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FMLA Policy for General City Employees

◆ Summary ◆

This document outlines the eligibility requirements and procedures for general City of Milwaukee employees under the Wisconsin Family and Medical Leave Act (FMLA), section 103.10, Wisconsin Statutes, and the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. § et seq., as amended.

I. Wisconsin Family and Medical Leave Act (Wisconsin FMLA)

A. Eligibility for Wisconsin FMLA

To be eligible for Wisconsin FMLA, a City of Milwaukee employee must have completed 52 consecutive weeks of service, and at least 1,000 hours of service in the 52 weeks immediately prior to the leave commencing.

B. Benefits Under the Wisconsin FMLA

1. For an employee's own serious health condition

The Wisconsin FMLA entitles eligible employees up to two (2) weeks of leave per calendar year in connection with an employee's own serious health condition. An employee may substitute accrued paid sick leave, compensatory time, or vacation for unpaid Wisconsin FMLA leave.

2. For the care of an employee's spouse, domestic partner (as defined in section 40.02(21c) or section 770.01(1) of the Wisconsin Statutes), child, parent, parent-in-law or parent of domestic partner who has a serious health condition

The Wisconsin FMLA entitles eligible employees up to two (2) weeks of paid leave per calendar year to care for a spouse, child, parent, domestic partner, parent-in-law or parent of domestic partner who has a serious health condition. An employee may substitute accrued paid sick leave, compensatory time, or vacation for unpaid Wisconsin FMLA leave.

In the case of leave to care for a child age eighteen (18) or older, the medical certification must establish that the child cannot care for himself or herself because of a serious health condition

3. For the birth of the employee's child, placement for adoption or to care for the

employee's newborn child

The Wisconsin FMLA entitles eligible employees up to six (6) weeks of leave per calendar year in connection with the birth of a child. An employee may substitute accrued paid sick leave, compensatory time, or vacation for unpaid Wisconsin FMLA leave.

Up to six (6) weeks of Wisconsin FMLA leave in connection with the birth or placement for adoption of a child may be taken in one continuous block or as segmented increments of leave (i.e., day, hours). This six (6) week continuous block, or any segmented portions thereof, must begin within sixteen (16) weeks of the birth or placement for adoption of the child.

4. For the placement of a child with the employee for adoption or as a precondition to adoption under Wisconsin State Statute 48.90(2)

II. Federal Family and Medical Leave Act (FMLA)

A. Eligibility for Federal FMLA

To be eligible for federal FMLA leave, an employee must have worked for the City of Milwaukee for 12 months, which need not be continuous, and also have worked a minimum of 1,250 hours during the previous 12 months. The employer must count all service, unless it was more than seven (7) years ago (except if the break was due to National Guard or Reserve duty, or a written agreement exists where the employer intends to rehire the employee after break in service).

B. Federal FMLA Benefits

The Federal FMLA entitles eligible employees to a combined maximum of twelve (12) weeks of leave per calendar year for any one or a combination of the following reasons:

1. For an employee's own serious health condition, such as an illness, injury, impairment or physical or mental condition that also involves one of the following:
 - a) Two (2) visits to a health care provider for the condition within 30 days of the first day of a period of incapacity, and the first visit to the provider must take place within seven (7) days of the first day of incapacity, or
 - b) More than three (3) consecutive full calendar days of incapacity plus a regimen of continuing treatment or
 - c) For a serious chronic health condition, at least two (2) visits to a health care provider per year.

FMLA leave for a serious health condition may be taken intermittently only if medically necessary

2. For the care of an employee's spouse, child, or parent who has a serious health condition

In the case of leave to care for a child age eighteen (18) or older, in addition to having a serious health condition, the medical certification must establish that the child is incapable of self-care because of a mental or physical disability. The term "incapable of self-care" means that the person needs daily assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs), which include caring for one's grooming and hygiene, bathing, dressing, eating, cooking cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories and using a post office.

