

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION TO AMEND ARTICLE 83 OF THE MEMORANDUM
OF UNDERSTANDING REGARDING REPRODUCTIVE LOSS LEAVE**

Pursuant to the provisions of the Meyers-Milias-Brown Act (MMBA) and Council Policy 300-06, this Side Letter Agreement (Agreement) is entered into between the City of San Diego (City) and the San Diego Municipal Employees Association (MEA) to amend the Memorandum of Understanding (MOU) between the City and MEA approved by San Diego Resolution R-314970 dated June 12, 2023. The City and MEA are collectively referred to as the "Parties."

On October 10, 2023, Governor Gavin Newsom approved Senate Bill (SB) 848, which will be effective on January 1, 2024. SB 848 entitles employees who have been employed by the City for at least 30 days to take the equivalent of up to five days of reproductive loss leave upon the occurrence of a "Reproductive Loss Event," which includes a "failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction," as defined in Government Code section 12945.6.

On November 29, 2023, the City provided notice to MEA regarding compliance with SB 848 and proposed that reproductive loss leave be added to the City's unpaid bereavement leave (FEHA Bereavement Leave), and runs concurrently with the City's paid bereavement leave. Employees may use any accrued leave or go unpaid once their paid bereavement leave allocation for each fiscal year has been exhausted. Although SB 848 requires reproductive loss leave to be taken within three months of the Reproductive Loss Event, the City will authorize employees to take reproductive loss leave within 12 months following a Reproductive Loss Event.

The Parties agree as follows:

1. The Parties have satisfied all obligations under the MMBA, Council Policy 300-06, and other applicable law and regulations to meet and confer in good faith on the subject of this Agreement.
2. The Parties agree to amend Article 83 of the MOU, as follows:

"A. Eligibility

Under the terms of this Article and the California Fair Employment and Housing Act (FEHA) at Government Code section 12945.7, employees who have been employed by the City for at least 30 days are entitled to take up to five days of unpaid bereavement leave upon the death of each covered family member listed in Government Code section 12945.7.

Additionally, under the terms of this Article and FEHA at Government Code section 12945.6, employees who have been employed by the City for at least 30 days are entitled to take up to five days of unpaid reproductive loss leave following a "Reproductive Loss Event," as defined in Government Code section 12945.6. However, employees are limited to 20 days of reproductive loss leave within a 12-month period.

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This unpaid bereavement and reproductive loss leave will be referred to in this Article as "FEHA Unpaid Bereavement Leave."

Paid Bereavement Leave is available to full-time, three-quarter time, and half-time employees for use during each fiscal year of this MOU upon the death of an employee's spouse or registered domestic partner; parent (biological, step, adoptive, in-law, foster, legal guardian, or other person who stood in *loco parentis* (i.e., in place of a parent) to the employee when the employee was a child); sibling (biological, step, foster, adopted); child (biological, step, foster, adopted, ~~miscarried, stillborn~~, legal ward, a child of a domestic partner, or a person to whom the employee stands in *loco parentis*); grandparent (biological, in-law); and grandchild (biological, adopted).

Paid Bereavement is also available for full-time, three-quarter time, and half-time employees following a Reproductive Loss Event, which includes: failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

Neither Unpaid Bereavement Leave nor Paid Bereavement Leave is not authorized for a death or Reproductive Loss Event that occurred before the employee's hire date with the City of San Diego.

B. Bereavement Leave Hourly Totals

Five days of ~~FEHA Unpaid~~ Bereavement Leave is the equivalent of 40 hours for full-time employees assigned to a 40-hour work schedule, 30 hours for three-quarter time employees, 20 hours for half-time employees, and 10 hours for non-standard hour employees.

Paid Bereavement Leave totaling 40 hours (regardless of the number of covered deaths) is available to each full-time employee for use during each fiscal year of this MOU upon the occurrence of a covered death or Reproductive Loss Event as described above.

Paid Bereavement Leave is prorated for three-quarter time employees at 30 hours and half-time employees at 20 hours per fiscal year of this MOU. Non-standard hour employees are not eligible for Paid Bereavement Leave.

C. Documentation

For Unpaid Bereavement Leave (except as noted below) and Paid Bereavement Leave, documentation of the death of the family member (death certificate; published obituary; written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency; employee written attestation; etc.), or proof of miscarriage/stillbirth (a note from a healthcare provider) or other Reproductive Loss Event (a note from a healthcare provider; dissolution or breach of an adoption/surrogacy agreement; employee written attestation; etc.) must be submitted within 30 calendar days of when the employee returns to work. Proof related to miscarriage/stillbirth may be submitted directly to the Human Resources Department in lieu of the employee's department payroll specialist or supervisor, if preferred by the employee. If such proof is not submitted within the specified

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timeframe, the bereavement leave will revert to available compensated leave, or unpaid leave, at the employee's direction.

However, no documentation is required to use Unpaid Bereavement Leave for a Reproductive Loss Event.

D. Guidelines for Usage

Paid Bereavement Leave runs concurrently with ~~FEHA~~ Unpaid Bereavement Leave. However, the leave days need not be consecutive. For ~~FEHA~~ Unpaid Bereavement Leave in excess of an employee's Paid Bereavement Leave allotment, the employee may use any accrued unused leave available to the employee or unpaid leave. Both Paid Bereavement Leave and ~~FEHA~~ Unpaid Bereavement Leave must be taken in whole-hour increments.

Bereavement Leave must be taken within 12 months of the covered death or Reproductive Loss Event, not to exceed 40 hours of Paid Bereavement Leave total for any one covered death or Reproductive Loss Event, which is prorated for three-quarter time and half-time employees. Unused Paid Bereavement Leave during a fiscal year does not carry over to the next fiscal year."

- 3. Unless expressly covered in this Agreement, all wages, hours and other terms and conditions of employment presently enjoyed by MEA-represented employees, whether stated in an MOU, Personnel Regulation, Administrative Regulation, or in any other enforceable document, remain in full force and effect.
- 4. This Agreement is not binding on the Parties until it is approved by a two-thirds vote of the City Council, in accordance with San Diego Charter section 11.2.

This Agreement is executed by the following authorized representatives of each party:

Municipal Employees Association
 By: *Ann M. Smith*
 Ann Smith
 Lead Negotiator

Date: 12-6-2023

By: *Michael Zucchet*
 Michael Zucchet
 General Manager

Date: December 5, 2023

City of San Diego
 By: *Timothy Davis*
 Timothy Davis
 Lead Negotiator

Date: 12/14/23

By: *Jonnabelle Domingo*
 Jonnabelle Domingo
 Supervising Human Resources Officer

Date: 12/13/2023

By: *Scott Harris*
 Scott Harris
 Program Coordinator


Date: 12/12/2023

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Approved as to form this 14th day of December, 2023.

MARA W. ELLIOTT, City Attorney

By: 

Miguel Merrell
Deputy City Attorney