
PERSONNEL REGULATION - No. 2007-02

SUBJECT: FAMILY AND MEDICAL LEAVE ACT POLICY (FMLA)

EFFECTIVE DATE: December 1, 2007

Purpose of Policy

This policy is intended to prescribe procedures for leave under the Family and Medical Leave Act.

This Policy is intended to implement and clarify the language FMLA provisions of the City's collective bargaining agreements with AFSCME, Local 400, and employees not covered by a collective bargaining agreement.

The City of Takoma Park recognizes that family r medical leave is necessary to balance the demands of the work place with the needs of family and to entitle employees to take reasonable leave for medical reasons, for the birth or placement of a child, or for the care of an immediate family member (father, mother, sibling, spouse, child, domestic partner, step children, step-parent, father-in-law, mother in-law, legal guardian or any other dependent) with a serious health condition.

It is therefore the policy of the City of Takoma Park to grant up to twelve (12) weeks of job protected leave for specified family and medical leave in a 12-month period to eligible employees, who have been employed by the City for (12) months.

Where City policies are unclear on implementation, rights will be resolved in accordance with the Department of Labor regulations implementing the FMLA of 1993 and applicable judicial decisions.

ATTACHMENTS

- Frequently Asked Questions
- Employee FMLA Leave Request Form
- Certification of Health Care Provider Form

DEFINITIONS

- A. ***Family Leave*** - Leave used in connection with the birth of an employee's son or daughter and for the care of the newborn child, or placement of a child with the employee for adoption or foster care.
- B. ***Medical Leave*** - Leave used to care for the employee's spouse, son, daughter, parent or parent-in-law with a serious health condition; and leave used because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
- C. ***Child*** - Biological, adopted or foster children, a stepchild, a legal ward, or a person for whom an employee stands in loco parentis, who is less than 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.

- D. **Domestic Partners** - Two individuals in a mutual caring relationship, eighteen or older, both of whom reside in a mutual domicile. A domestic partner must be unmarried, the sole domestic partner of the other, and registered as a Domestic Partner with the City Clerk's office:
- E. **Spouse** - A husband, wife, or domestic partner of an employee.
- F. **Parent** - a biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.
- G. **Parent-in-law** - A biological parent of an employee's spouse or domestic partner.
- H. **In loco parentis** - Those persons with day-to-day responsibility to care for and financially support a child or, persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- I. **Immediate family member** - Father, mother, sibling, spouse, child, domestic partner, step children, step parent, father-in-law, mother-in-law, legal guardian or any other dependent.
- J. **Serious health condition** - An illness, injury, impairment, or physical or mental condition that requires either inpatient care, or a continuing regimen of treatment by a health care provider.
- K. **Continuing regimen of treatment** - Treatment which usually includes:
- two or more visits to a health care provider
 - two or more treatments by a provider of health care services on referral from, or under the direction of a health care provider
 - a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of a health care provider (for example a course of medication or therapy to resolve the health condition or pregnancy or prenatal care).
- L. **Incapable of self-care** - Individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living"(ADL). ADL include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
- M. **Physical or mental disability** - Physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- N. **Health care provider** - A doctor of medicine or osteopathy, podiatrist, clinical psychologist, optometrist, dentist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker
- O. **Key Employee** - A salaried employee who is among the highest 10 percent of all the employee employed by the City and residing within 75 miles of their work site.
- P. **Intermittent leave** - Leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time.

- Q. ***Reduced leave schedule*** - A leave schedule that reduces an employee's usual number of working hours per work week or hours per work day.
- R. ***As soon as possible and practical*** - As soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30-day notice of the need for family or medical qualifying leave and its anticipated start and duration, "as soon as possible and practical" would mean verbal notice within one or two business days of when the need for leave became known to the employee.

POLICY

Employees who have been employed by the City for (12) months are eligible for leave under the FMLA. An eligible employee is entitled to family or medical leave paid, unpaid, or a combination of paid and unpaid for the birth of a child and to care for such child; for the placement of a child with the employee for adoption or foster care; to care for the employee's seriously-ill child, sibling, spouse, parent, or parent-in-law; because of a serious health condition.

An employee can take up to twelve (12) weeks of leave in a 12-month period under this policy. The 12-month period for family or medical leave will commence with the first use of family or medical leave. Each time an employee takes family or medical eligible leave, the amount of leave taken is subtracted from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take for the remainder of the 12-month period.

All City-paid insurance and other benefits will continue during an approved FMLA absence with the exception of leave accrued, if using leave without pay for more than five days in a pay period.

