

## **FAMILY AND MEDICAL LEAVE (FMLA LEAVE)**

The Family and Medical Leave Act of 1993 provides eligible employees with the ability to take leave for the following reasons:

- To care for the employee's child upon birth or to care for a child upon the child's placement with the employee for adoption or foster care. Leave for this reason may not be taken on an intermittent or reduced work schedule basis. Unmarried fathers are required by the city to show proof of the parental relationship through a birth certificate or a court document before allowing FMLA Leave for this reason.
- To care for a parent, spouse, or child with a serious health condition. Leave for this reason may be taken on an intermittent or reduced work schedule. Unmarried fathers are required by the city to show proof of the parental relationship through a birth certificate or a court document before allowing FMLA Leave to care for a child with a serious health condition. Leave for this reason may be taken on an intermittent or reduced work schedule basis.
- When the employee is unable to perform the essential functions of his or her job because of the employee's own serious health condition. Leave for this reason may be taken on an intermittent or reduced work schedule.

**Eligibility For FMLA Leave-** A City employee, whether regular full-time or regular part-time, who has worked for the City for at least 12 months **and** for a minimum of 1,250 hours in the immediately preceding calendar year is eligible for FMLA Leave. Paid and unpaid leave is not counted when computing the 1,250 hours worked in the immediately preceding calendar year.

Eligibility is determined as of the date the FMLA Leave actually begins, not when a request for leave is made.

**Duration Of FMLA Leave-**The City has established a calendar year as the method for determining the 12-month period in which an eligible employee's FMLA Leave entitlement occurs.

FMLA Leave is an unpaid leave of up to 12 weeks in any calendar year, which an eligible employee may take for any or a combination of all the reasons listed above. Employees on FMLA Leave must take all their accrued PTO before beginning the unpaid portion of the leave. Additionally, employees on FMLA Leave for the employee's own personal serious health condition must also take all accrued SPTO before beginning the unpaid portion of the leave. All PTO and SPTO taken count toward the 12 weeks of FMLA Leave.

An employee who fails to return after the end of 12 weeks of FMLA Leave may be terminated (unless of an exception required under the ADA, the delay in return is dominium, or the FMLA Leave is the result of a work-related illness or injury). If an employee is on a Disability Leave at the time employment is terminated, disability coverage will continue (see COBRA Rights for additional details). A terminated employee may be considered for future positions that become available, for which, in the City's opinion, the employee is qualified.

**FMLA Leave When Spouses Are Both Employed By The City-** When spouses are both employed by the City, they are both entitled to 12 work weeks of FMLA Leave for the birth or placement of a child for adoption or foster care and to care for a parent who has a serious

health condition. Spouses may, however, each take up to 12 weeks of FMLA Leave to care for a child or spouse with a serious health condition. Each spouse is also entitled to take the entire amount of FMLA Leave for which they are entitled in the event of a personal serious illness.

**Definitions Associated With The FMLA-** According to the FMLA, a family member is defined as an employee's spouse, child, or parent. The FMLA's definitions follow:

*Spouse:* A spouse is a husband or wife. Domestic partners are not included.

*Child:* A son or daughter who is biological, adopted, or a foster child, stepchild, legal ward, or a child of a person standing "in loco parentis." A child must be either under the age of 18, or, if 18 years or older, mentally or physically disabled and unable to care for himself or herself. Individuals 18 years or older will be considered incapable of self care if they require daily active assistance or supervision with three or more "activities of daily living" (such as grooming, hygiene, dressing, and eating) or "instrumental activities of daily living" (including cooking, shopping, taking public transportation, and paying bills.)

*Parent:* Any person who is the biological parent of the employee or who stands or stood "in loco parentis" to the employee when the employee was a "child." In the case of an employee who requires FMLA Leave to care for someone who acted as the employee's parent, a biological or legal relationship is not necessary. Parents-in-law, however, are not included within the meaning of "parent."

*Serious Health Condition:* According to the FMLA, a serious health condition means an illness, injury impairment, or physical or mental condition that involves:

1. Inpatient care (i.e., an overnight hospital stay), including any period of incapacity or any subsequent treatment in connection with the inpatient care, or
2. Continuing treatment by a health care provider.

