

Career Service Rule Section 2-20 B. - Adoption, Amendment or Repeal of Career Service Rules ("Rules"). When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows: ... 2) The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change... 4) A public hearing on the proposed rule change shall be held by the Board.

**PLEASE POST ON ALL BULLETIN BOARDS AS SOON
AS POSSIBLE**

Public Hearing Notice - No. 575

A Career Service Board Public Hearing has been scheduled regarding proposed revisions to Career Service Rule 12 **LEAVE FOR EXTENDED ILLNESS OR INJURIES and related rules.**

The scheduled time for the public hearing is **THURSDAY, MAY 17, 2018, at 9:00 A.M.**, in **Room, 4.G.2.**, Webb Municipal Building, 201 West Colfax Avenue.

If anyone wishes to submit written comments or talk to OHR staff regarding this notice, please contact:

Lauren Locklear
Office of Human Resources
201 West Colfax
Department 412
Denver, Colorado 80202
Lauren.Locklear@denvergov.org

Comments regarding this notice should be submitted no later than **12:00 P.M. on MONDAY, MAY 14, 2018.**

If anyone wishes to address the Board regarding this notice please contact Lauren Locklear at (720) 913-5618 or at Lauren.Locklear@denvergov.org no later than **12:00 P.M. on MONDAY, MAY 14, 2018** to get on the agenda. **You are encouraged to submit written comments regarding the subject matter of your testimony at this time so that the Board has time to adequately consider your input.**

**PLEASE POST ON ALL BULLETIN BOARDS
AS SOON AS POSSIBLE**

RULE PROPOSAL 470B

TO: Appointing Authorities, Managers, and Employees
FROM: Karen Niparko, OHR Executive Director
DATE: May 3, 2018
SUBJECT: Proposed revision of Career Service Rule 12 LEAVE FOR EXTENDED ILLNESS OR INJURIES and related rules

THIS PROPOSED REVISION TO THE CAREER SERVICE RULES IS BEING POSTED FOR PUBLIC COMMENT AND HEARING TO BE HELD ON

**THURSDAY, May 17, 2018, at 9:00 A.M.
Webb Municipal Building Room 4.G.2**

Please refer to the following table for additional information on the former rule description, the revised rule description, and the intended impact of the revisions to Rule 12 LEAVE FOR EXTENDED ILLNESS OR INJURIES and related rules:

RULE 12 LEAVE FOR EXTENDED ILLNESSES OR INJURIES and related rules			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
n/a	Rewords various provisions of Rule 12 for greater clarity.	Throughout Rule 12	Stylistic, grammatical and numbering changes.
Rule 12 provides guidelines and policies for administering extended time off due to illness or injury	Rule 12 provides guidelines and policies for extended time off due to illness, injury, pregnancy, pregnancy-related conditions, etc.	Rule title. Purpose statement.	Expand the scope of Rule 12 to include protections afforded by Colorado's Family Care Act (FCA) and Pregnant Workers Fairness Act (PWFA)
Rule 12 covers FMLA (Family and Medical Leave Act of 1993) leave, Workers' Compensation (Workers' Comp) leave, and ADA (Americans with Disabilities) leave	Rule 12 covers leave under the FMLA (including military caregivers), FCA, Workers' Comp, ADA, and PWFA.	12-10	Expand the types of leave covered by Rule 12

RULE 12 LEAVE FOR EXTENDED ILLNESSES OR INJURIES and related rules			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
FMLA provides up to twelve (12) weeks of job-protected leave for eligible employees' immediate family members, including domestic partners, and medical reasons	FMLA leave provides up to twelve (12) weeks of job-protected leave for eligible employees' specified family members and medical reasons. FCA leave provides up to twelve (12) weeks of job-protected leave to care for partners in a civil union or domestic partnership who have a qualifying serious health condition.	Section 12-20 Section 12-30	To bring Rule 12 in line with state law. Distinguishes FMLA leave from FCA leave and clarifies when an employee may use FCA leave in addition to FMLA leave.
Appointing authorities may deny secondary employment during FMLA leave.	Places parameters around the denial so that secondary employment may only be denied if it violates the restrictions of the employee's FMLA leave.	12-25	To ensure that denial of secondary employment is based on current work restrictions
No specific references to military caregiver leave.	Military caregiver leave provides unpaid leave to eligible employees to care for a covered service member with a serious illness or injury and is administered consistent with the FMLA except as provided in the rule.	Section 12-40	To ensure provisions relating to military caregiver leave provided under the FMLA are clearly stated in the Career Service Rules.
Outlines how temporary benefits under Workers' Comp interact with ADA leave	Changes "any capacity" to "employee's position" when evaluating if an employee's eligibility to receive Workers' Comp leave may be terminated prior to reaching Maximum Medical Improvement (MMI)	12-56	To align the Career Service Rules with current practice