Payroll deductions will be the Employee's responsibility when using leave without pay.

Neither sick nor annual leave shall accrue to an employee during a term of unpaid family or medical leave.

Medical leave will be first charged to accrued sick leave, then to accrued annual leave, then to leave without pay. Family leave will be first charged to accrued annual leave, then the employee will have the option of using accrued sick leave or leave without pay.

Upon an employee's return from family or medical leave, an employee is entitled to be returned to the same position the employee held when leave commenced if that position still exists; or; to an equivalent vacant position with equivalent benefits, pay, and other terms and conditions of employment.

If a husband and wife or domestic partners both work for the City, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a child, parent, or parent-in-law; -with a serious health condition, the amount of family or medical leave entitlement that the couple may take for those purposes shall not exceed a combined total of twelve (12) weeks leave in a 12-month period.

PROCEDURES

A. Employee Request for Leave

1. Whenever the need for family or medical leave is foreseeable, the employee will notify his or her supervisor at least 30 days in advance of when the leave is to begin, or as soon as possible and practical. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment so as to minimize disruption to the City's operation.
2. If an employee fails to provide 30-day notice for foreseeable leave **with no reasonable excuse** for the delay, the leave request may be denied up to 30 days from the date the City receives verbal notice.
3. If the need for family or medical leave is not foreseeable, the employee must notify his or her supervisor within 72 hours of an unforeseen event, or as soon as possible and practical.
4. Requests for family or medical leave must be submitted to the Human Resources Manager via the **Family or Medical Leave Request Form**. Such request must be given by the employee or by the employee's representative (e.g., spouse, family member, or responsible party) if the employee is unable to give such notice personally.
5. Upon request for family or medical leave, the Human Resources Manager will confirm the employee's eligibility based on the date the requested leave is scheduled to commence, or to confirm the employee's eligibility based on a projection that the employee will be eligible on the date leave would commence, or may advise the employee when the eligibility requirements are met.
6. An employee that timely files a Family or Medical Leave Request Form satisfies the notification requirement, even if he/she is not eligible for family or medical leave at the time the form is submitted.
7. Upon receiving notice from an employee of his/her need to take family or medical qualifying leave, the Human Resources Manager shall notify the employee in writing that the leave is being designated FMLA leave and provide information that the employee needs to know about his/her responsibilities while on family or medical leave. The memorandum shall include notice that: (1) the employee **must** provide certification of medical necessity for the leave by submitting a Certification of Physician or Practitioner Form prepared by their health care provider within 15 days of the request and failure to do so may result in continuation of the leave being denied until the certification is received; (2) the employee **must** provide periodic reports of their status and intent to return to work to their designated Department Head, or designee; (3) the employee **must** use accrued leave; (4) the employee **must** pay the employee's portion of his or her health insurance-premiums while on unpaid leave; (5) employee **must** undergo a fitness-for-duty certification before the employee can return to his/her position; (6) the employee shall have additional rights if, at the expiration of the FMLA leave, the employee is not medically able to perform the essential functions of the position held prior to the leave, or to a comparable position; (7) the consequence of the fraudulent use of family or medical leave is termination on the first offense.

The employee is required to sign this memorandum acknowledging the receipt of a copy of it and his/her understanding of its contents.

8. Final FMLA leave approval is granted by the City Manager or his/her designee.

B. Certification of the Serious Health Condition

1. The City will require medical certification to support a claim for leave for your own serious health condition or to care for the serious health condition of an immediate family member as provided for in the Certification of Physician or Practitioner Form. The employee is responsible for (1) providing this form to the Human Resources Division within 15 calendar days of the request, or (2) for providing a reasonable explanation for the delay.

Failure to provide timely certification may result in a denial of continuation of leave until the certification is submitted. Disciplinary action may be taken against the employee for being without leave.

2. In its discretion, the City may require a second medical opinion at the City's expense. If the first and second opinions differ, the City, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the City and the employee or the employee's representative. If an employee submits a complete certification signed by the health care provider, the City may not request additional information from the employee's health care provider. However, a health care provider representing the City may, with the employee's permission, contact the employee's health care provider for clarification and authentication of any certification.

C. Recertification of Serious Medical Condition

The Human Resources Manager may request the employee to obtain recertification at any reasonable interval, but not more than every 30 days unless:

- a) the employee requests an extension of leave;
- b) the circumstances of the original certification have significantly changed (e.g., duration, nature, complications of illness); or
- c) the Human Resources Manager has received information which casts doubt on the continuing validity of the certification; or
- d) the employee is unable to return to work after Family or Medical Leave because of the continuation, recurrence or onset of a serious health condition thereby preventing the recovery of health insurance premiums made by the City on the employee's behalf.

