




## Human Resources Policies and Procedures

Policy Title: <b>Family and Medical Leave of Absence (FMLA)</b>	Policy Number: 4.5
Effective: December 20, 2021  Supersedes previous version of policy dated March 7, 2011	
Approval:  <i>INTERIM HR Director</i>	Page 1 of 12

### 1.0 Scope

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|--|--|
| <input checked="" type="checkbox"/> Full-time          | <input checked="" type="checkbox"/> Union              |
| <input checked="" type="checkbox"/> Part-time          | <input type="checkbox"/> Independent Contractors       |
| <input checked="" type="checkbox"/> Temporary/Contract | <input type="checkbox"/> Visitors, Vendors, Volunteers |
| <input checked="" type="checkbox"/> Non-Union          | <input type="checkbox"/> Board and Commission Members  |

*Employees who are covered under the provisions of a collective bargaining agreement will follow the standards as contained in their respective contracts if this policy conflicts with the language in the contract.*

### 2.0 Purpose

To provide a policy that assures compliance with the Family Medical Leave Act of 1993, as amended.

### 3.0 Policy

The City of Ann Arbor recognizes that circumstances may arise in which employees find it necessary to be absent from work for a period of time due to:

- A. The birth of a son or daughter, and to care for the newborn child;
- B. For placement of a son or daughter for adoption or foster care;

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- C. To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- D. A serious health condition that makes the employee unable to perform the functions of his or her job;
- E. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; or
- F. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

The City of Ann Arbor will provide leaves of absences to eligible employees in these situations in compliance with the requirements of the Family Medical Leave Act (FMLA).

#### **4.0 Responsibility**

Management and Human Resources Services will be responsible for the consistent administration of this policy and ensuring compliance with the Family and Medical Leave Act. Employees are responsible for providing Management and Human Resources Services with proper notice of the need for leave and for providing requested certification related to the leave.

#### **5.0 Definitions (per the Family Medical Leave Act and supporting regulations)**

- 5.1 *Serious health condition*** means an illness, injury, impairment, or physical or mental condition that involves:
  - A. inpatient care (overnight stay in a hospital, hospice or residential medical care facility);
  - B. or continuing treatment by a health care provider.
- 5.2 *Continuing treatment*** means a serious health condition involving continuing treatment by a health care provider including:
  - A. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - B. An in-person treatment two or more times, within 30 calendar days

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of the first day of incapacity (first treatment must take place within 7 calendar days of the first day of incapacity) by a health care provider; or

An in-person treatment by a health care provider on at least one occasion within 7 calendar days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of a health care provider.

- C. any period of incapacity due to pregnancy or prenatal care;
- D. any period of incapacity or treatment due to a chronic serious health condition which:

Requires periodic visits (at least twice per year) for treatment by a health care provider;

Continues over an extended period of time; and May cause episodic rather than a continuing period of incapacity.

- E. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g. stroke or Alzheimer's);
- F. any period of absence to receive multiple treatments for restorative surgery after an accident or injury or for specified treatments such as chemotherapy or dialysis.

**5.3 Health care provider** includes: licensed MD's and OD's, podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in the State, nurse practitioners, nurse midwives, clinical social workers and physicians assistants authorized under State law, and Christian Science practitioners listed with the First Church of Christ, Scientists in Boston, MA.

**5.4 Personal Medical Leave:** A leave due to an employee's incapacity to perform his or her job due to a serious health condition.

**5.5 Family Medical Leave:** A leave to care for a son, daughter, spouse, parent with a serious health condition. Parent-in-laws are not covered by this policy. Employees are entitled to a Family and Medical Leave of Absence in situations where the employee has day-to-day responsibilities for care giving. The following care giving situations are included in determining an employee's eligibility for a leave: (Reference § 825.113 of the Act)

- A. A biological child, adopted child, foster child, stepchild, legal ward,

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or child of a person standing in the place of a parent, who is under 18 years old, or is older than 18 and is incapable of self-care because of disability.

- B. A biological parent of the employee or an individual who stood in the place of a parent of the employee.