RULE 12 LEAVE FOR EXTENDED ILLNESSES OR INJURIES and related rules			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Unclear parameters around timing of donated leave during the ADA process.	Specifies that only the ADA coordinator can determine whether employees qualify for leave under the ADA.	Section 12-66	Prevents donated leave from being applied before the ADA evaluation process is complete. Prevents abuse of ADA benefits.
No specific references to pregnancy accommodations.	Adds provisions from the Pregnant Workers Fairness Act regarding accommodations for pregnant employees.	Section 12-70	To make sure provisions of state pregnancy accommodation law are understood and followed, especially the employer's obligation to provide job accommodation or reassignment before leave, if possible.
Related Rules			
Defines immediate family for purposes of candidate referrals	Refers to Denver Code of Ethics for the definition of immediate family	Section 3-50	To clarify that for purposes of referrals, and to avoid favoritism, the appropriate definition of immediate family when referenced in Rule 3 is found in the Denver Code of Ethics
Reference to Rule 12 by title	Updates Rule 12's title to reflect proposed changes	3-51 Rule 10 purpose statement. Rule 11 purpose statement.	To update a reference to the Rule 12's title
Defines domestic partner and immediate family for the purposes of the City's paid leave programs	Clarifies definition of domestic partner, adds definition of partner in a civil union and includes partner in a civil union within the definition of immediate family	10-11	To ensure consistency across the City's leave rules and comply with state law
Outlines eligibility requirements for receiving donated leave	Requires that leave must be approved before you are eligible for donated leave; adds PWFA leave to the eligibility list	10-45	To limit abuse of donated leave and expand coverage to PWFA leave

ATTACHED BELOW YOU WILL FIND A STRIKETHROUGH VERSION OF THE PROPOSED REVISIONS TO RULE 12 LEAVE FOR EXTENDED ILLNESS OR INJURIES AND RELATED RULES.

DELETIONS ARE INDICATED BY strike through AND ADDITIONS ARE INDICATED BY **bold, italics, and underline.**

RULE 12
LEAVE **AND ACCOMMODATIONS** FOR
PREGNANCY AND EXTENDED ILLNESSES OR INJURIES

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering **accommodations and** extended time off ~~caused by~~ **for pregnancy, a pregnancy-related condition, physical recovery from childbirth, placement of a child for adoption, foster care, or guardianship and extended** illness or injury.

Section 12-10 Types of Leave Covered by this Rule

- A. Family and Medical Leave Act (“FMLA”) leave;
- B. **Colorado Family Care Act (“FCA”) leave;**
- C. Military Caregiver Leave;**
- ~~D.~~ Salary continuation leave and Workers’ Compensation leave;
- ~~E.~~ American ~~s~~ with Disabilities Act (“ADA”) leave in connection with the ADA Interactive Process; and
- F. Leave and Accommodations for Pregnancy and Childbirth.**

Section 12-15 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

Section 12-20 FMLA Policy

It is the policy of the Career Service Board to provide leave under the FMLA to eligible employees. The purpose of FMLA leave is to provide up to twelve weeks of job-protected leave in a **designated** twelve-month period to eligible employees for specified ~~immediate~~ family **members** and medical reasons. This rule is intended to comply with and be interpreted consistent with the FMLA and its corresponding regulations. To the extent an issue is not addressed herein, or if there is a conflict with a Career Service Rule, the FMLA and its corresponding regulations shall govern.

12-21 When Leave under the FMLA May be Used

FMLA leave shall only be available:

- A. For the birth of and care of bonding with a newborn child of the employee (including a newborn child born into a domestic partnership or civil union);
- B. For placement of a child with the employee, or the employee's domestic partner (as defined in Rule 10 PAID LEAVE) or the employee's partner in a civil union (as defined in Rule 10 PAID LEAVE) of a child for adoption, foster care or legal guardianship;
- C. To care for an employee's parent (or individual who acted as a parent to the employee), spouse or domestic partner, or child with a qualifying serious health condition, as defined in the FMLA and its corresponding regulations;
- D. To take leave when the employee is unable to perform the functions of the employee's job because of a qualifying "serious health condition" ~~as defined in the FMLA and its corresponding regulations~~; or
- E. For any other reason authorized by the FMLA.

