTER 7
VACATION LEAVE

Sections:

- 701 Eligibility
- 702 Vacation accrual
- 703 Cessation of accrual
- 704 Holidays falling during vacation
- 705 Use of vacation
- 706 Vacation at termination
- 707 Vacation benefits for deceased employees
- 708 Effect of extended military leave

701. Eligibility.

- (a) **Full-time regular employees.** Full-time regular employees shall be eligible for vacation leave in conformance with the provisions of Section 702;
- (b) **Part-time regular employees.** Part-time regular employees shall be eligible for vacation leave in conformance with the provisions of Section 702, with compensation computed on the basis of part-time/full time ratio.
- (c) **Hourly employees.** Hourly employees shall not be eligible for vacation leave.

702. Vacation accrual. Vacation will be accrued when an employee is in pay status and will be credited on a bi-weekly basis. Total vacation accrual at any one time may not exceed three times the annual rate of accrual. Each eligible employee shall accrue vacation at the following rates or as defined in the appropriate Memoranda of Agreement or compensation plans for continuous service performed in pay status:

- (a) **Less than four years.** For employees completing less than four years continuous service: 80 hours vacation leave per year.
- (b) **Four, but not more than nine years.** For employees completing four, but not more than nine years continuous service: 120 hours vacation leave per year.
- (c) **Nine, but not more than fourteen years.** For employees completing nine but not more than fourteen years continuous service: 160 hours vacation leave per year.

- (d) **Fourteen, but not more than nineteen years.** For employees completing fourteen, but not more than nineteen years continuous service: 180 hours vacation leave per year.
- (e) **Nineteen or more years.** For employees completing nineteen or more years continuous service: 200 hours vacation leave per year.

703. Cessation of accrual, and accrual resumption.

- (a) In the event an employee fails to use his/her vacation as provided in these rules, vacation accrual beyond the limits established in these rules shall be prohibited, and no other compensation or recognition of such prohibited accrual will be made, except that the City Manager may extend accrual limits when vacation is not permitted for the convenience of the City.
- (b) When an employee who has reached his/her maximum vacation accrual, as defined in Section 703 (a), uses vacation for his/her personal leave or voluntarily transfers accrued vacation in accordance with the Voluntary Leave Sharing provisions described in Section 705(f), the employee may resume accruing vacation up to the limits described by Section 703(a).

704. Holidays falling during vacation. In the event a City holiday falls within an employee's vacation period which would have excused the employee from work, and for which no other compensation is made (see Section 518), an additional work day for each such holiday shall be added to the vacation leave.

705. Use of vacation.

- (a) **When to be taken.** The time at which an employee may use his/her accrued vacation leave and the amount to be taken at any one time shall be determined by his/her department head with particular regard for the needs of the City, but also insofar as possible, considering the wishes of the employee.
- (b) **Limitation on use.** Employees may not use more than their annual rate of accrual in any calendar year period, provided, however, that a department head may grant exceptions to this limitation.

~~(c) **Waiting period.** Employees shall complete six months continuous service before using accrued vacation leave.~~

~~(d)~~(c) **Double compensation prohibited.** Employees shall not work for the City during their vacation.

~~(e)~~(d) **Vacation splitting.** It is the intention of the City that vacation be taken in units of one week; however, with approval of his/her department head, an employee may use his/her accrued vacation in units of less than one work week.

~~(f)~~(e) **Voluntary leave sharing.** An employee may voluntarily transfer accrued vacation to a Voluntary Leave Sharing program, in accordance with procedures adopted by the City Manager, provided that the employee will have a post-transfer balance of at least two weeks of accrued vacation.

706. Vacation at termination. Employees leaving the municipal service with accrued vacation leave shall be paid the amounts of accrued vacation to the date of termination. Payments for accrued vacation shall be at the employee's current rate of pay.

707. Vacation benefits for deceased employees. An employee who is eligible for vacation leave and who dies while in the municipal service shall have the amount of any accrued vacation paid to his/her estate within thirty days. This accrued vacation will be computed at his/her last basic rate of pay.

