

Family and Medical Leave Act - Procedures

(Links to [Policy](#), [Forms](#) and [Resources for Supervisors](#))

Applies to: All eligible classified and appointed employees under the jurisdiction of the Mayor and City Council.

Synopsis: The Family Medical Leave Act (FMLA) provides eligible employees with the right to request up to 12 weeks in any 12 months for the birth of a child or placement of a child with the employee for adoption or foster care, to care for a family member with a serious health condition, for an employee's own serious health condition and when a family member is called up to or on active military service. The FMLA also provides 26 weeks of unpaid leave in a single 12-month period for an employee caring for a family member recovering from an illness or injury suffered while on active military duty. The City will also provide these leave benefits to employees who have registered domestic partners with serious health conditions. The City will provide these leave benefits to employees who have worked 1,044 hours during a 12 month period immediately preceding the requested leave.

Council Approval Date: TBD

HR Department Approval: September 2008

Last Updated: September 9, 2008

Links to Regulations: [FMLA](#)

Administering Department: Human Resources **Contact:** Perry Palin **Phone:** (612) 673-3521

- I. **Purpose:** To establish City of Minneapolis policy guidelines under which appointed or classified employees who are not members of a recognized bargaining unit, or whose collective bargaining agreement specifies otherwise, may request a leave under the Family and Medical Leave Act of 1993 (as amended).
- II. **Eligibility:** Any City of Minneapolis employee who (1) has been employed for at least 12 months and (2) has worked at least 1,044 hours in the 12 month period immediately preceding the request.
- III. **Type of Leaves Available:** The following events may qualify an eligible employee for leave under the City's FMLA policy:
 - A. For the care for a newborn child;
 - B. For the placement of a child with the employee for adoption or foster care;
 - C. For the care of a spouse, registered domestic partner, child or parent with a serious health condition;
 - D. For the employee's own serious health condition that makes the employee unable to perform the functions of the job;
 - E. For any qualifying exigency arising out of the fact that a spouse, registered domestic partner, son, daughter, or parent of the employee 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;
 - F. For the care of a spouse, registered domestic partner, child, parent, or next of kin of the employee 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 suffered in the line of duty while on active duty.
- IV. **Employee Rights:** Employees have the right to continuation of health care coverage while on leave, restoration to the same or equivalent position upon expiration of leave, freedom from discrimination or retaliation for exercising FMLA rights.

V. Amount of Leave Available

- A. Up to 12 weeks of unpaid leave per twelve month period for leave types described in III. A., B., C., D. and/or E. above; or
- B. Up to 26 weeks of unpaid leave during a single twelve month period for the leave type described in III. F. above.

The City of Minneapolis utilizes a 12 month period measured forward from the date the employee's first FMLA leave begins.

If a husband and wife or registered domestic partners are employed with the City and using the leave for birth, adoption or foster care, the amount of leave is limited to a combined total of 12 weeks of leave.

VI. Employee Pay Status and Use of Accrued Leave: FMLA leave is unpaid. Where an FMLA eligible employee has accrued paid vacation and/or sick leave the eligible employee may elect to use accrued vacation and/or sick leave concurrently with FMLA leave to remain in paid status.

An employee with accrued compensatory time may elect to use compensatory time for an FMLA-qualifying leave provided the employee complies with City requirements for use of compensatory time. Any absence which is paid from the employee's compensatory-time balance shall not be counted against the employee's FMLA leave entitlement.

VII. Roles and Responsibilities: City employees play important roles to ensure compliance with the administration of leaves under the FMLA and in accordance with federal law and City of Minneapolis FMLA policy. City employees must perform the responsibilities as outlined below and in accordance with the procedures developed for this policy.

| Role | Responsibility |
|---|---|
| Department Heads | 1. Ensure that managers and supervisors in their departments comply with the FMLA policy and procedures. 2. Approve qualifying leaves of absence under the FMLA for employees in their department. |
| Managers and Supervisors | 1. Respond to employee requests for leave of absence including leaves governed by the FMLA. 2. Recognize the need for potentially FMLA qualifying leave based on actions or statements of employees. 3. Within two business days of a request for FMLA: <ul style="list-style-type: none"> a. Prepare and complete the FMLA Designation Notice. b. Prepare and Complete the Leave of Absence Form. c. Provide Certification of Health Care Provider Form to employee requesting the leave. 4. Provide required FMLA related paperwork to Department Head or designee for approval. 5. Determine if requests for leaves of absence are FMLA qualifying and if not deny the request, withdraw designation and explore other leave options available (if any). 6. Provide FMLA related paperwork to HRIS Representative so FMLA can be entered into HRIS. 7. Inform HRIS Representative when FMLA should be ended in HRIS. 8. Prepare letter of notification to employee that FMLA is ending. |
| HRIS Representative (and/or Payroll Representative) | 1. Review Designation Notice and Leave of Absence Form and enter leave in HRIS. 2. Monitor FMLA usage. 3. Notify managers and supervisors when leave is almost exhausted. 4. Terminate FMLA in HRIS when leave has been exhausted or when information is received from the manager or supervisor that FMLA is no longer needed. |
| HR Generalist | 1. Provide advice and counsel to managers and supervisors on the FMLA policy and procedures. 2. Upon request provide training to managers and supervisors in assigned departments |

