



ADMINISTRATIVE POLICY & PROCEDURE MANUAL

SECTION: Personnel (3000)

POLICY NO.: 3501.4

ADMINISTERING DEPARTMENT(S): Human Resources

SUBJECT: Family and Medical Leave Act

Purpose: To establish guidelines and procedures for the administration of the Family and Medical Leave Act (FMLA) of 1993.

Policy: The City of Clearwater will comply with all legal and administrative provisions of the Family and Medical Leave Act. This policy pertains to all regular City employees who meet the eligibility requirements of the Act.

Definitions:

The FMLA provides for up to 12 weeks of job-protected, unpaid leave for employees who must be absent from the workplace because of a serious health condition which makes the employee incapable of performing his/her job; to care for a spouse, child or parent with a serious health condition; to care for a spouse, child or parent who is a member or veteran of the Regular Armed Forces undergoing medical treatment, recuperation or therapy for a serious injury or illness; or because of the birth of the employee's child, or the placement of an adopted or foster child.

The Act also provides leave when a "qualifying exigency" arises for an employee with a spouse, parent or child who is on or has been called to active duty in the Regular Armed Forces and deployed to a foreign country, or for activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's deployment or impending deployment. An employee with a spouse, parent, child, or next of kin who incurs a serious injury or illness on active duty in the Regular Armed Forces may take up to 26 total weeks of leave to care for the injured service member in one 12-month period, and may take up to 12 total weeks of leave for qualifying exigencies arising out of the military member's active duty or call to active duty in support of a contingency operation (in combination with regular FMLA leave).

Administrative Repeal: The provisions contained herein shall supersede and replace all prior policies and procedures regarding this subject.

/s/William B. Horne II _____
William B. Horne II, City Manager

6/25/13 _____
Date

Procedure: See Attached.

Effective Date: 2/1/2001

Amended or Reissue Date: June, 2013

Reference(s): United States Code, Title 29, Section 2601

Statutes: _____ Ordinances: _____ Resolutions: _____ Legal Opinions: _____
Administering Department _____ Policy Committee _____



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FAMILY MEDICAL LEAVE PROCEDURES

I. EMPLOYEE ELIGIBILITY

A. Medical Necessity Requiring Leave

1. Serious health condition of employee

- a. Employee is incapable of performing the functions of his/her position.
- b. A serious health condition is defined as:
 - 1) Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
 - 2) Any period of incapacity requiring absence of three consecutive, full calendar days or more from work that involves continuing treatment by or under the supervision of a health care provider;
 - 3) Any period of incapacity due to pregnancy or for prenatal care;
 - 4) Any period of incapacity or treatment therefore due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);
 - 5) Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, etc.); or
 - 6) Any absence to receive multiple treatments, including any period of recovery there from, by or on referral by a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, etc.).
- c. A health care provider is defined as any of the following who are authorized to practice in the State where provider is practicing:
 - 1) A doctor of medicine (MD) or osteopathy (DO);
 - 2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors;
 - 3) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants;
 - 4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 - 5) A health care provider listed above who practices in another country who is authorized to practice under the laws of that country.



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- 6) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate claim for benefits.
 2. Care for employee's spouse, child or parent (including someone who stands/stood in loco-parentis which means he/she acted in place of a parent providing for care and support while employee was a minor)
 - a. Family member must have serious illness, injury, impairment, or physical/mental condition.
 - b. Family member requires in-patient care at a hospital, hospice, or residential medical care facility.
 - c. Family member requires continuing treatment by a health care provider as defined above.
 - d. Includes child older than 18 who is incapable of self-care due to a disability.
 - e. Family member needs employee to provide care, either physical or psychological.
 3. Birth of employee's child or placement of adopted or foster child
 - a. Includes stepchild or legal ward.
 - b. Includes child whose day-to-day care and financial support is the responsibility of employee.
- B. Eligibility Criteria
1. Employed at least 12 months prior to start of leave.
 2. Worked at least 1,250 hours during the 12-month period determined by using a rolling 12-month period measured backward from the date an employee's FMLA leave will begin. Although the 12 months of employment need not be consecutive, employment prior to a continuous break in service of seven years or more need not be counted except for: (1) a break in service resulting from an employee's fulfillment of National Guard or Reserve military reserve obligations; and (2) where a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service.
 3. Currently maintained on payroll.
- C. Ineligible for Consideration
1. Voluntary or cosmetic treatment not medically necessary except when in-patient hospitalization is required or complications occur.



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2. Leave for care of in-laws.

II. TERMS OF LEAVE

The City's leave year is defined as an annual calendar year beginning January 1 and ending December 31.

A. Leave for Employee or Family Illness

1. May work reduced schedule.
2. May take intermittent leave.
3. May take a maximum of twelve (12) weeks per 12-month period.

