

Family and Medical Leave Act Policy

Personnel

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1.0 PURPOSE:

This policy outlines the provisions of the federal and Wisconsin Family and Medical Leave Acts and the rights and obligations of employees and the City of West Allis under both laws.

2.0 ORGANIZATIONS AFFECTED:

This policy applies to all City of West Allis departments, boards, commissions, and City employees.

3.0 POLICY:

The Family and Medical Leave Acts provide eligible employees with up to 12 workweeks of unpaid protected leave each year for specified family and medical reasons and up to 26 workweeks to care for a covered servicemember. The eligibility and entitlements are defined differently under federal and state law.

4.0 REFERENCES:

Federal Family and Medical Leave Act of 1993 (including the Department of Labor's Final Rule, effective January 16, 2009, which provides updates to the regulations and incorporates military family leave requirements). Wisconsin Family and Medical Leave Act (Section 103.10 Wis. Stats.; Chapter DWD 225 Wisconsin Administrative Code).

5.0 PROCEDURES:

It is the policy of the City of West Allis to grant up to twelve (12) weeks of family and medical leave during any calendar year to eligible employees, in accordance with the federal and Wisconsin Family and Medical Leave Acts (FMLA) and to grant up to twenty-six (26) weeks of military caregiver leave during any single 12-month period in accordance with the federal Family Medical Leave Act as amended by the National Defense Authorization Act. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy.

6.0 ELIGIBILITY:

Employees are entitled to FMLA benefits if they:

6.1 **Federal** – Have been employed by the City for at least 12-months (not necessarily consecutive) and have worked at least 1,250 hours during the 12-months prior to the start of the FMLA leave.

- Time spent on paid or unpaid leave does not count in determining the 1,250-hour eligibility.

- 6.2 **State** – Have been employed by the City for at least 52 consecutive weeks and have worked for at least 1,000 hours during the 52 weeks prior to the start of the FMLA leave.

7.0 QUALIFYING EVENT & AMOUNT OF LEAVE:

- 7.1 Family and Medical Leave. Eligible employees may take up to a total of 12 workweeks of unpaid FMLA leave in a calendar year for the following qualifying events:
- 7.1.1 The birth or placement of a child for adoption or, under the federal FMLA, for foster care.
- a. State law provides for up to six (6) workweeks of unpaid leave for any one child.
  - b. Federal law requires that leave conclude within 12 months after the birth.
- 7.1.2 To care for the employee’s spouse, child, or parent with a serious health condition. The Wisconsin FMLA includes caring for a spouse’s parent, a domestic partner and a domestic partner’s parent.
- a. State law provides eligible employees up to 2 workweeks of FMLA family leave.
- 7.1.3 For the employee’s own serious health condition that renders the employee unable to perform his/her job.
- a. State law provides eligible employees up to 2 workweeks of FMLA medical leave.
- 7.1.4 Under the federal FMLA, if the employee experiences a qualifying exigency that arises out of the fact that a spouse, parent, or child has been called to or is on active military duty as a member of the National Guard or military Reserves in support of a contingency operation.
- 7.2 Military Caregiver Leave. An eligible employee who is the spouse, parent, child, or next of kin of a current member of the armed forces/covered servicemember (including the regular armed forces, the National Guard and the Reserves) who was injured while on active duty may be eligible for up to 26 workweeks of federal FMLA leave in a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 workweeks in a single 12-month period.
- 7.3 Leave qualifying for both Wisconsin and federal FMLA leave (including military caregiver leave) will count against the employee’s entitlement under both laws and will run concurrently. When the reasons(s) for qualified leave differ, the leave may not run concurrently under state and federal law, and an employee may be entitled to more than 12 weeks of leave in a calendar year. This type of leave occurrence will be evaluated and reviewed. FMLA leave will run concurrently with qualified sick leave. Qualified leave taken under Worker’s Compensation will run concurrently with federal FMLA leave and, at the employee’s request, with Wisconsin FMLA leave.
- 7.4 Under the federal FMLA, spouses employed by the City are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition. For military caregiver leave, the employee and employee spouse may be limited to a combined total of 26 workweeks of leave in a single 12-month period.

