

FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

Provisions

The Family Medical Leave Act of 1993 (FMLA) became effective August 5, 1993, and provides eligible employees unpaid medical leave as needed for up to twelve (12) weeks per calendar year for qualifying reasons. This policy may be revised from time to time when revisions are made by Congress or the Department of Labor. Procedures may change from time to time as deemed necessary and expedient.

Eligibility

Any employee who has been employed at least 12 months (need not have been consecutive) and has actually worked at least 1,250 hours during the 12 months immediately preceding the date of the commencement of the leave is eligible for up to twelve weeks of unpaid FMLA leave. All classes of employees are eligible providing they meet the foregoing requirement and the need for leave is verified by the medical provider.

Husband and Wife Both Employed by City

A husband and wife who both work for the City, who are eligible for FMLA leave may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's child or to care for the child after birth; for placement of a child with the employee for adoption or foster care, or to care for the child after placement; or to care for the employee's parent with a serious health condition. For example, if each spouse took 6 weeks of leave to care for a healthy newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

Military Employees Returning from Active Duty

A member of the National Guard or Reserve who is absent from employment for an extended period of time due to active military service and who requests FMLA leave shortly after returning to City employment may not have actually worked for the City after return for a total of 12 months or may not have performed 1250 hours of actual work in the 12 months prior to the start of the FMLA leave. Pursuant to a Memorandum dated July 22, 2002 from the U.S. Department of Labor, an employee reemployed following active duty military service would be entitled to FMLA leave if the hours that he or she would have worked for the City during the period of active military service would have met the FMLA eligibility threshold. Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the City should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave requested but for the military service.

Military FMLA

Employees seeking 12 weeks of "covered active duty" military FMLA due to a qualifying exigency, are required to provide proof of verification for the covered service member. The employee must provide a copy of the covered service members' military orders. In order to qualify as "covered active duty, a military member must be deployed to a foreign country. Employees seeking 26 weeks of medical FMLA are required to provide a copy of the covered service members' military orders. The employee is also required to submit medical provider certification of the covered service members' medical illness or injury. Under this provision qualifying employees are entitled to a combined total of 26 weeks of FMLA.

Notifications of Need for FMLA Leave

The request and notification requirements for FMLA leave are the same as those for requesting other types of paid leave. Written notice must be provided thirty (30) days prior to any foreseeable leave, such as childbirth, adoption, or planned medical treatment. However, if emergency conditions prevent thirty (30) days notification, you must notify your department head or supervisor as soon as possible, preferably within fifteen (15) days of the emergency. When leave is needed for an immediate family member or the employee's own illness, and the leave is for planned medical treatment, the employee must try to schedule such treatment so as not to unduly disrupt the department's operations.

Medical Provider Certifications of the Need for FMLA Leave

The medical provider certification to verify a serious health condition for FMLA leave are the same as required for eligibility for sick leave benefits. Employees must provide medical verification of the need for medical leave. If the City disagrees with the

medical opinion provided by the employee's medical provider, the City, at its expense, may require a second medical opinion. In the event the first and second medical opinions differ, the City may acquire, at its expense, a third medical opinion. The medical provider for the third medical opinion will be selected jointly by the City and the employee. The third medical opinion will be binding on both parties.

Medical Provider Release to Return to Work

A medical fitness for duty release is required for all employees who return to work from medical leave of any kind that exceeds three (3) working days, including FMLA leave.

Status Reports

Employees on medical leave must provide periodic reports as directed by the department head regarding their status and intent to return to work.

Contacting Employee's Health Provider

An employer may contact an employee's health care provider for "clarification". Direct supervisors are prohibited from contacting an employee's health care provider.

FMLA Qualifying Events

- The birth of a son or daughter and to care for the newborn child. Circumstances may require that leave begin before the actual date of the birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. Leave for the birth of a child must be concluded within 12 months after the birth.
- The placement of a son or daughter with the employee for adoption or for foster care. (Foster care is defined under the Act to require State action, rather than just an informal arrangement to care for another person's child). Leave can also begin before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. Leave for adoption or foster care must be concluded within 12 months after the event.
- The employee is needed to care for the employee's spouse, child, or parent with a serious health condition.
- A serious health condition that makes the employee unable to perform the functions of the employee's job. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. The City may, in requiring certification from a health care provider, provide the employee's medical provider a statement of the essential functions of an employee's position for the medical provider to review.
- In the event of a spouse, child or parent of covered service member called to active duty.
- To care for the employee's "next of kin" who is a covered service member suffering from a serious injury or illness as a result of service in the United States Military, the period of FMLA is 26 weeks of leave during a 12 month period.
- In the event of any "Qualifying Exigency" resulting from active duty military service.