12-22 Eligibility for FMLA leave

An employee may be eligible for FMLA leave if the employee has:

- A. Been employed by the City for at least twelve (12) months in the last seven (7) years; and
- B. Worked at least twelve hundred and fifty (1,250) hours in the twelve (12) months immediately preceding the beginning of the FMLA leave.

12-23 Requesting FMLA leave

- A. An employee may expressly request FMLA leave, or may merely state that he or she needs leave for a reason which the appointing authority knows is a qualifying reason for FMLA leave. In either instance, the appointing authority shall notify the employee that the leave may qualify as FMLA leave and refer the employee to their designated leave representative. ~~request and provide information in accordance with this rule.~~
- B. In any situation where the need for FMLA leave is foreseeable, an employee shall provide thirty (30) days' notice or ~~such~~ notice as soon as is practicable.
- C. In any situation where the need for FMLA leave is not foreseeable, the employee shall provide such notice as soon as is practicable. Such notice may be provided by the employee or the employee's spokesperson if the employee is unable to do so personally. ~~The employee or the employee's spokesperson will provide more information as required by the appointing authority when it can be readily accomplished as a practical matter.~~
- D. An employee requesting FMLA leave must provide to the ir designated leave representative ~~appointing authority~~ all information necessary to determine if such leave is appropriate, including:

1. The reasons for the leave so as to allow **for determining** ~~the appointing authority to determine~~ if the conditions identified in subsection 12-21 of this Rule have been met.
 2. The anticipated start of the leave.
 3. The anticipated duration of the leave.
 4. Whether ~~or not~~ the employee has a spouse or domestic partner who is also an employee of the City and County of Denver.
 5. A health care provider certification on a form provided by the appointing authority consistent with the FMLA. Information provided to **the employee's leave representative and/or** appointing authority regarding an employee's FMLA leave shall be maintained in a confidential file separate from the employee's personnel file.
- E. A request for FMLA leave which does not satisfy the conditions identified in subsection 12-21 of this Rule may be denied or delayed.
- F. A denial of a request for FMLA leave shall not preclude granting PTO or sick leave if the conditions identified in ~~these rules~~ **RULE 10 PAID LEAVE** are met.

12-24 Use of FMLA leave

- A. The twelve (12) month period shall begin when FMLA leave was first used by an employee. No more than twelve (12) workweeks of FMLA leave may be used in ~~any~~ **a designated** twelve (12) month period. **Exception:**
1. **An employee may be able to use up to twenty-six (26) workweeks of leave under the FMLA to care for a covered servicemember, as defined in the FMLA and corresponding federal regulations, with a serious injury or illness.**
- B. FMLA leave shall be granted consecutively, intermittently or on a reduced leave schedule, as provided for under the FMLA. ~~Provided, n-~~ **H**owever, if an employee requests FMLA leave intermittently or on a reduced leave schedule after the birth or placement of a child for adoption, **or** foster care or legal guardianship, such leave shall be granted only if it is consistent with the reasonable operational necessity of the agency, as determined by the appointing authority.
- C. It is the appointing authority's responsibility to designate qualifying leave as FMLA leave and the appointing authority shall notify the employee of such designation and provide other required information about FMLA leave. An employee cannot refuse to allow the appointing authority to designate qualifying leave as FMLA leave.

D. FMLA leave is unpaid leave, ~~unless a~~ An employee **may** elect to **use** substitute available paid leave, **which will run concurrently with** for unpaid FMLA leave, subject to the limitations in this Rule 12 on the use of paid leave while on salary continuation leave or Workers' Compensation leave.

E. In the case where both spouses or domestic partners are employees, ~~the amount of FMLA leave available shall be determined as follows:~~

and

~~1. When **the FMLA** leave is because of birth, adoption, foster care or legal guardianship of a child, the FMLA leave available for bonding shall be the combined total of twelve (12) weeks of FMLA leave during any **the designated** twelve (12) month period as defined in the FMLA and its corresponding regulations.~~

~~2. When the leave is because of the "serious health condition" of a parent, the FMLA leave available shall be the combined total of twelve (12) weeks during any twelve (12) month period as defined in the FMLA and its corresponding regulations.~~

~~3. When the leave is because of a serious health condition of either or both employees or a child, twelve (12) weeks of FMLA leave may be used by each employee in any twelve (12) month period.~~

12-25 Secondary employment during FMLA leave

Appointing authorities may deny secondary employment during FMLA leave ~~=~~ **if the secondary employment violates the restrictions of the employee's FMLA leave.**

12-26 Investigation of Use of FMLA leave

Appointing authorities may investigate the use of FMLA leave consistent with the FMLA, FCA, and ~~its~~ **their** corresponding regulations, **This may** include ~~ing by~~ requiring a second opinion and third opinion, if appropriate, and ~~by~~ considering information that is inconsistent with an employee's FMLA leave request. Misuse of FMLA leave may be cause for disciplinary action up to and including dismissal. An appointing authority may not discipline an employee for appropriate use of FMLA leave.

