

## **Chapter 11**

### **FAMILY AND MEDICAL LEAVE POLICY**

**11.01 Policy Statement.** In accordance with the federal Family and Medical Leave Act and the Washington State Family Leave Act (jointly referred to here as FMLA), the City grants job-protected, unpaid family and medical leave to eligible employees for up to twelve (12) weeks per twelve-month period for any of the following reasons:

1. The birth of and care for a newborn child, or the placement of a child with an employee in the case of adoption or foster care. Leave for these reasons will expire at the end of the 12 month period beginning on the date of such birth or placement;
2. In order to care for an immediate family member (spouse, child, or parent) if that family member has a serious health condition; and
3. An employee's own serious health condition that makes the employee unable to perform the essential function(s) of their position.

#### **11.02 Definitions.**

Twelve-Month Period - A rolling twelve-month period measured backward from the date family and medical leave is taken. The period continues with each additional family and medical leave day taken.

Spouse - Either member of a legally-married pair. If both spouses work for the City, they are entitled to a combined total of 12 weeks of leave if the leave is taken for the birth of a child, the placement of a child for adoption or foster care, or to care for a sick parent. If each spouse uses a portion of the 12 weeks of leave for the purposes specified above, each would be entitled to the difference between the amount they had taken and 12 weeks of FMLA leave for a different purpose. Example, if each spouse took 6 weeks of leave as a result of the birth of a child, each could use an additional 6 weeks due to his or her own serious health condition.

Child - A person younger than eighteen (18) years of age, or a person older than eighteen (18) years of age and incapable of self-care due to a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility. A "child" includes a biological, adopted, foster, or step-child.

Serious Health Condition - A serious health condition is an illness, injury, impairment, or a physical or mental condition involving inpatient care or continuing treatment by a health provider. Continuing treatment involves:

1. A period of incapacity of more than three (3) consecutive calendar days (not working days) and subsequent treatment including either two visits to a health care provider or one visit followed by continuing treatment under the health care provider's supervision;
2. A period of incapacity due to pregnancy or for prenatal care;
3. Treatment for chronic serious health conditions such as asthma and diabetes which (1)

requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (2) continues over an extended period of time (including recurring episodes of a single underlying condition); and (3) may cause episodic rather than a continuing period of incapacity; and

4. Treatments for serious conditions such as cancer that may not be incapacitating but without treatments would result in a period of incapacity of more than three (3) consecutive days.

Health Care Provider - Any health care provider that is recognized by the City or accepted by the City's group health plan. This may include physicians, dentists, clinical psychologists, optometrists, and chiropractors, nurse practitioners, nurse midwives and clinical social workers.

**11.03 Eligibility for Leave.** To be eligible for family and medical leave, an employee must have been employed by the City for at least twelve (12) months. Employees must have worked 1,250 hours during the 12 months prior to the commencement of leave. Vacation, personal leave, sick leave or unpaid leave is not included in the 1,250 hour calculation.

**11.04 Intermittent or Reduced Leave.** An employee may take FMLA leave on an intermittent basis (a few days or few hours at a time) or on a reduced leave schedule as a result of the birth of a child and for the placement of a child for adoption or foster care if the City and the employee agree to such a schedule.

Leave for a serious health condition may also be taken intermittently or on a reduced leave schedule when medically necessary. The City may request certification from the health care provider of the employee or family member of the medical necessity of the intermittent leave schedule and its expected duration. Employees are required to schedule intermittent leave that is foreseeable so as not to unduly disrupt the City's operations. The City may assign employees on intermittent FMLA leave temporarily to alternative positions with equivalent pay and benefits that better accommodate such recurring periods of intermittent leave.

For regular part-time employees and employees who work variable hours, the FMLA entitlement will be calculated on a prorated basis. A weekly average of the employee's hours worked over the twelve-week period before the beginning of the family and medical leave will be used for calculating the employee's normal workweek.

**11.05 Substitution of Paid Leave.** An employee on FMLA leave must use any accumulated vacation and sick leave they have available. After an employee on FMLA leave has exhausted their accumulated vacation and sick leave, the remainder of the leave will be unpaid.

