*City Personnel Policy*

# FAMILY AND MEDICAL LEAVE ACT

POLICY: 705

Council approval: ~~03/29/2010~~ # Pages: 6

**POLICY:**

It is the policy of the City to comply with the legal requirements and regulations of the Family and Medical Leave Act ("FMLA") which grants job-protected, unpaid, family medical leave to eligible employees for up to a combined total of 12 work weeks (or up to a combined total of 26 work weeks for a request involving item 6 below) in a 12-month period for:

1. The birth of ~~the employee's child and care of the newborn~~ a child and to care for the newborn child within one year of birth;
2. ~~Adoption or the foster care placement of a child with the employee and care of such child~~The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
3. To ~~C~~care for the employee's spouse, ~~son, daughter~~ child, or parent who has a serious health condition; or
4. The employee's serious health condition that ~~results in an inability to perform one or more of the essential functions of the employee's job~~ makes the employee unable to perform the essential functions of his or her job.
5. The need for leave because of "any qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is on active military duty or has been notified of an impending call to active military duty status in support of a contingency operation.
6. The care of the employee's spouse, son, daughter, parent, or next of kin when such relative is a covered service member who is recovering from a serious illness or injury sustained in the line of military duty or active duty in a single 12-month period.

If both spouses are employed by the City, they will be allowed up to 12 combined weeks of FMLA leave for items one, two, and parent under item three.

**PURPOSE:**

The intent of the FMLA is to allow employees to balance their work load and family life by taking reasonable unpaid leave for specific reasons listed above in a manner that accommodates the legitimate business interests of the City.

**APPLICABILITY:**

Any employee who: (1) has been employed by the City for at least 12 months; and (2)

has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

Calculation of hours worked in the prior 12-month period will include any time worked even though a break in service of 5 years or less has occurred. Time on active military service shall be counted as if the employee was at work regardless of the length of such break in service.

**DEFINITIONS:**

Serious Health Condition. For the purpose of this policy a serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:

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, and any period of incapacity or subsequent treatment in connection with such inpatient care; or,
2. Continuing treatment by a health care provider which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities) due to:

    A. A health condition (including treatment or recovery) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

        (1) Treatment two or more times by or under the supervision of a health care provider within the first 30 days of incapacity; or

        (2) One treatment by a health care provider with a continuing regimen of treatment.

    B. Pregnancy or prenatal care. (A visit to the health care provider is not necessary for each absence.) or,

    C. A chronic serious health condition which continues over an extended period of time, requires at least two visits per year to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or,

    D. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or,

    E. Any absences to receive multiple treatments or restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatment for cancer).

12-Month Period. The City's chosen benefit determination period for Family and Medical Leave consists of a rolling 12-month period measured backward from the beginning date of the requested leave.

Any Qualifying Exigency. This term is used to mean any need that falls under the following broad categories: (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 not encompassed in the other categories, but agreed to by the City and employee.

**PROCEDURE:**

1. **EMPLOYEE RESPONSIBILITIES**. Employees must give thirty (30) days' written advance notice to their Department Head of a need to take FMLA leave when it is foreseeable for the birth or placement of a child for adoption, or foster care, or for planned medical treatment. When unforeseen events occur that require FMLA leave, employees must give notice as soon as practicable, following usual and customary call-in procedures.

   A. Notice may be given either in person, email? or by phone when medical emergencies are involved; and, may be given by a spouse or family member if the employee is unable to do so due to a serious health condition.

   B. Employees should notify their Department Head when any change occurs in the circumstances for which leave is being taken.

   C. Employees must provide timely medical certification on forms provided by the City for FMLA leave.

   D. The employee must continue to pay the employee's share of group insurance costs as outlined in item #9 which follows.

   E. The employee should advise the Department Head if FMLA leave is being requested to be taken intermittently.

   F. If the employee has been on FMLA leave for the employee's serious illness or injury, the employee ~~will~~ may have to undergo a fitness-for-duty examination at the leave's end to certify that the employee is able to perform the job's essential functions with or without reasonable accommodation.

   G. An employee who takes intermittent leave must make a "reasonable effort" to schedule his or her leave to avoid unduly disrupting the City's operations.

2. **EMPLOYER RESPONSIBILITIES.**

   A. The City will designate in writing when paid leave will be counted toward the employee's family medical leave allotment.

   B. The City will notify the employee of the requirement to provide medical certification from a health care provider to support FMLA leave requests. This certification must be provided within fifteen (15) calendar days from the date the employer designates leave as FMLA leave and generally every 30 days thereafter. Forms can be obtained in the Human Resources Department or on the City's intranet. ~~and are also available on the Human Resources Department's web page at councilbluffs-ia.gov.~~

C. ~~The City~~Human Resources may provide a statement of the employee's essential functions to the physician and request the physician's certification to specify what functions the employee cannot perform.

D. ~~The City~~Human Resources may directly contact the employee's health care provider for the purpose of authenticating and clarifying the medical certification.

E. ~~No~~ An employee who has been absent for a serious health condition ~~will~~ may be ~~allowed to resume his/her normal job activities without~~required to obtain a City Doctor's Certificate form from the attending physician indicating the employee can perform the essential functions of the job (with or without reasonable accommodation).

F. As per City Policy, should conditions warrant, the City may opt to have the employee examined by a City physician in order to determine the employee's fitness for duty. If this should be required, the City will pay the cost of the exam.