| | |
|-------------|---|
| | on the FMLA policy and procedures. |
| HR Director | <ol style="list-style-type: none"> 1. Develop and maintain procedures for implementation and ongoing maintenance of the FMLA Policy. 2. Ensure HR Staff are carrying out their responsibilities. 3. Ensure that the City is complying with the FMLA. 4. Determine the appropriate means of communicating the FMLA policy and procedures to all employees. |

VIII. Notice of FMLA - There are three ways that absences may be designated as FMLA.

A. The employee requests the leave.

1. With regard to an employee requesting the leave, the Act mandates that if the necessity for the leave is foreseeable, the employee is required to give at least 30 days advance notice to the employer. Examples of foreseeable leave include planned surgeries and planned therapy. Failure to provide such notice without reasonable excuse allows the employer to delay the taking of the FMLA leave until at least 30 days after the date the employee provides notice of his or her need for leave. In addition, the employee must make reasonable efforts to schedule the treatment so as not to disrupt unduly the operations of the employer.
2. If the necessity for the leave is unforeseeable, the employee should give notice to the employer within 15 days after the employer's request or "as soon as practicable under the facts and circumstances of the particular case." Examples of unforeseeable leave include premature birth, a child suddenly becoming available for adoption or a medical emergency requiring immediate treatment.

B. The employee's actions or statements are such that the supervisor should inquire whether the leave is potentially FMLA qualifying and if so, designate accordingly.

1. With regard to an employee's actions or statements that mandate the supervisor to inquire further, the Act states that, "no specific form of notice is required." The employee does not have to expressly assert rights under FMLA or even mention the Act. All that is needed is that the employee provide the employer with enough information that the employer believes the absence might be covered under the FMLA. Calling in sick for three or more days, verbally mentioning that they need time off to care for a seriously ill spouse/child/parent and stating that they missed work because they were hospitalized are all examples of such a notice. As such, supervisors need to inquire if the absences are FMLA qualifying and if so document accordingly. Inquiry does not mean asking for diagnosis information. As a general rule, the City does not need to know the precise medical reason why an employee is ill. All that is needed is enough information to determine that the employee has a serious health condition as described elsewhere in these materials or has a need for leave to care for a newborn or newly placed child.

C. The employee sustains a work related injury that results in a serious health condition.

IX. Designating the Leave: Designation of FMLA leave must normally be made within two business days of the time the employee gives notice of the need for leave. Because the City of Minneapolis requires medical certification for all serious health condition leaves, ultimate designation in this instance will occur after receiving the properly completed certification form. However, the supervisor still needs to make a "preliminary designation" until the "[Certification of Health Care Provider](#)" Form is received if the employee has already begun taking the leave. If the medical certification ultimately fails to confirm that the leave is FMLA qualifying, the supervisor can withdraw the designation with [written notice](#) to the employee. (**Note:** Supervisors have the responsibility of designating the leave.)

Designation includes informing the employee of the designation and their rights and obligations under the Act. This is accomplished by completing and sending the employee the document entitled "[FMLA Designation Notice](#)".

The [FMLA Designation Notice](#), the completed the [Certification of Health Care Provider Form](#) and any other correspondence regarding the issue must be placed in the employee's confidential department medical file.

X. Certification: The following are examples of when a certification form may or may not be needed:

- A. Leave to care for a serious health condition (III. C, D & F), shall require the employee to have his or her health care provider complete the [Certification of Health Care Provider Form](#).
- B. Leave because a covered servicemember has been called to active duty (III. E) shall require the employee to obtain certification from the service member's branch of the Armed Forces.
- C. Leave to care for a newborn or newly placed child (III. A & B) may be granted without certification unless there exists a genuine question regarding the employee's truthfulness. In such a situation, consult the [HR Generalist](#).

