



CITY OF HOUSTON

EXECUTIVE ORDER

SUBJECT FAMILY AND MEDICAL LEAVE	E. O. No. 1-34	
	Effective Date Upon Approval	
<p>1.0 POLICY STATEMENT</p> <p>It is the policy of the City of Houston to comply with the Family and Medical Leave Act of 1993.</p> <p>2.0 PURPOSE</p> <p>To define the policy and procedure of the City with regard to family and medical leave required by the Family and Medical Leave Act of 1993.</p> <p>3.0 FMLA OVERVIEW</p> <p><i>An employee who has been employed by the City for at least 12 months, and who has been physically at work for at least 1,250 hours during the preceding 12-month period, is eligible to take up to twelve (12) weeks of family or medical leave within the benefit year (September 1 through August 31) and be restored to the same or an equivalent position upon return from leave, for one or more of the following reasons:</i></p> <ul style="list-style-type: none">a. For the birth of the employee's child and/or to care for such well child within 12 months of the birth;b. For the placement of a child with the employee for adoption or foster care, and/or to care for the newly placed child within 12 months of the placement;c. To care for the employee's covered family member with a serious health condition; ord. For the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job. <p>Regardless of the date on which leave begins, an employee may only receive up to 12 weeks of FMLA leave in a benefit year, which begins September 1 and ends August 31. On September 1 of each year, a new 12 week period of FMLA becomes available to eligible employees with an FMLA-qualifying reason; there shall be no carryover of FMLA leave from the previous benefit year. An employee who is on FMLA leave on August 31 shall have his or her eligibility redetermined as of September 1 for purposes</p>		
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of receiving FMLA leave for the new benefit year, although the employee will not automatically be required to requalify (e.g., obtain recertification for a serious health condition) for FMLA on September 1 if circumstances have not changed. For example, if an employee with a serious health condition that is certified to last 12 weeks begins FMLA leave on July 1, the employee will be entitled to FMLA leave only for the remaining 8 weeks in the FMLA benefit year. On September 1, the department will determine whether the employee has met the eligibility requirements for obtaining leave in that new FMLA benefit year. If eligible, the employee in this example would be able to use four weeks out of the new benefit year for the certified serious health condition without being required to submit recertification, unless otherwise warranted.

4.0 DEFINITIONS

- 4.1 **Benefit year.** The 12-month period beginning September 1 and ending August 31.
- 4.2 **Covered family member.** A covered family member is a spouse, child or parent of the employee, further defined as follows:
- a. **Spouse:** A husband or wife as defined or recognized under state law. The State of Texas recognizes a common law marriage, but does not recognize a domestic partnership.
 - b. **Child:** A biological, adopted, or foster care son or daughter; a stepson or stepdaughter, a legal ward, or the son or daughter of an employee standing *in loco parentis*, and who is either under age 18, or is age 18 or older and incapable of self-care because of a mental or physical disability.
 - c. **Parent:** A biological father or mother, or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. The term does not include a parent-in-law.
- 4.3 **Eligible employee.** An employee who has worked for the City of Houston for at least 12 months and at least 1,250 hours in the 12-month period immediately preceding the date leave begins. *The provisions of the Fair Labor Standards Act shall govern for purposes of calculating the time-of-service requirement, which excludes from the definition of "hours worked" any paid or unpaid leave, workers' compensation leave, or FMLA leave.* Eligibility for FMLA leave shall be determined as of the date the proposed leave begins.
- 4.4 **Essential functions.** Term borrowed from the Americans with Disabilities Act (ADA) to mean the fundamental job duties of the employment position, and which does not include marginal functions of the position.
- 4.5 **Family leave.** Leave provided under the FMLA other than for an employee's own serious medical condition for which an employee shall use accrued vacation, personal leave days granted under the IPP program, and unpaid leave. Included in family leave is:

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- 4.11 **Intermittent leave.** Leave taken in separate periods of time of not less than 15 minute increments for a single qualifying reason.
- 4.12 **IPP.** City of Houston Income Protection Plan as set forth in the City of Houston Code of Ordinances, Chapter 14, Division 2.
- 4.13 **Medical leave.** Leave provided under the FMLA for an employee's own serious health condition for which an employee shall use available accrued vacation, sick, donated sick, personal leave days granted under the IPP program, and unpaid leave.
- 4.14 **Reduced leave schedule.** A leave schedule consisting of a defined number of hours of leave per workweek or hours per workday which is less than the employee's regular schedule for a defined period of time.
- 4.15 **Serious health condition.** Any illness, injury, impairment, or physical or mental condition that involves:
 - 4.15.1 inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity, or subsequent treatment in connection with such inpatient care; or
 - 4.15.2 continuing treatment by a health care provider. An individual with a serious health condition is under the continuing treatment of a health care provider where:
 - 4.15.2.1 the individual is incapacitated for more than three consecutive calendar days, and receives:
 - a. two or more treatments by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider; or
 - b. two or more treatments by a provider of health care services (e.g., physical therapist) on referral by or under orders of a health care provider; or
 - c. at least one treatment by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a program of prescription medication or therapy requiring special equipment). supervision of the health care provider (e.g., a program of prescription medication or therapy requiring special equipment).
 - 4.15.2.2 the individual is incapacitated for any period due to pregnancy, or for prenatal care.

