



ADMINISTRATIVE POLICIES AND PROCEDURES

Policy ID: Human Resources
Subject: FMLA Leave of Absence
Creation Date: December 15, 2013
Revision Date: None
Prepared By: Human Resources Department
Approved By: City Manager
Legal Review: Elizabeth Ruhmann

DESCRIPTION: FMLA LEAVE OF ABSENCE

POLICY: The City of El Paso ("City") will afford its employees family and medical leave guaranteed by the Family and Medical Leave Act (FMLA). Under this policy, the City will grant to eligible employees, during a "rolling" 12-month period, up to 12 weeks of job protected unpaid leave, or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness.:

PROCEDURES:

1. Eligibility

To be eligible for FMLA leave, an employee must:

- have been employed by the City for at least 12 months (need not be consecutive); separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years; and
- have worked at least 1,250 hours in the preceding 12 months from the date FMLA is to be used.

Employees eligible for FMLA will be placed on FMLA and will be required to submit the appropriate paperwork in accordance with Federal guidelines.

II. Policy Details

A. Reasons for FMLA Leave

To qualify as FMLA leave under this policy, the employee must be taking leave for one or more of the reasons listed below:

- Because of the employee's own serious health condition which makes the employee unable to perform the essential functions of the employee's job;
- Birth of the employee's child, or to take care for the employee's newborn child;
- Placement of a child with the employee for adoption or foster care;

- To care for an immediate family member with a serious health condition:
 - a) An immediate family member is a spouse, parent, son or daughter with a serious health condition.
 - b) A son or daughter is defined as a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in *loco parentis* – taking the place of the child’s parents for day-to-day physical or financial support. The son or daughter must be under the age of 18 or if older than 18, incapable of self-care because of a mental or physical disability at the time FMLA leave is requested.
- Leave because of a qualifying exigency (“qualifying exigency leave”) as guaranteed under the military family leave provisions of the FMLA
- Leave to care for a covered service member with a serious injury or illness (“military caregiver leave”) as guaranteed under the military family leave provisions of the FMLA.

B. Duration of Leave

Eligible employees may receive up to 12 workweeks of unpaid leave during any “rolling” 12-month period, measured backward from the date that any FMLA leave is used. On each day of the year, an eligible employee’s FMLA leave entitlement is determined by the amount of leave he or she used in the 12 months before. As each new day is added, one day from the 12 months ago is eliminated. If on that date 12 months ago the employee took FMLA leave, one day of leave entitlement is created for the next 12 months.

Example for Determining Available Time

An employee used FMLA leave from May 1 through June 15, 2012 (six weeks of his 12-week entitlement). He used an additional six weeks of FMLA leave Nov. 15 through Dec. 31. On June 1, 2013, he would be eligible for four weeks of FMLA leave, figured by subtracting from his 12-week entitlement the six weeks used during the prior November and December, and the two weeks used June 1-15, 2012. The four weeks used in May 2012 would be outside the look back period because they occurred more than 12 months prior to the date on which the calculation of leave entitlement is begun. This example excludes FMLA taken for military caregiver leave.

FMLA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the birth or placement and cannot be taken intermittently. When a husband and wife both work for the same employer, they are limited to a combined total of 12 weeks of FMLA leave for the birth of a son or daughter, the placement of a child with them for adoption or foster care, or if they are needed to care for a parent with a serious health condition.

When leave is to care for a service member or veteran with a serious injury or illness, an eligible employee may take up

to 26 workweeks of leave during a single 12-month period to care for that service member or veteran. Leave to care for an injured or ill service member or veteran, when combined with other FMLA qualifying leave, may not exceed 26 weeks in the single 12-month period during which the 26 weeks of military caregiver leave is available. A single 12-month period for purposes of military caregiver leave begins on the first day that an employee takes military caregiver leave and ends twelve months after that date, regardless of the rolling 12-month period that the City utilizes for determining available leave for other FMLA-qualifying reasons.

C. Request for Leave

When the need for the leave is foreseeable, the employee must provide the City with at least 30 days advanced notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day.

When the need for FMLA leave is not foreseeable, the employee must comply with normal call-in procedure requirements and procedures for requesting leave, absent unusual circumstances.

