



## **FAMILY AND MEDICAL LEAVE**

### **I. PURPOSE**

To enable eligible employees to receive time away from work without pay for limited periods to attend to specific family members' needs or their own serious health condition with job protection and no loss of accumulated service.

### **II. SCOPE**

This policy applies to all employees who have worked for the City for twelve (12) months and at least at least 1,250 work hours during the twelve months preceding the leave. The calculation of twelve (12) months are not required to be consecutive and may be considered the previous seven years of employment with the City.

### **III. POLICY**

Eligible employees may take up to twelve weeks of unpaid leave per a rolling twelve-month period for a qualifying event(s) or up to twenty-six (26) weeks of unpaid Qualifying Exigency Leave in a single twelve-month period to care for a covered service member with a serious injury or illness. The maximum of twenty-six (26) weeks of combined unpaid leave in a single twelve-month period of which twelve (12) weeks may be for non-qualifying exigency leave. Qualifying events are:

- the birth of the employee's child or placement of a child with the employee for adoption or foster care,
- a serious health condition of a child, spouse, or parent,
- an employees' own serious health condition,
- a qualifying exigency arising out of the fact that your spouse, son or daughter, or parent is on active duty or call to active-duty status in support of a contingency operation as a member of the National Guard or Reserves, or
- because you are the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness.

Up to twelve (12) consecutive weeks of leave may be taken for the birth or placement of a child. Request for Family Medical Leave (FMLA) intermittent leave for the birth or placement of a child will require Department Director and City Manager or designee approval. Up to twelve (12) weeks of leave may be taken consecutively or intermittently if the employee, spouse, child or parent has a serious health condition. Eligible spouses



working for the City are limited to a combined total of twelve (12) work weeks of unpaid leave in a twelve-month period to share for FMLA qualifying events and a combined total of twenty-six (26) work weeks for military caregiver leave.

Employees must use their leave time, including but not limited to vacation, sick, personal holiday, and compensatory time, during the FMLA leave. No loss of seniority will occur while the employee is on this leave of absence. Employees must continue to pay any premiums that are paid for his/her group health insurance coverage and that of his/her dependents. If the employee is on FMLA leave, the employee is responsible for coordinating with Human Resources and Payroll to discuss arrears benefit payments through payroll deductions.

If the employee fails to return to work at the end of the approved leave, the City may recover from the employee the cost of any payments made to maintain the employee's coverage, unless the failure to return was beyond the employee's control.

#### IV. DEFINITIONS

##### 1. Child

Biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, who is under eighteen (18) years of age or an adult legally dependent child, as defined by the Americans with Disabilities Amendments Act of 2008. For qualifying exigency leave, a biological child, adopted child, foster child, stepchild, legal ward, or a child for whom you stood *in loco parentis*, and who is of any age.

##### 2. Parent

Biological parents, foster parents, adoptive parents, stepparents, legal guardians, or someone who stands *in loco parentis*. This does not include "parents-in-law".

##### 3. Spouse

A person in a legal marital relationship recognized under Texas law. A husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

##### 4. Military Service Member

A current member of the Armed Forces, including the U.S. National Guard or Reserves. A veteran who was honorably discharged within the previous five (5) years before the



employee takes military caregiver leave to care for the veteran with a qualifying serious illness or injury.

5. Next of Kin for a Covered Servicemember

Spouse, parent, son, or daughter, and Next of Kin in the following priority – blood relatives with granted legal custody, brothers and sisters, grandparents, aunts and uncles and first cousins.

6. Twelve-Month Period

A period of twelve months measured from any FMLA leave usage in a “rolling” twelve-month period. A “rolling” twelve-month period is measured backward from the first date of any FMLA leave usage and is limited to a total of 12 workweeks of leave during any twelve-month period.

