

	City of Cedar Park		
	Human Resources Policy Manual		
	Family and Medical Leave		
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1.0 Policy

The City has established this policy in compliance with the Family and Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. §§2601 et seq., as amended, and related regulations to enable an employee to receive time away from work without pay for limited periods to attend to specified family needs with job protection and no loss of accumulated service.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law, policy, or collective bargaining agreement (e.g., meet and confer agreement) that provides greater family or medical leave rights.

2.0 Procedure/Rule

2.1 Eligibility. This policy applies to an employee who has worked for the City for 12 months and at least 1,250 hours during the immediate 12 months preceding the leave.

2.2 Benefits (General 12-Week Entitlement): An eligible employee shall be granted family or medical leave consisting of unpaid leave, and when appropriate, accrued paid leave, for a combined total of up to 12 weeks during a 12-month period. In order to qualify for FMLA leave under this provision, the employee must take leave for one of the following reasons:

2.2.1 The birth of the employee's child and care for such child during the child's first year of life;

2.2.2 The placement of a child with an employee for adoption or foster care and care for such child during the first year following placement;

2.2.3 To care for a spouse, child or parent who has a serious health condition;

2.2.4 A serious health condition of the employee that renders the employee incapable of performing the functions of his or her job;

2.2.5 Any qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is a covered military member on covered active duty or called to covered active duty status; or

2.2.6 To care for the employee's spouse, child, or parent who is a covered servicemember with a serious injury or illness.

2.3 Benefits (Military Caregiver Leave): Eligible employees who are the spouse, child, parent, or next of kin of a covered Servicemember are entitled to up to 26 weeks of leave during a single 12-month servicemember period (for a total of 26 weeks if combined with other FMLA leave), to care for such Servicemember who incurred or aggravated a serious injury or illness in the line of active duty in the Armed Forces. Available leave not taken during the 12-Month servicemember period, which begins on the first day leave is taken, will be forfeited. No more than 26 weeks of leave may be taken in a single 12-Month servicemember period, and no additional extended leaves may be taken in other years for the same injury or illness.

2.4 Definitions: For the purposes of FMLA, the following definitions apply:

2.4.1 12-Month Period. A rolling 12-month period measured backward from the date leave is taken.

2.4.2 12-Month Servicemember Period. A single 12-month period measured forward from the first day military caregiver leave is taken.

2.4.3 Child or Son/Daughter. Anyone under 18 years of age who is the employee's biological, adopted or foster child, stepchild, legal ward or a child of someone standing in *loco parentis* (who has had day-to-day responsibility for caring for the child); or one who is 18 years or older who is incapable of self care because of a physical or mental disability. For purposes of a son or daughter on active duty or call to active duty contingency leave, or for military caregiver leave, the child may be of any age.

2.4.4 Spouse. A legal marital relationship in Texas.

2.4.5 Parent. Biological, foster or adoptive parent; stepparent; or legal guardian or someone who stood in the place of a parent when the employee was a child. This does not include parent-in-law.

2.4.6 Next of Kin. The nearest blood relative other than the spouse, parent, or child of a covered servicemember.

2.4.7 Active Duty. Duty under a call or order to active duty during a contingency operation.

2.4.8 Contingency Operation. A military operation designated by the U.S. Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions,

operations, or hostilities against an enemy of the United States or against an opposing military force, or which results in the call or order to, or retention on, active duty of members of the uniformed services during a war or national emergency declared by the President or Congress.

2.4.9 Covered Servicemember. A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for a serious injury or illness incurred or aggravated in the line of active duty and which may render the member medically unfit to perform the duties of the member's military position; or a veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five (5) year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperations, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered servicemember.

2.4.10 Qualifying Exigency includes:

2.4.10.1 Short-notice deployment: notification of a call or order to active duty seven or fewer days from date of deployment;

2.4.10.2 Military events and related activities:

- (a) To attend an official ceremony, program or event sponsored by the military that is related to active duty or call to active duty;
- (b) To attend family support programs and briefings sponsored or promoted by the military, military service organization, or American Red Cross that are related to active duty or call to active duty.

2.4.10.3 Childcare and Related Activities:

- (a) To arrange for alternate childcare;
- (b) To provide childcare on an urgent, immediate need basis;
- (c) To enroll or transfer the child to a new school or daycare facility;
- (d) To attend meetings with staff at school or daycare facility.

