

FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

A. APPLICATION. This policy applies to individuals who have been employed by the City for at least a total of twelve (12) months and who have worked at least 1,250 hours during the immediate preceding twelve (12) month period.

B. DEFINITIONS.

1. "Child" means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in the place of a parent under 18 years old or if 18 years old or older is incapable of self-care because of a mental or physical disability.
2. "Parent" is the biological parent of the employee or an individual who stood in place of the biological parent when the employee was a son or daughter.
3. "Qualifying Exigency" means one or more of the following: a) up to seven (7) calendar days for short term notice deployment; b) military events and related activities; c) childcare and school activities; d) financial and legal arrangements; e) counseling; f) short term rest and recreation; g) post deployment activities; and h) additional duties arising out of active service.
4. "Spouse" is a husband or wife.
5. "Serious illness" means an illness, injury, impairment or physical or mental condition that involves: (1) in-patient care in a hospital, hospice or residential medical care facility; (2) chronic conditions requiring continuing treatment by a health care provider; 3) permanent, long term conditions requiring medical supervision; 4) conditions requiring multiple treatments; 5) specialized pregnancy related conditions and 6) substance abuse treatment of the employee or a family member.

C. REASONS FOR LEAVE. An employee who meets the requirements set forth in Sections A and B above, may be granted a total of twelve (12) weeks of family medical leave during a twelve (12) month period, [the twelve (12) month period is based on a rolling year], for the following reasons:

1. A. The birth of the employee's child and in order to care for the child;

- B. The placement of a child with the employee by adoption or foster care;
- C. To care for the employee's spouse, child or parent who has a serious health condition;
- D. A serious health condition that renders the employee incapable of performing the functions of his or her job; or
- E. Due to a qualifying exigency that arises because a service member of the Reserves, National Guard or certain retired members of the regular armed forces or retired reserves has been called to federal active duty or ordered to federal active duty in the armed forces for a contingency operation.

2. BOTH SPOUSES WORKING FOR THE CITY. The total family leave that may be taken by spouses who are both employees of the City shall not exceed a total of twelve (12) weeks if the leave is taken for birth or adoption of a child or the serious illness of a parent. This section does not apply to the employee's own illness or the serious illness of a child. In those situations, both employees are entitled to a total of twelve (12) weeks leave.

3. BIRTH/PLACEMENT OF A CHILD. The entitlement to leave for the birth or placement of a child by adoption or foster care will expire twelve (12) months from the date of the birth or placement. The City is not required to grant intermittent leave in these circumstances although it may do so on a case by case basis

D. NOTICE OF LEAVE. An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment for the employee or family member, must submit an application for leave at least thirty (30) days before the leave is to begin. If leave is to begin within thirty (30) days, an employee must give notice to the City Clerk as soon as the necessity for the leave arises. When it is not practicable to provide advance notice, or when the need for the leave is not foreseeable, the employee must give notice as soon as practicable (absent an emergency situation, the same or next business day) and in compliance with the City's notice and procedural requirements for seeking leave as set forth in the City's Handbook. Further, the employee is required to follow the City's call-in policy set forth in the Handbook when the employee will be absent from work.

An employee requesting leave must complete an "Application for Family and Medical Leave" form. The completed application must state the reason for the leave, the duration of

the leave, and the estimated starting and ending dates of the leave. The completed application must be submitted to the City Manager via the City Clerk for approval.

- E. MEDICAL CERTIFICATION OF LEAVE.** An application for leave, based on the seriousness of the health condition of the employee or the employee's spouse, child or parent, must also be accompanied by a "Medical Certification Statement" completed by the health care provider stating the date on which the health condition commenced, the probable duration of the condition, and appropriate medical facts regarding the condition. The completed form is to be returned to the City within fifteen (15) days of receipt, unless the time is extended for good cause shown. Failure to provide the required information may result in denial of job protected leave unless the employee is able to provide adequate reason for the failure to provide the required information.

