

COUNCIL ACTION FORM

**SUBJECT: FMLA REVISIONS AND ADDITIONS MADE IN THE PERSONNEL
POLICIES AND PROCEDURES MANUAL**

BACKGROUND:

The Department of Labor issued a final rule to the Family and Medical Leave Act of 1993 to include several revisions to the existing law effective January 16, 2009. The Human Resources Department has made these revisions in the Personnel Policies and Procedures manual. The proposed wording changes are shown on the attachments in bold.

ALTERNATIVES:

1. Adopt the proposed changes to the Personnel Policies and Procedures manual.
2. Decline the proposed changes and retain the existing wording.

MANAGER'S RECOMMENDED ACTION:

These revisions provide language for administration of the City's FMLA policy and are needed to bring the City's personnel policies into compliance with federal law.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the revisions and additions to the Personnel Policies and Procedures manual.

10.16 Family and Medical Leave

1. Statement of Policy

In accordance with the Family and Medical Leave Act, the City will grant job protected, unpaid family and medical leave to eligible employees for up to twelve weeks per twelve-month period for any one or more of the following reasons:

- a. The birth of a child and to care for such child, or the placement of a child with the employee for adoption or foster care (Leave for this reason must be taken within the twelve-month period following the child's birth or placement with the employee); or
- b. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition; or
- c. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
- d. Because of any qualifying exigency (as the Secretary of State shall, by regulation, determine) 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 the Armed Forces in support of a contingency operation. **Qualifying exigency is defined and include absence for: (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities.**

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2. Servicemember Family Leave

Subject to certification, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember shall be entitled to a total of twenty-six weeks of leave during a twelve-month period to care for a servicemember with a serious illness or injury incurred in the line of duty or active duty. The leave described in this paragraph shall only be available during a single twelve-month period.

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3. Combined Leave Total

During the single twelve-month period described in Section 2, an eligible employee shall be entitled to a combined total of twenty-six weeks of leave under Sections 1 and 2. Nothing in this paragraph shall be construed to limit the availability of leave under Section 1 during any other twelve-month period.

4. Definitions

- a. Twelve-month Period - means a rolling twelve-month period measured backward from the date leave is taken.

- b. Immediate Family Member - includes spouse, child or parent. Step relationships are included; in-laws and unmarried domestic partners are not.
- c. Child - means a child either under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child.
- d. Serious Health Condition - means an illness, injury, impairment, or a physical or mental condition that involves:

1. Inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility,

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2. A period of incapacity requiring absence from work for more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

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a. Treatment two or more times, within 30 days of the first day of incapacity, (unless extenuating circumstances exist), by a health care provider; or

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b. Treatment by a health care provider on at least once occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

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The requirement in paragraphs 2(a) and (b) of this section means an in-person visit to a health care provider. The first visit (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

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3. Pregnancy or prenatal care by a health care provider.

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4. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

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a. Requires periodic visits at least twice per year for treatment by a healthcare provider, or by a nurse under direct supervision of a health care provider;

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b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

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c. May cause episodic incapacity rather than a continuing period of incapacity.

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5. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective.

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6. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for restorative surgery after an accident or other injury; or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment.

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- f. Active Duty – means duty under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.
- g. Covered Servicemember – means a 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.
- h. Outpatient Status – with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to:
1. a military medical treatment facility as an outpatient; or
 2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- i. Next of Kin – with respect to a covered servicemember, means the nearest blood relative of that individual.
- j. Serious Injury or Illness – in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

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e. . Continuing Treatment - means¶
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1. Two or more visits to a health care provider; or¶
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2. Two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider; or¶
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3. A single visit to a health care provider that results in a regimen of continuing treatment; or¶
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k. Incapacity – inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

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l. Regimen of Continuing Treatment – includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to the health care provider.

5. Coverage and Eligibility

To be eligible for family/medical leave an employee must:

- a. Have worked for the City for at least twelve months. If the employee has had a break in service of seven years or greater, those years of prior employment would not be counted except if the break in service was due to National Guard or Reserve military service, or where otherwise provided through a written agreement, including a collective bargaining agreement; and
- b. Have worked at least 1,250 hours over the previous twelve-month period.