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4.15.2.3 the individual is incapacitated or receiving treatment for such incapacity for any period due to a chronic serious health condition which:

- a. requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. continues over an extended period of time (including recurring episodes of a single underlying condition); and
- c. may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

4.15.2.4 the individual has a permanent or long-term incapacity due to a condition for which treatment may not be effective (e.g., Alzheimer's or severe stroke), and is under the continuing supervision of, although not necessarily being actively treated by, a health care provider.

4.15.2.5 the individual is absent for any period to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, 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 consecutive calendar days in the absence of medical intervention or treatment, such as cancer (e.g., chemotherapy or radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

4.15.3 Unless complications arise, ordinarily the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

4.16 **Supervisor.** The employee's supervisor or a departmental designee as designated by a department. If a department does not designate a specific person or persons to administer the FMLA for all employees in the department, the responsibility will fall to an employee's supervisor.

4.17 **Unable to perform the functions of the position.** Where the health care provider determines that an employee is unable to work at all, or is unable to perform any of the essential functions of his or her position.

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5.0 REQUIREMENTS AND CONDITIONS FOR FMLA LEAVE

An eligible employee may be granted up to twelve (12) weeks of FMLA leave during a benefit year for the following reasons:

5.1 For the birth of the employee's child and/or to care for such child.

5.1.1 Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take medical leave before the birth of the child for prenatal care or if her condition makes her unable to work for any period of time.

5.1.2 Family leave taken to care for the child after birth must be concluded within 12 months of the date of the birth. Family leave may run consecutively with or separately from medical leave.

Example: A new mother using six (6) weeks of medical leave after the birth (as prescribed by her health care provider)* may elect to continue with six (6) weeks of family leave to care for the child for a total of twelve (12) weeks of leave. Alternatively, she may take six (6) weeks of medical leave after the birth (as prescribed by her health care provider),* then return to work and take the remaining six (6) weeks of family leave to care for the child several months later, but before the child's first birthday.

*The number of weeks used for medical leave in this scenario is an example. The employee's health care provider determines when the mother is medically released to return to work.

5.2 For the placement of a child with the employee for adoption or foster care, and/or to care for the newly placed child.

5.2.1 FMLA leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. Examples of these situations associated with the placement or adoption include absences for an employee to attend counseling sessions, appear in court, consult with his or her attorney or the doctors representing the birth parent, or to submit to a physical examination.

5.2.2 Family leave must be concluded within 12 months of the date of the placement.

5.3 To care for the employee's covered family member with a serious health condition.

5.4 For the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

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6.0 NOTICE/DESIGNATION OF LEAVE

- 6.1 All departments shall prominently post, in a conspicuous place or places, a legible *Notice to Employees of Rights Under FMLA, June 1993 Substitute* (Form A) explaining the provisions of the FMLA and its enforcement procedures.
- 6.2 When an employee requests FMLA leave or leave which appears to be FMLA-qualifying, the supervisor shall have the employee complete the *Family and Medical Leave Request/Notice* form (Form B), and shall provide the employee with the *U.S. Department of Labor Highlights, FMLA Fact Sheet* (Form C). If for any reason the employee is not present to complete the *Family and Medical Leave Request/Notice* form, the supervisor shall complete the form based on information provided by the employee.
- 6.2.1 An employee must provide his or her supervisor with the reason for which leave is requested in order for the supervisor to make a determination approving the leave. In explaining the reasons for requesting a leave, especially where the need for the leave is unexpected or unforeseen, the employee shall provide sufficient information for the leave to be appropriately determined and designated.
- 6.2.2 If the employee's need for FMLA leave is foreseeable (e.g., because of an expected birth or placement, or because of a planned medical treatment), he or she must give the City 30 calendar days prior written notice. Failure to provide such notice may be grounds for delay of leave until at least 30 calendar days after the date the employee provides notice of his or her need for leave.
- 6.2.3 Where the need for leave is not foreseeable, the employee must notify the City within 1 to 2 working days of learning of the need for leave, except in extraordinary circumstances. Such notice may be in person or by telephone, fax machine or other electronic means. Such notice also may be given by the employee's spouse, family member or other responsible party if the employee is unable to personally provide notice, and such notice is required within 1 to 2 working days.
- 6.3 If leave is foreseeable based on a planned medical treatment, the employee taking leave must make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the department or the City.
- 6.4 The supervisor must determine whether the employee is eligible for leave pursuant to the FMLA. If the employee is eligible, the supervisor must provide the employee with a completed *Notice to Employee of Responsibilities and Requirements of FMLA Leave, Form WH-381 Substitute* (Form D) within 1 to 2 working days.

