

		<b>Family Medical Leave Act (FMLA)</b>			
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Special Instructions:	Policy revised to reflect change in philosophy regarding paid leave substitution.				

## I. 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.

It is the policy of the City of Whitewater to comply with the requirements of the Wisconsin and Federal Family and Medical Leave Acts (FMLA). Generally, an eligible employee will be granted up to 12 weeks of FMLA leave during any calendar year (January 1 through December 31.) The leave may be paid, unpaid or a combination of paid and unpaid, depending on the reason for the leave and the benefits to which the employee may be eligible.

The State and Federal laws differ in a number of areas, and the City will comply with both. When the reason for a leave qualifies under both State and Federal law, the following rules apply:

- The employee is deemed to be exhausting their entitlement under both laws concurrently; and
- The provision(s) most generous to the employee will apply.

## II. DEFINITIONS

- A. Child - Biological, adopted, or foster child, stepchild, legal ward or, under the Federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing "in loco parentis," who is under 18 years of age or 18 years of age and older and incapable of self-care because of a serious health condition.
- B. Covered Servicemember (Federal FMLA) - Active members 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, AND veterans who were members of the Armed Forces (including National Guard or Reserves) and were released or discharged from service within the five-year period prior to the date the employee's military caregiver leave began. An individual discharged dishonorably does not qualify. The time period between the 10/28/09 enactment date and 3/8/13 effective date of the regulations is excluded in the determination of the five-year period for covered veteran status.

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- C. Domestic Partner (Wisconsin FMLA) - Same-sex couples who register in their county of residence and same-sex and opposite-sex couples who are not required to register.
  - 1. To qualify as registered domestic partners, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, not more closely related than second cousins (whether of the whole or half blood or by adoption), they must share a common residence, and be members of the same sex.
  - 2. To qualify as domestic partners without registration, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, they must share a common residence, they must not be related by blood in a way that would prohibit marriage under Wis. Stat. 763.03, they must consider themselves to be members of each other's immediate family; and they must agree to be responsible for each other's basic living expenses.
- D. Incapable of Self-Care - The individual requires active assistance or supervision to provide daily self-care in three or more of the *activities of daily living* (i.e. grooming, hygiene, bathing, dressing, eating) or *instrumental activities of daily living* (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).
- E. Next of Kin (Federal FMLA) - The nearest blood relative other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemembers' next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.
- F. Parent - Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee, or parent-in-law or domestic partners' parents under the Wisconsin FMLA. Under the Federal FMLA, "parent" includes an individual who provided day-to-day care to the employee when the employee was a child.

### III. GUIDELINES: See Section E of IV How to Apply for FMLA Leave

### IV. PROCEDURE

#### A. Eligibility

- 1. Employees are entitled to FMLA benefits if they:
  - a. Federal – Have been employed by the City of Whitewater for at least 12 months (not necessarily consecutive); and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave.

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- 1) 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.
  - 2) Time spent on paid or unpaid leave does not count in determining the 1,250-hour eligibility.
  - b. State of Wisconsin – Have been employed by the City of Whitewater for at least 52 consecutive weeks and have worked for at least 1,000 hours during the 52 weeks prior to the start of the FMLA leave.
- B. Qualifying Event and Amount of Leave
1. Eligible employees may take up to a total of 12 work weeks of unpaid FMLA leave in a calendar year for the following qualifying events:
    - a. The birth or placement of a child for adoption or under Federal FMLA for foster care:
      - 1) State law provides up to 6 work weeks of unpaid leave for any one child.
      - 2) Federal law requires that leave conclude within 12 months after the birth.
    - b. To care for the employee's spouse, child, domestic partner (under Wisconsin FMLA), or parent (includes a parent-in-law and domestic partners' parents under the Wisconsin FMLA) with a serious health condition:
      - 1) State law provides eligible employees up to 2 work weeks of FMLA family leave.
      - 2) Care for a child does not include the children of the employee's domestic partner.
    - c. Qualifying Exigency - Family leave due to an employee's spouse, child or parent being deployed or called to covered active duty in a foreign country as a member of any branch of the military, including the National Guard or Reserves.
      - a. 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.
      - b. 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.
  2. Military Caregiver
    - a. An eligible employee may take up to an additional 14 weeks (not to exceed 26 weeks total) of family leave in a single 12-month period under this policy to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by active duty) for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list.

