

	Title: Family Medical Leave Policy		Policy Number: HR 141 FML	
	Author: Sandy Rohrick (2014) Charles Adams (2022 revisions)		Created: 01/24/2014 Revision: 09/19/2022	
	Scope: Non-Rep City Employees	Print Date: 9/16/22 9:52 AM		Page 1 of 7

1.0 Purpose

This policy outlines the provisions of the federal and Wisconsin Family and Medical Leave Acts and the rights and obligations of employees and employers under both laws.

(NOTE: There is a previous policy, HR 140 FML, which is titled "Family Medical Leave Policy." However, that policy covered many more items than simply FMLA Benefits. That policy is repealed as it relates to Family Medical Leave Act policies, Paragraph 3.6) The remainder of the policy remains in effect as amended by annual changes to the Employee Benefits Plan.)

2.0 Scope

This policy applies to all employees of the City of Sheboygan.

3.0 Policy

A. General Policy and Disclaimers

It is the policy of the City of Sheboygan to comply with all applicable State and Federal laws concerning military family leave, family leave, medical leave, or caretaking leave.

This policy applies only to leave designated under State or Federal law. Leave designated under this policy may overlap or duplicate leave available under collective bargaining policies or other personnel policies. Sick leave, vacation, and leave of absence provisions under any collective bargaining agreements remain in effect.

Leave provided by the City which is taken for the same reasons as leave covered by the FMLA is not in addition to leave provided under the FMLA. If leave qualifies for family or medical leave under either or both the Federal and State laws, the leave used counts against the employee's entitlement under both State and Federal FMLA concurrently. Leave covered by the FMLA will be deducted from the entitlement under the FMLA.

Both State and Federal Family and Medical Leave entitlement will be counted based on a calendar year (January-December).

B. Eligibility

Employees are entitled to FMLA benefits as follows.

1. Federal FMLA

In order for employees to be eligible for leave under the Federal Family Medical Leave provisions, they must have been employed by the City of Sheboygan for at least 12 months (whether consecutive or not) and have worked at least 1,250 hours during the 12 months prior to the start of the requested leave.

- a. Any absence from work due to military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) must be counted toward the employee's 12-month employment period when determining FMLA eligibility.
- b. Time spent on paid or unpaid leave does not count in determining the 1,250-hour eligibility

2. State FMLA

In order for employees to be eligible for leave under the Wisconsin Family Medical Leave provisions, they must have been employed by the City of Sheboygan for at least 52 consecutive weeks and must have been paid for at least 1,000 hours during the 52 weeks prior to the start of the FMLA leave. If an employee is maintained on the payroll for any part of the week, the week counts as a week of employment.

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C. Benefits

1. Federal FMLA

Federal law allows employees a total of 12 weeks for:

- a. Family leave for the birth of an employee's child or because of the placement of a child with the employee for adoption or foster care. Federal law requires that leave conclude within 12 months after the birth.
- b. Family leave to care for a child, legal ward, spouse, parent, or covered servicemember suffering from a serious health condition.
- c. Medical leave for an employee to care for their own serious health condition which renders them unable to perform the essential functions of the job.
- d. Exigency leave due to a spouse, child, or parent who is on active military duty or who has been notified of an impending call to active duty status in the National Guard or Reserves, in support of a contingency operation. Also included are servicemembers in the regular armed forces who are on active duty in a foreign country or are called to active duty in a foreign country.
 - i. Eligible employees may take leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
 - ii. The amount of time an eligible employee may take for Rest and Recuperation qualifying exigency leave is expanded to a maximum of 15 calendar days.

Federal law allows employees a total of 26 weeks of leave in a single 12-month period (regardless of calendar year) for caring for a spouse, son, daughter, parent, or next of kin who is a covered servicemember/veteran recovering from a serious illness or injury sustained in the line of duty. A covered veteran is defined as an individual who was discharged or released at any time during the five (5) year period prior to the first date the eligible employee takes FMLA to care for the covered veteran. A dishonorable discharge disqualifies the veteran from coverage.

2. State FMLA

State law allows employees leave as follows:

- a. Up to six (6) weeks of family leave for the birth or adoption of a child. This leave must commence within 16 weeks of the birth or adoption of a child. If nonconsecutive leave is taken, the last increment of the nonconsecutive leave must commence no later than 16 weeks after the birth or adoption date.
- b. Up to two (2) weeks of family leave to care for a child, legal ward, spouse, domestic partner, or parent (including parents-in-law and parents of a domestic partner) suffering from a serious health condition.
- c. Up to two (2) weeks of medical leave for an employee to care for their own serious health condition which renders them unable to perform the essential functions of the job.
- d. Up to six (6) weeks of medical leave for bone marrow or organ donation, in accordance with the Bone Marrow and Organ Donation Leave law (Section 103.11 Wis. Stats.). [Note: This leave may run concurrent with FMLA if the bone marrow or organ donation qualifies as a serious health condition under Federal or State FMLA.]