B. Leave for Birth, Adoption, or Placement of Employee's Child

1. Must be completed within one (1) year of the birth/adoption/placement.
2. Limited to twelve (12) weeks' total leave per 12-month period per couple if mother and father are City employees.
3. Intermittent or reduced-hour leaves allowed only with approval of Department Director and the Human Resources Department.
4. Must provide copy of birth certificate or adoption/placement paperwork.
5. Sick leave may not be utilized for bonding time or to provide psychological comfort. Employees will be required to utilize vacation or floating holiday leave for such purposes, or may request leave without pay if vacation and floating holiday leave balances are exhausted.

III. ELIGIBILITY PROCEDURES

A. Notification of Leave

1. If the leave is foreseeable, the employee must give verbal notice to his/her department at least 30 days in advance of the need for leave. Failure to provide 30 days' notice may result in the City requiring the employee to delay the leave for up to 30 days after notice is provided.
2. If the leave is unforeseeable, the employee must give verbal notice to his/her department as soon as the employee knows of the need for leave.
3. The employee's department will notify Human Resources after an employee has been absent for fourteen (14) consecutive calendar days, when FML is specifically requested by the employee, or when the Department believes the employee may be experiencing a situation that qualifies for FML.

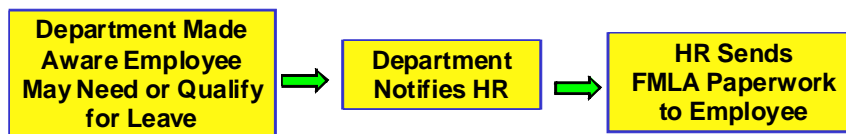


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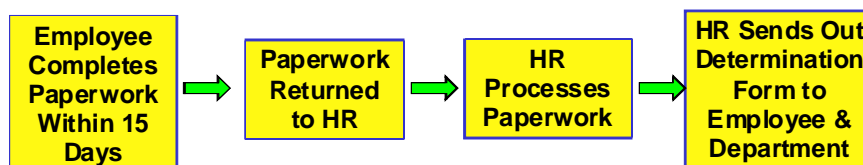
4. Human Resources will mail the employee an FMLA packet within two days of receipt of the information that this leave is being preliminarily designated as FMLA leave.
5. The Family and Medical Leave (FML) packet includes the Family & Medical Leave Policy, a Notice of Eligibility and Rights & Responsibilities, and a Certification of Health Care Provider for either employee or family member's serious health condition.
6. The Family and Medical Leave Preliminary Designation Form, together with the completed Certification of Physician or Practitioner signed by the physician if needed, must be returned to Human Resources within 15 calendar days from the date it was provided to the employee.
7. On the 15th day, if the paperwork is still not returned to Human Resources, a follow up notice will be sent to the employee. The notice will give the employee another 10 calendar days to return the required paperwork.
8. Failure to provide the designation form and medical certification, if needed, within the prescribed time limit, may result in denial or delayed continuation of FMLA leave and could result in disciplinary action if this failure results in the leave being unauthorized. An employee on leave that is deemed unauthorized will not be permitted to use paid leave time.
9. Human Resources will forward to the employee a Family and Medical Leave Designation Notice. A copy of the Family and Medical Leave Designation Notice will also be provided to the employee's department.

Notification Steps

Initial Notification Process



Paperwork Submission/Processing Steps





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B. Employee's Obligations While on Leave

1. Contact supervisor once every two weeks to report status.
2. Continuation of benefits during unpaid status:
 - a. Employee on unpaid leave is responsible for remitting payments of insurance-related deductions to the City. The Human Resources Department will inform the employee of the amount to be remitted for insurance-related deductions.
 - b. Payments are due to Human Resources on or prior to the Friday of each pay week.
 - c. Employee will be offered COBRA coverage for medical insurance once the 12 weeks of FML are exhausted if the employee is on an approved leave of absence without pay.
 - d. If evidence of hardship is presented and is accepted by the City Manager, employee may authorize the City to pay his/her health insurance premiums (employee's share of employee only premium, dependent health coverage, etc.) and deduct payments upon employee's return or bill an employee who does not return from leave. In such an instance, employee will be required to sign an agreement to reimburse the City upon return to active duty for all monthly health insurance deductions paid by the City during any period of unpaid leave. Employees whose health insurance is being paid in accordance with this agreement will not be covered under COBRA but will continue to be covered similar to other employees on active status.
3. If unable to return at the end of the FMLA period and if the employee is in an unpaid status, the employee must request in writing a leave of absence without pay in accordance with the City's Civil Service Rules and Regulations. The employee should contact the Human Resources Department at 562-4870 to obtain information on applying for a leave.

C. FMLA Medical Certification

1. Certification of Health Care Provider
 - a. Employee must provide to the Human Resources Department a form completed by a health care provider documenting the employee's need for family/medical leave. If the form is not complete or clarification is needed in order for Human Resources to make a determination, the employee may be required to submit additional information.
 - b. Form must be submitted within fifteen (15) calendar days of original notification.
 - c. Beginning and end dates of leave are determined using information presented by the healthcare provider on the form.