D. Periodic Reporting Required of Employee

The Human Resources Manager shall require an employee on Family or Medical Leave to report periodically on his/her status and intent to return to work by contacting the employee's Department Head or designee.

Failure of an employee to comply with the reporting requirements of this procedure may result in disciplinary action up to and including termination.

E. Employees Unable or Unwilling to Return from FMLA Leave

If the employee advises the Department Head or designees that he/she does not intend to return to work, the employee shall be asked to confirm that intent in writing. Employees who do not intend to return to work following family or medical leave should notify their supervisor within two business days. The employee's entitlement to reinstatement, continued leave, and maintenance of health benefits will cease. The employee shall be directed to contact the Human Resources Manager regarding COBRA health insurance coverage.

The employee's entitlement to reinstatement, continued leave, and maintenance of health benefits continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

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 after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to: (1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA; or (2) Other circumstances beyond the employee's control.

When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of the employee's or family member's serious health condition, thereby preventing the City from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the City may require medical certification of the employee's or the family member's serious health condition. (See Sec. 825.213(a)(3).) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

Failure to return to work without giving adequate notice at the expiration of the leave may result in termination for remaining absent without leave.

If the employee is unable to return to duty because disability renders the employee unable to perform the essential functions of his or her position, the City will attempt to accommodate the employee in accordance with the Americans with Disabilities Act.

F. Leave Entitlement/Usage

1. FMLA Leave will run concurrent with a workers' compensation absence.
2. Under some circumstances, employees may take intermittent leave or have a reduced leave schedule under this policy.
3. If requested, family or medical leave must be granted to an employee in a permanent position working at least twenty (20) hours per week with at least one year of service with the City. The twelve-month period for family and medical leave will commence with the first use of family or medical leave.

4. For part time employees and those who work variable hours, the family or medical leave entitlement is calculated on a pro-rata or proportional basis. (Example: An employee who is scheduled to work 20 hours per week is entitled to 240hours.)
5. Requests for leave donations are granted at the discretion of the Department Head. The use of donated leave is not permitted after an employee has been absent for 181 consecutive days.
6. Nothing in this procedure will prohibit the employee from requesting and the City Manager or designee from approving leave in excess of twelve (12) weeks. Additional leave beyond the twelve (12) weeks will not count as family or medical leave continuation of benefits purposes.

G. Family Leave

1. Leave used in connection with the birth of a child or the placement of a child for adoption or foster care must be completed within twelve months of the date of the birth or placement of the child.
2. Family leave may not be taken intermittently or on a reduced leave schedule except upon approval of the employee's department head.
3. Employees may request family leave as needed under this procedure but are guaranteed family leave only so long as the cumulative total of family or medical leave absences do not exceed twelve (12) weeks during a twelve-month period.
4. Family leave will first be charged to accrued annual leave, and then the employee will have the option of using accrued sick leave or leave without pay.
5. Employees may take family leave intermittently or on a reduced leave schedule only if the City agrees. Such a schedule reduction might occur, for example, where an employee, with the City's agreement, works part-time after the birth of a child, or takes leave in several segments. The City'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.

H. Medical Leave

1. As a general rule, where inpatient care is not involved, absences of more than three (3) days (and requiring the continuing treatment of a health care provider) for the employee's serious health condition or for the care of a family member with a serious health condition will be considered eligible for medical leave.
 - a. Department Heads shall notify Human Resources when an employee has an absence of three (3) days.
2. Prenatal care is explicitly included; routine physical exams are explicitly excluded.
3. Employees may request medical leave as needed under this procedure but are guaranteed medical leave only so long as the cumulative total of family or medical leave absences does not exceed twelve (12) weeks during a twelve-month period.

