



Family and Medical Leave and Extended Leave Policy¹

Policy No. C-05²

The Scope of this policy includes the following individuals:³

- ✓ Employees (including Appointed Officials, Probationary Employees, Full-Time At-Will Employees, Part-Time Employees, Civil Service Employees, Teamsters Employees, HPOA, HPSA, and IAFF Employees)

I. PURPOSE

To set forth the circumstances and procedure for employees to request leave pursuant to the Family and Medical Leave Act (FMLA) and the City's Extended Leave program.

II. POLICY APPLICATION

The City will grant family and medical leave in accordance with the requirements of applicable law in effect at the time the leave is granted. The City refers to this form of leave as "FMLA Leave." A Notice to Employees of Rights under the FMLA is available on the City's Intranet.

Employees must contact their supervisor or Human Resources Business Partner as soon as they become aware of the need for FMLA Leave. Employees are expected to provide prompt notice to the City of any change(s) to an employee's return to work date. Accepting other employment, continuing to work in another job, including self-

¹ The Extended Leave program set forth in this policy applies to Probationary Employees, Full-Time At-Will Employees and Civil Service Employees. Part-time and Temporary employees are not eligible to participate in the Extended Leave program but may be granted accommodations under the Reasonable Accommodation Policy, Administrative Policy No. A-04. Represented employees should refer to their applicable collective bargaining agreement for the terms of their Extended Leave policies.

² This policy is not to be construed as a contract or an implied contract concerning any employment-related decision or term or condition of employment. The City reserves the right to revise, delete or add to any and all policies, procedures, work rules or benefits stated in this policy at its sole discretion. See Introduction, Administrative Policy No. A-01.

³ The relevant definitions for the individuals identified in the Scope of this policy are defined in Introduction, Administrative Policy No. A-01.

employment, or filing for unemployment insurance benefits while on leave may be treated as a voluntary resignation from employment, unless the employee and the City have agreed, in writing, otherwise.

If an employee is unable to return to work due to their own serious health condition immediately after exhausting all their available FMLA leave (or within thirty (30) days of exhausting continuous FMLA leave), they may be eligible for additional continuous leave pursuant to the City's Extended Leave program.

A. Employee FMLA Eligibility

To be eligible for FMLA Leave benefits, an employee must:

1. Have worked for the City for a total of at least twelve (12) months;
2. Have worked at least 1,250 hours over the previous twelve (12) months as of the start of the leave; and
3. Work at a location where at least fifty (50) employees are employed by the City within seventy-five (75) miles, as of the date the leave is requested.

B. Relevant Definitions

For the purposes of this Administrative Policy:

1. A "spouse", per DOL and for purposes of FMLA leave, means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage.
2. A "child" is defined as any natural, adopted or foster child of the employee, or any child for whom the employee is acting as a parent ("in loco parentis"). The child must be under the age of eighteen (18) unless they are incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence.
3. A "parent" is defined as a biological, adoptive, step or foster parent or any other individual who acted in the place of a parent ("in loco parentis") when the employee was a child as defined above. Parents-in-law are not included in this definition.

C. Reasons for FMLA Leave

FMLA Leave is permitted for various reasons. Because an employee's rights and obligations may vary depending upon the reason for the FMLA Leave, it is important to

identify the purpose or reason for the leave. FMLA Leave may be used for one of the following reasons:

1. Within twelve (12) months of the birth of an employee's child, or placement of a child in the employee's home for adoption or foster care ("Bonding Leave");
2. To care for an immediate family member (spouse, child, or parent) with a serious health condition ("Family Care Leave");
3. An employee's inability to work because of a serious health condition ("Serious Health Condition Leave");
4. A "qualifying exigency," as defined under the FMLA, for military operations arising out of a spouse's, child's, or parent's active duty or call to active duty as a member of the military reserves or National Guard in support of a "contingency operation" declared by the U.S. Secretary of Defense, President or Congress, as required by law ("Military Emergency Leave"); or
5. To care for a spouse, child, parent or next of kin (nearest blood relative)—who is an Armed Forces member (including the military reserves and National Guard) undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list—with a serious injury or illness incurred in the line of duty while on active duty that may render the individual medically unfit to perform their military duties ("Military Caregiver Leave").

