

3 - EMPLOYEE BENEFITS

3.7 - Family and Medical Leave

Revised: July 1, 2007

Reviewed: July 2018

It is the City's intent to comply with the *Family and Medical Leave Act of 1993* and with any amendments or clarifications that have been made to that Act. Additional definitions and terms provided in the Act's regulations and court decisions may be used by the City as a guide in determining eligibility and compliance with the Act.

THE ACT

The Family and Medical Leave Act requires public and private employers with at least fifty workers to provide their employees with family and medical leave under certain limited circumstances. The law applies equally to both male and female employees.

Covered employers are required to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period. The City measures the 12-month period forward from the date of the employee's first use of FMLA regardless if that day is paid or unpaid. The second 12-month period begins the first time FMLA leave is taken after the completion of any previously established 12-month period of eligibility.

A husband and wife who are both employed by the City and are eligible for FMLA leave are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken because of the birth of the employees' son or daughter or because of the placement of a son or daughter with the employees for adoption or foster care in order to care for such son or daughter or to care for a parent (but not a parent-in-law) with a serious health condition.

ELIGIBILITY FOR LEAVE

To be eligible for the leave, employees must have worked for the City for at least 12 months (not necessarily consecutive months) and have worked at least 1,250 hours for the City during the previous 12-month period.

All paid leave available for the employee's use, such as vacation, personal time, or sick leave in the case of the employee's own serious health condition, must be used prior to the use of a leave under the FMLA. The paid leave will be used to satisfy part or all of the act's 12-week mandated family and medical leave.

The Act does not require the City to provide paid sick leave in any situation in which the City would not normally provide paid sick leave.

ENTITLEMENT TO LEAVE

Entitlement to leave under the *Family and Medical Leave Act of 1993*, is limited to the following:

- * Because of the birth of a son or daughter of the employee or because of the placement of a son or daughter with the employee for adoption or foster care in order to care for such son or daughter. Expiration for entitlement to leave granted for this reason shall expire at the end of the 12-month period beginning on the date of such birth or placement;
- * In order to care for the spouse, or parent, or child (under age 18 or an adult child who cannot care for himself or herself), of the employee, if such spouse, child or parent has a serious health condition;

- * Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

ADVANCE NOTICE, MEDICAL CERTIFICATION AND PROGRESS REPORTS

The employee will be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- * An employee must provide 30 days advance notice when the leave is foreseeable. If 30 days notice is not practical, such as because of a lack of knowledge of when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practical.
- * The City shall require medical certification to verify the severity of the illness or condition to support a request for leave because of either the request to care for an employee's seriously ill family member or because of a serious health condition that makes the employee unable to perform the functions of the employee's job. Employees must provide certification in a timely manner unless it is not practical to do so under the circumstances. Certification shall be on the WH-380 medical certification form, published by the U.S. Department of Labor. The City may request re-certification every 30 days unless conditions exist that allow the City to request re-certification sooner than the expiration of 30 days.

The City may require a second medical opinion, and if in conflict with the initial opinion, a binding third opinion. Both the second and third opinion shall be at the City's expense.

- * An employee on medical leave due to the employee's own serious health condition may not return to work without a fitness-for-duty medical release from the health care provider who has been treating the employee for that condition stating that the employee has the capability to perform the assigned tasks as outlined in the employee's position description. A statement from a health care provider merely stating that the employee may return to work will not constitute a fitness-for-duty medical release and will not be accepted by the City as evidence of a capability to return to work.
- * The City shall request periodic progress reports from an employee on leave regarding the employee's status and intent to return to work. The City may replace an employee who is on leave for the duration of the leave.

JOB BENEFITS AND PROTECTION

- * Employees taking leave under the Act are entitled to receive health benefits during the leave on the same terms and at the same percent of premium payment as if they had been at work throughout the leave, if the employee was covered by the City's group health plan prior to the leave.
- * If the employee is on unpaid leave the employee's share of the group health premium shall be due from the employee on each payday that the premium would have been deducted from the employee's payroll check if the employee were not on unpaid leave. The employee will be required to pay the premium to the City Clerk's office on or before 5:00 p.m. on the regularly scheduled day that payroll checks from which insurance deductions are made, are distributed to City employees. The City's obligation to maintain health insurance coverage ends if an employee's premium payment is more than 30 days late.
- * If the employee fails to return from leave, the City shall have the right to recover the City's share of the premium for maintaining the group health coverage during any portion of an unpaid leave unless the employee is *unable* to return to work at the end of the leave due to circumstances beyond the employee's control, such as the continuation, recurrence, or onset of a serious health condition.

- * Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Special provisions concerning key employees (employees who are among the highest paid 10% of all City employees) will be reviewed on a case-by-case basis at the time the key employee requests FMLA leave or as soon as practical after receipt of a request for leave.
- * The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave; however, seniority and other employment benefits will not accrue during any unpaid portion of the leave.

The City shall not discharge or discriminate against any person for lawful use of any rights or privileges extended by the FMLA.