

# Family and Medical Leave

## DEFINITIONS

“Child” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18 or age 18 and older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act, as amended.

“Covered Active Duty” or “Call to Covered Active Duty Status” means:

- For members of the Regular Armed Forces, active duty during the deployment of the member with the Armed Forces to a foreign country or a call to such active duty; or
- For members of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation.

“Covered Service Member” means either:

- a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A dishonorably discharged veteran does not qualify as a covered service member.

“Covered Veteran” means an individual who was a member of the Armed Forces, including the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period preceding the date an employee first takes FMLA leave to care for them.

“FMLA” means the Family and Medical Leave Act of 1993, as amended.

“Health Care Provider” means any doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse midwife, clinical social worker, and physicians assistant performing within the scope of his/her practice as defined under state law. Chiropractors and Christian Science practitioners are health care providers to the extent defined under FMLA regulations.

“Leave Period” means a 12-month period calculated by using a rolling 12-month period measured backward from the first day of the new leave period the employee is requesting.

“Military Leave Period” means a rolling 12-month period measured forward beginning on the first day that an eligible employee takes Military Caregiver leave.

“Next of Kin” means the nearest blood relative of a current service member, excluding their spouse, child, or parent, in the following order of priority:

- A blood relative designated in writing by the service member as the next of kin for FMLA purposes;
- A blood relative who has been granted legal custody of the service member;
- Brothers and sisters;
- Grandparents;
- Aunts and uncles;
- First cousins.

“Parent” means a biological parent adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term does not include a mother-in-law or a father-in-law.

“Serious Health Condition” means a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

“Serious Injury or Illness” means:

- in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- in the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that manifested itself before or after the member became a veteran and is either:
  - i.a continuation of a serious injury or illness that was incurred or aggravated when the covered member of the Armed Forces and rendered them unable to perform their duties; or
  - ii.a physical or mental condition for which the covered veteran has received a Department of Veterans Affairs Service-Related Disability Rating of 50 percent or greater and such rating is based in whole or in part on the condition precipitating the need for military caregiver leave; or
  - iii.a physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation due to disability based on military service or that would do so absent treatment; or
  - iv.an injury on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

“Spouse” means a husband or wife as recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Under Colorado law, persons in common law marriages are considered spouses; persons in civil unions are not.

## V. ELIGIBILITY

The FMLA provides unpaid, job-protected leave to eligible City employees. The City reserves the right to determine employee eligibility in accordance with applicable law and regulations. To be eligible for FMLA leave, an employee must:

1. Have been employed by the City for at least twelve (12) months; and
2. Have worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of the leave

In addition, employee eligibility is conditioned upon the City employing at least 50 persons within a 75-mile radius. If at any time the City work force comprises less than 50 persons, employees may no longer be eligible for FMLA leave.

## VI. REASONS FOR LEAVE

### A. Reasons for Twelve Workweeks of Leave.

Eligible employees can take up to twelve (12) workweeks of unpaid, job-protected leave during a Leave Period for any of the following reasons:

1. The birth of a child, and to care for the newborn child;
2. The placement of a child with an employee for adoption or foster care and to care for the child;
3. To care for the employee’s spouse, child, or parent with a serious health condition (described below);
4. The serious health condition that makes the employee unable to perform the functions of the employee’s job.

***Serious Health Condition.*** This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this policy are encouraged to consult with the Human Resources Department.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the City may designate all or some portion of related leave taken as leave under this policy, to the

extent that the earlier leave meets the necessary qualifications.