*Continuing Treatment:* Continuing treatment is defined as:

1. A period of incapacity of more than three consecutive calendar days involving one of the following:
  - Treatment two or more times by, or under the orders of, a health care provider, or
  - Treatment by a health care provider on at least one occasion that results in a supervised regimen of continuing treatment (excluding those limited to over-the-counter medications).
2. A period of incapacity due to pregnancy, including severe morning sickness, or time needed for prenatal visits.
3. Any period of incapacity and related periodic treatment due to a chronic health condition, such as asthma, diabetes, or epilepsy.
4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, if the employee is under the supervision of a health care provider (but not necessarily receiving active treatment), as when the employee has Alzheimer's, a severe stroke, or is in the terminal stages of a disease.
5. Any period of absence to receive multiple treatments by, or under the orders of, a health care provider either for 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 calendar days if left untreated, such as dialysis for kidney disease or chemotherapy for cancer.

*Incapacity:* Incapacity is defined under the FMLA to mean the inability to work, attend school, or perform other regular activities due to the serious health condition, treatment therefore, or recovery there from.

*Health Care Provider:* The FMLA defines health care provider to include doctors of medicine or osteopathy; podiatrists; dentists; optometrists; chiropractors (limited to treatment consisting of manual manipulation of the spine); nurse practitioners; nurse midwives; clinical psychologists; clinical social workers; Christian Scientist practitioners (listed with the First Church of Christ, Scientist, in Boston); and, any other health care provider from whom the employer or its health plan will accept certification substantiating a claim for benefits. With the exception of Christian Science practitioners, the health care provider must be authorized to practice by the state. In the case of a work-related illness or injury, the City designates the health care provider to whom employees must go for treatment.

**Intermittent And Reduced Work Schedule Leave-** Leave on an intermittent basis refers to FMLA Leave taken in separate blocks of time periodically for the same serious health condition. For example, an employee may take intermittent leave for medical appointments that cannot be scheduled during non-work time, or may take several days at a time over many months, as required for treatment such as chemotherapy.

When intermittent FMLA Leave is needed to care for an immediate family member or for the employee's own serious illness and is for planned medical treatment, the employee must try to schedule treatment in order to prevent disruptions of the City's operations.

Leave on a reduced work schedule basis refers to FMLA Leave taken by reducing an employee's usual number of hours per work week or work day for a period of time, such as switching from full-time to part-time work for several weeks.

More than one FMLA Leave may be taken when each is taken on an intermittent or reduced work schedule basis. For example, an employee may take FMLA Leave for his or her own serious health condition and to care for his or her child with a serious health condition and to care for a parent with a serious health condition, all at the same time. All time taken, however, counts toward the total 12 weeks of FMLA Leave allowed during a calendar year.

Employees cannot be required to take more time off than is medically necessary. For example, an employee who needs two hours leave per day cannot be required to take four hours. Employees may not, however, take time off in increments of less than one hour.

Although an employee may be required to receive the City's permission to take FMLA Leave on an intermittent or reduced work schedule basis in some situations, permission is not needed when such a leave is medically necessary.

An employee taking FMLA Leave on an intermittent or reduced workweek basis may be temporarily transferred to an available alternate position with equivalent pay and benefits, if the employee is qualified for the position and if the position better accommodates the

recurring periods of leave. Employees who require FMLA Leave on an intermittent or reduced work week basis must submit a Request for Leave on an Intermittent or Reduced Work Schedule Basis Form to their Department Heads as far in advance of the need as practicable.

Employees must also comply with all other requirements related to FMLA Leave. Additionally, proof of the inability to schedule appointments for medical treatment outside of work time may be required.

**Medically Necessary-** According to the FMLA Act, intermittent or reduced work schedule leave is medically necessary, if an employee has a serious health condition that requires a treatment regimen which is best accommodated by this type of leave. If the need for intermittent or reduced work schedule leave is foreseeable based on planned medical treatment, the employee must make a reasonable effort to schedule the treatment to prevent disruptions of the City's operations.

**Birth, Adoption, Or Foster Care Of Children-** FMLA Leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement.

**Conditions Not Covered Under The FMLA-** Conditions not covered under the FMLA include:

1. A regimen of continuing treatment including only over-the-counter medications, bed rest, drinking plenty of fluids, or any similar activities that can be initiated without a visit to a health care provider, unless something more serious is involved. Unless complications arise which require inpatient care or continuing treatment, the common cold, flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental problems, and periodontal disease.
2. Food poisoning, unless it requires inpatient care or continuing treatment.
3. Allergies, unless they require inpatient care or continuing treatment.
4. Mental illness resulting from stress, unless it requires inpatient care or continuing treatment.
5. Cosmetic treatments (such as most treatments for acne or plastic surgery), unless inpatient hospital care is required or complications develop which require inpatient care or continuing treatment.
6. Incapacitation due to drug or alcohol abuse, unless the absence is for inpatient care or continuing treatment. Furthermore, according to the FMLA, an employee may not avoid disciplinary action for violations of a drug and alcohol policy simply by invoking the FMLA.