**5.6 Child Care Leave:** A leave to care for an employee's newborn child, or a leave to care for a child placed with the employee due to adoption or foster care.

- A. This category of leave may be taken by the mother, father, or both. If the mother and father both work for the City of Ann Arbor, the aggregate total for a childcare leave may not exceed 12 weeks. Each parent will still be eligible for additional Family and Medical Leave of Absence in another category. For example, if the parents take 6 weeks each to care for a newborn child, they have reached the 12-week maximum for the Child Care category. However, each parent would still have 6 weeks of eligibility for that year under another leave category.
- B. This category of leave must be taken within 12 months after the birth or placement of the new child.

**5.7 Military Family Leave:** A leave related to a specified family member's service in the military under the following circumstances:

- A. **Qualifying Exigency:** When the employee's spouse, son, daughter or parent (covered military member) is on active duty or call to active duty status for one or more of the following exigencies:

Short term deployment: To address issues that arise when a covered military member is notified of impending call or order to active duty seven or less calendar days prior to date of employment.

Military events and related activities: To attend official ceremonies, events or programs related to active duty call of covered military member or to attend family support or assistance programs or informational briefings related to call to active duty;

Childcare and school activities: To deal with specified childcare and school related activities such as arranging for childcare, providing immediate need childcare, school enrollment, or teacher/staff meetings, which become necessary due to circumstances arising from the call to

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active duty of a covered military member;

Financial and Legal Arrangements: To deal with financial or legal arrangements relating to the absence of the covered military member;

Counseling: To attend counseling by someone other than a health care provider for the employee, the covered military member, or the child or stepchild of the covered military member where the need for counseling arises from the call to active duty;

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 (up to five days of leave for each instance of R&R);

Post-deployment activities: To attend arrival ceremonies, reintegration events and other military sponsored events for a period of 90 days following termination of the covered military member's active duty status or to address issues resulting from the death of a covered military member while on active duty status; or

Additional activities: To address other events which arise out of the covered military member's active duty or call to active duty status provided that management and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave.

- B. To care for a covered servicemember with a serious illness or injury: when an employee is caring for a current member of the Armed Forces (including National Guard or Reserve), or one who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy or outpatient status. The employee must be the spouse, son, daughter or parent (not in-law) or next of kin of a covered service member.

- 5.8 Amount of Leave:** Eligible employees may take up to 12 workweeks in a 12 month period for any qualifying leave, with the exception of leave to care for a covered servicemember with a serious illness or injury. A leave for the care of a covered servicemember with a serious illness or injury is limited to a total of 26 workweeks of leave during a single 12 month period beginning on the date of the employee's first FMLA leave to care for the covered service member begins. The employee is only eligible for this

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leave once for a covered service member.

**5.9 Intermittent or Reduced Hours Leave:** Employees may take leave for their own or a family member's serious health condition, or to care for a covered servicemembers with a serious illness or injury, or for a qualifying exigency all at once, or if medically necessary, on an intermittent or reduced hours basis. Intermittent leave means the employee takes only one or two days or hours at a time which can accumulate up to the total allowable leave period. Reduced hours mean the employee works fewer hours per day or week.

- A. Taking leave intermittently or on a reduced hours basis can result in the allowable maximum time for leave provided by the Family and Medical Leave Act extending over a much longer period of time.
- B. Intermittent or reduced schedule leave may only be taken for the care of a newborn child or placement of a child adoption or foster care, if the City agrees.
- C. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the service unit's operations.
- D. If an employee requests an intermittent or reduced hours leave, the City of Ann Arbor may temporarily transfer the employee to an alternative position that better accommodates the employer's needs while providing the leave. The alternative position must have equivalent pay and benefits.

**5.10 Equivalent position** means a position with equivalent pay, benefits, and other terms or conditions of employment.

**5.11 To care for** a family member who meets the definition of serious health condition encompasses: physical and psychological care and where the employee is needed to fill in for others providing care or to arrange for the third party care of the family member.