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6.5 In all circumstances, it is the City's responsibility to designate leave as FMLA-qualifying, regardless of the reason, based upon information provided by the employee. Where a request appears to be based on a serious health condition, the supervisor must request, and the employee must provide, a completed *Certification of Health Care Provider, Form WH-380 Substitute* (Form E) for the particular condition for which the employee is requesting leave, whether it be the employee's own health condition or that of the employee's covered family member. If the requested leave pertains to the employee's covered family member, the employee must complete a *Statement of Family Relationship* form (Form F) and return the form to the supervisor.

6.5.1 Accrued paid leave used for an FMLA-qualifying reason shall be counted against the employee's 12-week FMLA entitlement. The remainder of the leave period, if any, shall then consist of unpaid FMLA leave, which also shall be counted against the employee's 12-week FMLA entitlement. The supervisor must designate paid leave as FMLA qualifying leave, and notify the employee that the paid leave has been designated as FMLA qualifying leave and will be counted against the employee's 12 weeks of FMLA leave. This notification must be in writing and delivered to the employee by the most expeditious means, within 1 to 2 working days of the designation.

6.5.2 If the supervisor does not have sufficient information about the reason for an employee's use of leave, the supervisor shall inquire further, using established procedures, to determine whether the paid leave is potentially FMLA-qualifying.

6.5.2.1 If minimal information is obtained sufficient to qualify an eligible employee for FMLA leave, the supervisor shall preliminarily/conditionally designate the leave as FMLA leave and immediately provide the employee with a completed *Notice to Employee of Responsibilities and Requirements of FMLA Leave, Form WH-381 Substitute* (Form D), informing the employee of this preliminary/conditional designation and requiring the employee to submit appropriate supporting documentation to qualify the leave as FMLA within the applicable time frame.

6.5.2.2 If the leave is determined to be non-FMLA qualifying, or if the employee fails to provide the requested documentation, the supervisor shall remove the preliminary/conditional designation and the absence will be considered in a manner consistent with City and/or department policy for a non-FMLA absence.

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- 6.6 An eligible employee with an FMLA-qualifying reason may receive up to 12 weeks of FMLA leave each benefit year (September 1 - August 31). In all situations, an employee's approved FMLA leave for any single benefit year cannot extend past August 31. Accordingly, if an employee's FMLA leave is scheduled or expected to end on August 31, the employee must request and receive approval for FMLA leave for the new benefit year beginning September 1 in order to maintain FMLA protection. Employees should submit the "Request for FMLA Leave for the New FMLA Benefit Year" on page 2 of the *Family and Medical Leave Request/Notice* form (Form B). The employee's eligibility for the requested FMLA leave shall be determined as of September 1, but the employee shall not automatically be required to submit medical certification or other documentation for the requested FMLA leave unless circumstances warrant otherwise.
- 6.7 Upon making a determination to approve or disapprove an employee's leave request, or to delay approval pending receipt of supporting documentation, the department representative shall notify the employee in writing within 1 to 2 working days of the determination using the *Family and Medical Leave Determination* form (Form G).

7.0 REQUIREMENT TO USE PAID LEAVE

- 7.1 An eligible employee is required to use certain types of accrued paid leave in order to be compensated while on FMLA leave:
- 7.1.1 If leave is necessary for an employee's own serious health condition, the employee must first use and exhaust all of his or her accrued paid sick leave, vacation leave, donated sick leave and/or personal leave days granted under the IPP program, in compliance with City policies, before using unpaid leave.
- 7.1.2 If leave is necessary for the adoption or foster care placement of a child with the employee, to care for a child after birth, adoption or foster care placement, or to care for a covered family member with a serious health condition, an employee must first use and exhaust all of his or her accrued paid vacation and/or personal leave days granted under the IPP program, in compliance with City policies, before using unpaid leave. No sick leave or donated leave may be used under these circumstances.
- 7.1.3 Employees shall timely submit a *Leave Authorization Request, Revised P.D. Form 206* (Form H) indicating the appropriate leave designation.
- 7.2 For FMLA purposes, vacation leave usage is not limited and must be used up to the total amount accrued. An employee who uses vacation leave for FMLA purposes is eligible to use any remaining accrued vacation leave (up to a maximum of 30 days in the calendar year) for appropriate non-FMLA purposes.
- 7.3 Compensatory time, accrued holiday leave and/or floating holiday shall not be used to compensate employees while on FMLA leave.

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- 7.3.1 However, an employee may request to use his or her balance of compensatory time for an FMLA reason, and if the department permits its use, the absence which is paid from the employee's accrued compensatory time shall not be counted against the employee's FMLA entitlement.
- 7.3.2 If a council-declared holiday occurs during an employee's FMLA leave that is paid, the holiday is considered observed and that day's absence shall not be charged against the paid leave. If a council-declared holiday occurs during an employee's FMLA leave that is unpaid, the holiday shall be without pay. However, for purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave does not extend the FMLA leave period; the week is counted as a week of FMLA leave.