In some cases, multiple minor ailments, when combined, may be considered a serious health condition.

**Request For FMLA Leave-** All requests for FMLA Leave must be made by employees to their Department Heads in writing via completion of the Leave Request and Information Form from Human Resources.

Eligible employees who want to take FMLA Leave ordinarily must submit the Leave Request and Information Form at least 30 calendar days in advance of the need for leave, if the need for leave is foreseeable. If the employee's need is not foreseeable, the employee should submit the Leave Request and Information Form as far in advance as is practicable. The

City may delay FMLA Leave to employees who do not submit the Leave Request and Information Form in advance when there is a known foreseeable need for FMLA Leave.

**Medical Certifications-** The health care provider must provide initial and ongoing medical certification when the FMLA Leave is for an employee's own or a family member's serious health condition. When an FMLA Leave is for the birth of a child or to care for a child upon the child's placement with the employee for adoption or foster care, medical certification is not required.

The City may delay or deny approval of FMLA Leave for lack of proper medical certifications. Human Resources will provide employees with a Medical Certification Form to present to the health care provider. Generally, an employee has 15 days to provide medical certification from the health care provider after receiving notice of the requirement to do so from the City.

Medical certification must include: the date when the condition began, its expected duration, and a brief statement of treatment.

The City may, at its sole discretion, also require periodic medical re-certifications of the serious health condition of an employee, child, parent, or spouse and the employee's plan for returning to work.

The City also may require a second or third opinion, at the City's expense. When the FMLA Leave is a result of the employee's own serious health condition, a Fitness For Duty Report Form from the health care provider is required to return to work. In the event the healthcare provider charges the employee for a fit for duty form to be filled out, the City will reimburse the employee.

**Notice by the City to Employees Regarding FMLA Leave-**The City may not count an employee's absences as FMLA Leave, unless the City provides written notice to the employee. The City maintains the right, however, to start procedures to classify an illness as a serious health condition, if the period of incapacity is more than three consecutive calendar days, or for shorter absences related to chronic or recurring ongoing medical conditions, or for a work-related illness or injury, if applicable, even if an employee has not requested FMLA Leave.

The City also reserves the right to designate any qualifying leave as FMLA Leave regardless of whether the employee has specifically requested FMLA Leave.

**Compensation and Benefits Under The FMLA Leave Policy** - Leave taken under the FMLA Policy is unpaid. It is, however, the policy of the City to require employees to substitute other applicable accrued paid time for all or part of the unpaid FMLA leave.

An employee returning from FMLA Leave is entitled to any unconditional pay increases that occurred during the FMLA Leave.

**Service Time and Pay-** Eligible employees are not paid service pay while on unpaid leave, but employees are credited for service time while the employee is on leave. In other words service time will continue to accrue for an eligible employee showing no break in service while the employee is on leave. The employee's regular base salary and service pay (prorated over the remainder of the year) will commence upon his or her return to work.

**Benefits/Insurance Coverage-** Although an eligible employee's contributions made to PERF shall be interrupted during an unpaid FMLA Leave, no break shall be reflected in the employee's service credit. An eligible employee will continue to accrue PTO during the 12-week period of FMLA Leave (whether paid or unpaid) as allowed (continuously and/or intermittently and/or on a reduced work schedule). An employee shall not receive Holiday pay or time off for Holidays during FMLA Leave. If a full-time employee is on an intermittent or reduced work schedule FMLA Leave, the employee will receive Holiday pay or time off for Holidays.

An employee is not entitled to Bereavement Time Off during FMLA Leave that is continuous. When FMLA Leave is taken on an intermittent or reduced work schedule basis, an employee is eligible for Bereavement Time Off.

Group health and dental insurance coverage will continue on the same basis as coverage would have been provided had the employee been continuously employed during the leave period as long as the employee pays his or her regular portion of the premium on a timely basis. Employees may make arrangements with Payroll to pay their portion of this insurance coverage. The employee's health and dental insurance coverage may be terminated, if the employee's premium payment is more than 30 days late.