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3. Concurrent Leave

Leave qualifying for both Wisconsin and federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently. However, when the reason(s) for qualified leave differ, the leave may not run concurrently under federal and state law, and an employee may be entitled to more than 12 weeks of leave in a calendar year. This type of leave occurrence will be evaluated and reviewed with the employee at the time of the leave. Qualified leave taken under Worker's Compensation also will run concurrently with federal FMLA leave.

4. Non-Continuous or Intermittent Leave

Employees are permitted to take leave provided for in this subsection C on an intermittent (blocks of time) or reduced work schedule in no less than one-hour increments, as follows:

a. Federal FMLA

- i. To care for a sick family member or for an employee's own serious health condition when medically necessary, or when it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty.
- ii. To care for a newborn, adopted, foster child when approved in advance by the City.
- iii. For military family leave when approved in advance by the City.

Note: Employees requesting non-continuous federal FMLA leave that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.

- b. State FMLA for any purpose provided for in subsection C.2, so long as it does not unduly disrupt the department's operations.

The employee may not take, or be required to take, more leave than medically necessary to address the circumstances that caused the need for the leave.

5. Pregnancy-Related Conditions

The City does not discriminate against anyone who requests an excused absence for medical disabilities associated with pregnancy. Such leave requests will be evaluated according to the medical leave policy provisions outlined in this policy and all applicable laws.

Upon request, the City will consider providing reasonable accommodations for health conditions related to pregnancy or childbirth in accordance with all applicable laws. Depending on the accommodation requested, an employee may be required to provide medical substantiation of the need for accommodation. Accommodations may not be available if such health conditions prevent the performance of the essential functions of the employee's position.

Requests for accommodations or time off associated with pregnancy and/or childbirth that are not related to medical incapacity (such as time off for bonding, pre-birth house preparations, or child care) will be considered in the same manner as other requests for unpaid personal leave.

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6. Nursing Mothers

Under Section 4207 of the Patient Protection and Affordable Care Act of 2010, employees are allowed unpaid reasonable break time to express breast milk. Supervisors should, as much as possible and consistent with efficient operations, exercise the necessary flexibility to allow employees who wish to use paid breaks to express breast milk to do so even if do so falls outside of standard times for such breaks. The City shall provide appropriate private, lockable locations in each building no more than one floor away from the employee's work station. Bathroom facilities or facilities immediately adjacent to bathroom facilities are not appropriate locations.

7. Payments while on FMLA Leave

In general, both Wisconsin and federal FMLA leaves are unpaid. Under the Federal FMLA, the City of Sheboygan requires the leave to be charged against available and accrued paid leave (such as PTO, floating holidays, or compensatory time), including leave provided by a collective bargaining agreement. Under the Wisconsin FMLA, employees may choose substitute leave.

An employee on FMLA Leave will continue to accrue all benefits provided by City policies and collective bargaining agreements.

8. FMLA Leave for planned medical treatments

Employees who take medical leave should make reasonable efforts to schedule planned medical treatments so as not to unduly disrupt business operations.

D. Procedure

1. Employee's Request

Employees requesting leave must submit a Request for Leave form to the Human Resources Department at least **30** days, or as soon as practicable, in advance of taking leave. If circumstances do not permit an employee to give notice in advance of taking leave, the employee must notify the Human Resources Department and submit the Request for Leave form as soon as reasonable and practical. This should be interpreted to mean within one to two working days of the employee learning of the need for leave. Failure to give timely notice may result in the delay or denial of FMLA leave and may subject you to discipline under Municipality policies.

In emergencies, if the leave request cannot be made by the employee in writing, the employee's supervisor will notify the Human Resources Department. The Human Resources Department will follow up with the employee or the employee's emergency contact in writing to obtain and record the information needed in a leave request.

Upon receipt of the request, the Human Resources Department must approve or deny the request, give reasons for any denial, and specify any additional information required as well as the employee's rights and responsibilities under federal and state FMLA, as applicable. Additionally, the Human Resources Department shall inform employees if leave will be designated as FMLA-protected or if it has determined that the leave is not FMLA-protected. The Human Resources Department shall also inform employees of the amount of leave counted against the employee's leave entitlement. Appeal of any denial or other adverse decision may be made first to the Human Resources Director, and then to Common Council, which may, at its discretion, provide for a committee thereof to hear such appeals.

When approving requests, the Human Resources Department shall provide a Designation Notice setting forth the designation of anticipated leave under federal and state FMLA law and any other designation that may be appropriate.

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2. Medical Certifications

If the leave is for a family member's or the employee's serious health condition, the employee must submit a medical certification from the employee's or the family member's health care provider within **15** days. Documents containing family information must be kept confidential pursuant to the Genetic Information Nondisclosure Act (GINA).

