

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

### **1.0 Purpose:**

To describe the process for processing leave for eligible employees who request an absence as defined by the Federal Family and Medical Leave Act (FMLA), State of California Family Rights Act (CFRA), State Pregnancy, Childbirth or Related Medical Conditions Act and Military Family Leave.

### **2.0 Scope:**

This procedure applies to all VTA employees who are not covered by a collective bargaining agreement and/or where the agreement does not specifically address the issues that are addressed by the procedure. VTA will not tolerate the discharge, suspension, punishment, refusal to hire, or other discriminatory action against any individual, because that individual has exercised his/her right to take a Pregnancy Disability, CFRA or FMLA leave.

### **3.0 Procedure:**

- 3.1 Employees are eligible for FMLA and or CFRA leave if they have been employed with VTA for at least 12 months\* and have worked a minimum of 1,250 hours in the previous rolling 12-month period. The 1,250 hours includes only time actually worked and excludes paid and unpaid leaves (e.g. vacation, sick leave, comp time, leave of absence, etc.). Military duty shall be considered time worked for purposes of computing hours worked. *\* NOTE: Employment prior to break in service of 7 years or less will be counted toward meeting the 12 month eligibility requirement.*

Qualifying reasons for leave:

- Employee's own serious health condition;
- Birth of a child, placement with employee of a child for adoption or foster care;
- Employee's spouse, son, daughter or parent with a serious health condition or;
- Qualifying Exigency;
- Military Family Leave/Caregiver Leave.

- 3.2 All eligible employees shall be entitled to up to 12 weeks of unpaid job protected time off during a rolling 12 month period in the event of their own serious health condition, the birth, adoption or placement of a child for foster care; or to care for a parent, child, or spouse who has a serious health condition. See Military Leave section for additional time off.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 1 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

- 3.3 The maximum amount of leave available to women disabled by pregnancy is 4 months of Pregnancy Disability Leave/FMLA, and 12 weeks of CFRA time to bond with the baby, totaling 7 months of leave. Medical certification is required for the Pregnancy Disability Leave and a copy of the birth certificate is required for the CFRA bonding leave.
- 3.4 Employees requesting leave for birth, adoption or placement of a child for foster care may use their accrued vacation or floating holiday, prior to going on leave-without-pay status.
- 3.5 Employees requesting medical leave for their own serious health condition shall be required to use their accrued sick leave and then may use accrued vacation, floating holiday, and personal leave time prior to going on leave without pay status. If employee is receiving third party wage replacement (example: State Disability or Workers Compensation Benefits, Paid Family Leave) the leave would not be considered an unpaid leave, thus no requirement to use accrued sick leave prior to leave no pay would apply.
- 3.6 Labor Code 233 (Kincare) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months, to attend an illness of a child, parent, spouse, or domestic partner of the employee. This does not extend the maximum period of leave to which an employee is entitled under the FMLA. This leave does not apply to employees with PTO banks; it only applies to employees with sick accruals.
- 3.7 Any eligible employee who takes a leave of absence protected by the FMLA and/or CFRA and Military Leave will be entitled upon return from such leave to be restored to the same or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, except under limited circumstances.
- 3.8 Registered Domestic Partners shall receive the same FMLA/CFRA benefits as offered to married couples where applicable.
- 3.9 Employee and Employer Rights & Obligations
- 3.9.1 VTA will post and keep posted in a conspicuous place a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations (DOL Form WH Publication 1420).
- 3.9.2 Employee shall submit a request for FMLA leave; Upon VTA receiving knowledge that the employee's leave may be FMLA qualifying, VTA must notify the employee of

<b>Original Date:</b>	<b>Revision Date:</b>	Page 2 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

the employee's eligibility (Notice of Eligibility & Rights & Responsibilities Form) within 5 business days, absent extenuating circumstances (DOL Form WH-381).

- 3.9.3 The employee's Superintendent/Manager or designee shall designate qualifying leave, paid or unpaid, as FMLA leave [29 CFR Sec. 825.300 (b)]. All FMLA absences for the same qualifying reason are considered as a single leave and no further notice is provided to employee. If a subsequent need is required during the applicable 12-month period for a different FMLA qualifying reason and the employee's eligibility status has not changed, no additional eligibility notice is required. However if employees eligibility status has changed VTA must notify the employee with a WH-381 Form within 5 business days.
- 3.9.4 If the employee is not eligible the VTA notice must state at least one reason why the employee is not eligible. This designation notice can be used for all leaves whether approved or denied.
- 3.9.5 If circumstances require an FMLA and or CFRA leave to extend beyond 12 weeks, the employee may request a medical leave of absence (see Policy related to leaves of absences or the applicable collective bargaining agreement). If a medical leave of absence is granted, upon conclusion of the leave, no guarantee of position availability can be made, except for military leave entitlement of up to 26 weeks.