An employee who incurs a work-related illness or injury may be eligible to receive worker's compensation benefits. Any time off due to the work-related illness or injury will count toward the employee's FMLA leave entitlement.

The FMLA Act does not allow for the substitution of compensatory time for unpaid FMLA leave.

**11.06 Designating Leave as FMLA Leave.** The City has the authority to designate before leave starts, whether any paid leave to be taken counts towards an employee's FMLA leave entitlement, and will notify the employee immediately upon learning that it qualifies as FMLA leave. The initial notification to the employee may be oral, but will be confirmed in writing by the next regular payday. The City's designation is based upon information obtained from the employee or the employee's spokesperson (e.g., spouse, parent, physician, etc. if the employee is incapacitated). The employee must provide enough information to enable the City to make a determination, if not; the City may make a tentative designation until further inquiry is made to obtain the additional information.

**11.07 Employee Notice Requirements.** An employee must provide the City with at least thirty (30) days advance notice before FMLA leave is to begin if the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition. Failure to provide the notice with no reasonable excuse will give the City the right to delay the taking of leave until at least thirty (30) days after the date the employee provides notice to the City of the need for FMLA leave. If thirty (30) days notice cannot be provided, notice must be given as soon as practicable. Verbal or written notification to the City should be provided within one or two business days of when the need for leave becomes known to the employee. When planning medical treatment, the employee must consult with his/her supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt the City's operations, subject to the approval of the health care provider.

Medical Certification - If the employee's leave is to care for the employee's seriously ill spouse, child, or parent, or due to the employee's own serious health condition, the request must be supported by a certification issued by the health care provider of the employee or the employee's ill family member. When the leave is foreseeable and at least 30 days notice has been provided, the medical certification should be provided before the leave begins. The City will allow 15 calendar days for the employee to comply with a request for medical certification. Medical certification forms will be made available by the Human Resources office.

Second Opinion - The City may require a second medical opinion (at the City's expense). Pending receipt of the second opinion, the employee is provisionally granted leave. The City may also request periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report from the employee's attending physician advising that the employee can return to work.

If the opinions of the employee's and the City's designated health care providers differ, the City may require a third opinion (at the City's expense). The third health care provider will be designated or approved jointly by both the employee and the City. The third opinion is final and binding. The City will reimburse an employee or family member for any reasonable travel expenses incurred to obtain the second and third opinions.

Confidentiality - All documentation related to the employee's or family member's medical condition is held in strict confidence and maintained in the employee's confidential medical file in the Human Resources office.

**11.08 Payment of Group Health Premiums.** The City will maintain (including the continuation of paying the City's share of the premiums) the group health insurance coverage for an employee's FMLA leave period whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. Any portion of group health plan premiums which the employee has paid before starting an FMLA leave must continue to be paid by the employee during the leave. Any changes to premium rates and levels of coverage or other conditions of the plan that apply to other active employees also apply to eligible employees on FMLA leave. The City will give advance written notice to employees of the terms for payment of premiums during FMLA leave. If FMLA leave is unpaid, the City requires that payment of the employee's portion of the payment of health benefit premiums will be made by the employee to the City. Payment is required at the same time as if it would be made by payroll deduction.

The City's obligation to maintain group health benefits ends after an employee's premium payment is more than 30 days late. The City will provide 15 days notice that coverage will cease if the employee's premium is more than 30 days late. If coverage should lapse while the employee is on FMLA leave, they will be restored to equivalent coverage upon return to work and will not be required to meet any qualification requirements imposed by the health care plan such as preexisting waiting periods or passing a medical exam to obtain coverage.

Failure to Return to Work - The City may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work at the end of leave. The only exception is where the employee does not return due to the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member or other circumstances beyond the employee's control.

**11.09 Rights Upon Return to Work.** When an employee returns from an FMLA leave, they will be restored to the same or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. The Family Medical Leave Act does not require the City to place a returning employee in the same position. If a position in which an employee is placed is equivalent, the employee has no right to be restored to the original job.

The employee's restoration rights are the same as they would have been if the employee had not been on FMLA leave. For example, if the employee's position would have been eliminated, or if the employee would have been terminated, regardless of the employee having taken leave, the employee does not have the right to be reinstated upon return from FMLA leave.