5. Qualifying exigencies while the employee's spouse, child, or parent is on covered active duty or call to covered active duty status or has been notified of an impending call or order to covered active duty. The qualifying exigency must be one of the following:
  - a. Short-notice deployment. To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less days prior to the date of deployment. An employee can use leave taken for this purpose for a period of seven calendar days beginning on the day the military member is notified or an impending call or order to covered active duty.
  - b. Military events and related activities. To attend events sponsored by the military that are related to the covered active duty of the military member.
  - c. Childcare and school activities. Childcare and school activities pertaining to a child of the military member and necessitated by the military member's covered active duty.
  - d. Financial and legal arrangements. Making or updating financial and legal arrangements to address a military member's absence while on covered active duty.
  - e. Counseling. Attending counseling for the employee, the military member, or the child of the military member if the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
  - f. Rest and Recuperation. Spending time with a military member who is on short-term, temporary Rest and Recuperation Leave during deployment. The employee can use this leave for up to 15 calendar days beginning on the date the military member commences Rest and Recuperation Leave.
  - g. Post-deployment Activities. To attend events sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status and to address issues that arise from the death of the military member while on covered active duty status.
  - h. Parental Care. To address the needs of or provide short-term care for a parent of the military member who is incapable of self-care provided that the need to do so arises from the covered active duty status of the military member.
  - i. Additional Activities. To address any other event arising out of the military member's covered active duty, provided that the City and the eligible employee agree that the leave is a qualifying exigency and agree to both the timing and duration of such leave.

#### B. Reason for 26 Workweeks of Leave (Military Caregiver Leave)

Eligible employees may take up to 26 workweeks of unpaid, job-protected leave during a Military Leave Period to care for a covered service member with a serious illness or injury. To be eligible for this leave, an employee must be the spouse, child, parent, or next of kin of the covered service member. Military Caregiver leave is available to an eligible employee once per

service member or per veteran, per serious injury or illness, except that an employee cannot take more than 26 workweeks of leave during a Military Leave Period.

## **VII. AMOUNT, DURATION, AND TIMING OF LEAVE**

### **A. Twelve-Workweek Maximum Leaves.**

An eligible employee can take up to 12 workweeks for the circumstances listed above in Section VI. A during a Leave Period.

### **B. Twenty-Six Workweek Maximum Leave.**

An eligible employee can take up to 26 workweeks for Military Caregiver leave during a Military Leave Period. Although an eligible employee may also take more than one period of 26 workweeks under some circumstances, employees are limited to a total of 26 workweeks of leave in the Military Leave Period. If an eligible employee does not take all 26 workweeks of leave to care for a covered service member during the Military Leave Period, the employee forfeits the remaining portion of the 26 workweeks of leave

### **C. Married Employees.**

If a husband and wife 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 parent with a serious health condition, the husband and wife may only take a combined total of 12 workweeks of leave. However, each spouse may use up to 12 workweeks of FMLA leave during any 12-month period if the leave is to care for the employee's spouse or child with a serious health condition or the employee's own serious health condition. If a husband and wife both work for the City, they are limited to a combined total of 26 workweeks during the Military Leave Period if the leave is Military Caregiver Leave or a combination of Military Caregiver Leave and any of the circumstances listed above in Section VI. A.

### **D. Intermittent Leave or Reduced Work Schedule**

Subject to the limitations and certifications set forth by the FMLA, an employee may take leave intermittently or may on a reduced leave schedule under certain circumstances. FMLA leave that is taken in whole or in part on an intermittent basis may not exceed a total of 12 workweeks, or 26 workweeks for employees on Military Caregiver leave.

Employees must take intermittent leave in increments no greater than one hour.

Employees approved for intermittent leave shall make reasonable efforts to schedule such leave to avoid disrupting the work of the City and must comply with all other City and departmental notice and procedural requirements regarding leave requests and absences from work to the extent possible.

### **E. Timing of Leave for Birth or Placement of a Child.**

Employees who use FMLA leave in connection with the birth or placement for adoption or foster care of a child must use such leave within 12 months of the birth or placement of the child. Intermittent leave may not be used in this circumstance.

## **VIII. EMPLOYEE STATUS, COMPENSATION, AND BENEFITS**

Employees taking FMLA leave will be required to use all accrued paid time off (PTO) and earned time off (e.g., compensatory time) concurrently with their unpaid FMLA leave unless the leave also is taken in connection with an illness or injury that is covered by state workers' compensation laws or short- or long-term disability benefits. Additional absences from work in excess of the employee's accrued paid and/or earned time off shall be treated as leave without pay. The use of any paid time off, PTO or otherwise, during an FMLA leave of absence shall not extend the length of an employee's FMLA leave.

FMLA leave does not constitute a break in service for purposes of any employee benefit plan.