8.0 MEDICAL CERTIFICATION

- 8.1 An employee requesting FMLA leave for the employee's own serious health condition, or to care for a covered family member's serious health condition, must provide an appropriately completed *Certification of Health Care Provider, Form WH-380 Substitute* (Form E) to his or her supervisor within 15 calendar days of the City's written request for certification.
- 8.2 Failure to provide the requested medical certification in the time period specified by the supervisor (but not less than 15 calendar days) may result in denial of FMLA leave, or result in undesignating preliminary/conditional FMLA leave already begun, until such time as the certification is provided.
- 8.3 In the event a department seeks clarification and/or authentication of a medical certification, the department may, with the employee's permission, request the City Physician or his or her designee to communicate with the employee's health care provider for purposes of clarifying and/or authenticating such medical certification. The employee's written permission must be obtained on an *Employee Authorization for Clarification/Authentication of Medical Certification* form (Form I) prior to any communication with the employee's health care provider.

9.0 SECOND/THIRD OPINION

- 9.1 If the City reasonably doubts the validity of the medical certification provided by the employee, the City may require an examination by a second health care provider designated by the City and at the City's expense.
- 9.2 If the opinion of the second health care provider conflicts with the employee-provided medical certification, the City, at its expense, may require a third, mutually agreed upon health care provider to conduct an examination and provide a final and binding opinion. Employees shall cooperate fully, completely, and timely with all requests for additional medical opinions.

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10.0 RECERTIFICATION WHILE ON LEAVE

- 10.1 For leave relating to pregnancy or a chronic or permanent/long term serious health condition under the continuing supervision of a health care provider, the employee shall provide properly completed recertification forms no more often than every 30 days unless: (1) circumstances described by the previous certification have changed significantly; or (2) upon request of the employee's supervisor if the City receives information that casts doubt on the employee's stated reason for the absence.
- 10.2 If leave is for a serious health condition that does not relate to pregnancy or a chronic or permanent/long term condition, the employee will not be required to furnish recertification while on leave unless: (1) the employee requests an extension of the leave; (2) circumstances described by the previous certification have changed significantly; or (3) upon request of the employee's supervisor if the City receives information that casts doubt on the continuing validity of the original certification.

11.0 STATUS REPORTS

- 11.1 An employee on FMLA leave shall report periodically to his or her supervisor regarding his or her status and intent to return to work. Such periodic reports shall generally be made once every two weeks, or more frequently as needed considering the relevant facts and circumstances related to the employee's leave situation.
- 11.2 If the initial FMLA-qualifying reason ceases to exist before the employee's scheduled FMLA leave period ends, the employee must notify his or her supervisor within two (2) working days upon learning that the need for such leave ceases.

12.0 RETURN FROM LEAVE/FITNESS-FOR-DUTY CERTIFICATION

- 12.1 An employee who returns to work within or on the working day following the expiration of the authorized FMLA leave period is eligible to be restored to his or her former position or to an equivalent position.
- 12.2 An employee who wishes to return to work prior to the expiration of the scheduled FMLA leave must notify his or her supervisor at least 2 working days prior to the planned return date.
- 12.3 An employee who uses FMLA leave because of his or her own serious health condition must provide a doctor's statement or a completed *Fitness for Duty Certification* (Form J) pertaining to the same condition(s) for which the employee used FMLA leave, stating that he or she is fit for duty and able to return to work. An employee who fails to provide the required certification will not be permitted to resume work until the certification is provided, and may be subject to discipline up to and including indefinite suspension. However, upon being released to return to work, if the employee is unable to perform all of the essential functions of his or her job, the employee shall provide as much advance notice as possible of any restriction or limitation and a request for an accommodation in order that suitable accommodation can be considered and implemented, if appropriate and reasonable.

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- 12.4 An employee who takes intermittent leave for a serious health condition shall not be required to submit a fitness for duty statement upon returning from intermittent leave.

13.0 FAILURE TO RETURN FROM LEAVE

- 13.1 An employee who has not exhausted the 12-week FMLA leave entitlement, and who fails to return to work upon the expiration of his or her authorized FMLA leave, may be subject to discipline unless the department grants an extension of the FMLA leave.

- 13.1.1 An employee who requests an extension of FMLA leave within the available 12-week FMLA period due to a FMLA qualifying reason must submit the request in writing to his or her supervisor within 2 working days of learning of the need for the extension.

- 13.2 An employee who has exhausted the 12-week FMLA leave entitlement, and who fails to return to work upon the expiration of his or her authorized FMLA leave, shall no longer be covered under FMLA and shall have his or her absence considered in a manner consistent with City and/or department policy, which may include discipline up to and including indefinite suspension.

- 13.2.1 An employee may submit a written request, with medical verification or other supporting documentation, for a leave of absence (non-FMLA) to his or her department within 1 to 2 working days prior to the expiration of the scheduled FMLA leave. However, the extension is discretionary; the employee does not have a right to this non-FMLA leave.

