

City of Lawrence
Administrative Policy

SUBJECT FAMILY AND MEDICAL LEAVE		APPLIES TO CITY EMPLOYEES	
EFFECTIVE DATE AUGUST 5, 1993	REVISED DATE DECEMBER 16, 2014		NEXT REVIEW DATE June 1, 2015
APPROVED BY David L. Corliss, May 11, 2010		TOTAL PAGES 8	POLICY NUMBER 2

1.0 **PURPOSE**

The City of Lawrence (the "City") provides job-protected unpaid leave to eligible employees as defined by the Family and Medical Leave Act (FMLA).

2.0 **POLICY**

Leave Entitlement

The City will provide 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 family member (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 a covered military member on active duty or has been notified of an impending call or order to active duty status by the federal government as a member of the National Guard or Reserves in support of a contingency operation (it does not apply to family members of individuals enlisted in the Regular Armed Forces).

The City will also 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 12-month period to care for the servicemember.

Spouses, if both employed are by the City, are permitted to take independently tabulated FMLA leave each consisting of a total of 12 weeks (or 26 weeks if leave is also used to care for a covered military member with a serious injury or illness) 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.

Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Intermittent or Reduced Schedule Leave

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 to care for a seriously ill family member or because of the employee's serious health condition. The employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the City's operations.

Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the department director's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave will be charged as FMLA leave. Employees will not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Accounting for FMLA leave will be done in one-tenth of one (.1) hour increments. If necessary, the department director may transfer the employee temporarily to an available alternative position for which the employee is qualified with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

Utilization of Paid Time Benefit Programs while on FMLA

Employees will be required to utilize available (run concurrently) accrued **paid** leave (sick, vacation leave, personal days, kelley days or shared leave) while on FMLA leave. An employee's ability to use paid leave while on approved FMLA leave is determined by the paid time off policy. Employees may retain a combination of leave balances for a total of up to 80 hours (112 for employees on 2912 annual schedules) while on FMLA if they would prefer to take unpaid FMLA leave.

3.0 DEFINITIONS

12-Month Period

12-month period shall be a rolling 12-month period measured backward from the date an employee uses FMLA leave.

Eligible Employee

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

- have worked for the City of Lawrence for a total of 12 months or more; and
- have worked at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave;

While the 12 months (or more) 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)).

Serious Health Condition

"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, this 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 of the first date of incapacity and both the first and second 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.

Health Care Provider

Health care providers who may provide certification of a serious health condition include:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefits manager and,
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Family Member

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA.

The term "parent" is defined as biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. It does not include a parent "in-law."

The term "spouse" means a husband or wife or domestic partner.

The term "son or daughter" is defined as follows:

Family Members with a Serious Health Condition

The term son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Qualifying Exigency Leave and Serious Injury or Illness of Covered Servicemember

The terms son or daughter is defined as the employee's biological, adopted or

foster child, stepchild, legal ward or child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

4.0 PROCEDURE

Notice And Certification

Step 1: Employee Notice to Immediate Supervisor

Eligible employees seeking to use FMLA leave will be required to submit a request for FMLA leave in the same format (verbal or written) as required by the employee's department for other paid time off. A "Leave Request" form is available from the Human Resources division but not required.

- **30-day advance notice** of the need to take FMLA leave is required when the need is foreseeable and such notice is practicable; for military exigency leave, the employee should notify of the qualifying exigency as soon as practicable.
- If the leave is foreseeable less than 30 days in advance, notice must be given "as soon as practicable" which means at least verbal notice to his or her supervisor within **one or two business days** of learning of the need to take FMLA leave.
- When the need to take FMLA leave is not foreseeable, the employee must provide notice to his or her supervisor as soon as practicable under the facts and circumstances of the particular case.
- The notice must provide sufficient information for the supervisor to reasonably determine whether FMLA may apply to the leave request. 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.
- Where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within **two business days** of returning to work) that leave was taken for an FMLA-qualifying reason.
- Absent unusual circumstances, employees must comply with the department's usual and customary notice and procedural requirements for requesting leave.

Step 2: Immediate Supervisor (or department designee) Notice to Employee

Within 5 business days of the request for leave the Supervisor (or department designee) will send "Notice of Eligibility and Rights and Responsibilities" (Form WH-381) and request for certification to the employee attaching the appropriate form listed below.

- Certification of HealthCare Provider for Employee's Serious Health Condition (Form WH-380-E)
- Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F)
- Certification for Serious Injury or Illness of Covered Servicemember—Military Family Leave (Form WH-385)
- Certification of Qualifying Exigency for Military Family Leave (Form WH-384)

Step 3: Employee Returns Completed Certification to Immediate Supervisor

Within 15 calendar days, the employee must return the completed Certification to his or her immediate supervisor.

Step 4: Insufficient Information Responsibilities of Employee, Supervisor, Human Resources

If the employee submits an incomplete or insufficient certification signed by the health care provider, the supervisor (or department designee) in conjunction with Human Resources will advise employee in writing of incomplete or insufficient information and what is necessary to make sufficient. Insufficient includes the terminology "unknown".

The employee must return sufficient information within **7 calendar days**. Human Resources may approve an extension for the employee to submit sufficient information in circumstances when the employee has made diligent and good faith efforts but is unable to obtain the additional information within the established time frame.

If the requested additional information, or the necessary authorization for the healthcare provider to release a complete and sufficient certification directly to Human Resources is not received within 7 calendar days (or within the approved extension), the request for FMLA will be denied under Step 5.