4. Nothing in this policy limits the rights of employees to request sick leave donations in order to provide necessary care and attendance to a sick family member under existing sick leave policies.
5. An employee will be required to provide medical certification from a health care provider indicating the need for medical leave, the continuation of medical leave, and/or the ability of the employee to return to work.
 - a. Medical certification must state, in the case of the employee's serious health condition, that he or she is unable to perform the functions of the position.
 - b. Where the employee is requesting medical leave to care for a seriously ill family member, the health care provider must either certify that the third-party care is required or that the employee presence would be beneficial to the patient. Such certification, in conjunction with an employee's statement of the care he or she will provide, will be sufficient to satisfy this requirement.
 - c. If intermittent leave or leave on a reduced leave schedule is required, the medical certification must describe the treatment regimen provided, i.e., doctor's visits, therapy, etc.
6. Medical leave will be charged to accrued sick leave, accrued annual leave, and then to leave without pay, in that order.
7. Medical leave may be taken intermittently or on a reduced leave schedule if certified as necessary by the leave schedule as permitted herein.
 - a. Leave may be taken intermittently or on a reduced leave schedule when necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.
 - b. Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time) and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.
 - c. Intermittent or reduced leave schedule may be taken for absences where the employee or family member 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 by a health care provider.

I. Continuation of Benefits

1. Employees on family or medical leave whose health insurance coverage level changes (e.g., individual to two party) are responsible for filing the appropriate health insurance forms within the specified time period. Employees whose coverage level increases are responsible for the increased employee contribution.
2. During the leave period, the City will continue coverage under the health insurance plan in which the employee is participating prior to going on leave, at the level and under the conditions coverage would have been provided, if the employee had not gone on leave. If an employee is in a paid leave status, the employee's share will continue to be paid through payroll deduction. Employees who are in a leave without pay status for more than five days, must submit premiums to HR, for all applicable benefits, e.g., health, dental, medical savings account, dependent care, legal care and etc. by the first of each month. **Benefits will be canceled after a required payment is more than 30 days late.**

Payment must be made to the City of Takoma Park, Human Resources, 7500 Maple Avenue, Takoma Park, Maryland 20912 and must be in the form of a personal check or money order.

3. An employee that chooses not to return to work at the expiration of the family or medical leave will be terminated from the City's health and dental insurance and other benefits made by the City while the employee was in a leave without pay status. An employee that chooses to return to work in a capacity that does not meet the eligibility requirements for health and dental insurance or chooses not to return to work will be eligible for continuation of health benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act).
4. Employees who terminate employment while on family or medical leave will be eligible for COBRA if they meet COBRA eligibility requirements. The effective date for COBRA coverage will be based on the date of termination.

J. Return to Former Position

After the expiration of the employee's entitlement to twelve weeks of family or medical leave within the 12-month period, employees must return to duty. If the employee is unable to return to duty to perform the essential functions of his/her position because of a physical or mental condition, including the continuation of a serious health condition, the City's obligations under the Americans with Disabilities Act (ADA) will govern.

K. Return to Work Procedure

1. For family or medical leave due to the employee's own serious medical condition and upon being released by his/her personal physician, the employee is required to provide a written certification by his/her personal health care provider of fitness to return to work. This certification must indicate any restrictions of the employee's ability to perform the essential functions of his/her position. This certification shall be taken by the employee to the City's Human Resources Manager.
2. The employee shall not be restored to his/her position prior to the fitness-for-duty certification being completed and until any applicable American with Disabilities Act (ADA) considerations are resolved.

3. An employee on family or medical leave must be returned to the same or an equivalent position as that held when the leave commenced. The City cannot guarantee that the employee will be returned to his/her original job. There is an exception to this provision in the case of key employees, who may be denied job restoration if such denial is necessary to prevent substantial economic harm to the City. The designation of an employee as a key employee shall be made by the Department (or the appointing authority in the case of a Department Head who is requesting leave) as soon as practical after the Department Head (or appointing authority) learns of the need for use of family or medical leave.
4. Any exception to this provision requires the approval of the City Manager or his/her designee prior to the employee's return to work. Departments requesting permission to return an employee to a different but equivalent position must provide the City Manager or his/her designee with detailed justification of the reason the employee cannot be returned to his or her former position.

L. Record keeping/Time and Attendance

1. The Human Resources department will be responsible for maintaining records of family and medical leave, for tracking the amount of family and medical leave used within the twelve-month period, and for immediately notifying the employee in writing that leave is being designated as family or medical leave.
2. In addition to the type of leave requested (annual, sick, other approved leave, or leave without pay), the leave request form should include a notation that the absence is for family or medical leave.
3. If the City discovers that an employee has taken leave for a FMLA qualifying reason, then, immediately upon discovery, the City shall notify the employee in writing that it has deemed such leave to be FMLA leave.
4. Time sheets should be coded with the routine codes for sick leave, annual leave, other approved leave, and notation that the absence is for family or medical leave.
5. When leave is taken intermittently or on a reduced leave schedule, only the time actually taken as family or medical leave may be charged against the employee's entitlement. The minimum Leave taken Intermittently or on a reduced leave schedule shall be assessed in hourly increments.