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6. Intermittent or Reduced Leave

- a. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediately family member with a serious health condition or because of a serious health condition of the employee when "medically necessary".
 - 1. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
 - 2. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- b. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child only with the department's consent.
- c. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the twelve weeks prior to the beginning of the leave should be used for calculating the employee's normal work week.

7. Substitution of Sick Leave and Vacation

- a. In the case of an employee's personal illness or injury, all accrued sick leave must be used before unpaid leave will be granted. Sick leave may not be used for the care of family members, nor may it be used in connection with the birth of a child except as medically necessary for the health of the mother.
- b. At the employee's option, accrued vacation or compensatory time may be used concurrently with unpaid FMLA leave.
- c. Both paid and unpaid leave will be counted toward the maximum twelve weeks entitlement. This means that an employee will not be entitled to twelve weeks of unpaid leave in addition to any paid leave taken under the FMLA.

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8. Injury Leave and Workers' Compensation

When an employee is on injury leave and/or workers' compensation leave, such

leave will be designated concurrently as FMLA leave when the employee's condition is qualifying under the FMLA.

9. Notice Requirement

- a. An employee is required to give thirty days notice in the event of a foreseeable leave. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known.
- b. If an employee fails to give thirty days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until thirty days after the employee provides notice.

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10. Medical Certification

- a. For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form and return the certification to Human Resources. Medical certification must be provided by the employee within fifteen days after requested, or as soon as is reasonably possible.
- b. If an employee qualifies for FMLA and is absent because of his or her own health condition for more than three consecutive working days or the City becomes aware that an employee has been hospitalized, the City may designate that leave as FMLA by its own action.
- c. The City may require a second or third medical opinion (at its own expense), periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work. The City reserves the right to specify or approve the employee's selection of a physician.
- d. All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

11. Certification Related to Active Duty or Call to Active Duty

A request for leave under Section 1(d) must be supported by certification issued at such time and in such manner as the Secretary of State may by regulation prescribe. If the Secretary of State issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the City.

12. Effect on Benefits

- a. An employee granted an unpaid leave under this policy will continue to be covered under the City's employee health benefit trust, life insurance plan, and long-term disability plan under the same conditions as coverage would have been provided if he/she had been continuously employed during the leave

period. This means that the City will continue to pay the costs of such benefits as when the employee was in active pay status. In the case of family health coverage, the employee will be responsible for payment of the employee's premium share as outlined below.

- b. Employee contributions for family health coverage will be required either through payroll deduction or by direct payment to the City. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.
- c. If an employee's contribution is more than thirty days late, the City may terminate the employee's insurance coverage.
- d. If the City pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the City for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.
- e. If the employee fails to return from work upon unpaid family/medical leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member, or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the City may seek reimbursement from the employee for the portion of the premiums paid on behalf of that employee (also known as the employer contribution) during the period of leave.
- f. An employee is not entitled to accrual of sick leave or vacation during periods of unpaid leave but will not lose sick leave, vacation or seniority accrued prior to leave. In accordance with current City policy, seniority will continue to accrue during periods of unpaid leave up to 60 days.

13. Job Protection

If the employee returns to work following FMLA leave he/she will be entitled to return to his/her position. The right to reinstatement is, however, subject to any changes that would have affected his/her employment status even if such leave had not been taken. This means that the employee could be subject to transfer or layoff due to reorganization or abolishment of his/her position.

14. Family/Medical Leave Forms to be Submitted by the Employee

- a. Certification of Health Care Provider(Family Member/Serious Health Condition or Employee/Serious Health Condition)
- b. Certification of Qualifying Exigency for Military Family Leave
- c. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

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c. Authorization for Payroll Deduction for Benefit Plan Coverage Continuation
During a Family/Medical Leave of Absence

These forms may be obtained from the Human Resources Department,

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d. Fitness for Duty to Return From
Leave¶
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