12-27 Re-assignment

If an employee needs intermittent leave or leave on an established reduced leave schedule that is foreseeable based on the planned medical treatment for the employee or the employee's parent (**or individual who acted as a parent to the employee**), spouse, ~~domestic partner,~~ or child, or if the appointing authority agrees to permit intermittent or reduced schedule leave for the birth of **bonding with a newborn** child or for placement of a child for adoption, **or** foster care ~~or legal guardianship,~~ the appointing authority may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and for which the modified schedule is less disruptive to the business and/or operational needs of the department or agency than the employee's regular schedule.

12-28 Maintenance of Benefits

- A. During any Leave, the City must maintain the employee's health insurance coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously working during the entire leave period.
- B. It shall be the responsibility of an employee on unpaid ~~l~~Leave to provide that share of payment(s) necessary to maintain health insurance coverage.

12-29 Return from FMLA leave

- A. An employee returning from FMLA leave due to his or her own **qualifying** serious health condition shall provide a certification from the employee's health care provider that the employee is able to resume work. **Additionally, a** ~~an~~ employee ~~further~~ may be required to report periodically on the employee's status and intent to return to work.
- B. An employee returning from FMLA leave shall be returned to the same position the employee held when leave began or to an equivalent position which is defined by the FMLA regulations as a position ~~that is virtually identical to the employee's former position in terms of~~ **with equivalent** pay, benefits and ~~working~~ **other terms and** conditions **of employment**.
- C. An employee need not be re-instated if the employee would not otherwise have been employed at the time re-instatement is requested.
- D. If the employee is unable to return to work at the conclusion of FMLA leave, the appointing authority shall initiate the **ADA** Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's FMLA leave, unless the employee is also on salary continuation leave or Workers' Compensation leave.

Section 12-30 Colorado Family Care Act Leave

- A. The FCA provides unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership who have a qualifying serious health condition and is administered consistent with the FMLA. See Rules 12-20 through 12-29 above for eligibility and conditions.**
- B. An employee may be able to use up to twenty-four (24) workweeks of leave if the employee is eligible to use FMLA leave and FCA leave.**

Section 12-40 Military Caregiver Leave

Military caregiver leave provides unpaid leave to eligible employees to care for a covered service member with a serious illness or injury. Military caregiver leave

is provided under the FMLA and is administered consistent with the FMLA except as provided in this section.

A. Definitions

1. A current covered service member with a serious illness or injury is:
 - a. a current member of the Armed Forces, including members of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; and
 - b. has a serious illness or injury incurred or aggravated in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.
 2. A veteran covered service member with a serious injury or illness is:
 - a. a veteran discharged under conditions other than dishonorable within the five-year period before the employee first takes military caregiver leave to care for that veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and
 - b. has a serious illness or injury incurred or aggravated in the line of duty on active duty that rendered the servicemember unable to perform the duties of their office, grade, rank, or rating, or a condition for which the veteran received a VASRD of fifty percent or greater, or a condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service or would do so absent treatment, or an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- B. Qualifying family members for Military Caregiver Leave are as follows in this order: 1) any blood relative whom the covered servicemember has designated in writing; if none, then 2) all blood relatives with legal custody; if none, then 3) all brothers and sisters; if none, then 4) all grandparents; if none, then 5) all aunts and uncles; if none then 6) all first cousins.**
- C. Eligible employees who meet the FMLA criteria may take a combined total of 26 workweeks of leave for any FMLA-qualifying reason other than to care for a covered servicemember.**

D. To be certified for military caregiver leave, an eligible employee must provide additional documentation and certifications beyond what is required for a standard FMLA leave.

Section 12-30 50 Salary Continuation Leave and Workers' Compensation Leave

12-34 51 Definitions (for the purposes of this Section 12-30)

- A. **Disability:** The physical inability of an eligible employee to perform the duties of his or her position, or any other position with the City.
- B. **Eligible employee:** Any Career Service employee except:
 - 1. Employees occupying on-call positions; and
 - 2. Employees who hold positions in classifications in the Sheriff pay schedules (Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Captain, Deputy Sheriff Major, and Deputy Sheriff Division Chief).