7. Twelve Months of Employment

A period of twelve months in which the employee has been employed. The months of employment do not have to be consecutive. Part-time, temporary, or seasonal work counts towards the twelve months of employment. The employment prior to a continuous break in service of seven years or more are not counted unless the service is due to an employee’s fulfillment of military obligations or is governed by a collective bargaining agreement or other written agreement.

8. 1,250 Hours of Service

A period of time actually worked, which includes overtime hours worked. Any form of Paid Time Off (PTO) is not counted towards the 1,250 hours of service.

9. In Loco Parentis

The relationship exists when an individual intends to take on the role of a parent and has day-to-day responsibilities to care for or financially support of the employee as a child. An employer may require an employee to provide reasonable documentation of the qualifying family membership.

10. Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. Incapacity is the inability to work, being unable to perform any one of the essential functions of the employee’s position due



to a serious health condition, treatment of, or recovery from the serious health condition. *Continuing* treatment by a healthcare provider for a period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition. A temporary health condition that does not require continuing treatment by a healthcare provider and can be treated by over-the-counter medications such as aspirin, antihistamines, or salves, bed rest, drinking fluids, exercise, and other similar activities without a visit a health care provider is not sufficient to be considered continuing treatment.

#### 11. Fitness for Duty Certification

Documentation required to be completed by a healthcare provider prior to the employee returning to work from their own serious health condition. The document assesses the employee's ability to perform the essential functions of the employee's position. The City may contact the health care provider to authenticate or clarify the fitness for duty certification.

#### 12. Twelve Weeks of Leave

Employees have up to twelve (12) weeks of unpaid leave to use during the rolling twelve-month period. Spouses working for the same employer have a combined total of twelve (12) work weeks of leave in a rolling twelve-month period for the birth or placement of a child or to care for a parent with a serious health condition. This includes qualifying exigency leave for a military member that is a spouse, parent, son, or daughter who is deployed or notified of impending deployment to a foreign country. If only one spouse is eligible for FMLA leave, that individual is entitled to the full 12 weeks of leave.

#### 13. Twenty-Six Weeks of Leave

Up to twenty-six (26) work weeks of unpaid leave during a single twelve (12) month period to care for a spouse, parent, son, daughter, or next-of-kin covered military service member due to qualifying serious injury or illness. It is also known as Qualifying Exigency Leave. A combined total of twenty-six (26) work weeks of leave for any FMLA qualifying reason of which twelve (12) of the twenty-six (26) weeks can be for non-qualifying exigency leave. This leave is not restricted to one military service member and can be used for other military members.

#### 14. Covered Active Duty

For members of the regular armed forces, duty during deployment of the member with the Armed Forces to a foreign country. For members of the reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment



of the member within the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

15. Foreign Country

Deployment to areas outside of the United States or any Territory or possession the United States, including international waters.

16. Intermittent Leave or Reduced Schedule

Intermittent Leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per work week, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period, normally from full-time to part-time.

17. Medical Certification Requirements

Medical certification is required to support the employee's need for FMLA leave. The certification obtains information related to the request and includes health condition, amount of leave, and duration of condition. The City utilizes the US Department of Labor Wage and Hour Divisions' forms Medical Certification by a Healthcare Provider as it relates to the employees or family members serious health condition. The City may seek a second or third opinion by a Healthcare provider. The City does not require medical certification for Adoption and/or Birth of a Child.

18. Annual Medical Certification

The City will require annual medical certification for any leave requirement for an employee or family member's serious health condition lasts beyond twelve (12) months, the City can request a new medical certification. This new certification provides the City with an option to obtain a second or third opinion or to authenticate or clarify the certification with the health care provider.

19. Qualifying Exigency Leave

When the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty.

20. Qualifying Exigency Leave Certification Requirements



Qualifying Exigency Leave certification requires a copy of the military member's active-duty orders or other official military documents that provides the member's status of active duty or call to covered active-duty status. A statement or description of facts surrounding the qualifying exigency, contact information for related meetings, the estimated start date, and, if available, the end date. Certification for a military service member may not have a second or third opinion if it is completed by Department of Defense, Veterans Affairs, or TRICARE healthcare provider. If the military service member is seeking treatment from a private (non-Department of Defense) health care provider, the City may request a second or third opinion.