D. Length of FMLA Leave

The maximum amount of FMLA Leave will be twelve (12) workweeks in any twelve (12) month period when the leave is taken for:

1. Bonding Leave;
2. Family Care Leave;
3. Serious Health Condition Leave; and/or
4. Military Emergency Leave.

However, if both spouses work for the City and are eligible for leave under this policy, the spouses will be limited to a total of twelve (12) workweeks off between the two of them when the leave is for Bonding Leave. A twelve (12) month period begins on the date the employee first uses FMLA Leave. Bonding Leave must be taken consecutively unless

intermittent use of Bonding Leave is approved by the Department Director and the Director of Human Resources or designee.

The maximum amount of FMLA Leave for an employee wishing to take Military Caregiver Leave will be a combined leave total of twenty-six (26) workweeks in a single twelve (12) month period. A single twelve (12) month period begins on the date the employee first uses such leave and ends twelve (12) months after that date.

If both spouses work for the City and are eligible for leave under this policy, the spouses will be limited to a total of twenty-six (26) workweeks off between the two when the leave is for Military Caregiver Leave only or is for a combination of Military Caregiver Leave, Military Emergency Leave, Bonding Leave and/or Family Care Leave taken to care for a parent.

Under certain circumstances, an employee may take FMLA Leave intermittently or be permitted to take a reduced schedule. Leave taken intermittently may be taken in increments of no less than one (1) hour. Employees who are absent due to intermittent FMLA are expected to abide by the same call-in protocols as when they are absent for non-FMLA purposes.

To the extent required by law or provided by an Administrative Policy or a collective bargaining agreement, additional leave may be granted. For example, additional leave may be granted under other applicable extended leave policies or approved if the leave is necessitated by an employee's work-related injury/illness or a "disability" as defined under the Americans with Disabilities Act (ADA) and/or applicable state law. Certain restrictions on these benefits may apply.

E. FMLA Notice and Certification

1. Bonding, Family Care, Serious Health Condition, and Military Caregiver Leave Requirements

When the need for the leave is foreseeable, employees are required to provide thirty (30) days advance notice or such notice as is both possible and practicable if the leave must begin in less than thirty (30) days (normally this should be the same day the employee becomes aware of the need for leave or the next Business Day).

When the need for leave is not foreseeable, employees are required to provide notice within the time prescribed by the City's normal absence reporting policy, unless unusual circumstances prevent compliance, in which case notice is required as soon as is otherwise possible and practicable.

When the leave relates to medical issues, employees are required to provide a completed Certification of Health Care Provider form within fifteen (15) calendar days. For Military Caregiver Leave, an invitational travel order or invitational travel authorization may be submitted in lieu of a Certification of Health Care Provider form. Upon request, employees are required to provide periodic recertification. Employees may also be required to provide periodic reports on the status of their absence during their FMLA Leave.

At the City's expense, the City may also require a second or third medical opinion regarding an employee's own serious health condition. Employees are expected to cooperate with the City in obtaining additional medical opinions that the City may require.

When leave is for planned medical treatment, employees should try to schedule treatment so as not to unduly disrupt the City's operation. Employees should contact their supervisor or Human Resources Business Partner prior to scheduling planned medical treatment.

2. Military Emergency Leave Requirements

Employees are required to provide as much advance notice as is reasonable and practicable under the circumstances. Employees are also required to provide a copy of the covered military member's active-duty orders when the employee requests leave and a completed Certification of Qualifying Exigency form within fifteen (15) calendar days, unless unusual circumstances exist to justify providing the form at a later date.

3. Requests for Leave

Employees should follow the instructions on the FMLA Claim Submission Checklist available on the City's intranet to request leave. Requests for leave may also be directed to the Human Resources Business Partner.

4. Failure to Provide Certification and to Return from Leave

Absent unusual circumstances, failure to comply with these notices and certification requirements may result in a delay or denial of the leave. If an employee fails to return to work upon expiration of the FMLA Leave or other approved leave, the City may presume that the employee does not plan to return to work and has voluntarily terminated their employment.

5. Return to Work

Prior to being allowed to return to work, an employee wishing to return from a Serious Health Condition Leave must submit an acceptable release from a health care provider that certifies the employee can perform the essential functions of the job as those essential functions relate to the employee's serious health condition. This release should be submitted directly to the vendor handling day-to-day FMLA administration on behalf of the City. If an employee is being released to duty with work restrictions, the Human Resources Business Partner for the department will work with the employee's supervisor to determine if the employee's work restrictions can be accommodated. This may take several business days, and as such, the return-to-work release should be submitted as far in advance as possible of the date the employee is released to return to work. For an employee on intermittent FMLA Leave, such a release may be required if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which the employee took the intermittent leave.