3. For the birth, placement for adoption or to care for the employee's newborn child. Entitlement to leave in connection with the birth of a child expires twelve (12) months after the child is born or placed for adoption.
4. For the placement of a child with the employee for foster care

C. Substitution of Paid Leave – Federal FMLA

Federal law permits an employee to substitute accrued vacation or compensatory time for unpaid FMLA leave. Accrued sick leave, however, may only be substituted for the employee's own serious health condition.

Federal law permits an employer to require that an employee substitute available accrued paid leave for unpaid FMLA leave and employees on FMLA leave under the federal law will be required to substitute such paid leave to the extent it is available. In the event an employee has more than one source of accrued paid leave available and eligible for substitution (such as vacation, compensatory time, or sick leave in connection with leave for the employee's own serious health condition), the employee may choose which source of other accrued paid leave shall be applied for substitution.

III. Employee Responsibilities

A. Provide Advance Notice for Leaves that are Foreseeable

For leaves that are foreseeable, an employee must submit a request for leave at least 30 days prior to when the leave would begin, or as soon as practicable, meaning the same business day or following business day that the need for leave became known. Any period of delay may result in the denial of FMLA leave.

B. Comply with Department's Call-in Procedures

Employees must give notice as soon as practicable and comply with their departments' notification policy or established call-in procedures for reporting absences. Any period of delay in notification may result in the denial of FMLA leave.

C. Notifying the Department in an Emergency Situation

In emergency situations, where the need for leave was not foreseeable (*for example*, a sudden serious health condition), an employee shall file the appropriate forms as soon as practicable following the beginning of the leave of absence. When this occurs, the leave may be approved on a provisional basis, with final approval being contingent upon receipt of the completed appropriate forms.

D. Provide Sufficient and Complete Information

Employees must provide sufficient and complete information regarding the reason they are requesting leave, the timing of the leave, and when they are expected to return to work.

E. Scheduling and Notice of Planned Medical Treatment or to Care for a Family Member

If an employee intends to take FMLA because of planned medical treatment or for care of a spouse, parent or child, the employee must:

1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt their department's operations, subject to the approval of the health care provider involved; and
2. Give their department advance notice of the medical treatment or supervision in a reasonable and practicable manner.

F. Notify the Department if there is a Need for Additional Leave Time

If an employee needs additional leave time, he/she must contact his or her immediate supervisor and departmental personnel officer or the Departmental FMLA Administrator prior to the time he/she is expected to return and make necessary arrangements. Failure to return from leave may result in loss of right to reinstatement.

IV. Required Forms

A. Request for Family or Medical Leave Form and Department Review

Employees must complete the form entitled Request for Family or Medical Leave and Department Review under the Federal FMLA and/or Wisconsin FMLA. A new form must be completed for each instance of leave requested. If the employee is requesting intermittent leave, a new Request for Family or Medical Leave and Department Review under the Federal FMLA and/or Wisconsin FMLA form must be completed each pay period.

A departmental FMLA Administrator will inform the employee whether the requested leave is approved or denied via the "Department Review" section of the Request for Family or Medical Leave and Department Review under the Federal FMLA and/or Wisconsin FMLA. The employee will be notified if additional information is required.

If the leave is not approved, the departmental leave administrator will provide a reason.

The departmental FMLA Administrator will complete this “Department Review” for each instance of leave requested. If an employee has requested intermittent leave, a new “Department Review” must be completed each pay period in which FMLA leave is used.

B. Medical Certification Forms – Federal FMLA

1. For Employee’s Serious Health Condition

Employees must have their health care provider complete the form entitled Certification of Healthcare Provider for Employees Serious Health Condition. Information provided on the medical certification must be complete and sufficient.

2. For Family Member’s Serious Health Condition

Employees must have a health care provider complete the form entitled Certification of Healthcare Provider for Family Member’s serious Health Condition. Information provided on the medical certification must be complete and sufficient.