**5.12 Certification:**

- A. Employees will be required to support a request for a leave with certification for a health care provider or from the military as appropriate.
- B. If the City of Ann Arbor has reason to doubt the validity of a medical certification, the City of Ann Arbor may require the employee to obtain a second opinion at the City's expense from a health care

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provider chosen by the City. If the second opinion is different from the first, the City may require the opinion of a third health care provider jointly approved by the City and the employee, and at the City's expense. The opinion of the third provider will be final and binding.

## **6.0 Procedures**

### **6.1 Eligibility**

- A. Employees are eligible for an FMLA leave, in accordance with the Act after they have worked for the City of Ann Arbor for a least twelve (12) months or fifty-two (52) weeks and have worked at least 1,250 hours during the previous 12 months.
- B. Full-time and part-time employees may be eligible for a medical leave of absence (Policy 4.6), even though they may not qualify for a leave per FMLA, if an emergent, personal medical condition requires such a leave. However, job protection provisions provided by the FMLA will not apply.
- C. Whenever possible, leave under FMLA will run concurrently with similar leaves granted under any applicable state laws, including workers compensation, leave of absence, and sick leave.
- D. Approved Family and Medical Leaves of Absences begin on the first day of the absence.
- E. Whenever possible, leave under FMLA will run concurrently with similar leaves granted under any applicable state laws, including workers compensation, leave of absence, and sick leave.
- F. Eligible employees may take up to 12 weeks for a personal medical disability, and up to 12 weeks for the birth, adoption, or placement in foster care of a child, or to care for a family member with a serious health condition as described in section 5.8. The extent of the leave is based on a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- G. Family and Medical Leaves of Absence begin on the first day of absence.

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## 6.2 Requesting a Leave

- A. Employees are required to provide their supervisors with at least 30 calendar days advance notice before FMLA leave is to begin if the need for leave is foreseeable. If 30 calendar day's notice is not practicable, notice must be given as soon as is practicable. There may be circumstances when the request is made subsequent to the event. Notice must be sufficient to make the supervisor aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
- B. Supervisors are required to notify the next level of management and the Employee Benefits Team in Human Resources Services immediately upon receiving notice from the employee of the need for leave.
- C. Employees are required to submit a written request for all Family and Medical Leave of Absences (initial leaves and extensions) by using the ***Application for Family and Medical Leave*** and ***Request for Leave of Absence*** forms. In addition, employees must provide the following documentation within 15 calendar days to support their leave request:
  - 1. ***Child Care:*** Verification of birth, adoption or child placement.
  - 2. ***Personal Medical:*** Employees are required to provide certification of their disability. A ***Certification of Health Care Provider for Employees' Serious Health Condition*** must be used to document an employee's incapacity to work.
  - 3. ***Family Medical:*** Employees are required to provide certification of the family member's serious health condition by using the ***Certification Health Care Providers for Family Member's Serious Health Condition***.
  - 4. ***Military Family Leave:*** Employees are required to provide either ***Certification of Qualifying Exigency for Military Family Leave***, or ***Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave***.
- D. Human Resources Services shall provide the employee a **Notice of Eligibility and Rights and Responsibilities** within five (5) business days of the employee notifying the City of the need for

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FMLA leave.

- E. Following the time period for receipt of certification documents, Human Resources Services will issue a **Designation Notice** to the employee to indicate whether the FMLA leave is approved.
- F. In instances where no specific request for FMLA leave has been requested by an employee but the employee requests paid or unpaid leave which the City determines to be for an FMLA qualifying purpose (based on information provided by the employee), the City shall designate the requested leave as FMLA leave. The City will notify the employee when such a designation is made.