708. Effect of extended military leave. State and federal law shall govern the rights of employment and benefits for employees on military leave.

Public Agency Paid Parental Leave Survey

Survey - Parental Leave

Jun-18

Agency	Paid Maternity Leave	Paid Paternity Leave	Short-term disability	State Disability (SDI)
Alameda			X	X (certain bargaining units)
Hayward			X	
San Mateo				X (certain bargaining units)
Berkeley	X (unpaid, benefit/job protected leave for up to one year)			X
Mountain View			X	
Santa Clara				X (certain bargaining units)
Daly City			X	X (certain bargaining units)
Redwood City			X	X (certain bargaining units)
South San Francisco			X	
Fremont			X	
San Jose				
Sunnyvale			no short term but City's Paid Medical Leave (PML) and LTD is offered	X (certain bargaining units)

Paid Parental Leave Policy (DRAFT)

Presented to Labor Groups on: 10/2/2018

Purpose/Objective

All employees at the City of Palo Alto are eligible for Paid Parental Leave, for up to six weeks in the twelve-month period following the birth of a child, adoption of a child, or placement of a foster child in their home. Employees will be afforded the same level of benefit continuation for the period of time that the employee is on Paid Parental Leave as if the employee was on active work status.

The purpose of Paid Parental Leave is to enable the employee to care for and bond with a newborn or a newly adopted or newly placed child.

Employees are encouraged to talk with their managers about a return-to-work schedule with the possibility of reduced or flexible work hours to accommodate family needs.

Eligibility

- Employees who are the parent of a newborn child without regard to the marital status or sexual orientation of the parenting individual; OR
- Employees who have adopted a child or been placed with a foster child (in either case, the child must be age 17 or younger).

Amount, Time Frame and Duration

- Employees will be eligible for up to six weeks of Paid Parental Leave at 100 percent of the employee's regularly scheduled weekly base-pay.
- Paid Parental Leave will be paid on regularly scheduled pay dates.
- Approved Paid Parental Leave may be taken at any time during the twelve-month period immediately following the birth, adoption or placement of a child with the employee. Paid Parental Leave may not be used or extended beyond this twelve-month time frame.
- The City will allow employees to take Paid Parental Leave in the smallest of increment equivalent to a one-day shift according to their regular work schedule.
- If overtime hours are part of an employee's usual and normal workweek and the employee is unable to work overtime hours because of a Paid Parental leave, then any overtime hours not worked will be counted against the employee's Paid Parental leave entitlement. If the employee

Paid Parental Leave Policy (DRAFT)

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is off during their regular shift and is therefore not assigned to the overtime shift then only their regular work shift will be counted against the employee's Paid Parental leave entitlement.

- Any unused Paid Parental Leave will be forfeited at the end of the twelve-month period following the birth of a child, adoption of a child, or placement of a foster child in their home.
- Upon termination of the individual's employment at the City, he or she will not be paid for any unused Paid Parental Leave for which he or she was eligible.
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- In no case will an employee receive more than six weeks of Paid Parental Leave in a rolling 12-month period, regardless of whether more than one birth, adoption or foster care placement event occurs within that 12-month rolling time frame.

Coordination with Other Policies

- Paid Parental Leave taken under this policy will run concurrently with leave under the FMLA, CFRA and PDL.
- If a City holiday occurs while the employee is on Paid Parental Leave, such day will be charged as holiday pay and will not be counted against the employees six weeks of Paid Parental Leave.

Requests for Paid Parental Leave

- The employee must provide his or her supervisor and the Human Resources Department with notice of the request for leave at least 30 days prior to the proposed date of the leave (or if the leave was not foreseeable, as soon as possible). An employee who does not give 30 days' notice must explain why such notice was not practicable.
- The employee must complete the necessary Human Resource Department forms and provide all documentation as required by the Human Resource Department to substantiate the request.
- Employees may request to start their Paid Parental Leave up to two weeks prior to the birth/placement of the child.

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- As is the case with all City policies, the City has the exclusive right to interpret this policy.