FMLA leave entitlements for medical reasons are predicated upon the existence of a serious health condition of the employee or qualified family member, as defined by the Act.

For purposes of confirmation of family relationship, the City may require the employee giving notice of the need for leave to provide reasonable documentation or statements of family relationship. This documentation may take the form of a simple statement from the employee, a child's birth certificate, a court document, etc. The employer is entitled to examine such documentation, and the employee is entitled to the return of the official document(s) submitted for this purpose.

Additional Paid Sick Leave Benefits

Eligibility. Those employees who have accumulated over 300 days sick leave will be eligible to apply for additional paid sick leave benefits beyond the twelve weeks of leave provided by the FMLA.

Entitlement. If available, up to 13 weeks additional paid sick leave may be taken for the care of a child or spouse, after an employee has taken his or her 12 weeks of FMLA leave. Time may only be taken in weekly increments.

Available Days. Available days will be those accumulated by an employee **in excess** of 300 days.

Requirements. In order for an employee to be eligible for additional paid sick leave in excess of 12 weeks, the employee must provide a written notice from the physician to the employee's department head stating the nature of the illness of the child or spouse and that extended personal care by the employee is required for the patient.

Definitions

"Spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

"Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child as defined below. The term does not include parents "in law."

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of mental or physical disability."

Active Duty- The term "*active duty*" means duty under a call or order to active duty (or a notification of an impending call or order to active duty) in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code.

Next of Kin –The term "*next of kin*" used with respect to an individual, means the nearest blood relative of that individual in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. This term only applies to employees requesting 26 weeks of Military FMLA due to serious injury or illness.

Covered Service Member- The term "*covered service member*" means a 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 incurred in the line of duty on active duty in the Armed Forces; or an illness or injury aggravated in the line of duty.

Covered Active Duty- The term "*covered active duty*" means the military member **must now be deployed to a foreign country.**

Covered Veteran- The term "*covered veteran*" means an individual who must have been discharged under conditions other than dishonorable within (5) fine years of the first date an eligible employee take FMLA leave to care for the covered veteran.

Qualifying Exigency – The term "*qualifying exigency*" may be defined as any of the following events that arise out of active duty employment:

1. Issues arising from a covered military member's short notice deployment (i.e. deployment on seven or less day of notice). Leave taken for short term deployment must be taken within seven (7) days of the date of notification of deployment;
2. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and information briefings sponsored or promote by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
3. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare. Providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or day care facility if they are necessary due to circumstance arising from the active duty or call to active duty of the covered military member;
4. Making or updating financial and legal arrangements to address a covered military member's absence;
5. Counseling;
6. Rest and recuperation; an employee may take up to (15) calendar days for rest and recuperation
7. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
8. Parental care leave to care for the parent of a military-member that has been place on covered active duty

9. military
Any other event that the employee and employer agree is a qualifying exigency.

In the event the employee and the employer cannot agree to item number eight (8) listed above, the employer may reserve the right to deny the employee's request.

Eligible employees are required to use paid annual leave for a Non-Medical Military FMLA request. Sick leave may not be used for Non-Medical FMLA.

"Clarification" – The term "clarification" means contacting the employee's health care provider in order to understand the handwriting on the medical certification or to understand the meaning of a response; no additional information beyond that included in the certification form will be requested and any contact with the employee's health care provider will comply with the requirements of HIPAA Privacy Rule.

"In loco parentis" means a person with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs).

"Activities of daily living" (ADLs) include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating.

"Instrumental activities of daily living" (IADLs) include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

"Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined by 29 CFR § 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. and all applicable Court decisions.

"Incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

"Chronic serious health condition" is one which 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, that continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

"Intermittent Leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason.

"Reduced Leave Schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

"Serious Health Condition," for purposes of FMLA, means an illness, injury, impairment, or physical or mental condition that involves one of the following:

- 1) In Patient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity, or subsequent treatment in connection with such inpatient care; OR
- 2) Continuing Treatment by a Health Care Provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a period of incapacity of more than three (3) consecutive calendar days, AND any subsequent treatment or period of incapacity relating to the same condition, THAT ALSO INVOLVES treatment two (2) or more times by a health care provider, a nurse or physician's assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health

- care provider; OR, treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;
- any period of incapacity due to pregnancy, or for prenatal care;
 - any period of incapacity or treatment for such incapacity due to a chronic health condition;
 - a period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease; or
 - any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc., severe arthritis (physical therapy), kidney disease (dialysis).