12-32 52 Salary Continuation Leave

- A.
 - 1. The City provides paid disability leave (hereinafter "salary continuation leave") at the rate of eighty percent (80%) of an employee's gross salary for up to ninety (90) consecutive calendar days from the date of injury.
 - 2. An eligible employee is entitled to salary continuation leave if the employee has a disability as a result of an occupational injury or occupational disease arising out of and in the course and scope of employment with the City.
- B. An employee receiving salary continuation leave shall not be permitted to use other available paid leave.
- C. Salary continuation leave will end on the employee's last day as a City employee or if the employee is no longer eligible for temporary benefits under the Workers' Compensation Act of Colorado, as amended, Title 8, Articles 40-47, C.R.S. ("the Act").

12-33 53 Workers' Compensation Leave

- A. An employee who remains unable to return to work in his or her job without accommodation, or to modified duty after salary continuation leave has been exhausted, and is receiving temporary disability benefits under the provisions of the Act, will be permitted to use Workers' Compensation leave for absences from work resulting from the employee's occupational injury or occupational disease arising out of the course and scope of employment with the City, until it is

determined that the employee is no longer eligible to receive temporary disability benefits pursuant to the Act.

- B. Workers' Compensation leave is unpaid leave, except to the extent an employee elects to use available paid leave. An employee may use any available paid leave to make up the difference between eighty percent (80%) of the employee's gross salary and the temporary disability benefits paid under the provisions of the Act.

~~12-34~~ **54** Applicability of the FMLA

- A. The department or agency shall designate an employee's salary continuation leave and/or Workers' Compensation leave as FMLA leave if the requirements of the applicable Career Service **Rules** and Federal statutes and regulations are met.
- B. If an employee's salary continuation leave and/or Workers' Compensation leave is also designated as FMLA leave, the salary continuation leave and/or Workers' Compensation leave shall run concurrently with the FMLA leave.

~~12-35~~ **55** Maintenance of Benefits

An employee who is absent from work on salary continuation leave or Workers' Compensation leave is:

- A. Eligible to have the City continue paying its share of the employee's health, dental, and life insurance premiums during the period of salary continuation and/or Workers' Compensation leave, so long as the employee continues to pay his or her share of the insurance premiums.
- B. Eligible to earn paid leave as provided in these rules;

~~12-36~~ **56** Termination of Workers' Compensation Leave Eligibility

- A. Employees who are no longer eligible for temporary benefits under the Act are not eligible to continue receiving Workers' Compensation leave.
- B. If the employee's permanent restrictions prohibit the employee from returning to work full-time and/or full-duty after having reached Maximum Medical Improvement ("MMI"), the City shall initiate the **ADA** Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.
- C. Employees who are still receiving temporary benefits under the Act may lose their eligibility for Workers' Compensation leave before reaching MMI if it is determined that they will be unable to return to work in **the employee's position** any capacity. Such determination shall be made by the ADA Coordinator, after consulting with representatives from the City Attorney's Office and the City's **Risk Management** Workers' Compensation Unit. Once this determination is made,

the City shall initiate the **ADA** Interactive Process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.

Section 12-40 ~~60~~ The ADA Interactive Process

12-44 ~~61~~ Policy

- A. It is the policy of the City to provide equal employment opportunity to qualified individuals with disabilities. This rule is intended to comply with and be interpreted consistently with the Americans with Disabilities Act of 1990 ("ADA"), as amended. In case of a conflict between this rule and the ADA (and its corresponding regulations), the ADA will control. Additional information about the ADA may be found on the Equal Employment Opportunity Commission's website, www.eeoc.gov.
- B. No appointing authority, official, supervisor or employee shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, or any terms, conditions, or privileges of employment.

12-42 ~~62~~ ADA Definitions

- A. ADA Coordinator: Person or persons designated by the OHR Executive Director to act on behalf of the OHR ~~in~~ **with respect to requests for accommodation under the ADA in** the Interactive Process (IAP).
- B. Vacant position: An empty position that a department or agency is authorized to fill and intends to fill.

12-43 ~~63~~ Interactive Process (IAP)

A department or agency shall provide a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the department or agency, or pose a direct threat to any person. These determinations with regard to employees shall be made through the IAP. The process for accommodating applicants can be found in Rule 3 **RECRUITMENT AND SELECTION.**

- A. The City shall initiate an IAP when:
 - 1. An employee provides notice that the employee needs a reasonable accommodation to perform the essential functions of the employee's position; or
 - 2. The employee's department or agency has actual or constructive notice that an employee may have a disability for which the employee needs reasonable accommodation.