If authorization is given by the employee, a Human Resources representative or City Manager Office designee may contact the health care provider for the purpose of clarification and/or authentication of information submitted in the certification. In no case shall the employee's immediate supervisor contact the health care provider.

If there is disagreement between the City and the employee as to whether the medical condition qualifies under the FMLA, a second and/or third opinion may be required. The process outlined by the US Department of Labor and the FMLA for obtaining second and third opinions will be used. Coordination of second and third opinions will be through the Human Resources Division.

Step 5: Supervisor (or department designee) Approves/Denies Request for Leave

Within five (5) business days of the return of a complete and sufficient certification signed by the health care provider, or the employee's lack of response for request for certification or additional information, the supervisor (or department designee) will complete and send to the employee the Designation Notice (Form WH-382).

Recordkeeping

The supervisor (or department designee) will send a completed packet of FMLA documents to the Human Resources Division for records storage.

The employee's immediate supervisor (or department designee) will track FMLA utilization for all employees under his or her supervision. The supervisor (or department designee) will notify Human Resources at least five (5) business days prior to the employee's exhaustion of approved leave, to determine continued employment status and other benefit options.

The supervisor (or department designee) will notify the employee in writing should any employment action be taken following exhaustion of approved FMLA leave.

Return To Work

Job Restoration

Upon return from FMLA leave, an employee will 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, 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.

Fitness-For-Duty

FMLA regulations allow employers to enforce uniformly-applied policies or practices that require all similarly-situated employees who take leave for the employee's own serious health condition (both FMLA and non-FMLA qualifying absences) to provide a fitness-for-duty certification from the employee's health care provider that the employee is able to resume work.

The employee has the same obligations to participate and cooperate in the fitness-for-duty certification process as the initial certification process.

The City may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for the FMLA leave.

The City may require the certification to specifically address the employee's ability to perform the essential functions of the employee's job. To require this certification, the City must provide the employee with a list of the essential functions of the employee's job no later than with the designation notice and must indicate in the designation notice

that the fitness-for-duty certification must address the employee's ability to perform those essential functions.

The City may contact the employee's health care provider for the purpose of clarifying and authenticating the fitness-for duty certification, but must follow the procedures for clarifying or authenticating the initial medical certification. No second or third opinions of a fitness-for duty certification may be required.

The City may delay restoration to employment until the employee submits a required fitness-for-duty certification so long as the City provided the notice required.

While the City is not entitled to a fitness-for-duty certification for an employee to return to duty for each absence taken on an intermittent or reduced leave schedule, where reasonable job safety concerns exist, the department may require a fitness-for-duty certification for such absences up to once every 30 days before an employee may return to work when the employee takes intermittent leave. "Reasonable safety concern" means a reasonable belief of significant risk of harm to the individual employee or others (consider the nature and severity of the potential harm and the likelihood that potential harm will occur).

5.0 OTHER PROVISIONS

Periodic Recertification

Recertification will be required:

- if the initial medical certification expires,
- every six months if the absence lasts longer than six months,
- every year if the condition lasts longer than one year,
- if employee requests an extension of leave,
- if circumstances described in the previous certification changed, or
- the City receives information that casts doubt upon the stated reason for the leave or continued validity of the leave.

The City will require annual recertification in cases where a serious health condition extends beyond a single leave year.

Recertification must be returned within **15 calendar days** of request.

Other Employee Responsibilities

The employee must comply with all provisions as outlined in the "Notice of Eligibility and Rights and Responsibilities" and "Designation Notice" including use of paid leave in conjunction with FMLA, periodic status and intention to return to work updates, annual certifications and fitness-for-duty certifications prior to returning to work.

Maintenance of Health Benefits

The City will maintain group health insurance coverage and life insurance (according to plan provisions for “not actively at work”) for an employee on FMLA leave. Arrangements will need to be made by the employee with the Human Resources Division to pay his/her share of health coverage and other insurance premiums while on leave. The options will be to:

- a. terminate coverage for any benefits which are not currently covered under the Section 125-Premium Conversion program;
- b. double deduct through payroll for any premiums past due upon return from leave;
- or**
- c. be billed on a monthly basis for any premiums due while on leave

Should the employee fail to return to work at the conclusion of leave, the City may recover all premiums paid during the employee’s unpaid leave period. This may not be done if the reason the employee does not return to work is due to:

- a. the continuation, recurrence or onset of a serious health condition that would entitle the employee to FMLA leave, **or**
- b. other circumstances beyond the control of the employee.

Benefit Accruals

The employee is not entitled to accrual of seniority or any benefit to which the employee would not have been entitled had the employee not taken leave. Vacation and sick leave accruals will stop after a leave of absence becomes unpaid for more than two consecutive weeks.

FLSA Exemption

Exempt employees, as designated in “Classification of Employment” in the Employee Handbook, will not lose their FLSA-exempt status by using unpaid FMLA leave.

6.0 UNLAWFUL ACTS

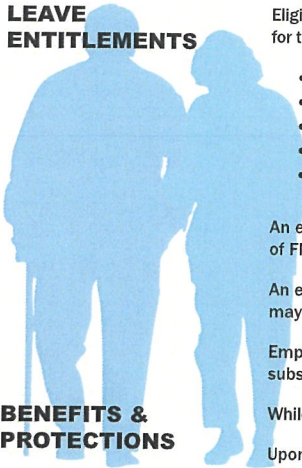
It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any person for opposing any practice, or because of involvement in any proceeding, related to FMLA.

If an unlawful act is suspected by an employee of the City it should be reported immediately to the Human Resources Manager or Director of the Legal Department.

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

BENEFITS & PROTECTIONS

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.



For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division