2.4.10.4 Care of the Military Member's Parent, When Parent is Incapable of Self-Care:

- (a) To arrange for alternate care;
- (b) To provide care on an urgent, immediate need basis;
- (c) To admit or transfer a parent to a new care facility;
- (d) To attend certain meetings with staff at a care

facility, such as meetings with hospice or social service providers.

2.4.10.5 Financial and Legal Arrangements:

- (a) To make or update financial or legal arrangements to address the covered military members' absence while on active duty or call to active duty status;
- (b) To act as the covered military member's representative to obtain, arrange, or appeal military service benefits while the member is on active duty or call to active duty status, and for 90 days following termination of active duty status.

2.4.10.6 Counseling: To attend counseling for oneself, the military member, or child when the need for such counseling arises from the active duty or call to active duty status of the covered military member.

2.4.10.7 Rest and recuperation: To spend up to fifteen (15) calendar days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment.

2.4.10.8 Post-deployment activities:

- (a) To attend arrival ceremonies, reintegration events, and any other official ceremony or program sponsored by the military for the approximately 90-day period following termination of active duty; or
- (b) To address issues that arise from the death of the military member while on active duty, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services.

2.4.10.9 Additional activities related to the call to active duty otherwise agreed to by the employer and employee.

2.4.11 Serious Health Condition. An illness, injury, impairment or physical or mental condition serious enough to involve either:

2.4.11.1 In-patient care (overnight stay) in a hospital, hospice or residential health care facility, and any subsequent treatment in connection with such inpatient care; or

- 2.4.11.2 Continuing treatment by a health care provider.

2.4.12 Continuing Treatment by a Healthcare Provider means:

2.4.12.1 A period of incapacity of more than three consecutive calendar days and subsequent treatment relating to the same condition involving:

- (a) Two or more in-person visits to a health care provider

within 30 days of the commencement of the incapacity; or
(b) Two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider within 30 days of the commencement of the incapacity; or
(c) A single visit to a health care provider within seven days of the commencement of the incapacity that results in a regimen of continuing treatment;

2.4.12.2 Prenatal care, or any period of incapacity due to pregnancy;

2.4.12.3 A period of incapacity or treatment of a chronic serious health condition which requires at least two period visits to a health care provider per year, continues over an extended period of time, and may cause episodic, rather than continuous, incapacity;

2.4.12.4 A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or

2.4.12.5 A period of absence to receive multiple treatments by a health care provider for restorative surgery after an accident or injury for a condition that would likely result in incapacity of more than three consecutive calendar days if left untreated.

2.5 Notice and Application for Leave

2.5.1 An employee intending to take FMLA leave because of an expected birth or placement for adoption or foster care, or because of a planned medical treatment, shall submit an "Application for Family or Medical Leave" at least 30 days before the leave is to begin to his/her supervisor. The application shall state the reason for the leave, the duration of the leave and the starting and ending dates of the leave. The notice must indicate that (1) the employee is unable to perform the functions of the job or that a covered family member is unable to participate in regular daily activities; (2) the anticipated duration of the absence; and (3) whether the employee intends to visit a health care provider or is receiving continuing treatment. The form shall be forwarded to Human Resources, who shall respond to the employee indicating whether or not the request is approved, if it shall be counted toward FMLA and how benefits shall be handled during the leave.

2.5.2 In the event of leave to attend to a qualifying exigency, the employee shall provide as much notice as is reasonable and practical under the circumstances.

2.5.3 When it is not practicable to give such notice under any circumstances, such as premature birth or sudden illness, notice should be provided to the employee's immediate supervisor *and* the

Human Resources Department as soon as practical, within one business day of when the employee learns of the need for leave.

- 2.5.4 An employee shall provide at least verbal notice sufficient to make the City aware that he/she needs FMLA leave and the anticipated timing and duration of the leave. Human Resources may inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee and to obtain the necessary information or forms for the leave to be taken.
- 2.5.5 Within 15 days of a request by Human Resources, the employee must provide a “Certification of Health Care Provider” completed by the relevant health care provider to support the employee’s request for leave. It is the employee’s responsibility to make sure that the health care provider completes this form. (See Certification of Leave in this policy).
- 2.5.6 An employee who shall undergo planned medical treatment is required to make reasonable effort to schedule the treatment in order to minimize disruptions to the City's operations.