- B. The IAP shall be a flexible, informal process that involves the department or agency, the employee and the ADA Coordinator, and requires the good faith participation of all parties. The ADA Coordinator may terminate the IAP if the employee fails to cooperate in the process.
- C. The purpose of the IAP shall be to determine if:
 - 1. The employee has a disability within the meaning of the ADA;
 - 2. If so, whether the employee needs a reasonable accommodation to perform the essential duties of his or her job, or another job; and
 - 3. If so, whether the employee can be reasonably accommodated.
- D. In order to make this determination, the ADA Coordinator may request and review medical records and other documentation in the possession, custody, or control of the employee's health care providers. The ADA Coordinator may also obtain an independent medical evaluation for the purpose of gathering information needed to make this determination. Such examinations and evaluations shall be reasonable and paid for by the department or agency where the employee is presently employed.
- E. If the employee is determined to have a disability as defined in the ADA, the ADA Coordinator, department or agency, and the employee shall endeavor to identify any reasonable accommodations the employee may need to be able to perform the essential functions of his or her position. The preferred option always shall be a reasonable accommodation that allows the employee to remain in his or her existing job.
- F. If the employee is determined not to have a disability as defined in the ADA, or it is determined that the employee cannot be reasonably accommodated, the ADA Coordinator will end the IAP and disqualification proceedings may be initiated by the employee's department or agency if the employee remains unable to perform the essential functions of his or her position.

12-44~~64~~ Re-assignment:

- A.
 - 1. If the ADA Coordinator determines that an employee with a disability cannot be reasonably accommodated in his or her current position; the employee expresses an interest in remaining employed with the City; and the employee's restrictions allow the employee to be reasonably accommodated in other positions, the ADA Coordinator shall explore re-assignment to a vacant position as a possible reasonable accommodation.
 - 2. This determination shall be communicated in writing to the employee as soon as possible after it has been made.
 - 3. The ADA Coordinator shall look for positions that are vacant and become vacant during the three (3) months immediately following this written communication.

4. The ADA Coordinator shall terminate the IAP before the end of the three-month period if the employee withdraws his or her request for re-assignment, or if the employee accepts an IAP re-assignment.
- B. Re-assignment is not available:
1. To a position that constitutes a promotion. If the employee originally took a demotion as an ADA re-assignment, the ADA Coordinator may consider positions above the employee's current pay grade if the employee is eligible for re-promotion (as defined in Rule 5 **APPOINTMENTS AND STATUS**) to that position and is able to perform the essential functions of that position with or without accommodations. This does not preclude an employee from applying for promotions within the Career Service;
 2. To job applicants who are not currently City employees.
- C.
1. The ADA Coordinator's priority is to identify vacant positions that are equivalent to the employee's current position in terms of pay and benefits, first in the employee's department or agency, and then in other departments or agencies.
 2. If no equivalent positions exist, the ADA Coordinator's next priority is to identify vacant positions of lower pay and benefits, first in the employee's department or agency, and then in other departments or agencies.
 3. If no vacant positions become available during the three-month re-assignment period, the ADA Coordinator shall terminate the IAP and disqualification proceedings may be initiated by the employee's department or agency.
- D.
1. The ADA Coordinator shall analyze the employee's specific experience, skills and background, and the specific job duties of the vacant position. The employee does not need to be the best-qualified individual for the position in order to be re-assigned to it.
 2. The ADA Coordinator shall provide the employee with information about all vacancies for which the employee:
 - a. Meets the minimum education, experience and licensing or certification requirements; and
 - b. Is able to perform the essential functions with or without accommodations.
 3. The employee may express his or her preference regarding the selection of a re-assignment position. However, the ADA Coordinator ~~is free to~~ choose s the re-assignment position to be offered to the employee.

- E. An employee with a disability may decline a re-assignment appointment that is a demotion and request that the ADA Coordinator continue looking for vacant positions within the three-month time period. However, if an employee declines an offer of a transfer to a comparable position in terms of salary and benefits, the ADA Coordinator shall terminate the IAP and disqualification proceedings may be initiated by the employee's department or agency.
- F. A department or agency to which an employee with a disability is being re-assigned is required to cooperate with the re-assignment process coordinated by the ADA Coordinator and accept the re-assignment of that employee through the IAP. However, the department or agency may file a request to the OHR Executive Director to review the re-assignment placement within five (5) calendar days of the re-assignment notice if the department or agency reasonably believes that the employee will not be able to perform the essential functions of the position with or without reasonable accommodation.
- G. If an employee is re-assigned to either an equivalent or demotion position, the employee shall continue to receive the pay rate he or she earned in the former position unless this exceeds the range maximum of the pay range of the new classification, in which case the employee shall receive the range maximum of the pay range of the new classification.
- H.
 - 1. The department or agency shall take all necessary steps to train the re-assigned employee in the duties of the position re-assigned, as it would do with any new employee.
 - 2. Re-assigned employees shall be provided any reasonable accommodation necessary for the employees to perform the essential functions of the new position.
- I.
 - 1. If an employee with a disability is re-assigned to a vacant position and the department or agency subsequently determines that the employee with a disability is unable to perform the essential functions of the position, with or without reasonable accommodation, the IAP will be resumed from the beginning.
 - 2. The IAP need not be resumed if the employee has performance problems in the position that are unrelated to his or her disability, or if the employee is dismissed as a corrective measure for misconduct.

