

**Policy # 26**  
**FAMILY MEDICAL LEAVE ACT/FAMILY CARE ACT**

The City complies with the requirements of the Family and Medical Leave Act (FMLA) of 1993 and Colorado's Family Care Act (FCA). FMLA/FCA provides job protection and maintenance of benefits while employees are out on certain types of leave. The provisions of the City's existing leave policies continue to apply and will run concurrently with FMLA/FCA leave. This policy contains an overview of FMLA/FCA; however, the specific provisions, requirements, and definitions of FMLA and FCA and the related Department of Labor (DOL) regulations will be followed in applying this policy.

**Eligibility**

To be eligible for leave under FMLA, employees must meet the following conditions:

- The employee must have been employed by the City at least 12 months, and
- The employee must have worked for the City at least 1250 hours during the 12-month period immediately preceding the commencement of the leave, and
- Need leave for one of the following reasons:
  - Birth, adoption, or foster care placement of a child within 12 months of birth or placement, or
  - To care for a serious health condition of the employee's partner in marriage pursuant to the provisions of the "Uniform Marriage Act, "Part 1 of Article 2 of Title 14 or Colorado common law,, child, or parent, or
  - A serious health condition of the employee that renders the employee incapable of performing the functions of the job, or
  - A qualifying exigency arising out of the covered active duty or call to the covered active duty status in the Regular Armed Forces, National Guard or Reserves of the employee's partner in marriage pursuant to the provisions of the "Uniform Marriage Act, "Part 1 of Article 2 of Title 14 or Colorado common law, son, daughter, or parent of an eligible employee, or
  - Military caregiver leave for an eligible employee who is the employee's partner in marriage pursuant to the provisions of the "Uniform Marriage Act, "Part 1 of Article 2 of Title 14 or Colorado common law, son, daughter, parent or next of kin of a covered service member or veteran with a qualifying serious injury or illness.

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Supervisors will inform employees requesting leave whether they are eligible under FMLA. If they are, the notice will specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the City will provide a reason for the ineligibility. Supervisors shall also notify the employees whether or not the leave qualifies as FMLA, if the leave will be designated as FMLA-protected and the amount of leave counted against the employees' leave entitlement. If it is determined that the leave is not FMLA-protected, the supervisor will notify the employee.

#### Duration of Leave

Eligible employees are entitled to a maximum of 12 workweeks of unpaid leave in any 12-month period. The 12-month period is calculated as a rolling 12-month period measured backward from the date the employee uses any FMLA leave. If the leave is military caregiver leave, eligible employees are entitled to a maximum of 26 workweeks of unpaid leave during a single 12-month period. The 12 month period for this leave is calculated from the first day the leave is taken.

The total FMLA leave that may be taken during a 12 month period (alone or in combination with other FMLA leave) is 26 workweeks. Mandatory overtime will count toward an employee's FMLA time for all types of leave. Any leave beyond FMLA leave will be subject to the City's other leave policies.

#### Combined Leave

If both partners in marriage, whether pursuant to the provisions of the "Uniform Marriage Act," Part 1 of Article 2 of Title 14 or Colorado common law, are employed by the City and have met the tenure and hours worked requirements under FMLA, the husband and wife may be limited to combined FMLA leave periods in accordance with DOL regulations.

#### Leave Taken on an Intermittent or Reduced Schedule

FMLA leave may be taken on either a consecutive, intermittent, or reduced basis as provided by FMLA. Such a schedule must be needed for medical reasons and approved by a healthcare provider. Leave due to qualifying exigencies or military caregiver leave may also be taken on an intermittent or reduced leave basis. However, FMLA leave may not be taken on an intermittent or reduced leave schedule for the birth, adoption, or foster care placement of a child unless approved by the Division Manager. The organization may temporarily transfer an employee who is taking FMLA on an intermittent or reduced schedule basis if the alternative position better accommodates the leave, and the leave is foreseeable and based on planned medical care. The alternative position must be equal in pay and benefits. Reduced schedule leave will not affect the status of "exempt" employees.

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### Substitution of Paid Leave for Unpaid Leave

Employees are required to use accrued leave to the extent they qualify for that leave in the following order unless previously approved by Human Resources:

- The employee must first draw from available sick or family sick balances as appropriate until exhausted,
- The employee must next draw from compensatory time, vacation, and personal holiday balances in any order until exhausted,
- The employee may then use leave without pay for the remainder of the FMLA leave.

When an employee is receiving worker's compensation payments or disability payments under a disability plan, the employee may not elect, nor may the City require the employee to substitute any form of paid leave for any part of the absence covered by these payments.

Disability leave for the birth of a child and for the employee's serious health condition, including workers' compensation (to the extent it qualifies), will be designated as FMLA leave and will run concurrently with FMLA leave.