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- b. A covered servicemember may also be a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
  - c. This entitlement will be applied on a per-covered-servicemember, per-injury basis. The covered servicemember must be the eligible employee's spouse, son, daughter, or parent, or next of kin. It will be necessary for the covered servicemember's treating health-care provider, as defined by law, to document the need for leave through the medical certification process.
    1. 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.
    2. A dishonorable discharge disqualifies the veteran from coverage. [The period between the 10/28/09 enactment of the law and the 3/8/13 effective date of the final rule is excluded in the determination of the five (5) year period for covered veteran status.]
  - d. For the employee's own serious health condition that renders the employee unable to perform their job.
    - 1) State law provides eligible employees up to 2 work weeks of FMLA medical leave.
    - 2) State law provides eligible employees up to 6 work weeks of FMLA 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].
2. Leave qualifying for both Wisconsin and Federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently.
- a. 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.
  - b. This type of leave occurrence will be evaluated and reviewed with the employee at the time of the leave.
  - c. Qualified leave taken under Worker's Compensation also will run concurrently with Federal FMLA leave.
  - d. Eligible spouses who work for the same employer are limited to a combined total of 12 work weeks of leave in a 12-month period for the following FMLA-qualifying reasons:
    - the birth of a son or daughter and bonding with the newborn child,
    - the placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child, and

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- the care of a parent with a serious health condition.

The limitation on the amount of leave for spouses working for the same employer does not apply to FMLA leave taken for some qualifying reasons. Eligible spouses who work for the same employer are each entitled to up to 12 workweeks of FMLA leave in a 12-month period, without regard to the amount of leave their spouses use, for the following FMLA-qualifying leave reasons:

- the care of a spouse or son or daughter with a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of their job; and
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

### C. Non-Continuous or Intermittent Leave

1. Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule.
  - a. When it is medically necessary to care for a family member with a serious health condition or because of the employee's serious health condition.
  - b. When it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty.
  - c. To care for a newborn, adopted or foster child.
    - 1) Federal FMLA leave for the birth or placement of a child, for adoption or foster care, may not be taken in non-continuous increments unless approved by the Municipality.
    - 2) Under the Wisconsin FMLA, the last increment of leave for the birth or placement of a child for adoption must begin within 16 weeks of that birth or placement.
    - 3) After the 16 weeks have passed (Federal FMLA window), if there is still eligible FMLA time, this time must be taken in concurrent blocks, unless non-continuous increments are approved by Human Resources.
    - 4) FMLA for the birth of a child is tied to the date of the birth of a child, so the 12 weeks of leave is an aggregate total. This is true even if the FMLA spans into multiple years.
2. Medical or family caretaking leave should be planned so as not to unduly disrupt the Municipality's operations.
3. 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.
4. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.

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5. The City of Whitewater allows for intermittent leave to be taken in no less than one-hour increments.
6. 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.
7. While utilizing Non-Continuous or Intermittent Leave, for the purposes of scheduling and overtime, a plan will be created with the employee based on the following factors:
  - a. If the leave is for the serious health condition of the employee, it is presumed that the employee would be unavailable for work.
  - b. If the leave is to care for an immediate family member with a serious health condition, the employee must let management know if they would be available for additional work while on the intermittent leave. This agreement is to be prearranged upon the approval of FMLA.
  - c. If the leave is for the birth or placement of a child, the employee must let management know if they would be available for additional work while on the intermittent leave. This agreement is to be prearranged upon the approval of FMLA.

### D. Payments on FMLA Leave

1. In general, both Wisconsin and Federal FMLA leaves are unpaid.
2. The City of Whitewater may require employees, or the employees may choose, to substitute paid leave for which they are eligible (such as sick leave, compensatory time or vacation days) for unpaid leave available under the Federal FMLA; or employees may choose to substitute available accrued leave for unpaid Wisconsin FMLA.
3. When paid benefits are substituted for the otherwise unpaid time, the employee is using the benefits concurrently with FMLA leave, and those benefits will not be available to the employee at a later time.
4. When paid benefits are substituted, the employee may be required to satisfy any procedural requirements of the City's paid leave policy (for example, advance notice to use paid leave, use of paid leave in established increments, etc.).
5. In cases where substitution of a paid benefit is not possible, the employee will receive reduced compensation consistent with the number of hours the person actually works.
6. The City of Whitewater will require that any leave provided by a City of Whitewater Collective Bargaining Agreement be substituted for Federal FMLA leave.
7. Holiday Pay:
  - a. If a holiday occurs while an employee is out on leave, the employee will receive pay for the holiday if the employee has substituted paid time off for the scheduled day before and after the holiday.
  - b. If the employee is electing to take the leave as unpaid time, the employee will not receive Holiday Pay.
  - c. In both cases the holiday will not entitle the employee to an extra day of leave.