2.6 Leave Calculation

- 2.6.1 For general FMLA leave, an eligible employee is entitled to take up to 12 workweeks of FMLA leave, **up to 480 hours for a regular, full-time employee who normally works five-day/40-hour weeks, and up to 672 hours for a shift firefighter**, during any 12-month period measured backward from the date the employee's first day of leave under this policy begins and continuous with each additional leave day taken. Human Resources is responsible for maintaining appropriate documents and calculations of the amount of FMLA leave taken by each employee during the 12-month period. Human Resources shall notify an employee when time taken for an approved leave is being counted against his/her 12-week entitlement under FMLA.
- 2.6.2 For military caregiver leave, an eligible employee is entitled to take up to 26 work-weeks of FMLA, up to 1,040 hours for a regular, full-time employee who normally works five-day/40-hour weeks, and up to 1,456 hours for a shift firefighter, during a single 12-month period measured forward from the first day military caregiver leave is taken. Other aspects of leave calculation will be the same as for general FMLA leave.
- 2.6.3 Whether or not an employee specifically requests FMLA leave, the City reserves the right to count any paid or unpaid leave that meets the eligibility requirements of FMLA against the 12-week (or 26 weeks if combined with military caregiver leave) entitlement,

provided notification is made to the employee.

- 2.6.4 An employee's entitlement to leave for the birth or placement of a child expires 12 months after the birth or placement of that child.
- 2.6.5 If a husband and wife both work for the City and each wishes to take FMLA leave for the birth or placement of a child or for military caregiver leave for a son or daughter, they are eligible for a *combined total* of 12 weeks (or 26 weeks if combined with military caregiver leave) for that particular qualifying reason.

2.7 Certification of Leave

- 2.7.1 The City may require certification (or periodic recertification) from a health care provider to support a leave request when an employee is taking a leave to care for a child, spouse or parent with a serious health condition, or due to the employee's own serious health condition. A "Certification of Health Care Provider" form is used for this purpose, and the completed form shall be provided to Human Resources within 15 calendar days from Human Resources' request. If the employee fails to provide adequate certification within this time period, then the City will inform the employee, in writing, what additional information is necessary and will allow the employee at least seven days to correct the certification. The City may delay leave until such certification is produced. In the case of medical emergency, the employee must submit certification as soon as is reasonably possible.
- 2.7.2 If the City has reason to doubt the validity of the original certification, a second opinion at the City's expense may be obtained. If necessary, to resolve a conflict between the original certification and the second opinion, a third opinion at the City's expense shall be obtained and shall be the final determination.
- 2.7.3 An employee returning from leave which was due to his/her own serious health condition shall provide a written release from his/her health care provider to assure that the employee is again fit for work.
- 2.7.4 Certification Related to Active Duty or Call to Active Duty: The employee requesting leave related to a family member's active duty or call to active duty shall provide supporting documentation of such status issued by the applicable Armed Services branch.
- 2.7.5 Certification for Extended Military Caregiver Leave: Employees requesting extended military caregiver leave must provide documentation of the injury, recovery or need for care, such as the military medical information, orders for treatment, or other official

Armed Forces communication showing that the injury or illness was incurred on active military duty and renders the member medically unfit to perform military duties.

2.8 Use of Paid and Unpaid Leave

2.8.1 It is the responsibility of Human Resources to designate leave as paid or unpaid FMLA-qualifying, and to give notice of the designation to the employee.

2.8.2 Once Human Resources has confirmed from the employee's request that leave is being taken for an FMLA-qualified reason, Human Resources shall notify the employee in writing within five business days (absent extenuating circumstances) either that the leave is designated and shall be counted as FMLA leave, or, if not eligible or if more information is needed, at least one reason why. Once the leave is designated as FMLA leave, the City will provide a written notice stating whether leave is available, and notifying the employee how much leave has been designated as FMLA leave, and how much leave remains. For an unspecified leave, the City will update the notification every 30 days as to how much leave was designated in the prior month, how much was rejected, and how much leave remains. If any part of the requested leave is not designated as FMLA leave, the City will provide written notice of and reason for denial.