"Unable to Perform the Essential Functions of the Position" means where the health care provider finds that the employee is incapacitated or unable to work or is unable to perform any one or more of the essential functions (job duties or physical requirements) of the employee's position within the meaning of the Americans with Disabilities Act (ADA).

An employee who must be absent from work to receive medical treatment for a "serious health condition" is considered to be unable to perform the essential functions of the position during the absence for treatment.

"Treatment" includes, but is not limited to, physician care, examinations to determine if a "serious health condition" exists and evaluations of the condition. Treatment does not include routine physical, eye, or dental exams.

"Regimen of Continuing Treatment" includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

Common Ailments Not Covered.

Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

Cosmetic Treatment

Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are considered serious health conditions provided all the other conditions of the FMLA are met.

Substance Abuse Treatment

Substance abuse may be a serious health condition if other conditions of the FMLA regulations are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Treatment for substance abuse does not prevent the City from taking employment action against the employee in cases involving disciplinary actions against the employee. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

Pregnancy or Prenatal Care

Absences attributable to incapacity due to pregnancy or for prenatal care may qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) working days. For example, an employee who is pregnant may be unable to report to work because of severe morning sickness.

Chronic Conditions

Absences attributable to incapacity due to a chronic serious health condition qualify for FMLA leave even though the employee

or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack, or a pregnant employee may be unable to report to work because of severe morning sickness.

Substitution of Paid Leave Benefits for Unpaid FMLA Leave Entitlements

Accumulated Sick Leave, Annual Leave and Discretionary Leave benefits, respectively, shall be substituted and be charged concurrently with unpaid FMLA entitlements for qualifying employee medical conditions other than on-the-job injuries. Substitution of paid leave benefits for unpaid leave does not extend the total length of the FMLA entitlement.

If all paid leave benefits that an employee is eligible to use for the specific situation under current City policy become exhausted prior to the expiration of the employee's unpaid FMLA entitlement, the remainder of the FMLA entitlement (if any) shall be unpaid.

Employees released by the medical provider with work restrictions requiring modified or temporary light duty may decline to return to work in a temporary light duty assignment while on FMLA leave. However, the remainder of the FMLA entitlement will be unpaid unless there are other paid leave benefits for which the employee is eligible under the circumstances. Sick leave is only payable if an employee is incapacitated and unable to work.

Employees working for another employer while on FMLA leave shall not be eligible for paid sick leave benefits since they are not incapacitated and unable to work. Annual leave or personal leave will be substituted concurrently with FMLA and when exhausted, the remainder of the FMLA entitlement shall be unpaid.

Workers' Compensation Benefits

When an employee is on leave due to an on-the-job injury or illness which is a serious health condition under the FMLA, the workers' compensation absence and FMLA will run concurrently. Sick leave benefits shall not be used to provide compensation during absences due to on-the-job injuries.

The City provides supplemental payments while injured employees are drawing Workers' Compensation (WC) Total Temporary Disability (TTD) payments from the City's WC Administrator. These supplemental payments are provided for a limited period while employees are drawing WC TTD payments so the employee will experience no reduction in compensation.

WC TTD payments and the City's supplemental payments shall substitute for any unpaid FMLA leave entitlement as long as employees remain eligible for the WC TTD payments.

Employees who receive a medical release to return to work with temporary work restrictions requiring temporary modified or light duty may decline to return to work while on FMLA leave for on-the-job injury/illness.

Refusals to accept offers of temporary modified or light duty are required to be reported to the WC Administrator. The City is also required to report any knowledge it has regarding employees working for another employer while absent and drawing WC TTD benefits. This may or may not result in the denial of further WC TTD wage payments. The decision to suspend TTD payments is made by the Workers' Compensation Administrator.

Once an employee is no longer receiving the WC TTD payments, the employee is no longer eligible for the City's supplemental payments. If the employee has available annual leave or personal leave, it will be substituted concurrently with the FMLA leave until exhausted, after which any remaining FMLA entitlement will be unpaid.

Intermittent Leave or Reduced Work Schedule

Intermittent leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from fifteen minutes or more to several weeks. Only the hours not worked are charged to unpaid FMLA leave being substituted and charged concurrently with paid leave.