If an employee does not provide the required certification by the designated deadline, or if the City determines that an employee's absence is not covered as FMLA leave, the leave may not be designated as Wisconsin and/or federal FMLA leave, and the employee may be subject to discipline under City attendance policies unless the employee uses accrued paid leave and/or is granted a non-FMLA leave of absence.

The City may require a second opinion and periodic certification. If a first and second opinion differ, the City may require the binding opinion of a third health care provider, approved jointly by the City and the employee and paid for by the City. When required by the City, second or third certifications shall be at the City's expense and periodic re-certifications shall be at the employee's expense. The City requires periodic reports during federal FMLA leave regarding the employee's status and intent to return to work.

3. Employer Designation

The City will require completion of FMLA documentation, including a Request for Leave, when an employee misses more than three (3) consecutive scheduled work days due to a qualifying FMLA event. If the leave is determined eligible, it will automatically be counted against the employee's FMLA entitlement. In such a case, the Human Resources Department shall provide a Designation Notice setting forth the designation of anticipated leave under federal and state FMLA law and any other designation that may be appropriate. Said notice shall also include any of the relevant information required by virtue of Subsection D.1 of this policy.

4. Worker's Compensation and Light Duty

Federal FMLA will run concurrent with worker's compensation provided that the injury meets the criteria for a "serious health condition", as defined by law. Substitution of accrued paid leave is not allowed for Worker's Compensation absences unless an applicable labor agreement provides otherwise.

If an employee accepts a light duty assignment while on worker's compensation, that time may not count against the employee's family or medical leave entitlement. If the light duty position is declined and the employee elects to stay on FMLA leave, the employee may give up their worker's compensation benefits.

5. Health Insurance Benefits

Group health insurance coverage will be maintained for employees while they are on FMLA leave, on the same terms as if the employee continued to work. The employee will be required to pay their regular portion of health insurance premium payments on a monthly basis.

The City may recover its share of health insurance premiums paid during a period of unpaid FMLA leave from an employee if the employee fails to return to work for a minimum of 30 calendar days after the expiration of the leave. The City may not collect the premiums if the reason the employee does not return is due to continuation, recurrence, or onset of a serious health condition that would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control.

The City may discontinue health insurance benefits if the employee fails to make a premium payment within 30 days of the due date after providing written notice to the employee of the cancellation of coverage for non-payment.

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6. Other Benefits

Other benefits under the City's Benefit plan may be continued during periods of unpaid FMLA leave, and arrangements should be made for employee's portion of the payments with the Human Resources Department.

7. Status While on Leave

During the leave, the employee must update the Human Resources Department at least every 30 days of their status with health care provider certification and the intention to return to work. The Human Resources Department will inform the employee's supervisor of the status of the employee's intention to return to work.

8. Extra Leave

Leave beyond the FMLA entitlement must be approved in advance and is subject to any collective bargaining agreements or policies and procedures.

9. Return to Work

The City shall provide all employees on FMLA a list of the essential functions of their position along with the "Designation Notice." All employees returning from FMLA for their own serious health condition must provide a Fitness for Duty statement signed by their treating physician and specifically indicating that the essential functions of the job can be performed. A form is available in the Human Resources Department that includes information about the requirement that the statement address the employee's ability to perform the essential functions. Upon return from FMLA leave, an employee shall be restored to his or her original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. Notwithstanding these provisions, before an employee who is unable to perform the functions of their job upon expiration of FMLA leave is terminated, the City shall consider whether other provisions of City policy or a collective bargaining agreement are applicable and whether the Americans with Disabilities Act, provisions of the Wisconsin Fair Employment Act, or other legal provisions are applicable.

Employees who return from an absence that they desire to be counted as FMLA must give notice within two days of returning to work. If notice is not timely, the employee may not assert FMLA protection.

10. Availability of Forms

Forms referred to in this section are available through the Human Resources Department. The Human Resources Director is responsible for maintaining, updating, and making available all such forms.

E. Additional Provisions

1. Correspondence

Any correspondence sent to an employee on leave will be sent to their last known address filed with the Human Resources Department. Employees must notify the Human Resources Department of any change of address.

2. Falsification of Forms

An employee will be subject to disciplinary action up to and including discharge for falsifying any information required or requested as part of the process for receiving leave or benefits under the FMLA or this policy.

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3. Unlawful Acts by Employer

FMLA makes it unlawful for any employer to:

- a. Interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- b. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

REVISIONS LOG

REVISION YEAR	DATE INTRODUCED TO SAL & GRIEV	MODIFICATION TO PRIOR NON-REP COMP PLAN	GENERAL ORDINANCE OR OTHER REF DOCUMENT
2014		Newly created procedure	