12-45 ~~65~~ Re-assignment of Classified Service Employees

- A. A Classified Service employee (police officer or fire fighter) with a disability is eligible to seek re-assignment to a vacant Career Service position as a form of reasonable accommodation if he or she cannot be reasonably accommodated in his or her Classified Service position. Should a Classified Service employee with a disability be re-assigned to a vacant Career Service position as a form of reasonable accommodation, the employee will no longer be a Classified Service employee, but instead will be a new Career Service employee.

- B. Under this circumstance, the employee will be entitled to the pension given to Career Service employees after the appropriate number of years of service for vesting within the Career Service system. The employee is not entitled to retroactive vesting for this pension for his or her years of service as a Classified Service employee. This rule does not prohibit the employee from purchasing service credits subject to procedures established by the Denver Employees Retirement Plan.
- C. The employee's sick and vacation days that he or she accrued as a Classified Service employee will not be carried over to the new Career Service position; however, the employee will be given monetary payment for such leave upon separating from the Classified Service, in accordance with the Police or Fire Department's rules and regulations and collective bargaining agreement then in effect. The employee shall accrue paid time off as a new Career Service employee.

12-46 ~~66~~ ADA Leave

- A. ADA leave shall be provided:
 - 1. During the IAP, once the ADA Coordinator has determined that ~~if~~ an employee has a disability, as defined in the ADA, which renders the employee ~~is~~ unable to perform the essential functions of his or her existing job without reasonable accommodation.
 - 2. During any period of leave that is provided to the employee as a reasonable accommodation as a result of the IAP.
- B. ADA leave is unpaid leave, ~~unless a~~ An employee may elect to use substitute available paid leave, which will run concurrently with ~~for~~ unpaid ADA leave, subject to the limitations in this Rule 12 on the use of paid leave while on salary continuation leave or Workers' Compensation leave.

Section 12-70 Pregnancy and Childbirth Accommodations

12-71 Policy

- A. It is the policy of the City to provide equal employment opportunity to employees who are pregnant, have a pregnancy-related health condition, or are physically recovering from childbirth.
- B. No appointing authority, official, supervisor or employee shall discriminate against an applicant or employee who is pregnant or has a pregnancy-related health condition, or an applicant or employee physically recovering from childbirth in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, or any terms, conditions, or privileges of employment.

12-72 Interactive Process (IAP) and Accommodations

- A.** **1.** **An employee who is unable to perform the essential functions of the employee's position because of the employee's pregnancy, physical recovery from childbirth, or related condition, may request a reasonable accommodation even if the employee would not be eligible for an accommodation under the ADA, or for modified duty under Workers' Compensation.**
- 2.** **Such an employee is not required to take leave as a reasonable accommodation if the employer can provide another reasonable accommodation for the employee such as an alteration to the non-essential functions of the employee's job, temporary transfer, or modified duty.**
- B.** **A department or agency shall provide a reasonable accommodation to the known pregnancy, pregnancy-related condition, and physical recovery from childbirth of an otherwise qualified applicant or employee, unless it can be demonstrated the accommodation would impose an undue hardship on the operation of the department or agency. These determinations with regard to employees shall be made through the IAP which is set forth in Rule 12-43. The process for accommodating applicants can be found in Rule 3 RECRUITMENT.**
- C.** **As an accommodation, the appointing authority may temporarily transfer the employee to an available alternative position for which the employee is qualified and for which the modified schedule is less disruptive to the business and/or operational needs of the department or agency than the employee's regular schedule. The alternative position may be a modified or light duty position.**
- 1.** **Temporary transfer is not available to a position that constitutes a promotion. This does not preclude an employee from applying for promotions within the Career Service.**
- 2.** **Temporary transfer is not available to job applicants who are not currently City employees.**
- D.** **If an employee cannot be accommodated or reassigned, the employee may be entitled to unpaid leave as an accommodation. The employee may elect to substitute available paid leave for this unpaid leave.**
- E.** **The department or agency shall designate leave granted because of an employee's pregnancy, physical recovery from childbirth, or related condition as FMLA leave if the requirements of the applicable Career Service rules and Federal statutes and regulations are met.**

Section 12-~~804~~7-Retaliation and Coercion

- A. It is a violation of this rule to discriminate against any individual because that individual has opposed any act or practice prohibited by this rule or because that individual filed a

grievance or appeal, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this rule.