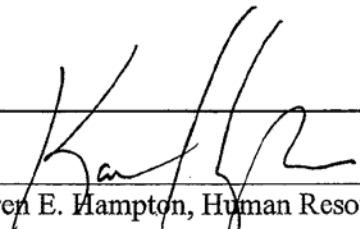
M. An employee will not accrue any annual or sick leave during unpaid family or medical leave.

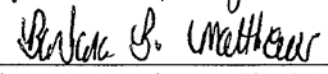
N. Consequences to the Employee for Fraudulently Obtaining Family or Medical Leave.

An employee who submits false information to obtain family or medical leave is not protected by the Family and Medical Leave Act job restoration or maintenance of health insurance benefit provisions. Fraudulent requests for family or medical leave will be considered a violation of City policy and will result in termination, not subject to progressive disciplinary management. False information, for example, would include falsified or forged Certification of Physician or Practitioner Forms.

PROTECTION FOR EMPLOYEES WHO EXERCISE THEIR FMLA RIGHTS

It is the policy of the City of Takoma Park to comply with the entitlements provided in the Family and Medical Leave Act (FMLA). Employees exercising their rights under this policy shall not be discriminated against. It is a violation of this policy for supervisors to interfere with, restraining or deny the exercise of rights under this Act.

PROPOSED:  DATE: 12-19-07
Karen E. Hampton, Human Resources Manager

APPROVED:  DATE: 12-21-07
Barbara B. Matthews, City Manager

FREQUENTLY ASKED QUESTIONS

Q. If my spouse and I both work for the City, are we each eligible for 12 weeks of FMLA leave?

A. If a husband and wife or both partners of domestic partnership work for the City, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care with the employees, or to care for a child, parent, or parent-in-law with a serious health condition, the amount of family or medical leave entitlement that each employee may take for those purposes shall not exceed a combined total of twelve (12) weeks leave in a 12-month period.

Q. What if I am a part-time employee? Am I still entitled to 12 weeks of FMLA leave?

A. If you are a part-time employee and you meet the eligibility requirements, you are still eligible for up to 12 weeks of FMLA leave. In this case, a week consists of the average number of hours you work in a regular week.

Q. Is FMLA leave a separate category of leave, like annual leave?

A. No. FMLA leave is not a type of paid leave that you accrue or earn, like annual or sick leave. Rather, it is a right to be away from work for up to 12 weeks during the leave year if you have a reason for using the leave that is covered by the law.

Q. May I use compensatory time as FMLA leave?

A. No. Compensatory time is regarded by the law as a substitute for overtime pay rather than a type of leave and cannot be used as FMLA leave.

Q. If I do not use any or all of my FMLA leave entitlement in a leave year, may I carry over the unused amount?

A. No. There is no carryover of FMLA leave the next leave year.

Q. If a holiday occurs during a week that am on FMLA leave, does the holiday count towards the FMLA leave?

A. Yes. A workweek that includes a holiday is counted as a full week of FMLA leave, unless you are using leave intermittently or on a reduced leave schedule basis.

Q. Will my Department Head, supervisor or Human Resources contact me while I am on FMLA leave?

A. As needed.

Q. Do I have to exhaust paid leave before unpaid leave kicks in?

A. Employees requesting family or medical leave are required to exhaust all accrued sick leave, annual leave, advancement of leave or other approved leave, as appropriate, in that order, prior

to the use of leave without pay.

Q. What about sick leave donation?

- A. Requests for leave donations are granted at the discretion of the Department Head. The use of donated leave is not permitted after an employee has been absent for 181 consecutive days.

For employees covered by the AFSCME Collective Bargaining Agreement please refer to Section 2: Sick Leave of the Agreement.

Q. Will FMLA unpaid leave constitute a break in retirement service for vesting purposes?

- A. No, however those covered under State of Maryland Retirement System must complete Form 046- Application to be Placed on a Qualifying Approved Leave of Absence.

Q. Will I receive pay increases while on FMLA leave?

- A. Performance Evaluations, pay increases, promotions may be delayed by a period of unpaid FMLA leave.

Q. May I work another job while on FMLA leave?

- A. All City policies regarding secondary employment continue to apply when an employee is on FMLA leave. The City will not deny FMLA benefits to an employee when an employee engages in secondary employment unless the FMLA leave was fraudulently obtained.