The City will maintain group health insurance benefits while the employee is on FMLA leave under the same conditions as if the employee were not on leave. If paid time off is substituted for unpaid FMLA leave, the City will deduct the employee portion of group health insurance premiums as regular payroll deductions. If FMLA leave is unpaid, the employee must make arrangements with the Human Resources Department to pay the employee portion of the premiums while on leave. The Finance Department must receive the payment by the 5th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The Human Resources Department will notify the employee 15 days before the employee loses coverage.

The City will require all employees that do not return to work from FMLA leave to reimburse the City for the portion of the employee's group health insurance benefit premiums that the City paid on behalf of the employee during the FMLA leave unless the employee does not return to work for one of the following reasons:

- A continued serious health condition of the employee or the employee's family member; or
- A circumstance beyond the employee's control.

If an employee contributes to a life insurance or disability insurance plan, the City will continue making payroll deductions while the employee is on paid leave. An employee on unpaid leave may continue those benefits provided that they pay their share of the premium payments. An employee that does not make the required payments may lose coverage.

All other employee benefits, such as PTO and holiday leave, cease to accrue during an unpaid portion of FMLA leave.

## **IX. PROCESS FOR ADMINISTERING FMLA LEAVE.**

### **A. Employee Obligations**

1. Employees shall comply with all City and departmental notice and procedural requirements regarding leave requests and absences from work to the extent possible.

2. Refusal to provide information or to answer questions pertaining to FMLA will be grounds to deny part or all of employees leave as FMLA leave.

3. A fraudulent request for or use of FMLA leave will be grounds for immediate termination.

## B. Request for Leave

If an employee fails to comply with the notice requirements set forth in this policy, the City may defer or deny their request until the employee provides proper notice.

### 1. New Child Leave

An eligible employee who foresees that she/he will require a leave for the birth/care of a child, or for adoption or foster care placement, must notify his/her supervisor and the Human Resources Department in writing not less than 30 calendar days in advance of the start of the leave. If not foreseeable, the employee must provide as much written notice as is practicable under the circumstances, generally within two working days of learning of the need for leave.

### 2. Family, Employee Medical Leave or Military Caregiver Leave

An employee who foresees the need for a leave due to planned medical treatment for herself/himself or for an applicable family member must notify his/her supervisor and the Human Resources Department in writing as early as possible so that the absence can be scheduled at a time least disruptive to the City's operations. Such notice must be at least 30 calendar days in advance of the start of leave, unless impracticable, in which case the employee must provide the written notice as early as circumstances permit, generally within two working days of learning of the need for leave.

When planning absences for reasons related to medical treatment, the employee should schedule the leave so as to minimally disrupt the City's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their supervisors prior to scheduling treatment in order to work out a treatment schedule that best suits the needs of both the employee and the City.

### 3. Military Exigency Leave

An employee who foresees the need for such leave, whether because the employee's spouse, child, or parent is on active duty or because of notification of an impending call or order to active duty in support of a contingency operation, must notify his/her supervisor and the Human Resources Department in writing as soon as is reasonable and practicable.

### 4. Other City Policies Apply.

Employees shall comply with all other City and departmental notice and procedural requirements regarding leave requests and absences from work.

### 5. Leave Extensions

Employees shall, if possible, make all requests for leave extensions in writing two (2) workweeks prior to the end of their scheduled leave.

### C. City's Response to Request

The City will notify employees who request FMLA leave regarding their eligibility for the leave within five (5) business days of receiving a request for leave. This notification will also contain (1) a statement of the employee's rights and responsibilities under the FMLA; and (2) a Medical Certification Form ("MCF"), if applicable.

### D. Certification

The City will require employees to provide documentation supporting a request for FMLA leave. This may include reasonable documentation or statement of family relationship. An employee's failure to submit complete and sufficient documentation in a timely fashion may result in deferral or denial of the requested leave.

#### 1. Serious Health Condition of Employee or Employee's Family Member

Employees seeking FMLA leave because of their own or a family member's serious health condition must submit a completed Medical Certification Form ("MCF") to Human Resources within fifteen (15) calendar days after the City requests a certification, or as soon as possible under the circumstances. The health care provider treating the person with the serious health condition must complete the form.