The certification form:

- 1. Covers a specific serious health condition and is only effective for the length of time designated by the health care provider on the [Certification of Health Care Provider Form](#) but shall not exceed a total of 12 weeks during any 12 month period.
- 2. Covers an employee caring for a family member recovering from an illness or injury suffered while on active military duty but shall not exceed 26 weeks of unpaid leave in a single 12-month period.
- 3. Explains the type of serious health condition or the injury or illness necessitating the leave and its probable duration.
- 4. States whether the employee requires leave on an intermittent basis or as a single block of time.

If the health care provider's information is incomplete, the employee may be asked to provide the complete information before being granted FMLA leave. A supervisor requiring the employee to provide additional information may not, however, contact the health care provider directly. Only a City doctor with the employee's permission can contact the original health care provider. Even then, the City doctor can only seek clarification or authenticity.

Assuming the [Certification of Health Care Provider Form](#) is complete, the original health care provider's opinion may still be disputed. In that instance, the City can seek second and third opinions (at the City's expense) to ascertain the validity of the original opinion. If contemplating these options, consult the [HR Generalist](#).

XI. Recertification: Under appropriate circumstances, the City may request recertification. The following are examples of when the City may request a recertification:

- A. For those employees who use FMLA leave in solid blocks of time, the City may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification change significantly (e.g., the duration of the illness, the nature of the illness) or the City receives information that casts doubt upon the continuing validity of the certification. Note, however, that leave for a different medical matter is not covered by the original certification and will require its own certification.
- B. For those employees who use FMLA leave intermittently, the City may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness) or the City receives information that casts doubt upon the continuing validity of the certification. The City may not request recertification in less than the minimum duration of the leave, as noted by the health care provider.

XII. Leaves for a Solid Block of Time or on an Intermittent Basis: Leaves under the FMLA may be taken as described below:

- A. Leave to care for a newborn or newly placed child (a.k.a. bonding leave) will only be granted in solid blocks of time.
- B. Leave that is medically necessary because of a serious health condition, however, may be taken in increments of time if so designated by the health care provider.
- C. The City will charge an employee's FMLA usage by the shortest period of time that the department uses to account for absences for payroll purposes, which currently is 30 minutes. Therefore, intermittent leave shall be taken in the minimum increments that the department uses for payroll.

If the employee requires continuing intermittent leave for foreseeable planned medical treatments and the taking of that leave would substantially impair the operations of the City, the employee may be transferred, temporarily, during the period of intermittent leave, to an available alternate position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternate position must have equivalent pay and benefits. The transfer to an alternate position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act) and state law. Consult the [HR Generalist](#), before taking such action.

XIII. Returning to Work after FMLA: As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition, the City may require the employee to submit a medical certification, i.e., a fitness for duty certification that the employee is able (or unable) to return to work provided that the Department requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain a fitness for duty certification.

When initially approving the leave, note the need to present a fitness for duty certificate on the [FMLA Designation Notice](#).

After returning to work, the employee must be reinstated to the same or equivalent position, pay, benefits, and conditions of employment as they had prior to exercising their right to take the leave.

XIV. Definitions

Child - Includes 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 age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

Incapacity - Inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

Injured on Duty (IOD) – Relates to injuries of peace officers and firefighters while on duty.

Outpatient Care - Requiring continuing treatment by a health care provider includes any one of the following:

1. Inability to work for more than three (3) consecutive days plus: (1) treatment twice; or (2) treatment once combined with a regimen of continuing treatment (e.g., prescription medication)
2. Period of incapacity due to pregnancy, or for prenatal care
3. Period of incapacity due to chronic serious health condition (e.g., asthma, epilepsy)
4. 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)
5. Incapacity to receive multiple treatments (including recovery time) either for restorative surgery after an accident or injury or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis))

Parent - Includes a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. Parent does not include parents "in-law."

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 condition. A regimen of 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 a health care provider.

Serious Health Condition - Means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care** - Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including, any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment** - A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under the orders of, or on referral by, a health care provider; or
 - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
3. **Pregnancy** - Any period of incapacity due to pregnancy, or for prenatal care.
4. **Chronic Conditions Requiring Treatments** - A chronic condition which:
 - a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider; and
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
5. **Permanent/Long-term Conditions Requiring Supervision** - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. **Multiple Treatments (Non-Chronic Conditions)** - 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, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Treatment - Includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

Military Service Related Definitions

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.

Contingency Operation - Means given such term in section 101(a) (13) of title 10, United States Code.

Covered Service Member - 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.

Next of Kin (with respect to an individual) - Means the nearest blood relative of that individual.

Outpatient Status (pertaining 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.

Serious Injury or Illness (pertaining to 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.