



# **POLICIES & PROCEDURES**

## **CITY OF FLINT, MICHIGAN**

### **FAMILY & MEDICAL LEAVE ACT**

**PURPOSE:** The purpose of this policy statement is to outline the conditions under which employees of the City of Flint may obtain leaves of absence under the provisions of the Family and Medical Leave Act of 1993 (hereinafter sometimes referred to as **FMLA**).

**REASONS FOR LEAVE:** The circumstances under which an eligible employee may take an FMLA leave of absence are:

- A. Upon the birth of the employee's child;
- B. Upon the placement of a child with the employee for adoption or foster care;
- C. When the employee is needed to care for the employee's child, spouse or parent if such child, spouse or parent has a serious health condition as defined in the Act; or,
- D. When the employee is unable to perform the functions of his or her position because of a serious health condition as defined in the Act.

#### **DEFINITIONS:**

- A. **Eligible employee:** An employee must have been employed by the City of Flint for a minimum of twelve (12) months in total and must have worked a minimum of 1250 hours during the twelve (12) month period immediately preceding the commencement of the leave of absence.
- B. **Spouse:** a husband or wife.
- C. **Parent:** a biological parent or an individual who stands or stood in loco parentis (those persons with day-to-day responsibilities to care for and financially support a child, or those who had responsibilities for the employee when the employee was a child. A biological or legal relationship is not necessary) to an employee when the employee was a child. This does not include parents-in-law.
- D. **Son or daughter:** a biological, adopted, or foster child; a stepchild; a court ordered legal ward (a copy of the court order will need to be submitted with the medical certification form); 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 due to a mental or physical disability.

1. **Incapable of self-care:** the individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living, i.e., caring appropriately for one's grooming and hygiene, bathing, dressing and eating, or instrumental activities of daily living, i.e., cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
2. **Physical or mental disability:** a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations under the Americans with Disabilities Act (ADA) define these terms.

**CONDITIONS AND REQUIREMENTS FOR LEAVE:** An employee requesting a FMLA leave of absence must complete a Family & Medical Leave Request Form. These forms are available only from the Employee Health Clinic, a division of Risk Management, and require an explanation of the reasons for the leave so that it can be determined whether the leave qualifies under the Act. Where possible, especially where leave is requested due to the birth of a child, the placement of a child for adoption or foster care, or planned medical treatment, the Family & Medical Leave Request Form should be submitted to the Employee Health Clinic **at least** thirty (30) days before the leave is to begin. If it is not possible to request leave thirty (30) days in advance, the request should be made as soon as possible before the leave is to begin.

In any case where leave is requested due to the birth, or placement of a child for adoption or foster care, the employee is expected to furnish, at a minimum, information concerning the anticipated timing and duration of leave on the Family & Medical Leave Request Form. In any case where leave is requested due to either a serious health condition of the employee or the employee's child, spouse, or parent, a Family & Medical Leave Request Form and a Certification of Health Care Provider Form (WH-380) will also be required.

**In the case of a request for leave due to planned medical treatment for a serious health condition of the employee or the employee's child, spouse, or parent, the employee is expected to consult with the employee's cost center manager, and, if necessary, the Employee Health Clinic, prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the City and the employee and does not unduly disrupt the employer's operations.**

The Certification of Health Care Provider Form (WH-380) should indicate, if possible expected occasions of intermittent leave and their duration. Utilization of intermittent FMLA leave due to planned medical treatment for your own illness or that of a spouse, child, or parent, will also require documentation from the health care provider that the appointment was attended. This must be submitted to the Employee Health Clinic no later than fifteen (15) calendar days after the appointment. **Failure to do so could result in denial of leave.**

In the case of a request for leave due to a serious health condition of either the employee or the employee's child, spouse, or parent, an employee's health care provider may

indicate an intermittent leave or a reduced work schedule is necessary. In that case, the reasons why an intermittent or reduced work schedule is necessary, the schedule for treatment (if applicable), and the anticipated number of days an employee will need off for the serious health condition must be clearly indicated on the Certification of Health Care Provider Form (WH-380).

If you have been approved for **intermittent** leave, **you must** call your immediate supervisor and the Clinic (766-7380) **each time** you intend to use FMLA leave. If the Clinic is not open, leave a message. The intermittent leave must be reported in one hour increments no later than the beginning of the workday. **Failure to do so could result in denial of leave and/or possible discharge.**

Consistent with relevant collective bargaining agreement provisions, if any, in cases when an intermittent or reduced leave schedule is requested, the employee may be required to transfer to an alternative position which better accommodates recurring periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits.

**Leave taken under this policy is granted because the employee is unable to work; accordingly, no employee taking leave under this policy shall be employed by any other employer without written permission from Human Resources Director.**

In all cases, only the Employee Health Clinic is empowered to grant or deny FMLA Leave. FMLA leave may be denied or delayed if the employee fails to provide requested medical certification to substantiate the need for the leave within fifteen (15) calendar days of when the leave was taken.

The City, taking into account all of the relevant facts and circumstances related to the individual employee's family or medical leave situation, may require the employee to report periodically on their status and intent to return to work.

Re-certification may be required by the City at reasonable intervals, but not more often than once every thirty (30) days, except that a re-certification will always be required when:

1. The employee requests an extension of their leave of absence;
2. Circumstances at the time of the original certification have changed significantly;
3. A new calendar year has started (January 1<sup>st</sup>); or,
4. The City receives information that casts doubt upon the continuing validity of the certification.