Employees needing intermittent leave or a reduced work schedule must attempt to schedule their leave so as not to disrupt their department's operations. In addition the department head may temporarily assign an employee to an alternative position with equivalent pay and benefits to better accommodate the employee's intermittent or reduced leave schedule.

To be eligible for intermittent leave or leave on a reduced work schedule, there must be a medical need for leave (as

distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced work schedule. The treatment regimen and other information provided in the medical certification of the serious health condition meets the requirement for certification of the medical necessity for intermittent leave or a reduced work schedule.

For Medical Treatments

When medically necessary for planned or unanticipated medical treatment of a serious health condition by or under the supervision of a health care provider, recovery from treatment, or recovery from a serious health condition, FMLA leave may be taken intermittently or on a reduced schedule.

For Periods of Incapacity

Intermittent or reduced schedule leave may be taken for absences where the employee, spouse, child, or parent is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition, even if he or she does not receive treatment at that time by a health care provider.

For Care of Spouse, Child, Parent With Serious Health Condition

With medical certification in a form approved by the City, intermittent leave or a reduced work schedule may also be taken to provide care or psychological comfort to a spouse, child, or parent with a condition meeting the definition of a "serious health condition." Medical statements shall certify:

- that such leave is medically necessary; and
- the expected duration and schedule of such leave.
- the type of care or psychological comfort that the employee is to provide.

For Birth or Placement of a Child for Adoption or Foster Care

An employee may take leave intermittently or on a reduced work schedule after birth of a child or for care of the child or placement of a child for adoption or foster care only if the department head agrees to permit intermittent leave or a reduced work schedule. The department head's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

Possibility of Transfers Due to Intermittent and Reduced Schedule Leave

During periods of intermittent leave or reduced work schedule, the City may require the employee to transfer temporarily to an available alternative position with equivalent hourly rate of pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Such transfer may include transfer to an alternative full-time position that better accommodates the employee's need for intermittent leave or reduced work schedule or to a part-time job with equivalent hourly rate of pay and benefits or altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave. The employee will not be required to take more leave than is medically necessary and transfers or reassignments will be made in such a manner so as to not work an undue hardship on the employee. When an employee who has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he/she left when the leave commenced.

Designating Leave As FMLA Leave

Department Head Responsibility

In all circumstances, whether requested in advance or unforeseen, it is the responsibility of the department head (or the department head's authorized designate) to

- determine if absences may be FMLA-qualifying and if so,
- determine if the employee is eligible for FMLA leave
- designate the leave, foreseen or unforeseen, paid or unpaid, as FMLA qualifying leave; and
- give written notice of that designation to the employee.

Such designation is based on information provided by the employee. If the employee is incapacitated, the information must be provided by the employee's spokesperson (the employee's spouse, adult child, parent, doctor, etc.) If the supervisor or department head does not have sufficient information about the reason for an employee's absence, the supervisor or department head shall inquire further of the employee or the spokesperson to ascertain whether or not the absence should be

designated as FMLA leave. Once the department head (or authorized designate) has acquired knowledge that the leave is being taken for an FMLA reason, the department head (or authorized designate) must promptly (within two business days without extenuating circumstances) notify the employee whether the leave is FMLA qualifying and whether or not the employee is eligible for FMLA.

Employee Responsibility

Employees giving notice of a need for medical leave for themselves or an immediate family member must provide sufficient information to enable the department head (or authorized designate) to determine whether the employee is eligible for paid leave and/or whether or not the leave qualifies under the FMLA. If the employee fails to provide sufficient information to make this determination, paid leave or unpaid FMLA leave may be denied. In such cases, the employee will be required to provide sufficient information to enable the department head to determine whether or not the employee is eligible for paid leave and/or whether or not the reason for the leave is FMLA-qualifying and should not be denied. With sufficient information, the department head will authorize the appropriate paid leave benefits to be paid. If the need for leave is determined to be FMLA-qualifying, the appropriate paid leave benefits will be substituted concurrently with the employee's unpaid FMLA entitlement.

Similarly, an employee on leave for a vacation or other personal reasons who seeks an extension of leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event that occurred during the period of vacation or personal leave, the City may count the leave used after the FMLA-qualifying event against the employee's twelve (12) week FMLA entitlement.

Employees requesting to use Discretionary or Annual Leave or comp time off for medical reasons must likewise inform the department head of the reasons for the absence(s) to allow the department head (or authorized designate) to determine whether the leave is FMLA-qualifying and should be designated as such.

