DEPARTMENT OF EMPLOYEE RELATIONS

04.30.14 (r. 9.14.2020)

Family and Medical Leave Act and Bone Marrow or Organ Donation 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, the Wisconsin Bone Marrow and Organ Donation Leave Act, section 103.11, Wisconsin statutes, and the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. § et seq., as amended.

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I. 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. An employee does not have to have worked for 12 months in a row (seasonal work counts), but if there is a break in service that lasted more than seven years, the period of employment prior to the seven-year break does not count (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

For the following reasons, federal FMLA entitles employees to up to 12 weeks of combined leave per calendar year.

1. A 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. Under qualifying circumstances, an employee who acts as a bone marrow or organ donor may qualify for Federal FMLA leave for their own serious health condition. Leave taken under the Federal FMLA for bone marrow or organ donation may be taken concurrently with leave provided under the Wisconsin Bone Marrow and Organ Donation Leave Act.

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.

The Federal FMLA allows for employees to take leave to care for a child to whom they stand *in loco parentis*, as well as for individuals who stood *in loco parentis* to the employee when they were a child. An individual may stand *in loco parentis* to a child if they have day-to-day responsibilities to care for or financially support a child. No legal or biological relationship is required to establish that an employee stand *in loco parentis*, however. An employee may also take leave to care for a disabled adult, who is incapable of self-care, for whom they stand *in loco parentis* or to whom they had stood *in loco parentis* when that individual was a child.

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.

5. For a qualifying exigency related to military active duty or to care for a covered servicemember with a serious illness or injury (See Military Leave section for additional information).

6. The Families First Coronavirus Response Act (FFCRA) provides expanded FMLA (EFMLA) leave for employees who are unable to work or telework due to school closure or loss of childcare related to COVID-19, through December 31, 2020. Along with expanding the qualifying reasons for leave, the FFCRA provides eligibility to use EFMLA to all employees who have worked at least 30 days for the CITY. This leave is also counted against an employee's 12-week FMLA leave entitlement. Please see the City's FFCRA policy for further information regarding EFMLA leave.

C. Substitution of Paid Leave – Federal FMLA

An employee can substitute accrued sick leave, vacation or compensatory time for unpaid FMLA leave. 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), the employee may choose which source of other accrued paid leave shall be applied for substitution. The City of Milwaukee does not require an employee to take FMLA. However, if the employee elects not to utilize leave under FMLA, they are not entitled to the same job protections provided under FMLA. An employee who has previously declined protected FMLA leave may elect, at a later date (but not retroactive), to utilize FMLA leave.

II. Federal FMLA 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. An employee does not have to have worked for 12 months in a row (seasonal work counts), but if there is a break in service that lasted more than seven years, the period of employment prior to the seven-year break does not count, 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.

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.

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. An employee can substitute accrued sick leave, vacation or compensatory time for unpaid FMLA leave for Military Caregiver Leave.

3. 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 an individual who was a member of the Armed Forces, including a member of the National Guard or Reserves, 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 in the Armed Forces) 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 Caregivers.

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

3. 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 the military member who is on short-term, 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 the leave 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.

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

G. Eligibility for Wisconsin FMLA

To be eligible for Wisconsin FMLA, a City of Milwaukee employee must have completed 52

consecutive weeks of service, and been paid for at least 1,000 hours of service in the 52 weeks immediately prior to the leave commencing.

H. Definitions

Wisconsin FMLA defines a serious health condition as a disabling physical or mental illness, injury, impairment or condition involving any of the following:

a) Inpatient care in a hospital, nursing home or hospices
b) Outpatient care that requires continuing treatment or supervision

I. Benefits Under the Wisconsin FMLA

Wisconsin FMLA entitles eligible employees to the following:

1. For an employee's own serious health condition; 2 weeks of protected leave per calendar year.

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; 2 weeks of protected leave per calendar year. Parent includes foster parent, adoptive parent, stepparent, or legal guardian of the employee or employee's spouse or domestic partner.

   Please note, the State of Wisconsin no longer recognizes new domestic partnerships. Only domestic partnerships registered under section 40.02(21c) prior to September 23, 2017, or registered under section 770.01(1) through April 1, 2018, are covered under Wisconsin FMLA.

   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 in foster care as a precondition to adoption under Wisconsin State Statute 48.90(2) or to care for the employee's newborn child; 6 weeks per calendar year.

   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) and must begin within sixteen (16) weeks of the birth or placement for adoption of the child. Intermittent use must also begin within 16 weeks of the date of birth or adoption, and the last segment of intermittent leave must begin within that 16-week period. Employees are only permitted six weeks of Wisconsin FMLA per birth or placement event.

J. Substitution of Paid Leave – Wisconsin FMLA

An employee may elect to take Wisconsin FMLA as unpaid leave. An employee may also elect to substitute accrued paid sick leave, compensatory time, or vacation for Wisconsin FMLA leave.