### **6.3 Compensation and Benefits**

- A. Leaves under FMLA may be paid or unpaid. Employees shall utilize leave time from their paid time off banks before utilizing unpaid time off. Paid leave may come from the following sources:
  - 1. sick, vacation, compensatory, personal leave time banks
  - 2. temporary or short-term disability plans;
  - 3. voluntary long-term disability plans; and/or
  - 4. workers compensation.
- B. If an employee requests leave for any reason permitted under this policy, he/she must exhaust all accrued leaves in connection with the leave except where retention of a balance is requested and approved. Upon request and approval, employees may retain a maximum of 40 hours of each paid leave in their leave banks. The exhaustion of accrued leave will run concurrently with the leave under this policy.
- C. Leave time will be computed based on the employee's budgeted status position. For example, a full-time employee regularly scheduled to work 40 hours weekly is eligible for 480 hours of leave during a 12-month period (40 hour weekly schedule times 12 weeks). A part-time employee scheduled to work 20 hours a week is eligible for 240 hours of leave during a 12-month period (20 hour weekly schedule times 12 weeks). (Employees are eligible for 26 workweeks of leave to care for covered servicemember with a serious illness or injury.)

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- D. Full-time employees may be eligible for optional voluntary short- and long-term disability benefits. If eligible, any short- or long-term disability time will be counted as a part of the employee's FMLA leave time. Workers' compensation time off will be counted as part of the employee's FMLA leave time.
- E. Paid time-off will not be earned during an unpaid leave of absence.
- F. After an employee qualifies for participation under the health care benefits program, benefits will continue for the length of the approved leave. Premium cost sharing, if any, for continued coverage will be at the same share of cost that is normally paid by an active employee.
- G. During an FMLA leave of absence, benefits will continue uninterrupted. If the employee is on an unpaid leave beyond the approved FMLA period their benefits will be terminated and they will be able to elect continuing coverage via COBRA.
- H. Employees failing to return from leave may be required to repay the City's share of the health care program premiums. Exceptions are those instances where failure to return is due to a continuation, recurrence, or onset of a serious health condition of the employee or family member which would otherwise entitle the employee to leave under FMLA, or because of other circumstances that are beyond the employee's control.
- I. Basic group term life insurance will be maintained at no cost to employees for the duration of a FMLA leave of absence.
- J. If the employee is on an unpaid leave of absence and has elected to purchase supplemental benefit(s) coverage, the employee must make contribution payments to the appropriate insurance company in order for continuation of benefits.
- K. Employees on an unpaid leave of absence are not eligible for holiday pay.
- L. Employees will continue to accrue time toward pay increases during FMLA leave.
- M. Contributions to the City of Ann Arbor Retirement System and to the Section 457 Deferred Compensation will cease while in an unpaid FMLA leave status.
- N. Employees whose health care benefits cease while on a leave of

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absence will have these benefits reinstated at their previous level immediately following their return to work.

- O. Employees may not accept other employment while on Family Medical Leave. Acceptance of employment at another employer while on FMLA leave shall be deemed a voluntary resignation from City employment.

#### **6.4 Return After a Family and Medical Leave of Absence**

- A. At the conclusion of an approved leave of absence, the City of Ann Arbor will return the employee to the same or equivalent position.
- B. Prior to the end of the leave and at least seven (7) calendar days before expected to return to work, the employee shall complete the ***Notice of Intent to Return from Leave***, signed by the employee and the employee's physician, if applicable, to verify the employee's fitness for duty, expected date of return to work, and to describe any applicable physical restrictions or limitations. Failure to provide such certification will result in denial of restoration.
- C. Failure to report to work after conclusion of a leave will constitute a voluntary resignation from the City of Ann Arbor.
- D. Employees returning from a Family and Medical Leave of Absence are not entitled to any right, benefit or position of employment other than any to which they would have been entitled to had they not taken the leave. If due to general economic conditions or restructuring of the department or division, an employee would have been laid off or terminated during the time period of the leave, such action will occur upon completion of the Family and Medical Leave.
- E. The performance review date of employees on an authorized leave of absence will be adjusted equal to the amount of time the employee is on leave of absence in instances where the leave of absence exceeds three continuous months.

#### **6.5 Employee Notice Requirement**

Employees with complaints of violations of the Act is directed to contact the City's Director, Human Resources and Labor Relations.

#### **6.6 Interpretation**

FMLA leave is a benefit program mandated by the federal government.

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Generally, any dispute that may arise between the City and an individual employee over the interpretation or application of the Act is not a proper subject matter for the intervention of a collective bargaining representative.

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