

CITY OF TUMWATER  
POLICY MANUAL - PART 1: PERSONNEL POLICIES

SECTION 6  
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6.08 Medical Leave of Absence

- 6.08.03 A certificate from a qualified health care provider may be required to provide certification of illness or temporary disability, and may be required to provide written release to return to work.
- 6.08.04 An employee will be returned to the same position, or similar position of the same pay, if leave has been taken only for the actual period of illness or disability relating to pregnancy or childbirth. The total medical leave period granted under this policy may not exceed 180 calendar days in an employee's career.

6.09 Family and Medical Leave

- 6.09.01 Eligibility for Leave: Any city employee who has been employed for at least twelve (12) months by the city and has worked for at least 1250 hours during the previous twelve (12) months is eligible for leave under this section.
- 6.09.02 Qualifying Events:
- New Child or Health Leave: An employee who is eligible for Family Medical Leave (FMLA), may receive up to twelve (12) weeks of unpaid leave in a twelve (12) month period to care for:
- (a) A newborn child, newly adopted child, newly placed foster child;
  - (b) a spouse, domestic partner, child or parent with a serious health condition; or
  - (c) a personal, serious health condition that leaves the employee unable to perform the essential functions of his/her job.

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If both spouses or domestic partners are city employees, the city reserves the right to restrict family and medical leave to a total of up to twelve (12) work weeks of unpaid leave in a twelve (12) month period for the birth or adoption of a child or to care for a parent with a serious health condition. The city may opt to limit the use of the family and medical leave to one spouse or domestic partner at a time.

Military Caregiver Leave: An employee who is eligible for FMLA, may receive up to twenty-six (26) weeks of unpaid leave in a 12-month period to care for recovering military service personnel who is a spouse, domestic partner, parent, child or next of kin who develops a serious injury or illness while serving in the armed forces. This includes a recovering veteran who is a spouse, domestic partner, parent, child or next of kin who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including National Guard or Reserves) at any time during the five-year period preceding the date of the treatment, recuperation, or therapy.

Call to Active Duty Leave: An employee who is eligible for FMLA, may receive up to twelve (12) weeks of unpaid leave in a 12-month period when a spouse, domestic partner, parent, or son or daughter on *covered active duty* in the Armed Forces has a qualifying exigency arising out of 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.

Eligible part-time employees shall receive family leave on a pro rata basis. If the number of working hours varies, the average hours over the course of the past 12 months prior to the family medical leave period shall be utilized as the basis for calculation the employee's normal work week.

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Family and medical leave taken to care for a newborn or newly adopted child must be completed within twelve (12) months of the child's birth or placement for adoption.

While an employee may also take 12-weeks of leave other than military care leave, the total amount that an employee may take of both military and other FMLA leave is 26 weeks in a 12-month period.

6.09.03 Definitions. For purposes of the family medical leave policy in section 6.09, the following terms are defined:

- (a) *"Child"* - means a child either under 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day to day responsibility for care and includes a biological, adopted, foster or step-child.
- (b) *"Contingency Operation"* – means those circumstances and situations as designated so by the US Secretary of Defense.
- (c) *"Covered Active Duty"* – means duty during deployment to a foreign country if a member of a regular component of the Armed Forces; for members of a reserve component, it means duty during deployment to a foreign country under a call or order to active duty pursuant to specified provisions of federal law.
- (d) *"Medically Necessary"* – means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

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- (e) “*Next of Kin*” – means nearest blood relative or as further defined by the U.S. Department of Labor.
- (f) “*Qualifying Exigency*” – means those circumstances and situations as defined by the US Department of Labor as they relate to the return to active military duty including: short-term deployment, military events and related activities, childcare and school activities, financial and legal arrangements, rest and recuperation, post-deployment activities and additional activities where the City and employee agree to the leave.
- (g) “*Serious Health Condition*” - means an illness, injury, impairment, or physical or mental condition that involves either: an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

In determining whether a *serious health condition* exists, the term “*continuing treatment*” shall mean either:

1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:

- Treatment two or more times by, or under, the supervision of a health care provider (i.e. in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
- One treatment by a health care provider (i.e. an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g. prescription medication, physical therapy); or

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- 2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
  - 3) Any period of incapacity for treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
  - 4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
  - 5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.
- (h) “*Serious Injury or Illness While Serving in the Armed Forces*” – means an injury or illness sustained in the line of duty or that existed before a service member’s active duty began and were aggravated by service in the line of duty while on active duty in the armed forces that renders the member medically unfit to perform the duties of the member’s office, grade, rank or rating and/or as further defined by the U.S. Department of Labor. For veterans, a serious illness or injury is a “qualifying injury or illness” (as defined by the DOL) that was incurred in the line of duty on active duty in the Armed Forces (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 service member became a veteran.

