

**AN ORDINANCE AMENDING
THE COMPENSATION ORDINANCE
AND ESTABLISHING COMPENSATION**

Meeting Date: 1/26/2021 (16)

ORDINANCE NO. 10713 (NEW SERIES)

**AN ORDINANCE AMENDING THE COMPENSATION ORDINANCE
AND ESTABLISHING COMPENSATION**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Section 3.6.17 of the Compensation Ordinance is hereby amended to read as follows:

SECTION 3.6.17: CHARTER/STATUTE AUTHORIZED STAFF TO ELECTED OFFICIALS AND BOARDS. For the following classes, compensation shall be at or within the biweekly rate range established for the class in Appendix One. Employees shall be paid an amount set by the appointing authority and the level of such pay shall be based on the appointee's education, experience and the quality and quantity of work to be performed. After appointment, all pay adjustments by the appointing authority shall be prospective only.

Class No.	Title	Rep Stat
000210	Assistant Assessor/Recorder/County Clerk	NE
000212	Chief Deputy, Assessor/Recorder/County Clerk	NE
000215	Retirement CEO	NE
000231	Special Assistant, Treasurer/Tax Collector	NE
000232	Asst Treasurer-Tax Collector	NE
000240	Assistant District Attorney	NE
000245	Chief Deputy District Attorney	NE
000249	Special Assistant, County Assessor	NM
000260	Undersheriff	NE
000262	Director, Sheriff's Management Services	NE
000264	Sheriff's Human Resources Administrator	NE
000265	Assistant Sheriff	NE
000266	Director, Sheriff's Legal Affairs	NE
000270	Chief Deputy, Treasurer/Tax Collector	NE
000283	Retirement Investment Officer	NA
000284	Retirement Deputy Chief Investment Officer	NA
000286	Investment Officer	NA
000287	Retirement Asst Administrator	NA
000288	Chief Investment Officer	NA
000289	Retirement Chief Investment Officer	NE
000291	Retirement General Counsel	NA
000292	Retirement Assistant General Counsel	NA
000330	Victim/Witness Program Director	NA
000332	Deputy Chief Investigator	NE
000337	Public Affairs Officer, District Attorney	NA
000342	Special Investigator (DA)	NE
000343	Special Assistant (DA)	NE
000344	Chief Investigator	NE
000345	Assistant Chief Investigator	NE
000346	Confidential Secretary	NM
000362	Special Investigator (Sheriff)	NA
000372	Legislative Assistant I (Board of Supervisors)	NA
000373	Legislative Assistant II (Board of Supervisors)	NA
000374	Chief of Staff (Board of Supervisors)	NA
000375	Special Investigator (Citizens Review Board)	NA
000377	Supervising Special Investigator (Citizens Review Board)	NA
000950	District Attorney Legal Operations Administrator	NA
002258	Information Technology Director, D.A.	NE
002259	Chief, District Attorney Administrative Officer	NE
007566	Retirement Assistant Director, Member Services	NA

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Section 2. Section 4.3.1 of the Compensation Ordinance is hereby amended to read as follows:

SECTION 4.3.1: FAMILY MEDICAL LEAVE/CALIFORNIA FAMILY RIGHTS ACT.