Additionally, failure of the employee to return to work at the end of FMLA Leave may give the City the right to collect the employer-paid portion of premium contributions made while the employee was on FMLA Leave, unless the reason for not returning is a certified new or continuing serious health condition or other circumstance beyond the employee's control.

Group term life insurance and accidental death and dismemberment, and disability insurance coverage will remain in force at the City's expense on the same basis as if the employee were not on leave.

**Working While on FMLA Leave-** An employee who is self employed or accepts other employment or works for any other current employer during FMLA Leave must report such work immediately to Human Resources.

An employee who is self employed or accepts other employment or works for any other current employer, performing work of a like or similar character or exertion as that which the employee performed for the City, during FMLA Leave for a personal serious health condition shall be considered to have terminated employment with the City as of the date such employment began and may be required to reimburse the City for the employer-paid portion of group health insurance premium contributions made while the employee was on leave.

**Job Restoration After FMLA Leave-** Every effort will be made by the City to hold an employee's position open until he or she returns to work from an approved FMLA leave. However, based upon the necessity of continuing operations during an employee's absence, the City may choose to fill any non-elected position. If the position is filled while an employee is on FMLA Leave, upon return to work, the employee will be placed in an equivalent position, with equivalent pay, benefits, and other terms and conditions of employment. In addition, the position into which the employee is placed, will have substantially similar duties. If an employee's position is eliminated during an FMLA Leave, through layoff or restructuring, the employee will not be entitled to return to his or her former or an equivalent position.

When the FMLA Leave is a result of the employee's own serious health condition, a Fitness For Duty Report Form from the health care provider is required prior to returning to work. In the event that the healthcare provider charges the employee for this service, the City will reimburse the employee.

Under the FMLA, the City cannot require an employee to work during FMLA Leave, until or unless the employee is fully restored to perform the essential functions of his or her job. The City, as stated above, however, makes every effort to accommodate restrictions placed on an employee by the health care provider. Such accommodations may take the form of FMLA Leave on an intermittent or reduced work schedule basis.

Employees who take FMLA Leave for their own serious health condition and do not return to work immediately following release from the health care provider, shall be considered to have voluntarily terminated employment as of the date of the release. A terminated employee may elect to continue his or her group health insurance and dental coverage, if any, through COBRA. (See Section 9.06) A terminated employee may be considered for future positions that become available, for which, in the City's opinion, the employee is qualified.

**Denial of Job Restoration-** The City may deny job restoration at the end of FMLA Leave only in the following situations:

1. If the City can show that an employee would not otherwise have been employed at the time the employee requests restoration, such as when an employee's position is eliminated in a workforce reduction;
2. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition (although the City must comply with the ADA); or,
3. If the employee is a highly compensated "key" employee whose restoration is denied to prevent "substantial and grievous economic injury" to the City's operations. Although a key employee may not qualify for restoration, the employee is still entitled to take FMLA Leave and to receive all benefits of the leave. In order to deny restoration to a key employee, however, the City must, at the time leave is requested, give the employee a detailed written notice explaining the key employee exception.

**Impact on Promotions, etc.** An employee who returns from FMLA Leave is equally considered along with employees who have not taken FMLA Leave for purposes of promotions, job openings, training, and all other aspects of employment.

**FMLA Leave and the Americans With Disabilities Act (ADA)**-The ADA may require the City to allow a disabled employee to extend a FMLA Leave beyond the FMLA's 12 week annual period (on a continuous, intermittent, or reduced work schedule basis) that is allowed by the City, if the extension would constitute a reasonable accommodation. Such extensions, however, may not have an indefinite duration. See Section 15.0, for the annual leave period allowed when an FMLA Leave is being taken for a work-related illness or injury.

**FMLA Leave and Personnel Files**- All medical information obtained in connection with FMLA Leave is kept in a confidential medical file separate from an employee's general personnel file.

**FMLA Leave and the Pregnancy Discrimination Act (PDA)**- The PDA requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same as employees who are on FMLA Leave for other temporary medical disabilities. Availability of leave extensions, accrual during leave of PTO, service time and pay, and any other accrued benefits and privileges, insurance coverage, and restoration after leave must be handled in the same manner as all other leave requests.

In certain limited circumstances, a pregnant employee who is experiencing substantial complications may be considered disabled under the ADA. In those cases, a pregnancy may not only qualify as FMLA Leave, but it may also require special accommodation under the ADA. For more information, contact Human Resources.