IV. Wisconsin Bone Marrow and Organ Donation Leave Act

A. Eligibility for leave under the Bone Marrow and Organ Donation Leave Act

To be eligible for leave under the Bone Marrow and Organ Donation Leave Act, a City of Milwaukee employee must have completed 52 consecutive weeks of service, and have been paid for at least 1,000 hours of service in the 52 weeks immediately prior to the leave commencing.

B. Benefits

1. Qualifying employees may take up to six weeks of protected leave to act as a bone marrow or organ donor. Employees will only be provided protected leave for the amount of time reasonably needed to recover from bone marrow or organ donation procedures as certified by their healthcare provider. This leave is separate from the leave provided to an employee under the Wisconsin FMLA. This leave may run concurrently with leave taken under the Federal FMLA if the employee's donation qualifies as a serious health condition under that law.

2. An employee may substitute accrued paid sick leave, compensatory time, or vacation for unpaid leave under the Bone Marrow and Organ Donation Leave Act. An employee is not required to take protected leave to which they may be entitled. However, if they elect not to utilize leave under the Bone Marrow and Organ Donation Leave Act, they are not entitled to the same job protections provided under that law. An employee who has previously declined protected leave under this law may elect, at a later date, to utilize protected leave (but not retroactive), if they still otherwise qualify.

V. 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 in notification may result in the denial of FMLA leave.

B. Comply with Department's Call-in Procedures

Employees must comply with their departments' notification policy or established call-in procedures for reporting absences, absent unusual circumstances. Any period of delay in notification may result in the denial of FMLA leave.

C. Notifying the Department in an Unforeseeable Situation

In unforeseeable situations, where the need for leave was not foreseeable (*for example,* a sudden serious health condition), an employee shall contact his or her immediate supervisor and departmental personnel officer or the Departmental FMLA

Administrator 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.

G. How to request and take leave

1. To request leave, an employee should provide the departmental leave administrator the following information:
    a. Whether the employee is requesting leave for the employee's own serious health condition, to care for a qualifying family member with a serious health condition or leave for a military exigency.
    b. Dates of the leave, if foreseeable.
2. Timely respond to the departmental leave administrator request for documentation.
3. Adhere to department call-in policies when using intermittent leave.
4. Provide leave request forms to payroll for each pay periods in which FMLA is used.
5. Provide any new certifications requested by the administrator and keep administrator informed of any major changes in your need for leave.
6. If utilizing unpaid leave for continuous leave, continue paying the employee's share of group health insurance premiums.
7. Submit any return to work documentation to the departmental leave administrator that is requested for your own serious health condition.

VI. Required Forms

A. Notice of eligibility and employee rights and responsibilities

Within five business days of being made aware of an employee's potential need for FMLA protected leave, the designated FMLA Administrator must provide the employee a City of Milwaukee FMLA Notice of Eligibility. This notice should inform the employee whether or not they are eligible for leave under both Wisconsin and Federal FMLA and, if not, provide the specific reasons why they do not qualify. The notice outlines the employee's rights and responsibilities while taking FMLA. The employee should be provided a copy of the appropriate medical certification form with their notice of eligibility.

B. Medical Certification Forms

1. For Employee's Serious Health Condition

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

   a. Clarification of Information on Medical Certification Form

      A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. If the medical certification is incomplete or insufficient, the City of Milwaukee must notify the affected employee via the FMLA Designation Notice, 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.

      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.

      Medical certifications should not be provided to an employee's direct supervisor and direct supervisors should not request certifications. Information in an employee's medical certification will not be disclosed to the employee's supervisor except to the extent necessary to provide reasonable workplace accommodations.

2. For Family Member's Serious Health Condition

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

The Employee's Serious Health Condition medical certification policy provisions outlined above apply to the family member's medical certification.

3. For Bone Marrow or Organ Donation

Employees must have their health care provider complete the Certification of Healthcare Provider for Employee's Serious Health Condition form. This form should confirm that the donee has a serious health condition which necessitates bone marrow or organ donation, that the employee is eligible and has agreed to act as a bone marrow or organ donor for the donee, and provide the amount of time the employee is expected to need to recover from the bone marrow or organ donation procedure.

4. Bonding Leave

Medical certification is not required for bonding time with a newborn child or child newly placed for foster care or adoption.

C. Leave Request Form

Employees must complete a Leave/Benefit Substitution Designation form to your departmental FMLA leave administrator for each continuous or intermittent leave approved.

If an employee has requested intermittent leave that exceeds the limits of a medical certification on file, then the leave may be denied unless a new medical certification is submitted within the requested timeframe.

D. Recertification

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 in January or upon first request in new calendar year.

2. A medical certification may be required every six (6) months in connection with a reported absence for Federal and/or State leave. The six-month period is based on the date the previous medical certification was signed by the healthcare provider and recertification can only be requested if the employee takes leave or requests leave after the six-month period has passed.

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.