- (a) Family Medical Leave (FML) shall be in accordance with the federal Family and Medical Leave Act of 1993 ("FMLA"), Public Law 103-3, 107 Stat. 6 (29 USC 2601 et seq.) as well as California Family Rights Act of 1991 ("CFRA") pursuant to Govt. Code Section 12945.2, administrative regulations promulgated by the California Fair Employment and Housing Commission, subject to the conditions set forth below. The County-administered FML and CFRA shall be governed by federal and state provisions, and by the provisions set forth below under this Section. [Certain provisions under this Section may refer to the federal FMLA regulations under Title 29 Code of Federal Regulations (hereinafter "CFR") or to the CFRA regulations under the California Code of Regulations (hereinafter "CCR").]
- (b) Definition. FML and CFRA are unpaid time off (excluding FML Public Health Emergency Leave granted under the Families First Coronavirus Response Act) under federal and state laws which may be granted to an eligible employee for certain qualifying events specified under subsection (c)(2) below. However, employees will be required to use applicable paid leave balances concurrently with FML and CFRA.
- (c) Eligibility.
 - (1) FML and CFRA shall apply to all employees who have been employed by the County for at least twelve (12) months and for at least one thousand two hundred and fifty (1,250) hours of service during the twelve (12) month period immediately preceding the commencement of the leave and who meet all the eligibility requirements of the FMLA or the CFRA.
 - (2) Qualifying Events for FML and CFRA Eligibility. An appointing authority is required to grant FML and/or CFRA to eligible employees for any of the following qualifying events required by the FMLA and CFRA:
 - (a) For birth of a child, and to care for the newborn child;
 - (b) For placement of a child with the employee for adoption or foster care, and to care for the newly placed child;
 - (c) To care for the employee's spouse, child, or parent, with a serious health condition;
 - (d) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's job;
 - (e) Exigency Leave – To care for a covered military member serving in the Reserves, active duty, or a retired member of the Regular Armed Forces or Reserve; and
 - (f) Military Caregiver Leave – To care for an employee's spouse, child, parent or next of kin, while recovering from an injury or illness suffered while on active duty or a preexisting injury that was aggravated while on active duty within the last five (5) years preceding his or her treatment, for up to twenty-six (26) weeks.
 - (3) Additional Qualifying Events for CFRA Eligibility. An appointing authority is required to grant CFRA to eligible employees for any of the following qualifying events required by CFRA:
 - (a) To care for a sibling, grandparent, grandchild, Registered Domestic Partner and/or child of any age with a serious health condition.
- (d) Conditions.
 - (1) Requesting FML and/or CFRA. The employee shall give notice to the appointing authority of the need for FML and/or CFRA by completing the required forms. To give such notice an employee does not need to assert rights for FML and/or CFRA expressly or even mention FML and/or CFRA; however, the employee must state a qualifying reason for FML and/or CFRA. An employee who fails to demonstrate an FML/CFRA qualifying reason is not eligible for FML/CFRA. However, the

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appointing authority may consider the employee for other types of County authorized leaves. The requested leave will be counted against the employee's annual FMLA and CFRA entitlement as well. This notice shall refer to the leave as "FML/CFRA".

- (2) Medical Certification. If an employee is requesting leave for more than three (3) days due to their own serious health condition or a serious health condition of a family member, they must provide medical certification on the form entitled "Certification of Health Care Provider". Employees must provide proof of serious health condition within the timelines prescribed by the Department of Labor and California Department of Employment and Fair Housing. In the event of a Pandemic illness, the medical certification may be waived by the Director. If an employee does not submit a medical certification, FML/CFRA may not be granted. Under certain circumstances, recertification of the serious health condition may be required.
 - (3) Job Retention. Following FML/CFRA leave, the employee is entitled to return to the same or an equivalent job upon return from leave. However, should the employee exhaust their FML/CFRA leave and continue on some other form of County unpaid leave, they may not be entitled to return to their previous position.
 - (4) Health Insurance Liability. The employee may be liable for the payment of health insurance premiums paid by the County during their FML/CFRA leave if the employee does not return to work for at least thirty (30) days after taking FML/CFRA leave as more fully set forth in Section 4.3.1(g), Maintenance of Insurance Coverage, below.
 - (5) Fitness-for-Duty. The employee will be required to provide a fitness-for-duty certification before returning to work, unless the appointing authority determines that the certification is not necessary as more fully set forth in Section 4.3.1(i), Certification Prior to Return from Leave, below.
- (e) Duration. An eligible employee is entitled to twelve (12) workweeks of FML and CFRA during a 12-month period. The 12-month period shall be measured forward from the date the employee's first FML/CFRA leave begins. The next 12-month period would begin the first time FML/CFRA leave is taken after completion of any previous 12-month period. NOTE: An employee is entitled to take leave for a disability due to pregnancy, childbirth, or related medical conditions pursuant to the California Pregnancy Disability Leave provision under Government Code Section 12945 which shall not constitute FML/CFRA. Twelve (12) workweeks of FML/CFRA may be used once an employee is no longer disabled by pregnancy.

An eligible employee is entitled up to twenty-six (26) weeks of leave if they request Military Caregiver Leave (MCL).

- (f) Coordination with County Leave Programs. FML/CFRA shall be coordinated with County paid leave and unpaid leave as follows:
- (1) FML/CFRA Paid Leave. The employee is required by the County of San Diego to substitute accrued vacation or other applicable paid leave in lieu of FML/CFRA unpaid leave if the employee is eligible for the paid leave according to the County's paid leave provisions. Such paid leave usage will be counted against the employee's FML/CFRA duration entitlement subject to the following exceptions:
 - (a) Paid injury leave pursuant to Compensation Ordinance Section 4.2.3 shall not be counted against FML/CFRA leave; and
 - (b) Fair Labor Standards Act (FLSA) compensatory time off is not a form of accrued paid leave that the County may require the employee to substitute for unpaid FMLA/CFRA leave. However, the employee may elect to use FLSA compensatory time for a FML/CFRA reason and such time off shall be counted as FML/CFRA leave.
 - (2) FML/CFRA Unpaid Leave. An employee who requests leave and is NOT eligible for paid leave under the County's paid leave provisions, but who qualifies for and is approved for FML/CFRA, shall be on FML/CFRA unpaid leave pursuant to the provisions of this Section.
 - (3) County Unpaid Leave. An employee who requests leave and is NOT eligible for paid leave or for FML/CFRA, but who qualifies for unpaid leave under one of the County's unpaid leave provisions,