To Determine Eligibility and Need

As stated previously, an employee must state a qualifying reason for needing leave to allow the department head to designate eligibility for leave under the Act. Medical certifications are required. All requirements to determine eligibility and need for unpaid FMLA leave, whether foreseen or unforeseen, are the same as those outlined in the medical leave policy.

Required Certification to Care for Newly-Placed Foster Child

To care for a newly-placed foster child, certification from the state agency responsible for placing the child is required. In cases of foreseeable placement, certification is required at time of request (30 days advance notice). If the placement is on an emergency basis, certification from the State agency is required as soon as is practical, or no later than two business days following the placement.

Job Restoration

Following FMLA leave, employees will be returned to the same position held prior to the leave or one that is equivalent in pay, benefits and other terms and conditions of employment.

Employees who have been medically-released to return to full duty and who do not report to work the next work day following expiration of their FMLA leave may become subject to discharge.

Exceptions

It should be understood that under very limited circumstances, certain highly compensated salaried "key" employees are eligible for FMLA leave, but are not guaranteed restoration to their positions if they choose to take leave. If an employee is considered a "key" employee and the City plans to deny job restoration, the City shall notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave; notify the employee as soon as the City decides it will deny job restoration and explain the reasons for this decision; offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

"Key" Employee Definition

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent (10%) of employees.

Intent Not to Return to Work

If any employee unequivocally informs the City that he or she does not intend to return to work, the employment relationship is deemed terminated, and the employee's entitlement to reinstatement, continued leave, and health benefits ceases, except as

covered by C.O.B.R.A.

Employee Reporting Responsibility

Employees on FMLA leave must report periodically, as required by the Department head and/or City policy, on the employee's status and intention to return to work.

Penalty for Fraud

An employee who fraudulently obtains FMLA leave from the City is not protected by FMLA's job restoration or maintenance of health benefits provisions and is subject to discharge.

Health Care Insurance

The City will maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work, i.e., employee must pay his/her percentage of any family coverage.

Before any period of leave without pay commences, an employee must contact the Finance Department to make arrangements to pay their usual share of health insurance premiums to the City. The City's obligation to maintain health benefits under FMLA stops if and when an employee informs the employer of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted. The City's obligation also stops if the employee's premium payment is more than 30 days late and the City has given the employee written notice at least 15 days in advance advising that coverage will cease if payment is not received.

Employees should contact the Finance Department as far in advance of unpaid leave as possible to obtain details about making payment. In cases of sufficient notice, it is possible to begin making extra deductions in advance so that the payments will be made and the employee will not have to be concerned about them while off on unpaid leave. All insurance payments are paid one month in advance, i.e., May's premium is due in April, etc.

Other Payroll Deductions

While an employee is on paid leave the City will continue other payroll deductions for employee-elective insurance coverage or other elective payroll deductions, such as contributions to the Deferred Compensation program or the Credit Union. However, during periods of unpaid leave, the City will require that the employee continue to make those payments, along with the employee's share of health care payments.

Status Reports

The City requires periodic reports from an employee during leave regarding the employee's status and intent to return to work. If the employee provides a statement of intent to return to work, even if the statement is qualified, entitlement to leave and maintenance of health benefits continues. However, if the employee gives an unequivocal notice of intent not to return to work, the City's obligations to provide health benefits (except pursuant to C.O.B.R.A. requirements) and to restore the employee end.

Failure to Return to Work

If an employee willingly does not return to work for at least 30 calendar days after the expiration of his or her leave, then he or she may be required to reimburse the City for payment of any health insurance premiums paid by the City during the leave. If the employee does not return because of the continuing serious health condition, then reimbursement will not be required.

Earned and Accrued Benefits

During any leave without pay, including unpaid FMLA leave employees do not earn or accumulate paid leave benefits. However, leave benefits that accumulated prior to the start of the FMLA leave that remain following the FMLA will not be lost, and use of family or medical leave will not be considered a break in service when vesting or eligibility to participate in benefit programs is being considered.

Non-Discrimination Policy

The City of North Little Rock is an Equal Opportunity Employer. It is the policy of the City not to discharge or discriminate against any employee exercising his or her rights under the Family Medical Leave Act. Acts of retaliation against any employee exercising his/her right to leave under the Act are prohibited.

Conflicts in Policies

Where conflicts arise in the application of existing City policies and/or State laws vs. the FMLA regulations, FMLA regulations will prevail where reasons for leave are determined to be eligible for the FMLA. Where conflicts arise in the application of existing federal law vs. the FMLA regulations, the provisions of each will be coordinated on a case by case basis.