8.0 NON-CONTINUOUS OR INTERMITTENT LEAVE:

Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule (1) when it is medically necessary to care for a family member (including a domestic partner and a domestic partner’s parent under the Wisconsin FMLA) with a serious health condition or because of the employee’s serious health condition; (2) to care for a newborn, adopted or foster child; or (3) for military caregiver leave. Federal FMLA leave for the birth or placement of a child for adoption or foster care may not be taken in non-continuous increments unless approved by the City; such leave must be completed within the 12-month period beginning on the date of birth or placement of the child. Under the Wisconsin FMLA, the last increment of leave for the birth or

placement of a child for adoption must begin within 16 weeks of that birth or placement.

When scheduling intermittent or reduced schedule leave, employees must make a reasonable effort to schedule the leave so as not to unduly disrupt the City's operations. Employees requesting non-continuous federal FMLA leave that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.

The employee may not take, or be required to take, more leave than medically necessary to address the circumstances that caused the need for the leave.

#### 9.0 PAYMENTS ON FMLA LEAVE:

In general, both Wisconsin and federal FMLA leaves are unpaid. Under the federal FMLA, the City may require employees, or employees may choose, to substitute paid leave for which they are eligible (such as vacation days, personal leave or compensatory time) for unpaid leave. Under the Wisconsin FMLA, employees may choose to substitute available accrued leave for unpaid leave. Any such substituted leave will run concurrently with FMLA leave.

An employee who is taking leave because of the employee's own serious health condition, the serious health condition of a family member (including a domestic partner and a domestic partner's parent under the Wisconsin FMLA), for a qualifying exigency, or for the birth, adoption or foster care of a child (and has exhausted all applicable sick leave benefits) must use all paid vacation, random or compensatory time as part of such leave and take the remainder of the entitlement as unpaid leave.

The City will require that any leave provided by a City collective bargaining agreement be substituted for federal FMLA leave.

As with all leaves of absence, no employee may pursue or engage in employment when on FMLA leave.

#### 10.0 FMLA NOTICE AND HOW TO APPLY FOR FMLA LEAVE:

10.1 When an employee calls in seeking time off for the employee's illness/injury or a family member's (including a domestic partner and a domestic partner's parent under the Wisconsin FMLA) illness/injury, in order to constitute FMLA notice, thereby triggering the City's duty to treat the absence as a potential FMLA absence, the employee must provide sufficient information to their supervisor to make the City aware of the possible need for FMLA leave and the anticipated timing and duration of the leave. Upon being made aware of an employee's possible need/qualification for FMLA leave, the supervisor shall so notify the Human Resources Manager (HR Manager).

10.2 When leave is foreseeable, the employee must submit a Family and Medical Leave Employee Request form ("request form") to the HR Manager at least 30 days in advance of the leave or, when foreseeable but less than 30 days in advance, as soon as practicable. When the need for leave is not foreseeable, the employee must notify the HR Manager and thereafter submit the request form as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, it is considered practicable for an employee to provide notice of unforeseeable leave within the time prescribed by the City's usual and customary notice requirements applicable to that employee for such leave. Failure to give timely notice and/or submit the request form may result in the delay or denial of FMLA leave and may subject the employee to discipline under City policies.

10.3 If the leave is for a family member's (including a domestic partner and a domestic partner's parent under the Wisconsin FMLA) or the employee's serious health condition, or to care for a covered servicemember, the employee must submit a medical certification form from the employee's or the family member's health care provider within 15 days. If the leave is for a qualifying exigency, the employee must submit a certification form to support the request for such leave within 15 days. The employee must provide a

complete and sufficient certification. If the employee receives written notification that the certification is incomplete and/or insufficient, the employee shall have seven days to cure the identified deficiencies. If an employee does not provide the required certification by the designated deadlines, or if the City determines that an employee's absence is not covered as FMLA leave, the leave may not be designated as Wisconsin and/or federal FMLA leave, and the employee may be subject to discipline under City attendance policies unless he or she uses accrued paid leave (like vacation) and/or is granted a non-FMLA leave of absence.

10.4 Second or third opinions at the City's expense and periodic re-certifications at the employee's expense may be required under certain circumstances. The City requires periodic reports during federal FMLA leave regarding the employee's status and intent to return to work.

10.5 Forms are available through the Human Resources Division.

- Family and Medical Leave Employee Request Form
- Health Care Provider FMLA Certification
- Certification of Qualifying Exigency for Military Family Leave
- Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave

#### 11.0 HEALTH INSURANCE BENEFITS:

Group health insurance coverage will be maintained for employees while they are on FMLA leave, on the same terms as if the employee continued to work. The employee will be required to pay their regular portion of health insurance premium payments on a schedule established by the City.

