

SECTION 60-9

SUBJECT: FAMILY AND MEDICAL LEAVE

I. Purpose

- a. This policy outlines the basic procedures governing Family and Medical Leave. Family and Medical leaves are unpaid, job-protected leaves of absence by employees for child care, personal medical care, family medical care and certain other circumstances.
- b. This policy is intended to implement the Federal Family and Medical Leave Act (“FMLA”), as amended which became effective on January 16, 2009. It is intended to be interpreted and applied consistently with those laws.

II. Eligibility

- a. An employee will be eligible to seek a Family and Medical Leave if:
 - i. the employee has worked for the City for at least twelve (12) months; and,
 - ii. the employee has worked for the City for at least 1,250 hours during the 12 months;
 - iii. In certain circumstances, separate periods of employment are aggregated for purposes of meeting the 12-month requirement. Additionally, any time that the employee would have worked for the City but for his or her Armed Forces (including National Guard or Reserve) obligations is counted toward the 1,250 hour requirement for Family and Medical Leave.
 - iv. The employee and spouse, if both employed by the City, are each eligible for up to twelve (12) weeks FMLA leave to care for a covered service member with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.
 1. The FMLA defines a child (“son or daughter”) as a “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing “in loco parentis”, who is— (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.”
 - a. “In loco parentis” is commonly understood to refer to a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the

parental relation without going through the formalities necessary to legal adoption. The FMLA regulations further defines “in loco parentis” as including those with day-to-day responsibilities to care for and financially support a child.

2. Individuals claiming in loco parentis may be required to submit in writing confirming this status with the child.

III. Types of Family and Medical Leaves

For purposes of this policy, the term “Family and Medical Leave” refers to the leaves of absence under the FMLA. Eligible employees may qualify for any of six types of Family and Medical Leaves. Throughout this policy, the terms “Family and Medical Leave” and “FMLA Leave” refer to any of the following six types of leaves:

a. Pregnancy Leave

- i. An employee may take Pregnancy Leave due to incapacity due to pregnancy, prenatal medical care or child birth.
- ii. Pregnancy leave will run concurrently with FMLA leave.

b. Birth, Adoption and Child Care Leave

- i. An employee may take a Birth, Adoption and Child Care Leave to care for his or her child after birth, or for placement with the employee of a child for adoption or foster care. The leave must be completed within 12 months of the child’s birth, adoption or foster care placement.

c. Family Illness Leave

- i. An employee may take a Family Illness Leave to care for a seriously ill or injured spouse, parent or child.
- ii. The illness or injury must be a “serious health condition” within the meaning of the FMLA, a term which is defined below.
- iii. If the leave is for the care of a child, the child must either be under age 18 or be unable to care for himself or herself due to a mental or physical disability.

d. Employee Illness Leave

- i. An employee may take an Employee Illness Leave because of a serious health condition that makes the employee unable to perform his or her job.

e. Qualifying Exigency Leave

- i. An eligible employee is eligible for up to a total of 12 work weeks of unpaid leave during the normal 12-month period established by the City for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces. Qualifying exigencies include:
 1. Issue arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
 2. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
 3. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
 4. Making or updating financial and legal arrangements to address a covered military member's absence;
 5. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
 6. Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
 7. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
 8. Any other event that the employee and employer agree is a qualifying exigency.

- ii. FMLA leave may be taken intermittently whenever medically necessary to care for a covered service member with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.
- iii. Under certain conditions as noted below, employees or employers may choose to "substitute" (run concurrently) accrued paid leave (such as sick, comp, personal day or vacation leave) to cover some or all of the FMLA leave.
 - 1. Upon the birth of a child to an eligible employee, or the placement of an adopted or foster child with an eligible employee, that employee is entitled to FMLA leave. The leave must be completed within one year of the birth or placement of the child. The leave shall be unpaid unless it qualifies under the sick leave policy or unless the employee elects to use accrued vacation leave, accrued comp time or their annual "personal holiday", for part or all of such leave.
 - 2. FMLA Leave which qualifies for sick leave shall be paid leave to the extent that the employee has accrued sick leave credits. When an employee has exhausted accrued sick leave, FMLA leave shall be unpaid leave, except that the employee may elect to use accrued vacation leave for part or all of the unpaid leave.

f. Military Caregiver Leave

- i. An employee who is a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member.
- ii. A covered service member is a current member of the Armed Forces, including a member 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.
- iii. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.
- iv. The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the

employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered service member.)