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may be considered for County unpaid leave (not FML/CFRA unpaid leave) pursuant to the provisions of the County unpaid leave program.

(g) Maintenance of Insurance Coverage.

- (1) General Requirement. An employee's group insurance coverage shall be maintained during approved FML/CFRA on the same conditions as coverage would have been provided if the employee had been employed continuously during the entire FML/CFRA period.
- (2) Premium Payments During FML/CFRA Paid Leave. The County will continue to make its regular contributions toward insurance premiums for up to twelve (12) weeks of FML/CFRA in order to maintain insurance benefits.
- (3) Premium Payments During FML/CFRA Unpaid Leave.
 - (a) County Contribution Towards Employee Premium. During the period that an employee is on FML/CFRA unpaid leave, the County shall continue to make its contributions required under Compensation Ordinance Sections 5.1.6(c), Flexible Benefits Plan, and all other group insurance benefits provided by the County even though the employee is not receiving pay during this FML/CFRA unpaid leave period.
 - (b) Employee Premium Payment. The employee will be required to continue to pay their share of their regular insurance premium payments during FML/CFRA.
 - (c) Employee's Failure to Submit Payment While on Leave. If an employee fails to submit the full amount of the insurance premium payments on a timely basis, the County shall pay the required amount on behalf of the employee on an advance basis in order to maintain all of the employee's insurance coverage. The employee shall continue to be obligated for these premiums and shall reimburse the County for the payments. The reimbursement shall be as follows:
 - (i) During the period of the FML/CFRA unpaid leave, the employee shall make payment to the County for all the required premiums which are past due.
 - (ii) Upon the employee's return to work from leave, any required premiums not paid by employee shall be entered as added payroll deductions. The amount of each added payroll deduction shall be equal to the amount of each separate premium not paid by the employee. This added payroll deduction shall be entered on each of the employee's biweekly pay warrants until the full amount of the premiums is paid in full.
- (h) Employee's Failure to Return to Work After FML/CFRA Unpaid Leave. If an employee fails to return to work for at least thirty (30) days after FML/CFRA unpaid leave, except for those circumstances indicated under CFR Section 825.213(a)(1)-(3) and (c), the insurance premiums paid during FML/CFRA Unpaid Leave by the County through the County's contributions and any premium amounts owed by the employee which are paid during FML/CFRA unpaid leave by the County on an advanced basis are the obligation of the employee and shall be considered a debt owed by the non-returning employee to the County. The County may recover this debt through the deduction from any sums due to the employee from any required payoffs owed to the employee from vacation or sick leave balances.
- (i) Certification Prior to Return from Leave. An employee may return to work at the conclusion of FML/CFRA for their own serious health condition contingent upon providing a medical release prior to returning to work. At its discretion, the Appointing Authority may determine that a certification is not necessary and the employee will be permitted to return to work.

Section 3. Effective Date. Section 2 of this ordinance affects compensation and shall take effect upon adoption and all other sections of this ordinance shall take effect thirty (30) days after its adoption. Within fifteen days after the date of adoption of this ordinance, a summary shall be published once with the name of those members voting for and against the same in the newspaper of general circulation published in the County of San Diego.

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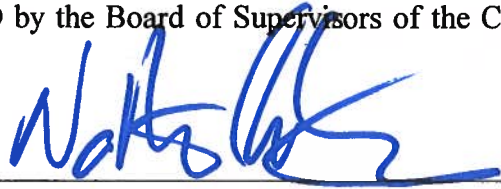
Section 4. Operative Date. Operative dates by specified section are listed in the table below.

Section Number	Operative Date
Section 1	2/26/2021
Section 2	1/26/2021

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: Smitha R. Arons, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 26th day of January 2021.



NATHAN FLETCHER
Chair, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Vargas, Anderson, Fletcher, Desmond
ABSENT: Lawson-Remer

ATTEST my hand and the seal of the Board of Supervisors this 26th day of January 2021.

ANDREW POTTER
Clerk of the Board of Supervisors

By 
Grace Caro, Deputy



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