2.8.3 Using Accrued Paid Leave. FMLA leave is generally unpaid leave; however, an employee may receive compensation if paid leave is available:

For an employee taking FMLA leave, available (1) sick leave, (2) then compensatory time, (3) then vacation leave and (4) then holiday time shall be exhausted **before** taking unpaid leave. Once all accrued paid leave is expended, the remainder of the 12-week FMLA (or 26 weeks if combined with military caregiver leave) allowance shall be unpaid leave.

An employee receiving workers' compensation benefits is not required to expend accrued sick or vacation leave. The 12-week entitlement shall run concurrently with workers' compensation leave, provided the employee is otherwise eligible for FMLA leave.

2.9 Benefits Coverage During Leave.

2.9.1 During a period of FMLA leave, City benefits (except base pay) at the time leave is granted shall remain in effect for the duration of

such leave. The City shall continue to contribute its share of premiums for the employee's health benefits to remain in effect during the leave period at the same level and under the same conditions as if the employee had continued employment.

An employee shall continue to make any contributions that he/she made to health and other insurance plans before taking leave in the same manner required when working. For the portion of the FMLA leave that is unpaid, **it is the employee's responsibility to make arrangements with Human Resources** to have his/her share of premiums paid while on leave. Written documentation of agreed upon terms for these payments shall be provided by Human Resources after such terms are arranged. Failure of the employee to pay his or her share of insurance premiums may result in loss of coverage.

If an employee's contribution is more than 30 days late, the City may terminate the employee's insurance coverage.

If the City pays the employee contributions missed by the employee while on leave, the employee shall be required to reimburse the City for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee shall be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.

2.9.2 If the employee fails to return to work after a period of unpaid FMLA leave, and the City has paid for maintaining health coverage, the employee may be required to reimburse the City for payment of health and insurance premiums paid unless the reason the employee does not return to work is due to:

- Continuation of a serious health condition that would entitle the employee to FMLA leave which prevents the employee from performing his/her job; or
- Other circumstances beyond the control of the employee.

2.9.3 The employee is considered to have returned to work after he/she has worked for a period of 30 calendar days. For example, an employee who returns to work for only one workweek and then departs is not considered to have returned to work for the purposes of premium payments. The City may recover health insurance premium payments from certain sums due to the non-returning employee, such as accrued vacation time or travel reimbursement.

2.10 Intermittent Leave or Reduced Work Schedule

- 2.10.1 Depending upon medical necessity, and in accordance with the law, an employee may take FMLA leave in 12 consecutive weeks (or 26 consecutive weeks if combined with military caregiver leave), may use the leave intermittently, or under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 (or 26) workweeks over a 12-month period.
- 2.10.2 If an employee takes an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 (or 26) weeks to which an employee is entitled.
- 2.10.3 When an employee has requested intermittent or reduced schedule leave, the City may, for the duration of the intermittent or reduced schedule leave, transfer the employee to an alternative position with equivalent pay and benefits if the employee is qualified for the position and if it better accommodates the recurring periods of leave more than the employee's current job.
- 2.10.4 The City may require additional certification of the necessity for intermittent or reduced schedule leave.
- 2.10.5 Intermittent or reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the approval of the employee's Department Head and the HR Director.

2.11 Return From Leave

- 2.11.1 An employee who takes leave under this policy is entitled to be restored to the same position held when the leave started, or to an equivalent position with equivalent pay. An equivalent position is one that has the same pay, benefits and other employment terms, and involves the same or substantially similar duties and responsibilities with the equivalent skill, effort, responsibility and authority.
- 2.11.2 Certain highly compensated, "key" employees, as defined by the FMLA, may be denied restoration if it is necessary to prevent substantial and grievous economic harm to the City's operations.
- 2.11.3 If an employee wishes to return to work prior to the expiration of his/her FMLA leave, the employee shall notify his/her supervisor at least two working days prior to the employee's planned return.

3.0 Unlawful Actions and Enforcement of FMLA Rights

It is unlawful for the City to interfere with, restrain, or deny the exercise of FMLA rights, or to discharge or discriminate against anyone for opposing such unlawful practices or for Family and Medical Leave

participating in a proceeding relating to FMLA. An employee may file a complaint with the U.S. Department of Labor's Wage and Hour Division or may bring a private lawsuit against an employer for violating his/her rights under the FMLA.