- B. It is a violation of this rule to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this rule (including, but not limited to, making a request for a reasonable accommodation).

Section 12-9048 Confidentiality and Record Keeping

Any medical information obtained about an employee **pursuant to this Rule 12** ~~during the IAP~~ shall be collected and maintained on separate forms and in separate files and be treated as confidential, except that:

- A. Supervisors, managers, human resources personnel and other City employees involved ~~in the IAP~~ may obtain access to such information on a need to know basis.
- B. Supervisors, managers, human resources personnel and other appropriate City employees may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
- C. First-aid and safety personnel may be informed if the disability requires emergency treatment.
- D. Information may be given to the state workers' compensation offices, and state second injury funds, in accordance with the state workers' compensation laws.

RELATED RULES

Section 3-50 Candidate Referral List and Interviews

- B. 2. Immediate family in this context means ***immediate family as defined in the Denver Code of Ethics (D.R.M.C. § 2-52)***, ~~spouse, child (and step-child), parent (and step-parent), grandparent, grandchild, sibling, partner in a civil union, domestic partner, any person with whom he or she is cohabiting, and any person to whom he or she is engaged to be married.~~
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3-51 Selecting a Candidate for Hire

- A. An Agency Hiring Authority and/or Agency Hiring Manager may only fill a vacant Career Service job with a candidate whose names appears on the Referred List provided by the OHR as described in this Rule 3, or who falls within one of the following exceptions:
1. Career Service employees who are eligible for re-promotion, transfer, or demotion appointments (including employees who are eligible for an ADA re-assignment under Rule 12 **LEAVE *AND ACCOMMODATIONS FOR PREGNANCY AND EXTENDED ILLNESSES OR INJURIES***), or former employees who are eligible for re-employment, as defined in Rule 5 **APPOINTMENTS AND STATUS**.

**RULE 10
PAID LEAVE**

(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering the City's paid leave programs. For rules regarding leave for extended illnesses or injuries see Rule 12 **LEAVE AND ACCOMMODATIONS FOR PREGNANCY AND EXTENDED ILLNESSES OR INJURIES.**

10-11 Definitions

- B. Domestic Partner: An unmarried adult, unrelated by blood (closer than would prohibit marriage in Colorado pursuant to the Colorado Revised Statutes),[§] with whom an unmarried employee has an exclusive committed relationship, maintains a mutual residence and shares basic living expenses **or an individual with whom an employee has registered a domestic partnership with the municipality in which the individual resides or with the state, if applicable.**
- C. **Partner in a Civil Union: As defined in section 14-15-103 (5) of the Colorado Revised Statutes.**
- D.** Immediate family: Spouse, child, parent, grandparent, grandchild, sibling, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, **partner in a civil union,** domestic partner, and the parent, child, or sibling of the **partner in a civil union or** domestic partner, as well as minor children for whom the employee or the employee's **partner in a civil union or** domestic partner provide day-to-day care and financial support.
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10-45 Donating Leave

- E. Recipient requirements:
2. In order to use donated leave, an employee must:
- a. Have exhausted his or her accumulated compensatory time, sick leave and vacation leave or PTO **or personal holiday,** be absent from work and;
- i. Be receiving salary continuation leave, or temporary disability benefits under the provisions of the Workers' Compensation Act. In either of these situations, the employee may only use donated leave to make up the difference between the employee's base salary, and the total of other paid leave received and the temporary disability benefits the employee is receiving;

- ii.** **Be receiving leave as an accommodation because of the employee's pregnancy, physical recovery from childbirth, or related condition;**
- iii.** **ii.** Be receiving **approved** FMLA leave;
- iv.** **Be receiving approved FCA leave;**
- v.** **iii.** Be receiving **approved** ADA leave; or
- vi.** **iv.** Have received written notice of a contemplation of **medical** disqualification meeting. The employee may use donated leave until **medical** disqualification occurs or until the end of the period in which a decision on **medical** disqualification must be issued, whichever occurs first.

**RULE 11
UNPAID LEAVE**

(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering unpaid leave. For rules regarding extended illness or injury leave please see Rule 12 **LEAVE AND ACCOMMODATIONS FOR PREGNANCY AND EXTENDED ILLNESSES OR INJURIES.**