3. Clarification of Information on Medical Certification Form

- a. If the medical certification is incomplete or insufficient, the City of Milwaukee must notify the affected employee in writing, stating the additional information required. The Employee will have seven (7) calendar days to provide the additional information. If an employee fails to submit a complete and sufficient medical certification despite the opportunity to correct the deficiency, FMLA leave may be denied.
- b. A human resources professional, departmental FMLA Administrator, or management official, but not the employee’s immediate supervisor, may ask the employee’s health care provider to clarify information provided on the medical certification form. A City of Milwaukee representative may contact the health care provider directly to authenticate a Certification. With the employee’s written permission, a City of Milwaukee representative may contact the employee’s health care provider to clarify information on the medical certification or discuss incomplete information.

4. Other Relevant Information May Also Be Considered

The City of Milwaukee may consider any information received pursuant to worker’s compensation or the interactive process associated with determining accommodations under the Americans with Disabilities Act to determine an employee’s entitlement to FMLA leave.

C. Recertification – Federal FMLA

The following events may trigger a requirement for medical recertification and the timing of the certification:

1. When a serious health condition extends beyond a single year an annual medical certification may be required.
2. For a continuing chronic condition a medical certification may be required every six (6) months.
3. When there is a significant change in the circumstances described in a previous certification (for example, the duration or frequency of the absence, the nature or severity of the illness, complications), a new medical certification may be required.
4. When a certification is submitted under circumstances where there is reason to doubt the validity of the medical certification, a new medical certification may be required.

D. Fitness-for-Duty Certification – Federal FMLA

1. Notification to employee: At the time leave is approved or prior to returning to work,, the City will notify employees in writing whether a fitness-for-duty certification is required prior to returning to work or within fifteen (15) days after returning to work.
2. A fitness-for-duty certification can only be required from employees returning from continuous leaves.
3. A fitness-for duty certification can be required every 30 days during intermittent or reduced schedule leaves if a reasonable safety concern exists.
4. Required fitness-for-duty certifications must be complete and sufficient. If a required fitness-for- duty certification is not complete or sufficient, employees will be notified in writing of the deficiencies and given seven (7) calendar days to provide the required information. If the employee fails to provide the required information, the City may delay the employee’s return to work or deny the leave.

V. Pursuant to State and Federal Laws, the City of Milwaukee’s administration of the FMLA benefit includes the following:

- A.** Wisconsin and Federal Family and Medical Leave Act benefits run concurrently.
- B.** The City of Milwaukee is adopting the standard under Federal FMLA that an employee must have completed at least 1,250 hours in the twelve-month period immediately preceding the family and medical leave.
- C.** The City of Milwaukee requires employees to substitute paid leave to the extent it is available when utilizing FMLA.

- D.** Paid leave includes sick leave, vacation/TVA, comp time and donated accrued time off, as permitted under the state and federal laws, respectively.
- E.** Married couple combined maximum total – The City of Milwaukee is adopting the standard under Federal FMLA to limit spouses who are both employees of the City to a combined total of twelve (12) weeks of FMLA leave during any calendar year for the birth or placement of a child or for the care of a parent with a serious health condition.
- F.** The City will provide required FMLA notices to the employee within five (5) business days.
- G.** The employee will be restored to the same or an equivalent job upon return from leave.
- H.** During an FMLA leave, the City of Milwaukee will maintain the employee’s health insurance coverage. Employees will continue to pay their normal contributions, if any, for health and dental insurance during the time of their leave. Questions should be directed to the Department of Employee Relations-Employee Benefits Division at 286-3184.
- I.** If the employee fails to return to work after taking FMLA leave and the failure is not due to circumstances which would otherwise entitle the employee to FMLA leave or are otherwise beyond the employee’s control, the employee is liable for the payment of all health and dental insurance premiums paid by the City of Milwaukee during the unpaid portion of the FMLA leave.
- J.** Employees may voluntarily settle or release their FMLA claims without court approval. Employees may not, however, prospectively or retroactively waive their FMLA rights.
- K.** The City may deny a Sick Leave Incentive Control award to an employee who does not have perfect attendance because of taking FMLA leave.
- L.** An employee absent from work due to leave under the FMLA is not entitled to unemployment compensation benefits.
- M.** Light Duty Assignments:
 - 1. An employee may reject a light duty assignment and elect FMLA leave instead.
 - 2. If an employee voluntarily accepts a light duty assignment, the time spent performing the light duty assignment does not count as FMLA leave. The employee’s right to restoration is held in abeyance during the period of time the employee performs light duty (or until the end of the applicable 12-month FMLA leave year).
 - 3. If an employee accepts light duty while still eligible for FMLA leave, the employee has reinstatement rights to the employee’s original or equivalent job, but only until the end of a 12- month period the employer used to calculate FMLA leave.