IV. Serious Health Condition

- a. A “serious health condition” is an illness, injury impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the essential functions of the employee’s job or prevents the qualified family member from participating in school or other daily activities.
- b. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity or more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

V. Notice and Scheduling of Leave and Related Employee Responsibilities

- a. Required Information
 - i. Employees who seek a Family and Medical Leave must provide sufficient information for the Human Resources Department to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities, or the need for hospitalization or continuing treatment by a health care provider or circumstances supporting the need for a Qualifying Exigency Leave or a Military Caregiver Leave. Employees must also inform the Human Resources Department if the requested leave is for a reason for which a Family and Medical Leave was previously taken or certified. Failure to provide sufficient information may result in denial of leave.
 - ii. Employees will also be required to provide a certification and periodic recertification supporting the need for leave. Unless a longer period is specified, a medical certification or recertification must be completed and returned to the City within fifteen (15) days of the City’s request. Moreover, employees on leave may be contacted periodically for

updates concerning their status and intent to return. Employees are expected to be fully responsive to such requests for updates.

b. Advance Notice of Foreseeable Leave

Except as otherwise provided below, employees must provide 30 days' advance notice of the need to take a Family and Medical Leave with the need for the leave is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable.

c. Form of Notice of Foreseeable Leave

An employee requesting Family and Medical Leave shall submit a "Leave of Absence Application" to his or her department head. Upon notification of the leave request, the Human Resource Department will forward the "Certification of Health Care Provider" or the "Certification for Serious Injury or Illness of Covered Service Member for Military Caregiver Leave" to the employee. This form must be returned to the Human Resources Department within 15 calendar days.

- i. The certification shall be filed on a form provided by the Human Resources Department;
- ii. Recertification shall be filed on the same form by the employee anytime that the employee seeks an extension to his or her leave or every six months;
- iii. The information required on the "Leave of Absence Application" form is the only information that may be requested by the Department head to support the leave request.
- iv. The "Certification of Health Care Provider" form(s) may be executed by a person licensed by the State to practice medicine, osteopathy, podiatry, dentistry, clinical psychology, optometry, or chiropractic, or by a nurse practitioner or nurse midwife authorized by State law, or Christian Science practitioners appropriately listed.
- v. The "Certification for Serious Injury or Illness of Covered Service Member for Military Caregiver Leave" must be completed by a United States Department of Defense (DOD) Health Care Provider or a Health Care Provider who is either:
 1. a United States Department of Veteran's Affairs (VA) health care provider;
 2. a DOD Tricare network authorized private health care provider;
 - or,
 3. a DOD non-network Tricare authorized private health care provider.

d. Scheduling of Foreseeable Leaves

If an employee plans to take a Family Illness Leave, an Employee Illness Leave or Military Caregiver Leave because of planned medical treatment, the employee must make an effort to schedule the treatment to reduce the disruption to the City, subject to the health care provider's approval. An employee should generally consult with his or her supervisor to explore alternatives to reduce disruption to the City.

e. Notice of Unforeseeable Leave

When a Family Illness Leave, an Employee Illness Leave, Military Caregiver Leave or Qualifying Exigency Leave is needed due to a reason that was not foreseeable, the employee should give the Human Resources Department verbal or written notice as soon as he or she reasonably can. As soon as practicable, the written notices set forth above in paragraphs V.C.(1) – (5), shall be completed by the employee requesting unforeseeable leave.

f. Effect of Insufficient Notice

An employee's failure to give adequate notice may delay, or may result in the denial of, the employee's right to take Family and Medical Leave.

VI. Confirmation of Leave

- a. The City will inform employees who request Family and Medical Leave whether they are eligible for a leave that is covered by the FMLA within five (5) business days, absent extenuating circumstances. If they are, the Human Resources Department will send a "Notice of Eligibility and Rights & Responsibilities" form to the employee.
- b. If they are not eligible and the leave is denied, the reason will be stated on the form. If the leave is approved, the Human Resources Department will forward a "Designation Notice" to the employee.

VII. Length of Leave and Restoration Rights

a. In General

- i. In general, except for those employees taking Military Caregiver Leave, an employee will be entitled to a maximum of 12 weeks of Family and Medical Leave during any 12-month period. The 12-month period is a "rolling" period measured backward from the date an employee uses any leave under this policy. Each time an employee takes any Family and Medical Leave, the remaining leave entitlement will be any balance of the 12 weeks that has not been used during the immediately preceding 12 months.