3. **INTERMITTENT LEAVE**. 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 immediate family member with a serious health condition or because of a serious health condition of the employee when "medically necessary".

A. Medically necessary means there must be a medical need for the leave and the leave can best be accomplished through an intermittent or reduced leave schedule.

B. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates a recurring period of leave when the leave is planned based on scheduled medical treatment.

4. **ELIGIBILITY FOR PERFECT ATTENDANCE PAY.** ~~The fact that an employee's absence has been designated as Family Medical Leave will not affect the employee's eligibility for pay or leave benefits awarded for Perfect Attendance.~~ Absences that are protected by the FMLA will not disqualify an employee from earning Perfect Attendance.

5. **ALTERNATIVE DUTY.** Time spent working an alternative duty assignment or limited duty assignment shall not be counted toward an employee's Family Medical Leave entitlement.

6. **USE OF PAID LEAVE.** The City will allow the employee to ~~substitute~~ use any form of paid leave to which the employee would normally be eligible according to the terms and conditions of the applicable paid leave policy in lieu of any or all of the unpaid leave permitted by law. Absent any other eligible form of paid leave, the City will require the employee to utilize all accrued vacation and personal leave before taking unpaid leave. All leave, whether paid or unpaid will count toward the 12 (or 26) workweek limitation provided by the law.

7. **HOW FMLA LEAVE INTERACTS WITH CITY PAID LEAVE**. The FMLA requires

that the City allow an employee unpaid leave when he/she is eligible for FMLA leave, as described above. The law permits the City to require the employee to use accrued paid annual leave, sick leave, and/or Injury-on-the job leave which may be counted, concurrently, with FMLA leave. Accordingly, appropriate paid leave will be substituted by the City for unpaid FMLA leave and counted against the 12 week FMLA leave entitlement. In sum, an employee on FMLA leave will have his or her paid leave counted toward the 12 week FMLA allowance, until such paid leave has been exhausted. Any subsequent FMLA leave will be unpaid, up to a total of 12 weeks.

~~7.~~8. **HOLIDAYS.** If an employee needs less than a full week of FMLA leave, and a holiday falls within the partial week of leave, the hours that the employee does not work on the holiday are not counted against the employee's FMLA leave entitlement.

8.9. **BENEFIT ACCRUAL.** All benefit accruals will cease beginning with the first next pay period in which the employee is utilizing unpaidafter the employee exhausts their paid leave. Accruals will begin again when the employee resumes a paid status for an entire pay period. .

9.10. **GROUP INSURANCE.** The FMLA requires the City to allow employees to continue coverage under the City's group insurance plan for the duration of the leave.

A. In the case of paid FMLA leave, the City and the employee's share of health plan premiums will be paid in the customary manner by payroll deductions.

B. In the case of unpaid FMLA leave, employees will be required to remit the employee's share to the City Treasurer by the first of the month for which the coverage is being paid, subject to the grace period described below.

C. There is a thirty (30) day grace period after which coverage will be terminated if the employee has not paid the respective share of the premium. This should be carefully noted by the employee since it places upon the employee the responsibility of ensuring the continuation of health coverage during a period of unpaid leave.

D. In lieu of provisions B and C above, the employee may voluntarily make arrangements with the Human Resources Department to pre-pay the estimated amount that will be owed during the unpaid portion of the leave through payroll deduction during the paid portion of the leave; or, if necessary, to pay the amount owed through payroll deduction upon return from the unpaid leave. This method allows the employee to continue to pay for health premiums on a pre-tax basis.

E. If employee requests or allows coverage to lapse, coverage will be reinstated immediately upon return to active duty.

10.11. **RETURN TO WORK.** Upon return from FMLA leave, an employee must be restored to the employee's original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment, provided that the employee is able to perform the essential functions of the job. If the employee is unable to perform the essential job functions with, or without, reasonable accommodation, the employee has no right to be restored to his or her position, or to an equivalent position. .

A. The employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave. If an employee is on unpaid FMLA leave, other benefits, and accrual of benefits, shall be governed the same as any other unpaid City leave.

B. A key employee, defined as an employee who is salaried and is paid among the highest ten percent of the City's salaried and non-salaried FMLA eligible and non-eligible employees, may be denied reinstatement when it can be shown that substantial and grievous economic injury to City operations could occur should the key employee in question utilize FMLA leave. The Director of Human Resources will notify the employee making the FMLA leave request in writing if he/she has been designated as a key employee.

~~11.1. **HOW FMLA LEAVE INTERACTS WITH CITY PAID LEAVE**. The FMLA requires that the City allow an employee unpaid leave when he/she is eligible for FMLA leave, as described above. The law permits the City to require the employee to use accrued paid annual leave, sick leave, and/or Injury on the job leave which may be counted, concurrently, with FMLA leave. Accordingly, appropriate paid leave will be substituted by the City for unpaid FMLA leave and counted against the 12 week FMLA leave entitlement. In sum, an employee on FMLA leave will have his or her paid leave counted toward the 12 week FMLA allowance, until such paid leave has been exhausted. Any subsequent FMLA leave will be unpaid, up to a total of 12 weeks.~~

12. **DISCLAIMER**. If any provision of this policy conflicts with a provision of the FMLA or could be interpreted to provide a benefit greater than what is intended in the FMLA, the provision of the FMLA shall prevail and be applied.

13. **QUESTIONS**. Questions regarding the use of and qualifications for FMLA leave should be directed to the Human Resources Department.