Leave requests that are not submitted according to policy, and as soon as practicable may be delayed or denied based on individual facts and circumstances.

D. Certifications of Leave

Certification for the Employee's and Family Member's Serious Health Condition

The City will require certification for the employee's serious health condition or the family member's serious health condition. The Human Resources Department will receive all medical certifications for employee's or family member's serious health condition(s). The employee must respond to the request for certification within 15 calendar days of the notice of eligibility. Failure to comply with the above mentioned requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

Certification of Qualifying Exigency for Military Caregiver Leave

The City will require certification of the qualifying exigency for military family leave as provided under the FMLA. The documentation (i.e. military orders) should be sent to Human Resources. The employee must respond to such a request within 15 calendar days of the request. Failure to comply with the above mentioned requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

Certification for Serious Injury or Illness of Covered Service Member for Military Caregiver Leave

The City will require certification for the serious injury or illness of the covered service member as provided under the FMLA. The certification must be submitted to the Human Resources Department. The employee must respond to such a request within 15 calendar days of the request. Failure to comply with the above mentioned requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

E. Leave Determination

Incomplete Certifications

If an incomplete medical certification is received, the Human Resources Department will provide the employee with the opportunity to either have the health care provider correct the certification or provide a written release for Human Resources to contact the Health care provider directly. The employee will have seven (7) calendar days to resolve any deficiencies in the medical certification. If, after seven (7) calendar days the identified deficiencies have not been resolved, the FMLA request may be denied.

2nd and 3rd Opinions

The City may request recertification and/or a second opinion for the serious health condition of the employee or the employee's family member in accordance with the regulations under the FMLA. If the City questions the validity of the health care provider's opinion, a second opinion may be required. In such cases, the City will choose a health care provider to give the second opinion and will pay the cost. If the first and second opinions differ, the City may require a third opinion. The health care provider giving the third opinion will be jointly approved by the City and the employee. The third opinion will be binding on both parties. The City will pay the cost of the third opinion.

Recertification

If, after the initial medical certification, the employee needs to renew or change the leave request, he or she is required to submit an additional or amended medical certification to the Human Resources Department.

Recertification will be necessary when the employee seeks an extension of his or her leave. The employee must provide a new medical certification every six months.

The City may require recertification of the ongoing need for leave every 30 days or more often depending on the circumstances of each individual situation. Failure to provide proper medical certification may result in the denial of FMLA leave, or in a delay of its approval.

Approval/Denial Notice

Once Human Resources received a completed medical certification, the employee will be notified within five (5) business days whether or not the leave is approved or denied along with a designation of the leave as FMLA.

If an employee takes sick leave for a condition that progresses into a serious health condition, and the employee requests additional medical leave as provided under this policy, the City may designate all or some portion of the leave taken as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

F. Intermittent Leave

Eligible employees may take FMLA leave intermittently (in blocks of time), or by reducing their normal weekly or daily work schedule, when medically necessary for their own or an immediate family member's serious health condition or for the serious injury or illness of a service member. This type of FMLA leave use must be carefully reviewed and supported by medical certification. Intermittent FMLA is also available for leaves due to a qualifying exigency. Employees who require intermittent leave or reduced-schedule leave must try to schedule their leave so that it will not disrupt the department's operations.

Birth of Child/Adoption

Intermittent FMLA leave is not permitted for the birth of a child or to care for a newborn child or newly adopted child when there is no serious medical condition.

Call-In Procedures

Absent unusual circumstances, employees must comply with the City/departmental call-in procedures when they miss work for reasons potentially covered by FMLA leave. Employees must also designate their absence as an FMLA covered event each time intermittent leave is utilized. Failure to comply with these procedures may subject the employee to discipline up to and including employment termination.

Exhaustion of Intermittent Leave

Once FMLA is exhausted or no longer needed, absences will be counted as such. Should an employee exceed the estimated time away from work provided in his or her medical certification, he or she will be required to submit medical documentation or an updated medical certification to support the additional leave. If the need for more leave is protected under the FMLA, the absences will be counted as protected leave. Absences under FMLA must be related to the serious health condition according to the medical certification. Utilizing FMLA for reasons not related to the certification(s) is not permitted.