- ii. In the case of Military Caregiver Leave, an employee is entitled to a maximum of 26 weeks of leave in the 12-month period beginning on the first day that the employee takes this form of leave and ending 12 months later.

b. Nature of the Leave

- i. Unless otherwise approved, a Birth, Adoption and Child Care Leave must be taken at one time and must be taken before the end of the 12-month period beginning on the date of the child's birth or placement. The other Family and Medical Leaves may be taken through either a reduced working schedule or intermittently if such an arrangement is medically necessary, or if the City approves such an arrangement in its sole discretion.
- ii. If an employee is entitled to a Family Illness Leave, an Employee Illness Leave or a Military Caregiver Leave or if the employee is permitted to work on a reduced work schedule or intermittent basis, the City may transfer the employee temporarily to a position for which he or she is qualified and which has equivalent pay and benefits if the alternative position would better accommodate the recurring leaves than the employee's regular position. Use of intermittent or reduced schedule leave is measured in increments of one hour.
- iii. Qualifying Exigency Leave may also be taken on an intermittent basis.

c. Restoration Rights

i. In General

At the end of a Family and Medical Leave, an employee will generally have the right to return to his or her last position before the leave or to an equivalent position with equivalent benefits, pay, accumulated seniority, retirement, fringe benefits, service credits and other terms and conditions of employment. In returning from any of these leaves, the employee will not lose any benefit rights, such as vacation, to the extent that those benefit rights accrued before the leave period. However, an employee returning from Family and Medical Leave will not acquire greater rights to a position than any other employee in the event positions are eliminated during his or her leave.

ii. Extension of Leave

In the event that a Family and Medical Leave is extended beyond a level totaling 12 weeks of leave over 12 months (or 26 weeks in the case of Military Caregiver Leave), the leave will become "personal leave" and the City will consider the possibility of restoration but will not guarantee restoration. The determinations regarding whether to grant an

extension and to grant restoration after an extension will be made in the City's sole discretion after considering factors such as the purpose of the leave extension, the employee's length of service, the employee's overall employment record, the employee's position, and the City's assessment of its needs. For details on the duration of and procedures associated with personal leave, see the "Leaves of Absence Without Pay" section of this manual.

iii. Certification Before Return

Before an employee may return from an Employee Illness Leave that has continued at least 90 calendar days, the employee's health care provider may be required to certify that the employee is able to resume his or her job. The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

VIII. Pay and Benefits

a. Pay

- i. Family and Medical Leaves shall be recorded on time sheets as it is taken. Family and Medical Leaves are not paid leaves. However, an employee may substitute a paid leave for which the employee is eligible for an otherwise unpaid leave. Such a substitution will be counted against the employee's use of leave. The leave will remain subject to all protections that would apply if the leave was taken on an unpaid basis. For example, if the Family and Medical Leave is paid leave from accrued vacation or sick leave, it shall be recorded as both on the time sheet and deducted from both. Family and Medical Leave will run concurrently with vacation or sick leave and time off for worker's compensation injuries. Employees who seek paid leave will need to meet the notice and qualification requirements under the paid leave policy.
- ii. If sick leave is not available or the FML does not qualify for sick leave, but an employee is eligible for accrued paid leave such as vacation pay or paid personal days, the employee may elect to use that accrued leave during a leave under this policy.

b. Maintenance of Health Benefits

- i. During a Family and Medical Leave, the City will continue the employee's health insurance coverage, provided that the employee pays for the regular employee share of such coverage on a timely basis as if he or she had remained actively employed. During any paid leave, the employee share of the premiums will be deducted from the employee's pay. During the unpaid portion of a Family and Medical Leave, the employee will be required to pay the employee's share by delivering the

payment so that it is received by the City no later than the established date as determined by the payroll department.

- ii. If the employee fails to return from the leave, the City may be entitled to recover from the employee the portions of the health insurance premiums that were paid by the City with respect to the unpaid leave. The City will be entitled to recover these amounts unless the employee's failure to return was due to a serious health condition (within the meaning of the FMLA) or if there are other circumstances beyond the employee's control. If the employee states that he or she is unable to return from the leave because of a serious health condition, the City may require the employee to provide a medical certification.

IX. Medical Records

Documents relating to medical certifications, recertification's of employees or employees' family members will be maintained separately and treated as confidential medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors or Department heads, first aid and safety personnel, or government officials.

X. FMLA Violations and Enforcement

a. Unlawful Actions by Employers

The FMLA makes it unlawful for any employer to:

- i. Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or,
- ii. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or related to the FMLA.

b. Enforcement

- i. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
- ii. The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

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