The City may recover its share of health insurance premiums paid during a period of unpaid FMLA leave from an employee if the employee fails to return to work (for a minimum of 30 calendar days) after the expiration of the leave. The City may not collect the premiums if the reason the employee does not return is due to continuation, recurrence or onset of a serious health condition that would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control.

The City may discontinue health insurance benefits if the employee fails to make a premium payment within 30 days of the due date after providing written notice to the employee of the cancellation of coverage for non-payment.

#### 12.0 OTHER BENEFITS:

Benefits that accumulate based upon hours worked shall not accumulate during the period of FMLA leave. Qualified FMLA leave will not be counted as an absence under the City's attendance policy. Employees taking FMLA leave will be treated in the same manner as employees taking non-FMLA leave with respect to the administration of attendance reward programs and any rewards based on attendance (e.g. if an employee who uses paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who uses paid vacation leave for an FMLA-protected purpose would also receive the payment).

Other City benefits (e.g. life insurance coverage) may be continued during periods of unpaid FMLA leave, and arrangements should be made for the employee's portion of the payments with the Finance Division.

#### 13.0 WORKER'S COMPENSATION AND LIGHT DUTY:

Federal FMLA leave will run concurrent with Worker's Compensation, as will Wisconsin FMLA leave upon the employee's request, provided that the injury meets the criteria for a "serious health condition," as defined by law. Substitution of accrued paid leave is not allowed for Worker's Compensation absences unless an applicable labor agreement provides otherwise.

If an employee accepts a light duty assignment while on Worker's Compensation, or while recovering from a serious health condition, that time may not count against the employee's family or medical leave entitlement. An employee who voluntarily accepts a light duty assignment does not waive the right to job restoration; however, the employee's right to job restoration ceases at the end of the FMLA calendar year. If the light duty position is declined and the employee elects to stay on FMLA leave, the employee may give up their Worker's Compensation benefits.

14.0 FITNESS FOR DUTY AND RETURN TO WORK:

An employee returning from FMLA leave for his or her own serious health condition must provide a “Fitness for Duty” statement signed by their treating physician. An employee who fails to provide a Fitness for Duty statement will be prohibited from returning to work until it is provided. Failure to provide a Fitness for Duty statement may result in discipline up to and including termination. Upon return from FMLA leave, an employee shall be restored to their original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. An employee may not be restored to their original or equivalent position if they are unable to perform the essential functions of their job because of a mental or physical condition.

15.0 COMPLAINT PROCEDURE:

An employee who believes their FMLA rights have been violated should contact the Human Resources Manager and attempt to resolve the matter internally. However, if the matter is not resolved within a reasonable period of time after contacting the Human Resources Manager, the employee may file a complaint with the Wisconsin Equal Rights Division (Wisconsin FMLA), the U.S. Department of Labor (federal FMLA), or may bring a private lawsuit against the City.

16.0 DEFINITIONS:

- 16.1 Child – Biological, adopted, or foster child, stepchild, legal ward or, under the federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing “in loco parentis,” who is under 18 years of age or, under the Wisconsin FLMA who is 18 years of age or older and cannot care for himself or herself because of a serious health condition, or under the Federal FMLA who is 18 years of age or older and incapable of self-care because of a mental or physical disability.
- 16.2 Domestic Partner – The Wisconsin FMLA provides certain benefits to employees with a registered or unregistered domestic partner. Registered domestic partners (registered with the Register of Deeds in their county of residence) must demonstrate/attest: 1) Each individual is at least 18 years old and capable of consenting to the domestic partnership; 2) Neither individual is married or in a domestic partnership with another individual; 3) The two individuals share a common residence; 4) The two individuals are not nearer kin than second cousins; and 5) The individuals are the same gender. Unregistered domestic partners must demonstrate/attest: 1) Each individual is at least 18 years old and otherwise competent to enter into a contract; 2) Neither individual is married or in a domestic partnership with another individual; 3) They share a common residence; 4) They are not related by blood in any way that would prohibit marriage under Wisconsin law; 5) They consider themselves to be members of each other’s immediate family; and 6) They agree to be responsible for each other’s basic living expenses.
- 16.3 Health Care Provider – Under the federal FMLA, a doctor of medicine, doctor of osteopathy, physician’s assistant, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, and Christian Science Practitioner. Under the Wisconsin FMLA, a person described under section 146.81 (1) Wis. Stats., excluding a person described under s. 146.81 (1) (hp).
- 16.4 Incapable of Self-Care – The individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (e.g. grooming, hygiene, bathing, dressing, eating) or instrumental activities of daily living (e.g. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).
- 16.5 Next of Kin - A covered servicemember’s “next of kin” is the servicemember’s nearest blood relative, other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood

relative for purposes of military caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered servicemember's next of kin.