- 13.3 Whenever an employee fails to return to work upon the expiration of his or her authorized FMLA leave, the supervisor shall immediately contact the Benefits Section of the Personnel Department to report the employee's failure to return, whether or not the employee has received approval for additional non-FMLA leave.

14.0 INTERMITTENT OR REDUCED SCHEDULE LEAVE

- 14.1 Under certain specific circumstances, FMLA leave may be taken on an intermittent or reduced schedule basis:

- 14.1.1 FMLA leave for the employee's serious health condition or a serious health condition of the employee's covered family member may be taken on an intermittent or reduced schedule basis only if medically necessary and such medical need can be best accommodated on an intermittent or reduced schedule basis.

- 14.1.2 FMLA leave for prenatal care or pregnancy may be taken on an intermittent or reduced schedule basis, as appropriate.

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- 14.1.3 Family leave taken prior to the placement of a child with the employee for foster care or adoption may be on an intermittent basis as required (see Section 5.2.1).
- 14.2 FMLA leave to care for a child for parenting purposes (i.e. not due to the child's serious health condition) or after the placement of a child with the employee for foster care placement or adoption may not be taken on an intermittent or reduced schedule basis.
- 14.3 If an intermittent or reduced schedule leave is used, a schedule for taking such leave shall be agreed upon to the extent possible and shall be documented on a *Schedule for Reduced/Intermittent Leave* form (Form K). The employee shall attempt to schedule leave so as not to unduly disrupt the operations of the department or the City.
- 14.4 If an employee requests intermittent leave or reduced schedule leave that is foreseeable based on planned medical treatment for the employee and/or for the employee's covered family member, the City may require the employee to be reassigned to a temporarily available alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates the recurring absence than does the employee's regular position. Such reassignments shall be coordinated within the department.
- 14.5 An employee who is exempt under the Fair Labor Standards Act (FLSA) who uses unpaid FMLA leave on an intermittent or reduced schedule basis shall have his or her compensation reduced in proportion to the decrease in the number of hours worked by the employee. The FMLA regulations advise that this reduction in compensation will not cause the employee to lose the FLSA exemption.

15.0 CONTINUATION OF GROUP HEALTH PLAN INSURANCE

- 15.1 During the period of FMLA leave, an employee shall receive coverage under the City's group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- 15.2 An employee who chooses not to retain health coverage during the period of FMLA leave shall be entitled to be reinstated in the City's group health plan on the same terms when he or she returns from FMLA leave.
- 15.3 If paid leave is used concurrently with FMLA leave, the employee's health care premiums shall be paid by the usual method, including payroll deduction.
- 15.4 If the FMLA leave is unpaid, the employee shall complete a *Health Benefits Continuation* form (Form L) indicating the employee's election to pay his or her share of the health insurance premiums directly to the City to maintain coverage or to temporarily discontinue coverage.

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- 15.5 The City's obligation to maintain group health coverage shall cease if an employee's premium payment is more than 30 calendar days late. The employee shall be notified in writing by the Personnel Department that he or she has 15 calendar days in which to pay the premium in order to maintain coverage. If the premium payment is not paid by the established date, the City shall cease the employee's group health care coverage retroactively to the date the unpaid premium payment was due. The City will not pay the employee's share of the premium payment.
- 15.6 In the event coverage ceases for non-payment of a premium, the employee nevertheless shall be restored to group health care coverage upon his or her return from leave, for which no requalification shall be required for reinstatement.

16.0 OTHER BENEFITS

- 16.1 If the FMLA leave is unpaid, the employee shall pay his or her share of the benefit premiums directly to the City or to the carrier, as appropriate, to maintain coverage.
- 16.2 An employee whose FMLA leave is unpaid shall not be entitled to the accrual of any seniority or employment benefits that would have accrued if not for the taking of leave, including, but not limited to, such benefits as disability insurance, sick leave, annual leave, group life insurance, or pension benefits. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date leave began. The utilization of FMLA leave, whether paid or unpaid, shall not be considered in determining an employee's receipt of a benefit allowance under the City of Houston Income Protection Plan (IPP) for each new (IPP) benefit year.
- 16.3 The period of FMLA leave shall be treated as continued service for purposes of vesting and eligibility to participate in the City's pension or retirement plans.
- 16.4 While on FMLA leave, employees are prohibited from applying for or collecting compensation or benefits, from any source, to which they are not entitled.

17.0 SPOUSES EMPLOYED BY THE CITY

In certain situations, spouses who both work for the City are restricted in the total amount of FMLA leave to which they are entitled in a benefit year. If a husband and wife are both employed by the City and eligible for FMLA leave, they are limited to a combined total of 12 weeks of FMLA leave during a benefit year in the following circumstances: (a) for the birth of the employee's child and/or to care for such child within 12 months of the birth; (b) for the placement of a child with the employee for adoption or foster care and/or to care for the child within 12 months of the placement; or (c) to care for the employee's parent [not parent-in-law] with a serious health condition.