G. Pay Status While on Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family/service member, birth/adoption, or using military caregiver leave for a qualifying exigency, must use all accrued Sick leave and then Vacation leave prior to being eligible for unpaid leave.

H. Exempt Employee

If an exempt employee is on FMLA, deductions may be made for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee, regardless of whether these hours are paid or not. Whole days or partial days not worked due to FMLA will be charged against an employee's accrued leave balance or will be leave without pay. All FMLA time taken regardless of whether it is paid or unpaid will count against the employee's 12-week leave entitlement.

I. Employee Benefits While on Leave

While an employee is on FMLA leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work, as long as the employee pays his or her portion of the health care premium.

While on paid FMLA leave, the City will continue to make payroll deductions to collect the employee's share of the premium.

While on unpaid FMLA leave, the employee is responsible for making the employee's share of the premium. If an employee does not pay the required contributions, coverage may be canceled. However, the employee will be given 15 days-notice before coverage is canceled.

Employees retain their employment status during the period of leave. An absence covered by FMLA leave will not be considered a break in service for purposes of determining an employee's longevity, or any employee benefit plan.

If the employee contributes to the pension plan or life insurance, the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums.

J. Job Restoration

An employee who takes leave under the FMLA will normally return to the same position or a position with equivalent status, pay, benefits and other employment terms.

Unable to Return after FMLA Leave

If the employee is not medically released to return to work at the end of their FMLA leave and the employee has not been granted any additional leave, employment ends as "unable to return from leave" effective the last day of the approved leave, unless a continuation of leave has been granted as an accommodation under the Americans with Disabilities Act as amended, or for other reasons.

Failure to Return after FMLA Leave

Any employee who fails to return to work as scheduled after FMLA leave (end of certification, release to return to work, or

exhaustion of leave entitlement) may be subject to termination of employment. Employees, who exceed their FMLA entitlement without extension(s) of their leave approved under other appropriate leave provisions and applicable attendance policies, may be subject to dismissal from employment and applicable attendance policies.

K. Notice Requirements for Returning from FMLA Leave

Employees are expected to be able to return to work by the end of their approved leave. Prior to returning from leave for a personal health condition, the employee is required to secure a medical release from his or her healthcare provider confirming the release to return to work to perform the regular duties or set any restrictions. The request to return from medical leave of absence form should be completed and submitted to the Human Resources Department at least two (2) days in advance of the expected date of return reflected on the Request for Leave form.

If the employee is released to return to work with restrictions, the Human Resources Department in consultation with the Department Head, Departmental Human Resources Manager and/or employee's supervisor(s) will consider whether the restriction can be met in the workplace or if a reasonable accommodation is required. Medical restrictions are those that prevent the employee from performing their regular duties at the end of the approved leave due to a continuing medical condition. If an employee on FMLA leave for personal medical reasons is released to return to work sooner than the expected return date listed on the Leave Request, the employee must notify the Human Resources Department and their Departmental Human Resources Manager and/or supervisor within two (2) business days of receiving the release.

L Coordination with other Policies

Attendance and FMLA

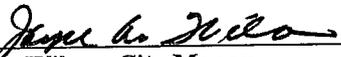
Absences covered by FMLA will not be charged against the employee under the employee's departmental attendance/absence policy. However, employees may be subject to discipline up to and including termination of employment if, during their leave, they engage in activities inconsistent with the stated purpose for the leave. For example, employee may be prohibited from engaging in other employment during FMLA leave. Misrepresentations or any act of dishonesty related to FMLA leave will also be grounds for discipline, up to and including termination of employment.

Worker's Compensation and FMLA

FMLA and Worker's compensation run concurrently if the injury meets the definition of a serious health condition under FMLA. FMLA requests for work injuries involving Worker's Compensation may follow a different process with respect to the verification of clarification of the medical certification. Please consult with the Human Resources Department/Departmental Human Resources Manager for more information on benefits and pay status while on leave.

Related Policies: **Non-FMLA Leave of Absence Policy.**

APPROVED BY:



Joyce Wilson, City Manager

1/6/14
Date