Seniority - An employee is not entitled to seniority or benefit accruals during periods of unpaid family and medical leave. However, an employee does not lose seniority or benefits accrued prior to family and medical leave.

Early Return -If an employee requests to return to work earlier than originally scheduled, he/she should give the City reasonable advance notice, generally at least two working days. The City may require that before returning, the employee present a certification from his/her health care provider that the employee is able to resume work.

Request for Extension - In certain circumstances, an FMLA leave of absence may be extended beyond 12 weeks, upon request, when accompanied by an explanation of the need for an

extension period from your health care provider. The employee should give reasonable notice to the City of the need for an extension, and provide updated medical certification, prior to the expiration of the originally scheduled leave period.

An employee who does not (or is unable to) return to work after exhausting available FMLA leave is no longer protected by FMLA. Group insurance coverage may terminate at the end of the month in which the extended leave begins. If the employee desires to continue group coverage he/she must make arrangements to prepay individual and dependents' premiums each month. These arrangements should be taken care of before beginning the extended leave of absence, but in no case later than 30 days after the end of the month in which the extended leave began.

The City cannot guarantee that an employee will be able to return to the same or equivalent job after his/her return from an extended leave of absence. Failure to return from an extended leave on or before the agreed-upon date may result in termination.

**11.10 Military Caregiver Leave.** An employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to 26 workweeks of unpaid leave during a single 12 month period to care for the servicemember. A covered servicemember is a current 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. A covered servicemember is also a veteran who was a member of the Armed Forces at any time during the period of 5 years preceding the date on which the he or she undergoes medical treatment, recuperation or therapy for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty, or that existed before the beginning of the service member's active duty and was aggravated by service in the line of duty on active duty, that may render the servicemember unfit to perform the duties of his or her office, grade, rank or rating. For a veteran, a serious injury is a qualifying injury or illness (as defined by regulation) that was incurred in the line of duty on active duty (or that existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself before or after the servicemember became a veteran. The "single 12 month period" for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of 26 workweeks for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.) Medical Caregiver Leave may be taken intermittently whenever necessary to care for a covered servicemember with a serious injury or illness.

**11.11 Qualifying Exigency Leave.** An employee may take up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer for FMLA leave for "qualifying exigencies" arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty status, or has been notified of an impending call or order to active duty status in support of a contingency operation. For purposes of this leave, covered active duty for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. Covered active duty for members of the

reserve components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. Specific qualifying exigencies are defined by regulation and may be found at 29 CFR 825.126, but include generally short notice deployments, military events and related activities, childcare related activities, financial and legal arrangements, counseling, rest and recuperation, and post-deployment activities. Please consult with Human Resources if you have questions about the scope of leave authorized under this section. FMLA leave may be taken intermittently for a qualifying exigency.

**11.12 Additional Medical Leave During Disability Due to Pregnancy or Childbirth and to Care for Newborn.** In addition to the FMLA leave described above, any employee entitled to leave for the period during which she is temporarily disabled due to pregnancy or childbirth. This pregnancy/ childbirth disability leave is unpaid and health benefits are not automatically continued; however, accrued leave may be used and the employee may continue insurance coverage at her expense. Certification from the employee's health care provider may be required. If the employee is eligible for FMLA leave, the Pregnancy Disability leave will run concurrently with FMLA leave.

The Washington Family Leave Act (FLA) provides certain additional leave benefits to care for a newborn. The FLA largely mirrors the FMLA, with the same eligibility standards and entitlement to 12 weeks of leave for family and medical reasons. In most situations, leave under the FLA runs concurrently with FMLA leave. However, the FLA leave does not run concurrently with any leave taken for pregnancy/childbirth disability; this affords an employee time off to care for her newborn once she has recovered from the disability.

For Guidance: For more information on any of these leave policies, or if you think you may need to take Family and Medical Leave, contact the Human Resource Assistant. The leave laws, particularly those applicable to pregnancy and childbirth, can be confusing. Employees are encouraged to contact Human Resource with any questions about how the various laws are coordinated in a particular situation.