### **Conditions of Leave**

- 3.9.6 Intermittent leave for birth or adoption/placement of a healthy child may be taken intermittently or on a reduced schedule only if VTA agrees. Bonding leave is time taken to bond with a new baby or for the adoption/placement of a child. Bonding leave can be taken in no less than two week increments except that the employee may take intermittent or reduced leave on two occasions for less than the minimum two-week period. Leave for the birth or placement of a child must be taken within 12 months after the event. A copy of the child's birth certificate is required.
- 3.9.7 Unless otherwise agreed in advance, during FMLA leave the employee must contact his/her Superintendent/Manager or designee each pay period to inform him or her of the status of the leave and the intended return to work date. If necessary, other dates of contact may be arranged by agreement between VTA and the employee.
- 3.9.8 Medical leave may be taken on an intermittent or reduced leave schedule if medically necessary for a serious health condition of the employee or his or her spouse, child, or

<b>Original Date:</b>	<b>Revision Date:</b>	Page 3 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

parent. The treatment regimen must be described in the certification that is required by VTA for medically necessary intermittent leave [29 CFR Sec. 825.202 (b)]. If leave is required on this basis, VTA may require the employee to transfer temporarily to an alternative position that better accommodates recurring periods of absence or a part-time schedule, if the collective bargaining agreement provisions allow, provided the position has equivalent pay and benefits [29 CFR Sec. 825.204].

- 3.9.9 If both spouses are employed by VTA, they are entitled to a combined total of 12 weeks of leave (rather than 12 weeks each) [29 CFR Sec. 825.121 (3)], for the:
- birth of the employee's son or daughter or to care for the child after birth;
  - for placement of a child with the employee for adoption or foster care, or to care for the child after placement; or
  - to care for the employee's parent with a serious health condition.

Attendance Incentives - VTA will disqualify employees from bonuses or other achievement based on attendance, when employees have not met the goal because they took FMLA [29 CFR 825.215 (2)].

### 3.10 Fitness for Duty

- 3.10.1 As a condition of restoring an employee whose FMLA leave was used for employee's own serious health condition, VTA may apply a uniformly applied policy (VTA Personnel Policy & Procedure Manual Policy #630) to obtain a fitness for duty certification. VTA shall provide the employee a list of essential functions of the employee's job with the designation notice during the initial certification process. VTA may contact the health care provider for clarification and authentication of the fitness for duty certification. No second or third opinions on fitness for duty certification may be required. The cost of the certification shall be borne by the employee and employee is not entitled to be paid for time or travel costs spent in obtaining certification.
- 3.10.2 No fitness for duty for absences taken on an intermitted or reduce leave schedule are allowed.
- 3.10.3 VTA is entitled to a fitness for duty for absences up to once every 30 days if reasonable safety concerns exists [29 CFR 825.312 (f)].

<b>Original Date:</b>	<b>Revision Date:</b>	Page 4 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

#### **4.0 Responsibilities:**

- 4.1 The Risk Management Department provides oversight, advice and recommendations to the operating divisions, department and worksites within VTA regarding FMLA, CFRA, PDL and Military Family Leave.
- 4.2 Superintendents, Supervisors, and Managers are responsible for properly designating and processing request for FMLA, CFRA, PDL and Military Family Leave with proper designation forms or notices.
- 4.3 Employees shall be responsible for providing timely notice of the need to take time off and providing all required documentation.
- 4.4 Employee Notice Requirements for Foreseeable Leaves
  - 4.4.1 VTA Family Medical Leave Request Form shall be submitted in writing to the employee's Superintendent/Manager or designee at least 30 days prior to the commencement date. When conditions make such a requirement impracticable, because of a lack of knowledge of approximately when the leave will be required to begin, or a change in circumstances, notice must be given as soon as practicable. As soon as is practicable means as soon as both possible and practical, taking into account all of the facts and circumstances of the individual case [29 CFR Sec. 825.302].
  - 4.4.2 When employee becomes aware of the need for FMLA leave with less than 30 days notice, it should be practicable for employee to provide notice either the same day or the next business day [29 CFR Sec. 825.302]. Employee shall provide at least verbal notice sufficient to make VTA aware that the leave may be FMLA and give anticipated timing and duration of such leave.
  - 4.4.3 VTA requires that an employee must comply with the usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances [29 CFR Sec. 825.302 (d)]. If the employee fails to comply with VTA usual notice and procedural requirements and no unusual circumstance justify the failure to comply, FMLA protected leave may be delayed or denied.
  - 4.4.4 If the need for leave is not foreseeable, notice shall be provided as soon as practicable under the facts and circumstances of the particular case. It will be required that it is practicable for employees to provide notice and described in VTA's usual and customary notice procedures [29 CFR Sec. 825.303].

