

**CITY OF BEAUMONT
POLICIES AND PROCEDURES MANUAL**

Policy Number: 2.4

Subject: Family and Medical Leave

Effective Date: October 16, 2013

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I. PURPOSE

The purpose of this policy is to provide definitions, rules and procedures for the use of leave requested and granted in accordance with the guidelines of the Family and Medical Leave Act.

II. OVERVIEW OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993

A. The Family and Medical Leave Act (FMLA) of 1993 and the updated rules effective March 8, 2013, require employers to provide eligible employees up to 12 work weeks of leave during any 12-month period for leave taken due to one or more of the following reasons described in 1-4. For reason 5 below, FMLA provides 26 work weeks of leave, when combined with other FMLA leave, in a single 12-month period.

- For the birth of a child or the placement of a child for adoption or foster care;
- To care for a spouse, child or parent with a serious health condition;
- For an employee's own serious health condition which makes the employee unable to perform the essential functions of his/her job.
- Any qualifying exigency arising from the employee's spouse, child or parent being called to covered active military service in a foreign country.
- To care for an employee's spouse, child, parent, or next of kin who has incurred an injury or illness in the line of duty in the Armed Forces in such an extent that he or she is medically unfit for active duty.

B. Most eligible employees who take FMLA have a right to return to the same or equivalent position with equivalent pay, benefits and working conditions. An employee's entitlement to benefits, other than group health benefits, during a period of FMLA leave is to be determined by the City's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

III. DEFINITIONS:

- A. Eligible Employee - any employee who has been employed for at least 12 months by the City on the date on which the FMLA requested leave is to commence and with at least 1,250 hours of service with the City during the previous 12-month period. Eligible months do not have to be consecutive months, but must be within seven years prior to the leave date, unless the break is caused by the fulfillment of employee's National Guard or Reserve military service obligation.
- B. Employment Benefits - all benefits provided or made available to employees by the City including group life insurance, health insurance, sick leave, annual leave, educational benefits, and pensions.
- C. Health Care Provider - a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services. In the case of military caregiver leave it includes healthcare providers, as defined in §825.125, who are not affiliated with DOD, VA, or TRICARE.
- D. Intermittent Leave - leave taken in separate periods of time rather than for one continuous period of time due to a single illness or injury, active duty leave or caregiver leave. Intermittent leave may include periods of leave from an hour or more to several weeks.
- E. Reduced Leave Schedule - a leave schedule that reduces the usual number of working hours per workweek, or hours per workday of an employee.
- F. Serious Health Conditions (SHC) - an illness, injury, impairment or physical or mental condition that involves:
 - 1. Inpatient Care - A condition requiring overnight hospitalization and subsequent treatment
 - 2. Continuing Treatment - A period of incapacity of more than three full consecutive calendar days and
 - a. An in-person visit to a health care provider within 7 days of the first day of incapacity and a second in-person visit within 30 days of the first days of incapacity; or
 - b. An in-person visit to a health care provider within 7 days of the first day of incapacity followed by a regimen of continuing treatment such as course of prescription medication or physical therapy.
 - 3. Pregnancy or prenatal care
 - 4. Chronic conditions continuing over an extended period of time (e.g. asthma, diabetes, migraine headaches)
 - a. Any period of incapacity
 - b. May cause episodic rather than continuous incapacity
 - c. Requires at least two visits annually to the health care provider

5. Permanent or long-term conditions (e.g. Alzheimer's, stroke, terminal diseases)
 - a. Any period of incapacity
 - b. Requires continuing supervision by a health care provider
 6. Conditions requiring multiple treatments (e.g. chemotherapy, dialysis, physical therapy)
 - a. Any period of incapacity
 - b. Restorative surgery or conditions, if left untreated, would result in incapacity of more than three full consecutive calendar days
- G. Parent - the biological, adoptive, step, or foster parent or an individual who lawfully stood in the position of parent to an employee when the employee was a child. This term does not include the employee's mother or father-in-law.
- H. Son or Daughter - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person lawfully standing in the position of a parent, 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, or for purposes of military family leave of any age.
- I. Spouse - a husband or wife as defined or recognized under the Texas State law for purposes of marriage including common law marriage with a declaration of formal marriage document from the courthouse.
- J. Next of Kin - nearest blood relative of the covered service member other than the spouse, parent, or child in the following order of priority unless the service member has designated in writing another blood relative. Blood relatives granted legal custody of the service member, brothers and sisters, grandparents, aunts and uncles, first cousins.
- K. Caregiver Leave - a caregiver leave allows an employee to have time off to care for a related covered service member who is ill or injured due to active duty or to care for an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.
- L. Covered Service Member - an individual who is:
- A 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 otherwise on the temporary disability retired list for a serious injury or illness; or
 - A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) or was diagnosed or released under conditions other than dishonorable at any time during the period of five (5) years

preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

- a. The applicable five (5) year period is calculated backward from the date the eligible employee first takes family-medical leave to care for the covered veteran except that the period from October 28, 2009 to March 8, 2013 must be excluded from the calculation for any veteran discharged or released prior to March 8, 2013.
- b. The single 12-month period for leave to provide care may extend beyond the end of the applicable five (5) year period if it does, in fact, begin during that period.

M. Covered Service Member “serious injury or illness”

1. In the case of a member of the Armed Forces (including a member of the National Guard or Reserves) means an injury or illness that was incurred by a covered service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) that may render the service member medically unfit to perform the duties of the service members regular job duties.
2. In the case of a veteran, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran and is:
 - 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 service member unable to perform the duties of the service member’s regular job duties.
 - b. A physical or mental condition for which the covered veteran has received a U.S Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver 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 or a disability or disabilities related to military service, or would do so absent treatment; 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.

N. Twelve Month Period - 12 month rolling backward method that is measured backward from the date an employee uses any FMLA leave.

- O. Key Employee - a salaried eligible employee who is among the highest paid 10 percent of employees who work within 75 miles of the facility where the employee taking leave is employed.
- P. Qualifying exigency - eligible employees can take leave for a qualifying exigency when their spouse, son, daughter, or parent is called to active military service in a foreign country. Only families of service members in the Reserves, National Guard and certain retired members of the Armed Forces are covered under this provision. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- Q. Cure period - seven-day-period given to an employee to correct an incomplete or insufficient medical document.

IV. EMPLOYEE RESPONSIBILITIES

- A. An employee interested in using leave in accordance with FMLA regulations must submit a Request for Family/Medical Leave Form (Attachment A) to the Personnel Department at least 30 days prior to commencing such leave when the need is foreseeable. If the need is not foreseeable, the employee is required to give at least a verbal notice to his/her supervisor as soon as practical and follow up with Personnel to complete the FMLA paperwork. The notice should include the anticipated timing and duration of the leave.
- B. When the need for leave is for reasons relating to a family member's Armed Forces active duty and such leave is foreseeable, the employee must give notice as soon as it is reasonable and practicable. The employee must provide certification that the service member has been called to active duty (Attachment F).
- C. The employee must provide medical certification supporting the need for leave due to a serious health condition affecting him/herself (Attachment C), an immediate family member (Attachment D), or a covered service member (Attachment E). The Certification of Physician or Practitioner Form must be completed by the health care provider and be returned by the employee or designee to the Personnel Department within 15 calendar days, if practical, of the request for FMLA leave. Failure to provide a certification will result in the employee's job not being protected by FMLA.
- D. If an employee fails to provide medical certification substantiating the need for FMLA for a parent, spouse, or a child, the employee will not be allowed to use Short-Term-Disability (STD) accruals.
- E. The employee must contact Employee Benefits to make arrangements for the continual payment of his/her dependent(s) and/or supplemental benefits coverage if all accrued leave is exhausted.
- F. The employee may be required to have the health care provider complete and submit a re-certification form every 30 days. The City may request re-certification no more than every 30 days, unless circumstances described by the previous certification have changed significantly or the City receives information that casts doubt upon the employee's stated reason for the absence or the employee has requested an extension of FMLA leave.

