

HUMAN RESOURCE POLICY

#14 (BEN)

FMLA – FAMILY MEDICAL LEAVE ACT

Approved by: Personnel Board 11/23/2015

City Council 1/12/2016

Mayor of Omaha: Jean Stothert
City Council President: Pete Festersen
Human Resources Director: Mikki Frost

Pursuant to the Omaha Municipal Code, Section 23-65, this document is a Human Resource policy of the City of Omaha. Please check the City's website, <http://www.cityofomaha.org/humanresources/public-documents/hr-policies> for the latest version of this policy. Where no policy or guideline exists or if there are questions on this policy, please contact the Assistant Human Resources Director/Labor Relations Director in the Human Resources Department.

Purpose:

The purpose of this policy is both to set forth the legal requirements and regulations of the Family Medical Leave Act (FMLA) and to reiterate the City's commitment to comply with and implement the legislation and any revisions thereafter. This policy provides City of Omaha employees with a general description of their FMLA rights and obligations. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. The Human Resources Department Benefits Division is responsible for the administration of this policy and is available to answer any questions regarding its content.

Policy:

A. Definitions

Employee: An employee must have worked for the City for at least twelve (12) months and worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. Time spent on paid or unpaid leave, including FMLA leave, is not included as hours worked and not counted in determining the 1,250 hours eligibility test for an employee under FMLA.

Immediate Family Member: The spouse, son, daughter, or parent of the employee. Spouse means a husband or wife as recognized under state law for purposes of marriage. A son or daughter is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing "in loco parentis" who is either under eighteen (18) years of age or is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence. Parents mean the biological, step or foster father or mother, or any other individual who

stood “in loco parentis” to the employee when the employee was a child. This term does not include parents “in law.”

Health Care Provider: Providers who may provide certification of a serious health condition include:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the City or the City's group health plan's benefits manager; and,
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity (inability to work) of more than three (3) consecutive calendar days combined with at least two (2) visits to a health care provider or one (1) visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a 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, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

B. General Provisions and Types of Leave Covered

Under this policy, the City will grant up to twelve (12) weeks of job-protected, unpaid leave during a 12-month period to eligible employees taking leave for one of the reasons listed below:

- The birth of a child and in order to care for the newborn child within one (1) year of birth.
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement.
- To care for an immediate family member with a serious health condition.
- The serious health condition of the employee making them unable to perform the essential functions of his or her job.
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

Additionally, the City will grant up to twenty-six (26) weeks of job-protected, unpaid military caregiver leave during a "single 12-month period" to eligible employees taking leave to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin. The single 12-month period for military caregiver leave is different from the 12-month period used for FMLA leave reasons.

Use of FMLA leave shall not be considered when evaluating an employee's performance. Any supervisor referral for sick leave shall not include any time an employee was on approved FMLA.

C. Amount of Leave

An eligible employee can take up to twelve (12) weeks for the FMLA circumstances for the five (5) bullets above under this policy during any 12-month period. The City will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy in the last twelve (12) months and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

As stated, an eligible employee can take up to twenty-six (26) weeks for the FMLA circumstance of military caregiver leave during a single 12-month period. For this military caregiver leave, the City will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of twenty-six (26) weeks available.

Employees who are legally married who both work for the City and if each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to

care for a parent (but not a parent "in-law") with a serious health condition, the two employees may only take a combined total of twelve (12) weeks of leave. If two employees are legally married and both work for the City and each wishes to take leave to care for a covered injured or ill servicemember, the employees may only take a combined total of twenty-six (26) weeks of leave.

D. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the City of Omaha Human Resources Department Benefits Division. Within five (5) business days after the employee has provided this notice, the Human Resources Department Benefits Division will complete and provide the employee with the City's Notice of Eligibility and Rights & Responsibilities form.

When the need for the leave is foreseeable, the employee must provide the City with at least thirty (30) days' notice. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. For planned medical treatment, the employee must consult with their supervisor and try to schedule an appointment at a time that minimizes the disruption to the City. The City would generally prefer that planned medical treatment be scheduled for the beginning or the end of the work shift if it must occur during work hours. The employee should consult with his/her supervisor prior to scheduling of treatment to arrange a schedule that best suits the needs of both the employee and employer. When the need for FMLA leave is not foreseeable, the employee must comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances, as set forth in the relevant City policy, ordinances, or labor agreements.

In circumstances where an employee has been absent for three (3) consecutive days due to illness or injury, supervisors must promptly report such absences to the Human Resources Department Benefits Division so that FMLA paperwork may be sent to the employee.

E. Certification for the Employee's Serious Health Condition

The City will require certification for the employee's serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the City's Certification of Health Care Provider for Employee's Serious Health Condition form maintained by the Human Resources Department Benefits Division.