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

4.4.5 “Calling in “sick” without providing more information will not be considered sufficient notice to trigger VTA’s obligations under the Act. VTA will be expected to obtain any additional required information through informal means [29 CFR Sec. 825.303 (b)].

#### 4.5 Medical Certification Requirements

4.5.1 VTA requires Medical Certification (Form WH-380-E) for FMLA leaves due to medical reasons that makes the employee unable to perform one or more of the essential functions of his/her position [29 CFR Sec. 825.305]. Employee must provide medical certification within 15 calendar days after VTA’s request for medical.

4.5.2 A certification is considered insufficient if VTA receives the certification but the information provided is vague, ambiguous or non-responsive. If the medical certification is incomplete or insufficient VTA shall state in writing the deficiencies and allow 7 calendar days to have deficiencies cured. If not cured in the resubmitted certification VTA may deny the FMLA leave. A certification that is not returned to VTA is not considered incomplete or insufficient but constitutes a failure to provide certification.

4.5.3 Clarification and authentication [29 CFR Sec. 825.307]. If employee submits a complete & sufficient certification, no additional information can be requested. However, VTA may contact health care provider for purposes of clarification and authentication of medical certification (whether initial certification or re-certification), after VTA has provided employee an opportunity to cure deficiencies.

4.5.4 VTA may request certification at some later date if VTA has reason to question the appropriateness of the leave or its duration [29 CFR Sec. 825.305 (b)].

4.5.5 For Medical certifications for self or family members (Form WH-380-F) that last beyond a single leave year, VTA will require a new medical certification and such new medical certification will be subject to provisions for authentication and clarifications including second & third opinions [29 CFR Sec. 825.305 (e)].

Under no circumstances can employee’s direct supervisor contact health care provider. Clarification means contacting health care provider to understand the handwriting on medical certification or to understand the meaning of response. Employee’s authorization is required for “clarification” purposes.

If employee chooses not to provide VTA with authorization and does not clarify the certification, VTA may deny the FMLA leave.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 6 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

Authentication means providing health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and or authorized by health care provider who signed the document. It is the employee's responsibility to provide VTA with a complete and sufficient certification and to clarify the certification if necessary.

4.5.6 If VTA has reason to doubt the validity of the medical certification, VTA may require a second opinion at VTA's expense. If the certifications do not ultimately establish the employee's entitlement for FMLA, the leave will not be designated as FMLA and will be treated under VTA's normal established leave policy [29 CFR 825.207 (b)].

4.5.7 If the opinions of the employee's health care provider and VTA's health care provider, second opinion differ the employee may obtain a third opinion at employer's expense. The third opinion physician is jointly approved by VTA and employee and shall be final and binding. [29 CFR 825.207 (c)].

#### 4.6 Employee Benefits During FMLA/CFRA Leave

4.6.1 Except as otherwise provided by a collective bargaining agreement or benefits resolution the following shall apply.

4.6.2 During any FMLA leave, VTA must maintain the employee's coverage under any group health plan on the same conditions as would have been provided if the employee had been continuously employed [29 CFR 825.209].

4.6.3 If the FMLA leave is substituted with paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, as a payroll deduction.

4.6.4 VTA shall pay the employer contribution for group health benefits coverage (including medical, dental and vision) during an FMLA/CFRA absence, regardless of whether the leave is paid or unpaid. Each employee shall be required to complete an authorization acknowledging that, should the employee not return to work at the end of the leave, VTA has the legal right to recover the cost of any unpaid employee premium co-pays and any premium paid by VTA to maintain his or her group health benefits during any period of unpaid leave [29 CFR 825.213] unless the employee does not return to work due to:

- the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave to care for the employee's family member or covered

<b>Original Date:</b>	<b>Revision Date:</b>	Page 7 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

servicemember with a serious health condition, or if the employee is unable to perform the functions of the position due to his or her own serious health conditions, medical certification may be required; or

- Other conditions beyond the employee's control that prevent the employee from returning to work [29 CFR 825.213 (2)].
- An employee who returns to work for at least 30 calendar days is considered to have “returned” to work. An employee who transfers directly from taking FMLA to retirement or who retires during the first 30 days after the employee returns to work is deemed to have returned to work.