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- d. City may require a second or third tie-breaking examination at City's expense.
 - e. Employee may be required to furnish subsequent recertifications.
2. Return to work from employee illness
- a. If absent from work for three (3) or more consecutive workdays, the employee must provide to his/her respective department a doctor's certification excusing the employee from duty for the duration of the absence and stating the employee is fit to return to duty.
 - b. Employee will not be allowed to return to work without the doctor's certification.
 - c. If the employee returns to work with reduced hours, it will not be necessary to submit a new FML request.
 - d. Department payroll preparers will track the total number of FML hours used during the leave period and provide this information to Human Resources at the time the employee returns to full duty.
- D. Accrued Leave
1. Employee illness
- a. Employee must exhaust all accrued sick, floating holiday, incentive, and vacation leave prior to entering unpaid Family/Medical Leave (FML) status. Use of accrued leave time runs concurrently with FMLA designated time.
 - b. Employees receiving Workers Compensation benefits are not required to utilize any form of accrued paid leave. However, employees shall be permitted upon written request to utilize paid leave to supplement Workers' Compensation to the extent that the combined Workers Compensation payments and paid leave equal the employee's total compensation prior to receiving Workers Compensation benefits. When an employee requests to not supplement Workers' Compensation benefits with accrued paid leave time, he/she is responsible for remitting payment for all voluntary and involuntary payroll deductions. Time missed due to a Workers' Compensation injury will run concurrently with FMLA-designated time.
2. Family illness
- a. Employee must exhaust all accrued sick, floating holiday, incentive, and vacation leave prior to entering unpaid FML status. Use of this time runs concurrently with FMLA-designated time.



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3. Child's birth or placement of adopted or foster child
 - a. Employee must exhaust all available accrued floating holiday, incentive, and vacation leave prior to entering unpaid FML status. Use of this time runs concurrently with FMLA-designated time.
4. Leave Charged Hourly for FLSA-exempt Employees
 - a. Salaried and exempt employees are charged leave time hourly for absences related to FML. Employees in positions designated as exempt from the overtime provisions of FLSA (Fair Labor Standard Act) are charged leave time on an hour for hour basis while on FML.
5. Unpaid Family Medical Leave (FML)
 - a. Employees will not accrue seniority or other employment benefits for the duration of unpaid FML-designated time when the time in an unpaid status exceeds 30 calendar days.

IV. CITY CONSIDERATIONS/REQUIREMENTS

- A. Continuation of City-provided Benefits While Employee on FML
 1. City maintains City-paid single coverage health insurance.
 2. City maintains City-paid group life insurance.
 3. City maintains long-term disability insurance if applicable.
- B. City Recovery of Premiums Paid During Family Medical Leave (FML)
 1. Recovery may be instituted only if the employee chooses not to return to work and there are no extenuating circumstances acceptable by the City or defined in the FMLA.
 - a. Examples of circumstances requiring recovery:
 - 1) Employee chooses to remain home with newborn.
 - 2) Employee accepts employment elsewhere.
 - 3) Employee chooses retirement; reason unrelated to FML.
 2. An employee who chooses not to return to work may continue health coverage under COBRA provisions.



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C. City May Require Second or Tie-breaking Third Medical Opinion

1. City pays for second and/or third opinions.

D. Upon Employee's Return to Work

1. Employee's sick and vacation leaves are resumed in same manner as prior to FML.
2. Employee's benefits are resumed in same manner and at same levels as prior to FML.
3. Employee is not required to requalify for benefits.
 - a. Paid FML (12-week leave) is treated as continued service for purposes of vesting and eligibility to participate in pension.
 - b. Employee is returned to the same or equivalent position as held prior to commencement of FML (equivalent position means same pay, benefits, and working conditions involving similar duties and responsibilities).
 - c. City will treat the employee as having voluntarily resigned if the employee refuses an offer of reinstatement to his/her same position or an equivalent position.

V. ENFORCEMENT MECHANISMS AVAILABLE TO EMPLOYEES

A. Unlawful Acts By Employer

1. Interfering with, restraining, or denying the exercise of any right provided by FMLA.
2. Discharging or discriminating against any individual for opposing any practice or because of involvement in any proceeding related to FMLA.

B. Employee Denied Leave or Reinstatement In Violation of FMLA

1. Employee may file complaint with the City's Employee Benefits/Employee Relations Manager in the Human Resources Department.
2. If the situation is not resolved at the City's level, the employee may file a complaint with the Department of Labor or the employee may file a private lawsuit against the City for violations in accordance with the guidelines specified in 29 CFR 825.400.

C. Undisclosed Leave

1. If employee is on vacation, sick leave, Workers' Compensation, etc., that later is determined to be eligible for FML, the City will retroactively redesignate the entire period as FML.



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2. In no circumstances will a retroactive designation be made more than two (2) days after the employee's return from leave or be based on information other than that provided by the employee or by the physician(s).