### E. How to Apply for FMLA Leave

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1. Employees must submit a Request for Leave email to Human Resources at least **30** days, or as soon as practicable, in advance of taking leave.
    - a. If circumstances do not permit an employee to give notice in advance of taking leave, the employee must notify Human Resources and submit the Request for Leave email as soon as possible, but no later than 7 days after the absence, which is the usual and customary notice requirement applicable to such leave, absent unusual circumstances (CFR 825.303 (c)).
  2. Failure to give timely notice may result in the delay or denial of FMLA leave and may subject the employee to discipline under City of Whitewater policies. 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.
    - a. Documents containing family information must be kept confidential pursuant to the Genetic Information Nondisclosure Act (GINA).
    - b. If an employee does not provide the required certification by the designated deadline, or if the City of Whitewater 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 the City of Whitewater attendance policies unless he or she uses accrued paid leave (like vacation) and/or is granted a non-FMLA leave of absence.
  3. Second or third certifications at the City of Whitewater's expense and periodic re-certifications at the employee's expense may be required under certain circumstances. The City of Whitewater requires periodic reports during Federal FMLA leave regarding the employee's status and intent to return to work.
  4. Forms are available through Human Resources. See Section V: REPORTING
- F. Health Insurance Benefits
1. 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.
    - a. The employee will be required to pay their regular portion of health insurance premium payments on a schedule established by the City of Whitewater.
    - b. Other benefits, including cash payments chosen by the employee rather than group health insurance coverage, will not be maintained during periods of unpaid FMLA leave.
  2. The City of Whitewater 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 of Whitewater 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.
  3. The City of Whitewater 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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### G. Other Benefits

1. Benefits that accumulate based upon hours worked shall not accumulate during the period of FMLA leave. In addition, an employee may be disqualified from an attendance reward program, and/or any reward may be reduced for having taken unpaid FMLA leave.
2. Other City of Whitewater benefits may be continued during periods of unpaid FMLA leave, and arrangements should be made for employee's portion of the payments with the City of Whitewater Finance Department.

### H. Worker's Compensation and Light Duty

1. 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.
2. Substitution of accrued paid leave is not allowed for Worker's Compensation absences unless an applicable Collective Bargaining Agreement provides otherwise.
3. 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.

### I. Return to Work

1. Any employee returning from FMLA for their own serious health condition must provide a "Fitness for Duty" Statement signed by their treating physician.
2. Upon return from FMLA leave, an employee shall be restored to their original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
3. An employee will not be restored to their original or equivalent position if they are unable to perform the functions of their job because of a mental or physical condition.
  - a. The City of Whitewater may require that the Physician or Medical Provider Certification specifically address the employee's ability to perform the essential functions of the job.
  - b. The City of Whitewater must provide an employee with a list of the essential functions with the FMLA Physician or Practitioner Certification and indicate that the certification address the employee's ability to perform those essential functions. (CFR 825.312(b).)
  - c. Before an employee who is unable to perform the functions of their job upon expiration of FMLA leave is terminated, the City of Whitewater must consider whether other provisions of the City of Whitewater's policy or a Collective Bargaining Agreement are applicable or whether the Americans with Disabilities Act or provisions of the Wisconsin Fair Employment Act are applicable.

- J. Further Information - For further information regarding this policy and/or your rights under both Federal and State FMLA, please see the Human Resources Department.

### V. REPORTING (FORMS)

Initial Letter WH-381: Notice of Eligibility & Rights and Responsibilities

Provider Certification WH-380 E: Certification of Health Care Provider for Employee's Serious Health Condition



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Provider Certification WH-380 F: Certification of Health Care Provider for Family Member's Serious Health Condition

Approved/Not Approved WH-382: Designation Notice

Poster WH1420: Your Employee Rights Under the Family and Medical Leave Act