## **5.0 Definitions:**

- 5.1 SPOUSE means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized (common law is not recognized in the State of California) or a Registered Domestic Partner who is registered with the Secretary of State of the State of California.
- 5.2 PARENT means a biological parent or an individual who stands or stood in loco parentis to a child. This term does not include parents “in Law”.
- 5.3 CHILD means a biological, adopted or foster child, stepchild, child of a Registered Domestic Partner, legal ward, or a person for whom an employee stands or stood “in loco parentis” when the person was a child. *In-Loco-Parentis* is defined as in place of a parent; instead of a parent; charged with a parent’s rights, duties and responsibilities. A biological or legal relationship is not necessary. To be considered a child, the person must be either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability”.
- 5.4 HEALTH CARE PROVIDER the Act defines “health care providers” as:
- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State of California.
  - Any other person determined by the Secretary to be capable of providing health care services.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 8 of 15
1/2/95	6/22/10	



<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

Others “capable of providing health care services” include only:

- 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 State of California and performing within the scope of their practice as defined under California State law.
- Nurse practitioners, nurse-midwives and clinical social workers 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.
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christen Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.
- Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- Any health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

5.5 AUTHORIZED TO PRACTICE IN THE STATE means that the provider is authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

5.6 KEY EMPLOYEE is a salaried employee who is among the highest paid 10 percent of all employees within 75 miles of the facility where the employee works [29 CFR Sec. 825.217 (a)].

At the time an employee requests FMLA, VTA shall determine whether the employee is a key employee and whether restoration of the employee upon expiration of the leave will cause substantial and grievous economic injury to VTA operations. If so, the General Manager, or designee, shall give the employee written notice to that effect.



<b>Original Date:</b>	<b>Revision Date:</b>	Page 9 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

- 5.7 PREGNANCY DISABILITY LEAVE (FEHA-PDL) is a leave of absence of up to 4 months, as needed, for the period(s) of time a woman is disabled by pregnancy. For employees who work less than full-time, or who work full-time but on alternative work schedules, the number of working days shall be adjusted on a prorata or proportional basis. There is no length of service requirement before an employee is entitled to a pregnancy disability leave.
- 5.8 CALIFORNIA FAMILY RIGHTS ACT (CFRA) - A California state law, found in Section 12945.1 of the Fair Employment and Housing Act (FEHA) which is the State equivalent to the Federal FMLA.
- 5.9 SERIOUS HEALTH CONDITION [29 CFR 825.113] means an illness, injury, impairment, or physical or mental condition that involves one of the following:
- INPATIENT CARE - [29 CFR 825.114] (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
  - CONTINUING TREATMENT BY A HEALTH CARE PROVIDER [29 CFR 825.115]—A period of incapacity includes any one or more of the following:
    - Incapacity & treatment is a period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves either:
    - Treatment two or more times within 30 days of the first day of incapacity by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider OR;
    - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
    - Treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment must take place within 7 days of the first day of incapacity.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 10 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

5.10 PREGNANCY LEAVES - Any period of incapacity due to pregnancy, or for prenatal care.

5.11 CHRONIC CONDITIONS - Any period of incapacity or treatment for such incapacity, due to a chronic serious health condition is one which:

- Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- VTA may request recertification not sooner than every 30 days and in connection with an absence unless:
- The medical certification indicates the minimum duration is more than 30 days , VTA must wait until that minimum duration expires, unless the employee requests an extension of leave;
- The circumstances described in previous certification have changed (frequency & duration);
- Employee has a pattern of using unscheduled FMLA leave in conjunction with his or her scheduled days off;
- Employer receives information that casts doubt upon the reason for the absence.

In all cases VTA may request a recertification of a medical condition every six months; even if the medical certification indicates a period in excess of six months. Recertification's are at the employee's expense. No second or third opinions on re-certifications are permitted.

5.12 PERMANENT/LONG-TERM CONDITIONS - A period of incapacity, which is permanent or long-term due to a condition for which, may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

5.13 MULTIPLE TREATMENTS – A period of absence to receive multiple treatments (including any period of recovery there from) 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

<b>Original Date:</b>	<b>Revision Date:</b>	Page 11 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

- 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 consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).
- FMLA leave is available for treatment for substance abuse provided the conditions of [29 CFR Sec. 825.119 (a)] are met. However treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment [29 CFR 825.119(b)].