#### 21. Comparable Position

A position comparable in pay, benefits, and other employment terms, including shift and location. If the shift or location have been eliminated, the employee may not be eligible for these items.

#### 22. Workers' Compensation

Workers' Compensation is due to an on-the-job injury or illness that also qualifies as a serious health condition under FMLA. The City will run the FMLA leave concurrently.

### V. PROCEDURE

#### A. Application and Commencement

1. A FMLA leave request must be completed by the employee and submitted through the City's HRIS system to Human Resources at least thirty (30) days prior to commencement date. If thirty (30) days' notice is not possible, an employee is required to provide notice as soon as practicable. If the employee does not make the request, FMLA leave may start when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason. When an employee is on leave for three (3) or more calendar days due to a qualifying event or intermittently for a serious health condition, FMLA will start with the first day of leave.
2. FMLA leave will start when an employee is on leave due to a qualifying event. Depending upon the type of FMLA leave request, it may be continuous, intermittent, or a combination of both.
3. The employer must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days.



4. When the FMLA leave request is to care for a sick child, parent or spouse, or for the employee's own serious health condition, the employee must submit a Certification of Health Care Provider for Family Member's Serious Health condition or Certification of Health Care Provider for Employee's Serious Health Condition. These form(s) are obtained by contacting the Human Resources Department. The employee will have fifteen (15) calendar days from the date of submittal for the completed Certification Health Care Provider to Human Resources. The City may consider extenuating circumstances if this date is not met. If the employee does not provide complete and sufficient certification, the City may request additional information to determine if the FMLA leave request is approved.
5. For Qualifying Exigency leave, the following non-exhaustive list of activities may be considered: short-notice deployment needs (7-day limit), childcare and school activities, financial and legal arrangements, counseling, rest and recuperation (15-day limit), post deployment, and parental care.
6. Accrued paid leave must be used concurrently with the employee's unpaid FMLA leave entitlement. There are no requirements on the type of leave to be used first.
7. Employees on leave without pay status will continue to accrue their sick and vacation leave.
8. Time that an employee is not scheduled will not be counted as leave. Only the amount of leave taken may be counted against the employee's leave entitlement. When a holiday falls during a week in which the employee is taking a full week of FMLA leave, the entire week is counted as FMLA leave. The minimum increment of leave time taken can be 0.25 hours.
9. Employees on leave must notify Human Resources and their immediate supervisor as soon as reasonably practical of availability and intent to return to work.
10. For the employee's own serious health condition, the City requires a Release to Return to Work form to be completed by their Health Care Provider and submitted to Human Resources prior to their return. The City will review and, if no additional information is required, provide the employee's immediate supervisor with the document and return-to-work date. If additional information is required, the City will need this to be submitted prior to the employee returning from FMLA leave.



B. Reinstatement

1. Upon return from a family and medical leave of absence, the employee will be reinstated in the following priority of position reassignment:
  - First: previous position if available.
  - Next: a comparable position for which the employee is qualified.
2. The employee will receive eligible pay increases that occurred while on FMLA leave. These pay increases may be based upon seniority and length of service.
3. An employee's failure to return from leave, or failure to contact his or her immediate supervisor or Human Resources on the scheduled date of return, will be considered a voluntary resignation.

Exception: If the employee on leave of absence is a salaried employee and is among the highest paid ten (10) percent of City employees living within seventy-five (75) miles of the City and keeping the job open for the employee would result in substantial disruption to City operations, reinstatement to the position may be denied. The employee will be given an opportunity to return to work in a different job.

C. Medical Documentation:

1. The City will follow the Health Insurance Portability and Accountability Act (HIPAA), Genetic Information Nondiscrimination Act, if applicable, and Protected Health Information (PHI) guidelines.