### Advance Notice

If the leave is foreseeable, the employee is required to provide 30 days notice and make a reasonable effort to schedule time off, so that it is least disruptive to the operations of the employer. Otherwise, the employee is required to give as much notice as practicable.

### Certification Requirements

Employees are required to provide certification of their need for FMLA leave. There are four certification forms specific to each type of leave: Employee's Serious Health Condition, Family Member's Serious Health Condition, Qualified Exigency, and Military Caregiver Leave. The forms can be obtained from your supervisor, City HR Benefits and Wellness, or the HR Benefits and Wellness Intranet site. Failure to provide complete and sufficient certification may be grounds for discipline and/or denial of the leave.

Certification regarding the health condition of employee, , employee's partner in marriage pursuant to the provisions of the "Uniform Marriage Act, "Part 1 of Article 2 of Title 14 or Colorado common law, child, parent, or covered servicemember requires health care provider statements.

Certification for a qualified exigency requires facts supporting the leave request including any supporting documentation. Documentation confirming family relationship, adoption or foster care may be required.

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The City may require second and third medical opinions at the City's expense. Employees also may be required to provide periodic recertification supporting the need for leave.

If an employee takes leave for a reason that later qualifies as approved FMLA leave, the City may designate all or some portion of the earlier leave taken as leave under this policy.

#### Benefits During FMLA

When already in effect, immediately prior to FMLA, employer contributions to insurance benefits will continue during FMLA leave to a maximum of 12 workweeks or a maximum of 26 workweeks if the FMLA leave is military caregiver leave. Employees must make prior arrangements with HR Benefits and Wellness to pay the required employee contribution for such benefits while on leave if leave is without pay.

If you choose to make premium payments during your unpaid FMLA, there will be a 30-day grace period after the agreed upon date during which time you must make your premium payments. If you fail to make the required payment, the City has the option to cease coverage on the date the grace period ends as long as it has given you 15 days notice.

#### Merit Pay

An employee's merit pay will not be reduced due to time off that qualifies as Family Medical Leave.

#### Failure to Return to Work

An employee who does not return to work upon expiration of FMLA leave may be discharged. An employee who fails to return from FMLA leave will be required to refund all employer benefit contributions paid during the unpaid portion of the leave, unless the failure to return results from the continuation, recurrence, or onset of a serious health condition, or something beyond the employee's control.

If an employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, he or she should consult with Human Resources regarding the City's ADA process.

#### Return to Work

Upon return to work from FMLA leave, most employees will be restored to the same position or to one equivalent in pay, benefits, and other terms and conditions of employment.

If FMLA is based on a personal serious health condition, the employee must provide medical certification that they are able to resume the essential functions of their position when they return to work.

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## Definitions

- **Covered Active Duty:**

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and  
(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10.
- **Covered Servicemember:**

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or  
(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- **Next of Kin:**

The nearest blood relative of the injured or recovering servicemember.
- **Serious Injury or Illness for Military Caregiver Leave:**

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in 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 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  
(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.
- **Qualifying Exigency:**

Specific and exclusive list of reasons defined by the Department of Labor for which an eligible employee can take leave arising out of the fact that an employee's partner in marriage pursuant to the provisions of the "Uniform Marriage Act," Part 1 of Article 2 of Title 14 or Colorado common law, son, daughter or parent of the employee is on covered active duty or has been notified of an impending call to covered active duty status in the National

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Guard or Reserves or Regular Armed Forces. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

- **Serious Health Condition**: As defined by the FMLA, including an illness, injury, impairment, or physical or mental condition that may involve any of the following:
  - Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility;
  - Continuing treatment by a health care provider with incapacity of more than 3 calendar days that also involved treatment by a health care provider two or more times within 30 days. The first visit must take place in person and within seven days of the first day of incapacity;  
OR
  - Treatment on one occasion that results in a regimen of continuing treatment (i.e. antibiotics). (Generally, the common cold or flu does not qualify as a serious health condition.) The treatment must take place in-person and within seven days of the first day of incapacity;
  - Pregnancy or prenatal care;
  - Chronic condition requiring periodic visits for treatment such as asthma. Visits for treatment must take place at least twice a year and certification form must be turned in twice a year;
  - Permanent/long term incapacity (severe stroke, Alzheimer's)
  - Absences to receive multiple treatments by or under the supervision, orders or referral of a health care provider and any period of recovery related to the treatments.

#### Unlawful Acts

FMLA makes it unlawful for the City to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

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### Enforcement

- An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against the City.
- FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

### Family Care Act Leave

Eligible employees may be provided up to 12 weeks of unpaid leave to care for their Civil Union partners as such are defined pursuant to the “Colorado Civil Union Act,” Article 15 of Title 14; or domestic partner if registered with the municipality in which the person resides or with the State, if applicable, who have serious health conditions. Generally, leave under the Family Care Act is administered consistent with FMLA regulations.

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