**In the event that the City doubts the validity of a medical certification, the City may require the employee to obtain a second opinion at the City's expense from a health care provider designated by the City. If the opinions of the employee's health care provider and the employer's designated health care provider differ, the City may**

**require the employee to obtain certification from a third health care provider, again at the City's expense, which third certification shall be binding on both the City and the employee. The City and the employee shall jointly designate the third health care provider.**

**The use of FMLA leave for circumstances other than those defined by the Family & Medical Leave Act of 1993 are considered fraudulent and subject to disciplinary action up to and including discharge.**

**DESIGNATION OF LEAVE:** In addition, the City will require that paid or unpaid leave, taken under a collective bargaining agreement or ordinance provision, for a reason which also qualifies for a leave under the Family and Medical Leave Act will be part of the employee's twelve (12) week entitlement for family and medical leave under this policy. FMLA will run concurrent with all other qualifying leaves. For example, the City will require that a leave of absence taken under an "extended sick leave" or "maternity leave" collective bargaining agreement provision also be considered a leave of absence under one of the qualifiers set forth in the Family and Medical Leave Act.

Once the City has acquired knowledge that the leave is being taken for a FMLA required reason, the City will promptly (within two business days absent extenuating circumstances) notify the employee that the leave is designated and will be counted as FMLA leave.

In all cases, it is the responsibility of the City to designate leave, paid or unpaid, as qualifying or non-qualifying under the Family and Medical leave Act, based upon information provided by the employee prior to completion of the leave. This designation may be made retroactively during the course of a leave of absence in cases where extensions of leave are sought or where information necessary to determining the qualifying status of the leave become available within fifteen (15) calendar days after the leave begins. In the event any dispute arises between an employee and the City, the Family and Medical Leave Act of 1993 shall govern the resolution of such dispute.

**DURATION OF LEAVE:** An eligible employee is entitled to a total of twelve (12) weeks of unpaid leave during any calendar year for the reasons listed in this policy with the following exception:

Spouses who are both eligible employees of the City of Flint are entitled to a combined total of twelve (12) weeks of leave [rather than twelve (12) weeks each], when leave is taken upon the birth or placement for adoption or foster care of a child, or to provide care for a parent who has a serious health condition. This limitation is not applicable to eligible employees who may also be approved for an individual total of twelve (12) weeks leave due to their own serious health condition or to care for a child with a serious health condition.

Entitlement for leave for the birth of the employee's child or the placement of a child with the employee for adoption or foster care expires twelve (12) months following the date of birth or placement. The allotment of time for this will normally be taken in a block of time (consecutive days or weeks). Intermittent or a reduced work schedule is

permitted only with the express approval of the department and/or division manager as long as said leave is not disruptive to the department schedule.

**RELATIONSHIP TO ACCRUED LEAVE:** If an eligible employee has accrued annual and /or sick leave, the City of Flint will use accrued annual first then sick leave for unpaid FMLA leave under this policy until accrued annual and/or sick leave have been exhausted due to the birth of a child, placement of a child for adoption or foster care, or care for a family member. If the reason for leave is due to the employee's own serious health condition, the employee will use accrued annual and /or sick leave for unpaid leave until accrued annual and/or sick leave have been exhausted. It is up to the employee with approved FMLA leave for a serious health condition of their own to inform their supervisor which accrued leave (annual or sick) they are utilizing while on FMLA leave.

**STATUS OF EMPLOYEE BENEFITS DURING LEAVE:** During the duration of any leave designated as qualifying under the Family and Medical Leave Act, the City will maintain group health insurance coverage, if any, for the eligible employee on the same terms as if the employee continued to work.

**An employee on unpaid FMLA leave must make arrangements to pay his or her normal portion of health insurance premiums to maintain insurance coverage. An employer's obligation to maintain health benefits under FMLA stops if and when an employee fails to return to work after a FMLA leave entitlement is exhausted. The employer's obligation also stops if the employee's premium payment is thirty (30) days late and the employer has given the employee written notice at least 15 days in advance that coverage will cease if payment is not received. Arrangements for payment of premiums must be made through the Finance Department.**

In the event an employee fails to return to work for a period of thirty (30) calendar days after exhaustion of the employee's FMLA leave entitlement, the City, will recover its share of health plan costs incurred during a period of unpaid leave, unless the failure to return is caused by the continuation, recurrence or onset of a serious health condition which would allow for an FMLA leave of absence, the layoff of the employee while on leave, or other circumstances beyond the control of the employee. The decision of a parent not to return to work and to stay home with a newborn child upon the conclusion of an FMLA leave of absence will not be considered a circumstance beyond the employee's control. The City reserves the right to require certification where an employee's failure to return from an unpaid leave is based upon continuation, recurrence or onset of a serious health condition.

**RETURN TO WORK:** An employee returning from an FMLA leave of absence shall be returned to a position the same or equivalent to that held when commenced with equivalent benefits, pay, and other terms and conditions of employment. However, an employee has no greater right to reinstatement or to other benefits or terms and conditions of employment that the employee would enjoy had the employee been continuously employed during the FMLA leave of absence.

An employee on an unpaid FMLA leave of absence does not forfeit accrued benefits; however, an employee on an unpaid FMLA leave does not accrue credited service

(seniority) or such benefits as sick leave accrual and/or annual leave accrual, except as otherwise provided by relevant collective bargaining agreement or ordinance provision, if any.

When an employee returns to work from an unpaid leave of absence caused by the employee's serious illness, the employee will be subject to the same policies and procedures that would be applicable had the absence been covered by accrued sick leave.

An employee's return to work following FMLA leave will be denied or delayed if the employee fails to provide fitness-for-duty documentation for an employee's serious health condition resulting in an absence of work for five (5) or more consecutive work days or as otherwise provided in the collective bargaining agreement. This documentation should come from the physician who issued the Certification for the leave. It must clearly state that this return to work is without restrictions or with restrictions that are defined in measurable terms and for what length of time they are to be imposed.

DEPARTMENT: RISK MANAGEMENT

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