18.0 RECORDS AND CONFIDENTIALITY

- 18.1 Departments shall maintain a central repository of FMLA-related records, which shall be maintained as confidential records in separate files from the employee's personnel files. The information contained in an employee's FMLA-related medical

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records (i.e., medical certifications, recertifications or medical histories of employees or employees' family members) shall be confidential and released only on a "need to know" basis.

- 18.2 Each department shall maintain an employee's FMLA-related records for a period of three years.
- 18.3 If an employee transfers from one department to another department while using FMLA leave, the losing department shall provide a copy of the FMLA records relating to the employee's current FMLA leave upon the request of the gaining department.

19.0 COORDINATION WITH WORKERS' COMPENSATION

- 19.1 If an employee is on approved injury leave for which the employee is receiving workers' compensation benefits, FMLA leave may run concurrently with the injury leave. The supervisor shall coordinate with the Case Management Division of the Personnel Department to properly monitor the employee's status during the FMLA/workers' compensation leave period.
- 19.2 While on approved injury leave, accrued paid leave shall not be utilized for any purpose, including in place of salary continuation, during the period in which the employee is receiving workers' compensation benefits.
- 19.3 Employees are subject to and must follow all applicable laws and regulations relating to workers' compensation, including the City of Houston Work Ability Guidelines, Executive Order 1-33 (April 1, 1995), and any subsequent amendments, with the exception that an employee who uses FMLA leave during a period of approved injury leave for which the employee is receiving workers' compensation benefits shall only be required to submit, if necessary, the *Certification of Health Care Provider, Form WH-380 Substitute (Form E)* as supporting medical documentation during the FMLA leave period, and shall only be required to be in contact with his or her supervisor once every two weeks, unless circumstances warrant otherwise. Further, the employee cannot be disciplined for refusing a transitional duty assignment, although, pursuant to the City of Houston Work Ability Guidelines, the refusal of transitional duty may otherwise result in the termination of any salary continuation benefits and/or workers' compensation benefits the employee may be receiving.

20.0 REPORTING OF FMLA LEAVE FOR TIME-KEEPING PURPOSES

20.1 *Family Leave* is reported in the following manner:

- a. VFL - Vacation FMLA Leave
- b. PFL - Personal FMLA Leave (IPP)
- c. UFL - Unpaid FMLA Leave (Dock)

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20.2 *Medical Leave* is reported in the following manner:

- a. SFL - Sick FMLA Leave
- b. VFL - Vacation FMLA Leave
- c. PFL - Personal FMLA Leave (IPP)
- d. DSKFL- Donated Sick FMLA Leave
- e. IFL - Injury FMLA Leave
- f. UFL - Unpaid FMLA Leave (Dock)

20.3 Paid leave may be utilized in any order, consistent with City policies, provided that all available accrued paid leave is utilized prior to the use of unpaid leave. For example, an employee who is approved for FMLA family leave, and who has available vacation and personal leave days, may first use either the vacation or the personal leave days; however, the employee must exhaust all of his or her available vacation and/or personal leave days prior to utilizing unpaid leave. Similarly, an employee who is approved for FMLA medical leave and who has available sick, vacation, and personal leave days may first use either the sick, vacation or personal leave days. In certain circumstances, an employee on FMLA medical leave may qualify for donated leave under the City's Accrued Leave Donation Program. If the employee has already exhausted his or her available sick, vacation and personal leave days, but is waiting for the leave to be donated, he or she must use unpaid leave pending receipt of the donated leave. After the employee receives the donated leave, he or she must exhaust the donated leave prior to using additional unpaid leave.

21.0 OTHER TERMS AND CONDITIONS

- 21.1 An employee shall not be subject to discrimination or retaliation for having used FMLA leave. An employee's exercise or attempt to exercise his or her rights under the Family and Medical Leave Act of 1993 shall not be interfered with, restrained or denied, nor shall an employee's use of FMLA leave be used as a negative factor in employment actions, including but not limited to hiring, promotions, transfers, training, disciplinary actions, or other terms and conditions of employment.
- 21.2 The time during which an employee is on FMLA leave shall not be counted for purposes of the City's attendance policies. Absence due to FMLA leave will be handled as any other absence for purposes of satisfying new hire/rehire and promotional probationary periods. For example, an eligible employee who uses 60 days of unpaid FMLA leave in his or her new hire probationary period shall have his or her probationary period extended by that 60 day time period.
- 21.3 This policy shall be accessible in each department for review by employees upon request.
- 21.4 Employees are subject to and must follow all applicable City/departmental policies and directives while on FMLA leave, including, but not limited to, the duty to comply with the City's policy regarding outside employment, and, where applicable, the requirement to submit to a test for controlled substances and/or alcohol.

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21.5 An employee shall not forge, tamper with, alter, or falsify any official form, doctor's statement, or City document, nor make a false statement related to the request for FMLA leave, the eligibility or continued eligibility for FMLA leave and/or other related benefits or conditions.