E. Return to Work Release

1. Notification to employee via the FMLA Designation Notice:
   At the time leave is approved the City will notify employees in writing whether a return to work release is required prior to returning to work.

2. A return to work release will be required from employees returning from continuous FMLA leaves of five (5) days or longer for their own serious health condition

3. During intermittent or reduced schedule FMLA, a return to work release can be required every 30 days if a reasonable safety concern exists.

4. Required return to work release must be complete and sufficient. If a required return to work release 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.

F. Proof of Relationship

For purposes of confirming family relationship, the employer may require the employee giving notice of the need for FMLA leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a marriage certificate, court document, a simple statement from the employee, etc. The City does not require that an employee provide a birth certificate for the birth of a child for the purposes of FMLA.

VII. Leave Administration

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 when the requirements for coverage under both laws are met. Leave taken under the Wisconsin Bone Marrow and Organ Donation Leave Act may also be taken concurrently with Federal FMLA leave when the employee qualifies for leave under both laws. Leave taken which is only covered under one law cannot be deducted from an employee's leave entitlement under the other law. For instance, leave to care for a parent-in-law which is covered under Wisconsin FMLA does not count against an employee's 12 weeks of leave

provided by the Federal FMLA. Conversely, an employee who has utilized all 12 weeks of available Federal leave for their own serious health condition may still have two weeks of leave available under Wisconsin law to care for a qualifying family member and six weeks of leave available for the birth or adoption of a child.

B. The City of Milwaukee requires employees to substitute paid leave to the extent it is available when utilizing **Federal** FMLA.

C. Paid leave includes sick leave, vacation/TVA, comp time and donated accrued time off, as permitted under the state and federal laws, respectively.

D. 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.

E. The City will provide required FMLA notices to the employee within five (5) business days after an employee requests FMLA leave, or when the City acquires knowledge that an employee's leave may be for an FMLA-qualifying reason. A designation notice approving an employee for leave may retroactively designate time taken as protected FMLA leave, if the circumstances warrant.

F. The employee will be restored to the same or an equivalent job upon return from leave. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

G. During an FMLA leave, the City of Milwaukee will maintain the employee's health and dental insurance coverage. Employees will continue to pay their share of the premium contributions for health and dental insurance during the time of their leave. While on unpaid FMLA, the employee will be billed for their monthly premium and failure to make payments will result in termination of health and dental benefits. Questions should be directed to the Department of Employee Relations-Employee Benefits Division at 286-3184.

H. 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.

I. Employees may voluntarily settle or release their FMLA claims without court approval. Employees may not, however, prospectively or retroactively waive their FMLA rights.

J. The City may deny a Sick Leave Incentive Control award to an employee who does not meet the requirements for the award outlined in City ordinance, regardless of whether they are on FMLA leave.

K. The City may adjust employees' service time for all unpaid FMLA leave periods.

L. An employee absent from work due to leave under the FMLA is not entitled to unemployment compensation benefits.

M. Employees are not permitted to perform work while on FMLA. If an accommodation exists that would allow an employee to work from home on either a full or part time basis while certified for FMLA leave, and both the employee and the City agree to such an arrangement, the employee will be paid for time worked. That time will not be deducted from the employee's FMLA entitlements. Departments may block an employee's access to City resources while out on continuous FMLA leave and may request the return of City property for the duration of a continuous period of leave.

N. 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.

VIII. Employee Disputes

A. Internal Complaints

1. Federal and Wisconsin law prohibit employers from denying employees leave to which they are entitled under FMLA, interfering with their use of such leave or retaliating against employees for utilizing protected leave. The City takes all complaints of possible violations of these laws seriously and will take steps to address any employee's concern that their rights under these laws might have been violated.

2. If an employee believes that they have been denied leave to which they were entitled, that any other employee interfered with their use of protected FMLA leave or that they were retaliated against for taking protected leave they may file a complaint with the Department of Employee Relations' Human Resources Compliance Officer. The Compliance Officer will review pertinent facts and documentation to assess if any rights provided under Federal or State FMLA were violated.

3. Retaliation for filing an internal complaint is strictly prohibited.

B. External Complaints

1. Employees may file complaints with the Federal Department of Labor – Wage and Hour Division, if they feel that any of their rights under the Federal FMLA have been violated. A complaint filed with the Federal Department of Labor should be filed within a reasonable time of when the employee discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.

2. Employees may file complaints with the Wisconsin Department of Workforce Development – Equal Rights Division, if they feel that any of their rights under the Wisconsin FMLA have been violated. There is a 30-day statute of limitation from the date of the most recent alleged violation for filing a complaint under the Wisconsin FMLA.

3. Employees may file complaints with both the Federal Department of Labor and the Wisconsin Department of Workforce Development if they feel that their rights under both Federal and Wisconsin FMLA laws have been violated.

4. Retaliation for filing complaints with either the Federal Department of Labor or the Wisconsin Department of Workforce Development is strictly prohibited.