

7.13 FAMILY AND MEDICAL LEAVE (FMLA)

General

In accordance with the Family and Medical Leave Act (FMLA) unpaid leave for certain family and medical reasons will be granted to all eligible employees for up to twelve (12) weeks per twelve (12) month period with job protection and no loss of accumulated service provided the employee returns to work at the end of the leave.

Family and Medical Leave Act ("FMLA Leave") provides for job-protected leave for the following reasons:

1. Birth or placement of a son or daughter with the employee for adoption or foster care;
2. To care for a spouse, son, daughter, or parent who has a serious health condition;
3. The employee's own serious health condition that makes the employee unable to perform the essential functions of the position;
4. A qualifying exigency arising of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves; or
5. As a spouse, son, daughter, parent, or next of kin to care for a covered servicemember with a serious injury or illness.

Certain circumstances may require special interpretation of the policy or involve application of laws other than the federal FMLA. As it is impossible to anticipate every circumstance that might arise under this policy, employees are encouraged to contact City Administration if they believe that the policy description below is inapplicable in whole or in part to their specific circumstances.

If a husband and wife both work for the City, the aggregate number of weeks of leave to which both are entitled is limited to twelve (12) weeks for Parental Leave.

In accordance with the law, the following definitions apply:

"Caring" for someone includes psychological as well as physical care. It also includes acquiring care and sharing care duties.

An eligible "son or daughter" is defined as a biological, adopted, foster, or step child, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

An eligible "parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

"Serious health condition" is defined in Federal law, but generally means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

"Twelve-month period" is a rolling twelve (12) month period measured backward from the date the employee uses any FMLA leave..

Eligibility under FMLA

An eligible employee is one who has worked for the City for a cumulative period of twelve (12) months and at least 1,250 hours during the twelve (12) month period prior to requesting the leave.

Length of Leaves of Absence under FMLA

The length of FMLA leave is not to exceed twelve (12) weeks in any twelve (12) month period; except for a covered servicemember with a serious injury or illness, where an employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin up to a total of 26 workweeks of unpaid leave during a single 12-month period to care for the servicemember. FMLA leave will be taken simultaneously with all paid leaves provided by Minnesota state statutes or City policy. The entitlement to FMLA leave for the birth or placement of a son or daughter expires twelve (12) months after the birth or placement of that son or daughter.

Procedure for Requesting FMLA Leave

The employee will provide verbal or written notice to his/her supervisor at least thirty (30) days prior to the date on which leave is to begin or if thirty (30) days notice cannot be given as much notice as practical.

If an employee fails to give thirty (30) days notice for a foreseeable leave with no reasonable explanation for the delay, the leave may be denied until thirty (30) days after the employee provides notice. To the extent possible, planned medical treatment should be scheduled so that it will not unduly disrupt the City's operations.

Supervisors must immediately provide City Administration notification of all FMLA requests. Upon this notification, City Administration will verify eligibility for FMLA on a case by case basis and ensure completion of the designated forms as outlined by the U.S. Department of Labor.

A leave initially approved and designated as an FMLA leave, may be subject to being re-designated later as a non-FMLA leave, in the event that certain FMLA requirements are not met.

Medical Certification under FMLA

The employee will be required to provide medical certification to support a request for leave because of the serious health condition of a son or daughter, spouse, parent, or the employee him/herself. The U.S. Department of Labor's designated form must be used in obtaining medical certification from a health care provider. The form may be obtained from the City Administration Office.

The form is to be completed by the attending health care provider and signed by both the provider and the employee. Medical certification should be submitted to City Administration within fifteen (15) days after the leave commences, or as soon as is reasonably possible.

If the City is not satisfied with the certification, it may require a second (or third) opinion at the City's expense. If required, the City will select a health care provider not regularly associated with the City. The City may also require periodic reports on the employee's status and intent to return to work.

All documentation related to the employee's or family member's medical condition will be maintained as a confidential record in the employee's medical file.

Recertification under FMLA

Recertification may be required if the employee requests an extension of the original length approved by the City or if the employee's circumstances change. Recertification may also be required if there is a question as to the validity of the certification or if the employee is unable to return to work due to the serious health condition.

Intermittent Leave under FMLA

Leave requested because of a "serious health condition" of either a family member or the employee may be taken intermittently or on a reduced schedule if medically necessary. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, the employee may take leave intermittently on a reduced leave schedule only upon employer approval. All requests for intermittent leave will be evaluated on a case-by-case basis.

The City may require the employee to transfer temporarily to an alternative position, with equivalent pay and benefits that better accommodates the intermittent leave.