In situations where the City determines there are deficiencies in the medical certification requiring verification or clarification from the employee's health care provider, it shall be the responsibility of the employee, not the City, to resolve such insufficiencies. To give the employee an opportunity to resolve such issues, the City will contact the employee

in writing and explain what deficiencies and/or further clarification is needed from the health care provider to allow the City to make its FMLA determination. Employees will be given a minimum of seven (7) calendar days to provide the necessary information to the City to correct the deficiencies. Failure to provide such information in a timely manner may result in a denial of continuation of leave.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay the employee to get a certification from a second doctor, which the City will select. The City may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

F. Certification for the Family Member's Serious Health Condition

The City will require certification for the family member's serious health condition. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the City's Certification of Health Care Provider for Family Member's Serious Health Condition form maintained by the Human Resources Department Benefits Division.

In situations where the City determines there are deficiencies in the medical certification requiring verification or clarification from the employee's family member's health care provider, it shall be the responsibility of the employee, not the City, to resolve such insufficiencies. To give the employee an opportunity to resolve such issues, the City will contact the employee in writing and explain what deficiencies and/or further clarification is needed from the employee's family member's health care provider to allow the City to make its FMLA determination. Employees will be given a minimum of seven (7) calendar days to provide the necessary information to the City to correct the deficiencies. Failure to provide such information in a timely manner may result in a denial of continuation of leave.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee's family member to get a certification from a second doctor, which the City will select. The City may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered

final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

G. Certification of Qualifying Exigency for Military Family Leave

The City will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the City's Certification of Qualifying Exigency for Military Family Leave form maintained by the Human Resources Department Benefits Division.

H. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

The City will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using either the City's Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave form or the City's Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave form. The Human Resources Department Benefits Division maintains both military leave forms.

I. Designation of FMLA Leave

Within five (5) business days after the employee has submitted the appropriate certification form, the Human Resources Department Benefits Division will complete and provide the employee with a written response to the employee's request for FMLA leave using the City's Designation Notice form. Records and documents relating to FMLA requests, medical certifications, and/or medical histories of employees or their family members, created for purposes of FMLA, are required to be maintained confidentially by the Human Resources Department in a separate file/records from the usual Human Resources file.

J. Employee Status and Benefits During Leave

While an employee is on leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the amount it paid for the employee's health insurance premium during the leave period.

Employees are still responsible to make their share of health insurance premium payments to maintain health benefits while they are on leave. If the employee does not earn sufficient pay to cover their portion of the premium, then the employee is required to make a payment to the City of Omaha at that time. In addition, if an employee is without pay for two (2) consecutive pay periods, then he/she will need to arrange to continue to make their employee share of the premium payments on their health insurance to maintain health benefits while they are on leave. In either instance, such employee must contact the Human Resources Department Benefits Division to make arrangements. If the premium is not paid by the 5th of the following month (e.g. March without pay, must pay premium by the 5th of April), then the benefit(s) will cease the last month in which the premium was paid until the employee returns to work and recommences premium payment deductions.

The City will not pay premiums for other benefits (e.g., dental insurance, life insurance, supplemental insurance coverage, etc.) while an employee is on FMLA leave, unless the employee's earnings from utilizing paid leave are sufficient to cover the cost of the premiums.

K. Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a written fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the City's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits, and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

L. Use of Paid and Unpaid Leave

The FMLA permits an employer to require an employee to use accrued paid leave concurrently with approved unpaid FMLA leave. It is the policy of the City that when an employee is approved for FMLA leave, he/she must use all paid leave (annual, sick, comp, IOD, etc.) prior to being eligible for unpaid FMLA leave. City rules on criteria for using paid leave, as set forth by policy, ordinance, and labor agreement, will still apply. For example, an employee approved for FMLA leave for their own serious health condition is able to have their sick leave run concurrently with the FMLA leave. An employee approved for FMLA leave for the serious health condition of an immediate family member may be able to use family sick leave concurrently with the FMLA only if the relevant City policy, ordinance, or labor agreement states such immediate family member qualifies under family sick leave and then only up to the set amount of hours.

In sum, an employee on FMLA leave will have his/her paid leave counted towards the twelve (12) week FMLA allowance (or twenty-six (26) week military caregiver leave)

until such paid leave has been exhausted. Any subsequent FMLA leave will be unpaid, up to the approved FMLA total.

M. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in twelve (12) consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of twelve (12) weeks (or twenty-six (26) weeks to care for an injured or ill servicemember over a 12-month period).

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, the City and the employee **must** mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one (1) year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach an agreement with the City before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

N. Recertification

The City may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every thirty (30) days and only when circumstances have changed significantly, or if the City receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the City may request recertification for the serious health condition of the employee or the employee's family member every six (6) months in connection with an FMLA absence. The City may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

O. Intent to Return to Work From FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.