If the leave is needed to care for a spouse, child, or parent of the employee, the certification must so state an estimate of the amount of time the employee will need to be off work. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his or her job. The City may request a second opinion, at the City's expense. If the original opinion and the second opinion conflict, the City may require a third opinion by a physician jointly selected by the City and the employee. The City will bear the cost of the third opinion, which is final and binding on the employee and the City, as to the necessity of the medical leave. The City may require subsequent re-certification on a reasonable basis.

- F. PAID/UNPAID LEAVE.** The employee must first use accrued, but unused, leave as part of the twelve weeks. The order of usage, i.e. accrued vacation leave, accrued holiday leave (if any), accrued sick leave and accrued compensatory time off will depend on the reason for the leave and will be in accordance with the leave policies in the City's Handbook. Leave must be used in the same increments outlined in the Handbook for the applicable leave if that leave was taken for reason other than FMLA leave. After all vacation, holiday leave, sick leave and compensatory time off has expired, the remaining part of the twelve weeks will be without pay.

- G. BENEFITS COVERAGE DURING LEAVE.** During a period of family or medical leave, an employee will be retained on the City's health plan under the same conditions that applied before leave commenced. To continue health coverage, the employee must continue to make any contributions that he was making to the plan before taking leave. If the employee fails to return to work after the expiration of the leave, the employee may be required to reimburse the City for payment of all health insurance premiums made by the City during the family or medical leave as provided by the Family and Medical Leave Act.

An employee is not entitled to the accrual of any seniority or any other employment benefits that would otherwise have accrued during the period of leave. An employee who takes family or medical leave will not lose any seniority or employment benefits that accrued before the date leave began.

- H. **RETURN FROM LEAVE.** An employee must complete and submit to the City Manager via the City Clerk a "Notice of Intention to Return From Family or Medical Leave" form, before he/she can be returned to active duty status. If an employee wishes to return to work prior to the expiration of an approved family or medical leave of absence, notification must be given to the City Manager at least five (5) working days prior to the employee's planned return. An employee must also submit a fitness for duty certificate from the employee's health care provider indicating that the employee is able to resume work and is able to perform the essential functions of his/her position where the leave is due to the employee's serious health condition.

Upon return to work, an employee will be restored to his old position or to a position with equivalent pay, benefits and other terms and conditions of employment. The City cannot guarantee that an employee will be returned to his or her original job.

- I. **FAILURE TO RETURN FROM LEAVE.** The failure of an employee to return to work upon the expiration of a family or medical leave of absence will subject the employee to termination of employment unless an extension of leave is granted by the City Manager. An employee requesting an extension of leave must submit a request for an extension, in writing, to the City Manager via the City Clerk. The request must be accompanied by a physician's statement as to the necessity for the continued leave. The written request is to be made as soon as the employee realizes that he or she will not be able to return at the expiration of the leave period. The extension must be approved by the City Manager at his sole discretion.

- J. **MILITARY CARE GIVER LEAVE:** Up to twenty-six (26) weeks of leave may be granted in a single twelve (12) month period to an employee, including next of kin, who meets the requirements set forth in Subparagraph A above, to care for a covered service member for a serious injury incurred by the covered service member in the line of active duty. For the purpose of this section of the Policy, the following definitions apply:

1. "Covered service member" means a member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is on temporary disability retired list for a serious injury or illness. Former members of the Armed

Forces, National Guard or Reserves are not covered by this provision.

2. "Serious injury or illness" is one incurred in the line of active duty that may render the member unfit to perform his/her duties. It includes both physical as well as psychological injuries.

The City may require certification that the employee is needed to care for a seriously ill or injured service member. The certification may be completed by the Department of Defense health care provided, a Veterans Affairs health care provider, or a Department of Defense non-network TRICARE authorized private health care provider. The burden is on the employee to provide the Certification, upon request, and failure to do so may result in a denial of the leave.