- 16.6 Parent – Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee (and of an employee's spouse or domestic partner under the Wisconsin FMLA). Under the federal FMLA, "parent" includes an individual who provided day-to-day care to the employee when the employee was a child.
- 16.7 Qualifying Exigency – Qualifying exigencies, for purposes of the federal FMLA, include:
- (1) Short-notice Deployment: Addresses issues that arise when a covered military member is notified of an impending call or order, and deployment is within seven days of notification. Leave is limited to seven calendar days beginning the date the covered military member is notified of an impending call or order to active duty.
  - (2) Military Events and Related Activities Associated with the Call or Order to Active Duty: Attending official ceremonies, programs or events sponsored by the military; and attending family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross.
  - (3) Childcare and School Activities: Arranging alternative childcare when the order/call to active duty necessitates a change in the existing childcare arrangement; providing childcare on an urgent, immediate need basis (but not on a routine, regular or everyday basis); enrolling in or transferring a child to a new school or day care facility as necessary; and attending meetings with staff at a school or day care when meetings are necessary due to circumstances arising out of the call or order to active duty (e.g. disciplinary meetings, parent-teacher conferences, school counselors). This provision applies to children of the covered military member under age 18 or over 18 if incapable of self-care because of physical or mental disability at the time the FMLA leave commences.
  - (4) Financial and Legal Arrangements: Making and updating financial and legal arrangements to address the covered military member's absence (e.g. preparing financial and health care powers of attorney, transferring bank account signature authority, enrolling in Defense Enrollment Eligibility Reporting System, obtaining military identification cards, or preparing or updating a will); acting as the covered military member's representative before federal, state or local agencies for purposes of obtaining, arranging or appealing military benefits.
  - (5) Counseling: Attending counseling, provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member. A "child" is the covered military member's own child under age 18 or over 18 if incapable of self-care because of a physical or mental disability.
  - (6) Rest and Recuperation: To spend time with a covered military member who is on short-term, temporary rest and recuperation leave during a period of deployment. The employee is limited to five days of leave for each instance of rest and recuperation leave the covered military member receives.
  - (7) Post-deployment Activities: Attending welcome home 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 out of the death of a covered military member while on active duty.
  - (8) Additional Activities: Includes events which arise out of the covered military member's active duty or call to active duty status, provided the City and the employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

- 16.8 Serious Health Condition – An illness, injury, impairment or physical or mental condition that involves:
- a. inpatient care in a hospital, hospice or residential medical care facility; or
  - b. under Wisconsin FMLA, outpatient care that requires continuing treatment or supervision by a health care provider (generally defined as requiring two direct, continuous and first-hand contacts by a health care provider); or
  - c. under the federal FMLA, continuing treatment by a health care provider including any one or more of the following:
    1. a period of incapacity of more than three (3) consecutive, full calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
      - treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse 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 that results in a regimen of continuing treatment under the supervision of a health care provider.

(Note: Under the above two bullet points, the employee’s treatment must be an in-person visit to a health care provider and the first [or only] visit must take place within seven days of the first day of incapacity).
    2. any period of incapacity due to pregnancy or for prenatal care;
    3. chronic conditions requiring periodic treatment (at least twice a year) by or under the supervision of a health care provider that continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
    4. permanent/long term conditions requiring supervision for which treatment may not be effective (e.g. Alzheimer’s, a severe stroke, or the terminal stages of a disease);
    5. multiple treatments by or under the supervision of 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis).
  - d. Examples of a serious health condition include, but are not limited to, heart attacks or other serious heart conditions, most cancers, strokes, appendicitis, pneumonia, and ongoing pregnancy and prenatal care.
- 16.9 Single 12-Month Period – The “single 12-month period” for purposes of military caregiver leave is a period that commences on the date an employee first takes leave to care for a covered servicemember with a serious injury or illness and ends 12 months after that date. This is a different period than the calendar year that is used by the City to determine an employee’s other FMLA leave entitlements (e.g. referenced in section 7.1 of this Policy).
- 16.10 Workweek – The employee’s usual or normal schedule (hours/days per week) prior to the start of FMLA leave.