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- (i) *"Twelve Month Period"* - means a rolling 12-month period measured backward from the date taken and continuous with each additional leave day taken.

6.09.04 Procedures:

- (a) **Notice Requirement:** An employee must request the use of family and medical leave by submitting a written statement of the specific reasons for the leave at least thirty (30) days prior to the anticipated date of delivery, placement or adoption. If a scheduled medical treatment for the employee or a spouse, domestic partner, child or parent of the employee is the basis for the request, the employee must, if practicable, provide thirty (30) days written notice. It is the responsibility of the employee who has a planned medical treatment to make a reasonable effort to schedule treatment so as not to unduly disrupt city operations. The notice must be presented to the department head, who will review and forward the written statement to the Administrative Services Director.
- (b) **Confirmation Requirement:** The city may require an employee requesting family and medical leave to provide confirmation from a health care provider of the need for and probable duration of the leave requested. The confirmation must be provided in an approved city format available from the Administrative Services Director within fifteen (15) days of the date that confirmation is requested by the city. The city reserves the right to obtain, at its expense, an opinion from a second health care provider of the city's choosing. Should the recommendations of the city's health care provider differ from that of the employee's, the opinion of a third health care provider, chosen jointly by the employee and the city, will be obtained at the expense of the city, to review the request.

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All documentation related to the employee's or family member's medical condition will be treated in confidentiality and maintained in the employee's medical records file within the Administrative Services Department.

6.09.05 Duration and Use of Family and Medical Leave:

- (a) Consecutive and Intermittent Use of Family and Medical Leave: An employee will normally be granted up to twelve (12) consecutive weeks of family and medical leave in a *twelve month period*. Intermittent use of up to twelve (12) weeks of family and medical leave may be allowed by the city when the employee has established, through the confirmation process in 6.08.03, that it is *medically necessary* to use the leave intermittently.

Intermittent use of up to twelve (12) weeks of family and medical leave in a Twelve Month Period may be allowed for care of a spouse, domestic partner, *child* or parent who has a *serious health condition*. The medical certification of the need for intermittent leave provided by the employee's health care provider must specify the expected duration of the intermittent leave. In granting the use of intermittent family and medical leave, the city may require an employee to temporarily transfer to an available alternative position with equivalent pay and benefits to better accommodate the employee's modified work hours.

- (b) Status Reports While Using Family and Medical Leave: The city may require an employee using family and medical leave to periodically report their status and intention to return to work. The city may also require an employee to obtain additional, written medical certification for the need to continue the leave.

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- (c) Use of Paid Leave as Part of a Family and Medical Leave Period Required: Employees requesting the use of unpaid family and medical leave for a personal *serious health condition* shall normally be required to exhaust sick leave accruals and to utilize up to four work weeks of their accrued vacation leave as part of the leave period. Employees with less than four work weeks of accrued vacation leave shall normally be required to use their entire leave accrual.

Employees requesting the use of unpaid family and medical leave to care for a spouse, domestic partner, child or parent with a *serious health condition* must exhaust their vacation leave and may be required to exhaust their sick leave subject to section 6.10.

Accrued vacation and sick leave must be taken at the beginning of the family and medical leave period. Exceptions to the mandatory use of sick and annual leave as part of a family and medical leave period may be requested, in writing, to the Mayor when the family and medical leave is requested.

An employee on both FMLA and time-loss from Worker's Compensation (L&I) may choose to use his/her available paid leave time or to take the FMLA time as unpaid time. The employee will designate his/her desire for leave time or unpaid time on his/her timesheet.

The city may, at its discretion, grant leave without pay pursuant to Personnel Policy 6.08 or 6.17 to extend the duration of a family and medical leave period beyond 12 weeks.

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6.09.06 Employee Benefits During Periods of Family & Medical Leave: The city will continue the employer's share of the premiums for medical and dental coverage for up to twelve (12) weeks of approved family and medical leave. However, city payment of the employer's share of coverage is conditioned upon return to work. Except in certain circumstances, if the employee terminates employment before returning from family and medical leave, the city may recover all insurance payments made while the employee was on family and medical leave. If an employee is normally required to pay for part of the medical and dental insurance premiums, mutually acceptable arrangements for payment of the employee's share of the premiums must be made to ensure continuation of coverage.

Sick and vacation leave shall not accrue during a period of unpaid family and medical leave, unless earned by meeting the requirements of 5.03.03. Paid holidays shall not be provided to employees on unpaid family and medical leave, unless earned by meeting the requirements of 6.02.04 or 6.02.05.

6.09.07 Job Protection Provisions: If an employee returns to work within the agreed upon time period of family and medical leave, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority. The employee's restored status will be the same as it would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have any new right to be reinstated upon return from leave.

If an employee fails to return to work following twelve weeks of family and medical leave, he/she will be reinstated to the same or a similar position only if a position is available. If the same or similar position is not available the employee may be terminated.