5.14 **MILITARY FAMILY LEAVE/Caregiver Leave** – Military family leave provisions are incorporated into the FMLA’s current statutory provisions. The same qualifications for FMLA apply to Military Family Leave (example: employed for 1 year, worked required 1250 hours); also the procedures used for taking military family leave are the same for FMLA leave whenever possible.

- **MILITARY CAREGIVER LEAVE** - An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a (single) 12-month period to care for the servicemember, No more than 26 workweeks of leave may be taken within any “single 12 month period”.
- While on “Military Caregiver Leave”: Twelve weeks of CFRA leave will be exhausted if the employee caring for the injured servicemember is a spouse, child, or parent of the servicemember. CFRA leave is only 12 weeks; the remaining 14 weeks of the military caregiver leave will be FMLA leave.
- However, CFRA leave is not exhausted if the family member taking care of the servicemember is a "next of kin" (defined as the nearest blood relative of the servicemember) who does not fall within the aforementioned categories; i.e. grandparents, siblings etc.
- The term "serious injury or illness" includes "an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on

<b>Original Date:</b>	<b>Revision Date:</b>	Page 12 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

active duty in the Armed Forces), and that may render the member medically unfit to perform the duties.

- However, with respect to veterans, the term "serious injury or illness" means a "qualifying" injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran. To family members of veterans undergoing medical treatment, recuperation, or therapy for a serious injury or illness as long as the veteran was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes the relevant medical treatment, recuperation, or therapy.

Note: VTA will require employee to provide confirmation of family relationship.

5.15 QUALIFYING EXIGENCY LEAVE – An eligible employee may take qualifying exigency leave arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Reserves, National Guard, or Armed Forces for one of the following qualifying exigencies:

- Short notice deployment (seven or less calendar days prior to the date of deployment);
- Military events and related activities;
- Childcare and school activities (e.g. arrange alternate childcare, provide childcare on an urgent immediate need basis, or attend meetings at school or daycare facility);
- Financial and legal arrangements (e.g. to prepare and execute power of attorney);
- Counseling (non medical, for oneself, the servicemember or child);
- Rest and recuperation (up to 5 days);
- Post-deployment activities (attend ceremonies & briefings for a period of 90 days or to address issues arising from death of servicemember);
- Additional activities agreed to by the employer and employee.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 13 of 15
1/2/95	6/22/10	

<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

Note: California Family Rights Act ("CFRA") does not provide military leave for "qualifying exigencies," CFRA leave is not exhausted when an employee takes FMLA leave for a qualifying exigency.

A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States [29 CFR 825.126].

## **6.0 Records:**

- 6.1 FMLA /CFRA /PDL/MFL documents shall be maintained in the Risk Management Department for no less than 3 (three) years.

## **7.0 Appendices:**

- 7.1 Medical Certification Form/Self (WH-380-E).
- 7.2 Medical Certification Form/Family Member (WH-380-F).
- 7.3 Certification of Qualifying Exigency for Military Family Members (WH-384).
- 7.4 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (WH-385).
- 7.5 Notice of Eligibility and Rights & Responsibilities (WH-381).
- 7.6 Designation Notice (WH-382).
- 7.7 General Notice-Employee Rights & Responsibilities (WH-1420).
- 7.8 ATU Attendance and Absence Codes.

## **8.0 Training Requirements:**

- 8.1 Training for Superintendents/Supervisors/Managers/Timekeepers/Office Supervisors.

## **9.0 Summary of Changes:**

- 9.1 Policy #241-was updated to new format and changed to a Procedure.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 14 of 15
1/2/95	6/22/10	


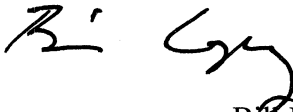
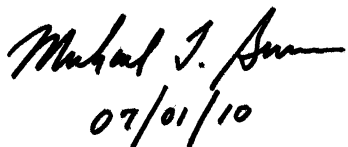
<b><i>Family Medical Leave, Pregnancy Disability Leaves and Military Family Leave</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	AS-HR-PR-3300
	<b>Version Number:</b>	02

9.2 This Procedure now includes Registered Domestic Partner in the definition of spouse.

9.3 Procedure includes Military Family Leave.

9.4 Procedure revisions to include the new FMLA regulatory changes effective 1/16/09.

**10.0 Approval Information:**

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Nanci G. Eksterowicz Risk Manager	 Bill Lopez Chief Administrative Officer	 07/01/10 Michael T. Burns General Manager

<b>Original Date:</b>	<b>Revision Date:</b>	Page 15 of 15
1/2/95	6/22/10	