VI. Federal Military Family Leave

A. Eligibility

To be eligible, an employee must have worked for the City of Milwaukee for 12 months, which need not be continuous, and worked a minimum of 1,250 hours during the previous 12 months. The employer must count all service, unless it was more than 7 years ago, except if the break was due to National Guard or Reserve duty or a written agreement exists where the employer intends to rehire employee after break in service.

City employees may not substitute paid sick leave for Federal Military Family Leave. Other forms of accrued paid leave, however, such as vacation and compensatory time, may be substituted for Federal Military Family Leave.

When spouses are both employed by the City, they are limited to a combined total of 26 workweeks in a “single 12-month period” if the leave is to care for a covered servicemember with a serious injury or illness.

B. Military Caregiver Leave

Eligible employees may take up to 26 work weeks of unpaid time during a single 12-month period to care for a covered servicemember with a serious illness or injury incurred in the line of duty. Next of kin may qualify as caregivers.

1. An eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the servicemember.
2. A “covered servicemember” is
 - a. a current 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 covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
3. A “covered veteran” is a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
4. A “serious injury or illness” of a servicemember is one that
 - a. was incurred by a servicemember in the line of duty on active duty, or
 - b. existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade,

rank, or rating.

5. A “serious injury or illness” of a covered veteran is one that was incurred by the veteran in the line of duty on active duty (or existed before the beginning of the veteran’s active duty and was aggravated by service in the line of duty on active duty and manifested itself before the servicemember became a covered veteran and is either:
 - a. a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank or rating; or
 - b. a physical or mental condition for which the covered veteran has received U.S. Department of Veterans Affairs Service-Related Disability Rating of 50% or greater, and such rating is based in whole or in part, on the condition precipitating the need for leave; or
 - c. a physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service; or
 - d. an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregiver
6. The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later.
7. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA- qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.)

C. Qualifying Exigency Leave

1. Eligible employees may use 12 unpaid work weeks of normal FMLA leave for “any qualifying exigency” arising from a member of the Regular Armed Forces, National Guard or Reserves called to active duty or on active duty as the result of a federal call to active duty with deployment to a foreign country.
2. An eligible employee may take up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation.
3. “Qualifying exigencies” are:

- a. Issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven (7) days from the date of notification;
- b. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- c. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- d. Making or updating financial and legal arrangements to address a covered military member's absence;
- e. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active military member who is on short-term duty or call to active duty status of the covered military member;
- f. Taking up to fifteen (15) days of leave to spend time with a covered temporary, rest and recuperation leave during deployment;
- g. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member.

D. Intermittent Military Family Leave

1. FMLA leave may be taken intermittently whenever medically necessary to care for a covered servicemember with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member.
2. 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 department's operation.

E. Notice Requirements for Military Family Leave

1. Employee Notice

- a. Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If it is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day.
- b. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable.
- c. When the need for military family 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.

2. Designation of Leave as Counting Against FMLA Entitlements

When Military Family Leave is being taken for an FMLA-qualifying reason, the City will notify the employee that the leave is designated and will be counted as FMLA leave. The City will designate leave that qualifies as both leave to care for a covered servicemember with a serious injury or illness and leave to care for a qualifying family member with a serious health condition as leave to care for a covered servicemember in the first instance.

F. Certifications Requirements for Military Family Leave

1. A request for military family leave must be supported by an appropriate certification in the form titled Certification of Qualifying Exigency for Military Family Leave or Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave.
2. The City may use a health care provider, a human resource professional, a departmental FMLA Administrator, or a management official – but not the employee’s direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an Invitational Travel Order or an Invitational Travel Authorization.
3. The City may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.