22.0 RESPONSIBILITIES OF THE EMPLOYEE

- 22.1 Review and comply with the Family and Medical Leave Policy.
- 22.2 Timely notify supervisor of foreseen and unforeseen FMLA qualifying events.
- 22.3 Provide supervisor with reasons for which leave is requested or necessary.
- 22.3 Provide supervisor with reasons for which leave is requested or necessary.
- 22.4 Timely submit medical certification, recertification and fitness-for-duty certification as required.
- 22.5 Report to his or her supervisor periodically while on leave regarding his or her status and intent to return to work.
- 22.6 Report to his or her supervisor if the FMLA-qualifying event ceases to exist. In the event the reason for which the employee is taking FMLA leave no longer exists, the employee must immediately notify his or her supervisor to arrange to return to work.
- 22.7 Arrange for payment of group health plan premiums and any other applicable benefit premiums, such as dental or life insurance, while on unpaid FMLA leave as required.
- 22.8 Timely submit all FMLA-related forms as required.
- 22.9 Cooperate fully, completely, and timely with all requirements under this policy.

23.0 RESPONSIBILITIES OF THE SUPERVISOR

- 23.1 Inform the employee of the availability and eligibility for FMLA leave upon notification of a FMLA qualifying event.
- 23.2 Request appropriate information from an employee when a request for leave or an absence appears to be subject to the provisions of the FMLA.
- 23.3 Provide employees with written guidelines of their rights and responsibilities under the FMLA upon request and as appropriate.
- 23.4 Appropriately designate FMLA leave and immediately notify (within 1 to 2 working days) the employee of the leave designation.
- 23.5 Provide employees with appropriate forms for processing FMLA leave requests, and document distribution of those forms using the *Family and Medical Leave Transmittal Memo* (Form M) or similar transmittal.
- 23.6 Notify employee of requirement to utilize accrued paid leave, if applicable.

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- 23.7 Notify the employee of medical certification and recertification requirements.
- 23.8 Notify employee of requirement for a fitness-for-duty certificate as a condition of restoration to employment, and ensure that the employee has submitted the fitness-for-duty certification prior to returning to work.
- 23.9 Provide an employee who will be out on unpaid FMLA leave with advance written notice of the method to be used in making premium payments for health care and other benefits coverage, such as dental or life insurance, if applicable.
- 23.10 Arrange a schedule for the employee to provide periodic reports on his or her status and intent to return to work.
- 23.11 If applicable, arrange a schedule for intermittent or reduced schedule leave upon a showing of medical necessity.
- 23.12 Arrange for or work with the Case Management Section of the Personnel Department if the employee will be returning to work with restrictions and requires an accommodation.
- 23.13 Ensure that medical records and documents obtained from an employee pertaining to FMLA leave for the employee's/covered family member's serious health condition are kept confidential.
- 23.14 Immediately contact the Benefits Section of the Personnel Department whenever an employee fails to return to work upon the expiration of his or her FMLA leave, whether or not the employee has received approval for additional non-FMLA leave.

24.0 RESPONSIBILITIES OF THE DEPARTMENT HEAD

- 24.1 Maintain the required posted notices explaining the FMLA rights and provisions.
- 24.2 Ensure that employees are not discriminated against for exercising their lawful rights under the FMLA.
- 24.3 Implement these procedures and enforce the policy, including discipline, if any.
- 24.4 Provide employee (or supervisor) with the names(s) of health care provider(s) approved by the Personnel Department for a second or third medical opinion.
- 24.5 Oversee the transfer of an employee to an alternate position for purposes of intermittent or reduced schedule leave requests, where appropriate.
- 24.6 Provide opportunity for accommodating an employee who returns to work with restrictions.
- 24.7 Create and maintain a central repository within the department for all FMLA-related records.

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24.8 Create/maintain a system to ensure that medical information pertaining to FMLA leave is kept confidential.

24.9 Maintain a copy of this E.O. 1-34 accessible for review by employees upon request.

25.0 RESPONSIBILITIES OF THE PERSONNEL DEPARTMENT DIRECTOR

25.1 Prepare and distribute to Department Heads the following:

- a. the appropriate written information to be given to an eligible employee whose need for leave is FMLA-qualifying, detailing the specific expectations and obligations of the employee and explaining any consequences of failure to meet those expectations and/or obligations.
- b. appropriate FMLA-related forms.
- c. the name(s) of approved health care provider(s) to refer an employee for a second or third medical certification, upon written request by a department.

25.2 Ensures that an employee on unpaid FMLA leave, who fails to timely pay his or her health care premium payment, or the premium for other benefit coverage, such as dental or life insurance, when due, is provided with 15 calendar days written notice that health insurance coverage will cease retroactive to the premium due date unless payment is made within the 15 calendar day period.