F. Compensation and Benefits During FMLA Leave

Employees must first use accrued paid time off (PTO, Sick Leave, Vacation Leave, Banked Holiday, Compensatory Time) to the extent permitted by law, applicable collective bargaining agreement or City policy, prior to going on unpaid FMLA Leave. The use of paid benefits will not extend the length of an FMLA Leave, as all paid time must be used concurrently with FMLA Leave.

The City will continue making contributions for employee group health benefits during an employee's FMLA Leave on the same terms as if the employee had continued to work. This means that if an employee wants their group health benefits coverage to continue during FMLA Leave, the employee must also continue to make any premium payments that they are required to make for the employee and their dependents. Employees taking Bonding Leave, Family Care Leave, Serious Health Condition Leave, and Military Emergency Leave will generally be provided with group health benefits for a twelve (12) workweek period. Employees taking Military Caregiver Leave may be eligible to receive group health benefits coverage for up to a maximum of twenty-six (26) workweeks. In some instances, the City may recover premiums it paid to maintain health coverage if an employee fails to return to work following a FMLA Leave.

Employees' length of service as of the leave will remain intact, and accrued benefits such as leave accruals, Holiday Pay and other benefits will continue during periods of unpaid FMLA Leave pursuant to applicable collective bargaining agreements or Administrative Policies.

G. Extended Leave Program

The City may grant an employee up to an additional three (3) months of continuous leave if they have exhausted all their FMLA leave and is still unable to return to work because of a serious health condition (after exhausting their continuous FMLA leave). An employee requesting Extended Leave may be required to medically certify they need for Extended Leave. The Human Resources Department shall be responsible for reviewing, determining eligibility, and approving all requests for Extended Leave. Extended Leave is not available for employees who are not eligible for FMLA pursuant to Section A. The Extended Leave program set forth in this policy applies to Probationary Employees, Full-Time At-Will Employees and Civil Service Employees. Part-time and Temporary employees are not eligible to participate in the Extended Leave program but may be eligible for accommodations under the Reasonable Accommodation Policy, Administrative Policy No. A-04. Represented employees should refer to their applicable collective bargaining agreement for the terms of their Extended Leave policies.

Extended Leave is not available on an intermittent basis and must be taken continuously. Employees must first exhaust their accrued paid time off (PTO, Sick Leave, Banked Holiday, Compensatory Time) prior to going on unpaid Extended Leave status.

If, at the end of the Extended Leave, the employee is still unable to return to work as a result of their serious health condition, the City and the employee will engage/continue to engage in the interactive process to determine if there is a reasonable accommodation that will permit the employee to return to work to perform the essential functions of their job. See Reasonable Accommodation Policy, Administrative Policy No. A-04. However, if during the course of the interactive process, it is determined the employee cannot perform the essential functions of the job, with or without a reasonable accommodation, the employee will be terminated.

H. Benefits During Extended Leave

Health Insurance: An employee's health insurance will continue as usual or for the period that the employee has paid sick leave, annual leave, administrative leave, comp time and bonus hours, whichever is greater. Under all leave circumstances, the employee will be responsible for paying any required employee premiums.

Holiday Pay: If the employee is on an unpaid status during their Extended Leave, holiday pay will not be paid to the employee during this time.

PTO: If the employee is on an unpaid status as of January 1st of the year, they will not be credited with PTO. However, upon returning to paid status, the employee will receive their PTO on a prorated basis.

I. Employees Remain Accountable for Abiding by City Policies and Procedures

FMLA and Extended Leave will not delay nor prevent disciplinary actions due to conduct that is independent of the need for FMLA and Extended Leave. For example, an employee under investigation for work performance deficiency, misconduct, or other policy violations that took place prior to the taking of FMLA or Extended Leave (even if such misconduct is discovered while the employee is on FMLA), shall be subject to the same disciplinary action as a similarly situated employee not utilizing FMLA or Extended Leave.

J. Job Reinstatement after FMLA and/or Extended Leave

Under most circumstances, employees will be reinstated to the same position they held at the time of the leave or to an equivalent position with equivalent pay, benefits, and other employment terms and conditions. However, an employee has no greater right to reinstatement than if the employee had been continuously employed rather than on leave. For example, if an employee would have been laid off had the employee not gone on leave, or if an employee's position has been eliminated during the leave, then the employee will not be entitled to reinstatement.

III. APPROVAL

APPROVED BY:

Richard Derrick, City Manager/CEO

REVIEWED BY:

Nicholas Vaskov, City Attorney

Brooke Stream, Director of Human Resources

Record of approved document can be obtained through the Human Resources Department.

EFFECTIVE DATE: 2/16/2016

REVISION DATE: 5/17/2022