Employees who submit a deficient or incomplete form will receive written notice from Human Resources stating the deficiencies and must submit a complete and correct MCF to Human Resources within seven (7) calendar days of receiving this notice. If the medical information in the MCF is incomplete, a representative from the Human Resources Department may contact the health provider directly to authenticate or clarify information on the MCF.

In cases where there is reason to doubt the validity of a certification, the City may, at its own expense, request a second or third medical opinion regarding the condition and treatment necessitating the leave.

#### 2. Qualifying Exigency Leave

a. Certification of Need for Leave. The City will require certification of the qualifying exigency within 15 days of the request or as soon as possible. The first time an employee requests leave because of a qualifying exigency, the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military indicating that the covered military member is on active duty or called to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. The employee will be required to supply such documentation again only for a different active duty or call to active duty status for the same or a different covered military member. An employee's failure to provide complete and sufficient certification may result in the delay or denial of FMLA leave.

The City may, without the employee's permission, contact the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.

The City may at any time require confirmation of the employee's relationship with the service member and may require the employee to certify the appropriate facts related to the particular qualifying exigency for which leave is sought.

### 3. Military Caregiver Leave

#### a. Certification of Need for Leave.

##### i. Standard Certification.

If an employee requests leave to care for a covered service member with a serious injury or illness, the City will require the employee to obtain a Medical Certification Form ("MCF") completed by an authorized health care provider of the covered service member. The City will require certification within 15 days of the request or as soon as possible. An employee's failure to provide complete and sufficient certification may result in the delay or denial of FMLA leave.

The City may request a second or third opinion of a covered service member or veteran's serious injury or illness only if the initial certification is provided by a health care provider *not* affiliated with the military.

If the medical information in the MCF is incomplete, a representative from the Human Resources Department may contact the health provider directly to authenticate or clarify information on the MCF.

##### ii. ITOs and ITAs.

In lieu of any certification, the City will accept "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill service member at his or her bedside, regardless of whether the employee is named in the order or authorization. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered service member in a continuous block of time or on an intermittent basis.

The City may seek authentication and clarification of the ITO or ITA but will not seek a second or third opinion or a recertification during the period of time in which leave is supported by an ITO or an ITA.

Prior to granting leave to care for a covered service member beyond the expiration date specified in an ITO or ITA, the City will require a certification form for the additional time completed by the authorized health care providers.

Certification timelines will be the same as those under basic FMLA leave.

b. Confirmation of Employee's Relationship with Service Member. The City may require confirmation of the employee's relationship with the service member at any time.

#### 4. Continued Need for Leave.

Under certain circumstances, the City may require periodic updates and additional documentation supporting an employee's continued need for leave.

#### E. Designation.

Within five (5) business days after determining whether the leave sought qualifies as FMLA leave, the Human Resources Department will complete and provide the employee with a written response to the employee's request for FMLA leave.

#### F. Recertification

The City may request subsequent re-certification during the course of an employee's leave in accordance with the limitations set forth in the FMLA regulations.

#### G. Intent to Return to Work

On a basis that does not discriminate against employees on FMLA leave, the City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

#### H. Return to Work.

##### 1. Restoration.

Employees returning to work from FMLA leave will be reinstated to the same or an equivalent position held prior to the leave being taken, unless the position has ceased to exist due to business reasons. Employees will also be restored to the same level of benefits they had at the time their leave began. Certain "key employees" may not be eligible for such reinstatement. Determination of whether an employee is a key employee shall be made at the time an employee gives notice of the need for leave.

##### 2. Fitness for Duty.

An employee who takes leave under this policy shall be required to provide the Human Resources Department with a medical certification of their fitness to return to work completed by the health care provider. This certification will be based upon the essential functions of the employee's job. The City will inform the employee of this requirement when it notifies the employee that leave take will be designated as FMLA leave.

##### 3. Resignation.

The City will consider an employee to have voluntarily resigned if:

- a. an employee does not return to the same or equivalent position as soon as he or she is able; or
- b. If an employee engages in other employment during FMLA leave.