25.3 Provide training and guidance on the implementation and administration of the Family and Medical Leave Policy.

26.0 RESPONSIBILITIES OF THE CITY PHYSICIAN

26.1 Review medical documentation pertaining to FMLA leave upon the request of a department.

26.2 Recommend health care providers for second and third opinions when appropriate.

26.3 Upon request by a department and with the employee's permission, communicate with the employee's health care provider to clarify and/or authenticate a medical certification. The employee's permission should be obtained using the *Employee Authorization for Clarification/Authentication of Medical Certification* (Form I).

27.0 COMPLIANCE

27.1 The City shall comply with all federal, state and local laws and regulations regarding the Family and Medical Leave Act. In the event of a conflict between the provisions of this policy and a law, federal, state or local law shall prevail.

27.2 All employees through the Department/Division director shall comply from the policy date forward.

27.3 Any policy exceptions and/or violations shall be brought to the attention of the Director of Personnel for review and recommendation of a course of action.

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CITY OF HOUSTON POLICY SUMMARY - FAMILY AND MEDICAL LEAVE

MATRIX OF FORMS TO BE PROVIDED TO EMPLOYEE FOR FAMILY AND MEDICAL LEAVE

FORMS

- Form A (COH) Notice to Employees of Rights Under FMLA, June 1993 Substitute (§6.1)
- Form B (COH) Family and Medical Leave Request/Notice (§6.2; 6.6)
- Form C (DOL) U.S. Department of Labor Highlights, FMLA Fact Sheet No. ESA 93-24 (§6.2)
- Form D (COH) Notice to Employee of Responsibilities and Requirements of FMLA Leave, Form WH-381 Substitute (§6.4, 6.5.2.1)
- Form E (COH) Certification of Health Care Provider, Form WH-380 Substitute (§6.5, 8.1, 19.3)
- Form F (COH) Statement of Family Relationship (§6.5)
- Form G (COH) Family and Medical Leave Determination (§6.7)
- Form H (COH) Leave Authorization Request, Revised P.D. Form 206 (§7.1.3)
- Form I (COH) Employee Authorization for Clarification/Authentication of Medical Certification (§8.3, 26.3)
- Form J (COH) Fitness for Duty Certification (§12.3)
- Form K (COH) Schedule for Reduced/Intermittent Leave (§14.3)
- Form L (COH) Health Benefits Continuation (§15.4)
- Form M (COH) Family and Medical Leave Transmittal Memo (§23.5)

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Notice to Employees of Rights Under FMLA

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement: FMLA requires the City of Houston to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements: Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

FMLA also includes a special leave entitlement that permits eligible employers to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections: During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

FMLA Eligibility Requirements: City of Houston employees are eligible if they have worked for the City of Houston for at least one year, and have physically worked 1,250 hours over the previous 12 months prior to the date of the proposed FMLA leave.

Definition of Serious Health Condition: A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave: An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave: The City of Houston requires the exhaustion of appropriate paid leave prior to taking unpaid FMLA leave during the approved leave period. In order to use paid leave for FMLA leave, employees must comply with the City of Houston and their department's normal paid leave policies.

Employee Responsibilities: Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with their department's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities: Employees requesting leave must be informed whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employee must be provided a reason for the ineligibility.

Employees must be informed whether their leave will be designated as FMLA-protected and the amount of leave to be counted against the employee's FMLA leave entitlement. The employee must be notified if it has been determined that the leave is not FMLA-protected.

Unlawful Acts by Employers: FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or to 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.

Enforcement: An employee may file a complaint with the U. S. Department of Labor or may bring a private lawsuit against their employer. 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.

For additional information, contact the U. S. Department of Labor at 1-866-487-9243 (TTY: 1-877-889-5627), or go to www.wagehour.dol.gov

Fact Sheet #28: The Family and Medical Leave Act of 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress. [See Fact Sheet 28A.](#)

The FMLA became effective on August 5, 1993 for most employers and entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness.

EMPLOYER COVERAGE

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of **seven** years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service. *See, [special rules for returning reservists under USERRA.](#)*

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of **12 workweeks** of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;

- for placement with the employee of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; **or**
- for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks** of **unpaid** leave during a “single 12-month period” to care for the servicemember. *See* Fact Sheet 28A for specific information regarding military family leave.

Spouses employed by the same employer are limited in the **amount** of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered servicemember with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee’s usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer’s operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer’s approval.

Under certain conditions, employees **or** employers may choose to “substitute” (run concurrently) accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy.

“**Serious health condition**” means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:
 - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
 - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
 - (2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

NOTICE AND CERTIFICATION

Employee Notice

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the **first** time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$110 for each separate offense. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave.

Certification

Employers may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. An employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition. An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent leave or when leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an "eligible" employee's use of leave required by FMLA.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

All Public Works & Engineering Department Employees

If you need an FMLA Package, please see your Division/Branch FMLA Coordinator to obtain the required forms for completion and timely submission.

Do not download or use forms from any other source as they may contain incorrect or outdated information.