Communication during FMLA

All employees on FMLA leave will be required to report to their supervisor two weeks prior to the agreed upon return to work date on their status and intention to return to work. The employee should immediately report to his/her supervisor if his/her medical condition changes or the employee decides that he/she will not be returning to work. While on leave, any employee who does not comply with the terms of the Family Medical Leave Act or does not provide timely and/or appropriate documentation will be considered to have voluntarily resigned.

Return to Work Under FMLA

The City may require a medical certificate attesting to the employee's fitness for duty at least two (2) weeks prior to the return to work date. The fitness for duty report must be based on the particular health condition(s) for which the leave was approved and must address whether the employee can perform the essential functions of his/her regular job.

The City Administrator, or designee, may consult with a physician or other expert to determine reasonable accommodations for any employee who is a "qualified disabled" employee under the ADA (Americans with Disabilities Act). If a fitness for duty certification is required, the City may deny reinstatement until it is provided.

Job Protection under FMLA

Employees returning from FMLA leave will be reinstated in their former position or a position equivalent in pay, benefits and other terms and conditions of employment.

An employee's reinstatement rights are the same as they would have been had the employee not been on leave. Thus, if an employee's position would have been eliminated or an employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

Special Provisions for Highly Paid Employees

Salaried employees who are among the highest paid 10% of the employees of the City may be denied restoration to employment following FMLA leave if such denial is necessary to prevent substantial economic injury to the City's operations.

If the City determines that such injury to the City's operations would occur, the City will notify the employee of its intent to deny restoration. An employee who is notified that this provision (i.e., denial of restoration to employment) will be applied to him/her may retain employment by not taking leave; or if already on leave, returning from the leave.

Effect on Benefits under FMLA

An employee granted paid or unpaid leave under this policy will continue to be covered under the City's group health and dental insurance plans, the life insurance plan, and the AD&D insurance plan under the same conditions and at the same level of City contribution as would have been provided had they been continuously employed during the leave period. If there are changes in the City's contribution levels while the employee is on leave, those changes will take place as if the employee were still on the job. Arrangements for payment of the employee's portion of premiums must be made by the employee with the City. Employee contributions will be required either through payroll deduction or by direct payment to the City. If an employee's contribution is more than thirty (30) days late, the City may terminate the employee's insurance coverage (subject to COBRA requirements).

If the employee fails to return from unpaid FMLA leave for reasons other than the continuation of a serious health condition of the employee or a covered family member, (a re-certification is required within thirty (30) days of failure to return to work), the City may seek reimbursement from the employee for the portion of the premiums paid by the City on behalf of that employee (i.e., employer contribution) during the period of leave.

An employee on an unpaid leave will not accrue vacation, sick, floating holiday, or personal time leaves.

Seniority under FMLA

Seniority will continue to accrue during any period of unpaid FMLA leave and seniority accrued prior to commencement of FMLA leave will be retained.

Use of Accrued Paid Leave or Compensatory Time during FMLA Leave

Employees will be required to utilize paid leave balances to include personal leave, floating holidays, vacation, sick leave, and compensatory time concurrent with the FMLA leave and in accordance with usual requirements for the use of such paid leave (e.g., substitution of sick leave will be permitted in accordance with the uses permitted under that policy).

Vacation and sick leave benefits will continue to accrue while on paid FMLA leave. Only paid FMLA leave counts as continued service for purposes of PERA.

Records Retention under FMLA

Records on FMLA leave will generally be kept with normal payroll records or maintained separately as a confidential medical record in accordance with the law.

Failure to Return from FMLA Leave

Employees who cannot return from an approved FMLA leave at the end of the approved leave period may request an extension up to the maximum of the twelve (12) weeks allowed under FMLA. If the twelve (12) FMLA weeks have been exhausted, the employee can request to go on a leave of absence. If approved, before unpaid leave begins the employee must use all accrued sick leave, compensatory time, floating holidays, and vacation leave that remains in accordance with usual requirements for the use of such paid leave. If the leave is approved and unpaid, the employee will be required to pay the full cost of all group insurance premiums (i.e., life, health and dental) as provided under COBRA, in order to continue coverage.

Where FMLA is exhausted and a leave of absence is not approved or the employee fails to request additional leave, and the employee does not return to work, the employee will be considered to have voluntarily resigned. If circumstances beyond the employee's control prevented the employee from requesting additional leave, a retroactive leave request may be allowed, subject to the City Administrator's approval.

The family and medical leave policy will be administered in accordance with the Family and Medical Leave Act.