



# FMLA POLICY

PM-66-06

Section: 66-00, EMPLOYEE STATUS

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## I. PURPOSE AND SCOPE

The Family and Medical Leave Act, as set forth in Public Law 103-3, provides job protected leave for all eligible City of Memphis employees up to 12 weeks. This policy is issued to ensure City employees receive, as a minimum, the level of time provided to them as set forth in the Family and Medical Leave Act (FMLA).

## II. POLICY STATEMENT

It is the policy of the City of Memphis to ensure that the guidelines of the Family and Medical Leave Act are followed. The FMLA does not preempt, modify, or affect federal nondiscrimination laws. The City continues to comply with laws that prohibit discrimination on the basis of race, gender, age, sex, religion, national origin, or disability. A copy of the entire Family and Medical Leave Act regulations is available in all Divisions.

## III. ENTITLEMENT

### A. EMPLOYEE TIME ELIGIBILITY

1. Leave is available to all City of Memphis employees with the exception of employees who work less than 1250 hours during a 12-month period of time and fail to work a total of twelve (12) months for the City of Memphis.
2. The 12-month period in which 12 weeks of leave entitlement occurs is a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (may not extend back before August 5, 1993).
3. The 12-month period need not be consecutive months for eligibility.
4. Only actual hours worked are counted towards 12-month period.
5. Separate periods of employment in which the break in service is more than 7 years are not used to determine eligibility.
6. Time in military service counts toward the required 12 months.



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### B. QUALIFYING REASONS FOR LEAVE

Under the FMLA, eligible employees are entitled up to 12 weeks of leave during any 12-month period without fear of losing their job for one or more of the following reasons:

1. Birth and care of the employee's child;
2. Placement of a child for adoption or foster care with and employee;
3. Care of an immediate family member with serious health condition, including spouse, legal domestic partner, child, or parent of the employee or;
4. Serious health condition that makes the employee unable to perform the functions of the position;
5. For the birth, bonding, or care of children for whom an employee has the responsibility for day-to-day care or financial responsibility, but no biological or legal relationship with the child (in loco parentis)".

NOTE: While employees may request bonding leave on an intermittent basis, the minimum length of any intermittent leave for bonding is two (2) weeks.

6. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or next of kin is a covered military member on covered active duty.

### DEFINITION OF SERIOUS HEALTH CONDITION

A serious health condition is defined by the law as an illness, injury impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or



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2. A period of incapacity requiring absence of more than **three full calendar days** plus treatment by a health care provider two or more times, or once with a regimen of treatment; or
3. Any period of incapacity due to pregnancy, or for prenatal care; or
4. Any period of incapacity (or treatment therefore) due to a chronic serious health condition. A “chronic serious health condition” is one which requires periodic visits to a health care provider (or health care professional under the supervision of a health care provider); continues over an extended period of time; and may cause episodic rather than continuing periods of incapacity; or
5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or,
6. Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated.

### GUIDELINES

1. If an employee asserts a Serious Health Condition under the requirement of a period of incapacity requiring an absence of more than three full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, the employee’s first visit must take place within **seven (7)** days of the first day of incapacity.
2. If the employee asserts that the condition involves “treatment two or more times”, the two visits must occur within thirty (30) days of the first day of the incapacity.
3. Periodic visits for serious health conditions are defined as a visit to a healthcare provider for the same condition at least twice a year.
4. The law does not require paid family or health leave.
5. Employees may use accrued sick, vacation, bonus and other available paid leave as part of their 12-week leave. The substitution



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of paid leave does not extend the length of an FMLA leave, and the paid time off will run concurrently with an employee's FMLA entitlement. Likewise, leave taken in connection with a disability leave plan or worker's compensation will be automatically designated as FMLA leave and shall run concurrently with any FMLA leave entitlement.

6. Once authorized paid leave is exhausted, the remainder of the 12 weeks of leave will be unpaid.
7. Maternity leave is counted as part of the 12 weeks of FMLA leave.

### **EMPLOYEE BENEFITS**

- A. Leave taken under the Act can be taken "intermittently or on a reduced leave schedule" in certain cases.
- B. The entitlement to leave for a birth or placement of a child shall expire at the end of the 12-month period beginning on the date of such birth or placement.
- C. Up to 12 weeks of leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation; or
- D. Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.
- E. Employer will maintain employee's group health coverage during the period of FMLA Leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- F. Upon return from leave, an employee is entitled to be restored to the same position the employee held when the leave began, or to an equivalent position under most circumstances.



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## IV. PROCEDURE

Generally, employees must give 30-day advance notice of the need for FMLA leave. Where the need for leave is unforeseeable, an employee must notify the leave coordinator as soon as possible and follow the following procedures:

- A. Employee must notify HR Business Partner or HR Liaison of his or her division of need for leave.
- B. The HR Business Partner or HR Liaison is required to provide the employee with an FMLA packet with documents to complete and submit to the Leave Coordinator.
- C. The employee must submit the appropriate documentation within (15) days to the Leave Coordinator to support request for leave.
- D. An employee requesting leave due to birth of a child or to care for a newborn child of the employee, spouse, or placement of a child through adoption or foster care must submit Federal FMLA Form WH-380-F.
- E. An employee requesting leave due to employee's serious health condition must submit Federal FMLA Form WH-380-E of the notice request and approval form.
- F. The Leave Coordinator will notify the employee within five (5) business days or as soon as practical of his or her eligibility for family/medical leave.
- G. Upon exhausting FMLA leave, the employee should contact the Leave Coordinator to see what, if any, accommodations may be available in accordance with the Americans with Disabilities Act Amendments Act (ADAAA).

**NOTE:** If employee does not submit the FMLA packet to Leave Coordinator within (15) days, from the date of the initial notice sent to the employee, on the 16<sup>th</sup> day, a second letter will be sent to the employee requesting the FMLA packet and supporting documentation. If documentation is not received after the second letter, on the 26<sup>th</sup> date from the date of the initial notice sent to the employee, the employee's pay



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will stop and employee will be placed on Unauthorized Absence without Leave (UAWOL). On the 36<sup>th</sup> day from the initial notice sent to the employee, the employee will receive notice of termination.

### V. RESPONSIBILITY

- A. It is the responsibility of each employee to adhere to the guidelines and practices of the Family and Medical Leave Act. Also, the employee is responsible for proper documentation concerning leave.
- B. The HR Business Partner or HR Liaison shall be responsible for receiving proper documentation and submitting such documentation to the Leave Coordinator expeditiously. Records relating to FMLA leave are required to be retained in the employee's health file for a period of three years by the Leave Coordinator.
- C. It is the responsibility of each Division to ensure that the Family and Medical Leave Act guidelines are appropriately followed through the approval process.
- D. Failure to provide the appropriate documentation within fifteen (15) days from the date of the request may result in delay in the commencement of FMLA leave, withdrawal of any designation of FMLA leave, or denial of the leave; in which case the leave will be treated in accordance with the City's standard leave of absence and attendance policies. If the employee refuses to return FMLA paperwork and the City has enough information to determine that the leave is taken for a qualifying FMLA reason, the City shall designate the leave as FMLA. Additional time to provide medical certification may be granted in some circumstances.
- E. All questions concerning the administration of this policy shall be addressed to the Chief Human Resources Officer or designee.

### VI. DEFINITIONS

**"Family member"** for purposes of this document includes spouse, son, daughter, parent, or next of kin.



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**“Intermittently”** for purposes of this document is leave that is taken in separate blocks of time due to a single qualifying reason

**“Qualifying exigency”** for purposes of this document is categorized as short-notice- deployment military events, related activities, childcare and school financial and legal arrangements, counseling rest and recuperation, and post deployment activities. Additional activities not encompassed in the other categories, but agreed upon by the employee and employer.

## **REFERENCE POLICIES**

- SECTION, 46-00, LEAVE WITH PAY
- SECTION, 50-00, LEAVE WITHOUT PAY
- PM-66-01, SENIORITY RIGHTS/ADJUSTED DATE OF EMPLOYMENT
- PM-66-02, MATERNITY LEAVE
- PM-46-03, SICK LEAVE

## **AUTHORITY**

- PUBLIC LAW 103-3, FAMILY MEDICAL LEAVE ACT