- G. When the employee is taking intermittent leave due to a medical necessity, the employee should try to schedule treatment so that it will not unduly disrupt operations. The City may request re-certification every six months in connection with an absence for employees requesting intermittent or reduced leave for periods in excess of six months due to an ongoing condition.
- H. When an employee is on FMLA for his/her own serious health condition, he/she shall complete and submit, with the health care provider's signature, the Notice of Intention to Return From Leave Form (Attachment H) to Personnel at least two weeks prior to returning to work. If an employee fails to provide the requested return to work form, his/her return may be delayed until the employee submits the form.
- I. The certification returned by the employee must be "complete and sufficient". A certification is incomplete if one or more of the applicable entries is not completed. A certification is insufficient if it is "vague, ambiguous, or non-responsive".

V. EMPLOYER RESPONSIBILITIES

- A. Personnel will disseminate information about FMLA by displaying FMLA posters in conspicuous places, including information in the Policy and Procedures Manual, providing information during employee orientation and/or at the time of leave request or when such leave is designated as FMLA by the City.
- B. Upon receipt of your FMLA request, Personnel will notify the employee of his/her FMLA eligibility status, rights and responsibilities within five business days (Attachment B). If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible. The Eligibility Notice will be provided in writing.
- C. Department Supervisors shall designate any absence that meets the requirements of FMLA as Family and Medical Leave, even if the employee does not request FMLA. In that case Personnel will notify the employee within five working days of this designation and request medical certification. The City may retroactively, as determined by law, designate an employee's absences as FMLA leave even if Personnel did not provide a designation notice to the employee when required.
- D. Personnel will grant the employee at least 15 calendar days to obtain a medical certification for a serious health condition (or more if 15 days is not practical) as defined under FMLA regulations.
- E. If the Certification by the Health Care Provider is not complete and sufficient, the regulation provides for a "cure" period. Personnel will advise the employee of any additional information required and the employee will be granted up to seven (7) days to cure the deficiency. If the deficiency is not cured, the City may deny the leave.
- F. When Personnel has enough documentation to determine whether leave is being taken for an FMLA qualifying condition, Personnel will notify the employee within five (5) working days whether the leave is designated as FMLA, absent extenuating circumstances (Attachment G).
- G. The City will continue coverage under its health care plan for the employee and his/her dependents while the employee is on paid family medical leave. Each employee shall continue to make required contributions for him/herself and for his/her dependents based upon their current benefit plan requirements. However, if the employee fails to return to work after the

period of leave expires, the City may recover from the employee any premiums paid on behalf of the employee during the leave period unless:

1. There is a continuation, reoccurrence or onset of a serious health condition of the employee or family member; or
 2. There are other circumstances beyond the control of the employee.
- H. Employees who are on leave without-pay still need to continue payments in accordance with their benefits plan. If an employee fails to continue payments, the City will notify the employee after 30 days and give the employee 15 days to remit the missed payments. If payments are not recovered after the 15 day period, the City reserves the right to discontinue benefits while the employee is on FMLA. An Employee's benefits may be restored after the employee returns to work.

VI. RULES/PROCEDURES

- A. Time off for worker's compensation injuries shall be designated as family medical leave if the conditions meet the requirements of a serious health condition.
- B. An employee shall be required to use available accrued paid leave before utilizing unpaid leave when requesting family and medical leave. Personal leave, vacation, short-term disability and comp time may be used in connection with FMLA. Leave requests must be used in accordance with the various leave guidelines outlined in the City of Beaumont Policies and Procedures Manual.
- C. A reduced or intermittent leave schedule will be allowed to care for a seriously ill spouse, son, daughter, parent, covered service member, or the employee's own serious health condition when deemed medically necessary by a health care provider. A Medical Certification Form from the health care provider is required.
- D. A reduced or intermittent leave schedule after the birth or placement of a child may be taken, but shall not exceed two months. The entitlement to leave for the birth/adoption/placement of a child expires at the end of twelve months from the date of birth/adoption/placement of the child.
- E. A reduced or intermittent leave schedule may be taken for reasons relating to a family members Armed Forces active duty or when an employee needs to care for a family member who has incurred an injury or illness while on active duty.
- F. A husband and wife who are both employees of the City can be entitled to a total of 12 work weeks of leave for any FMLA qualifying condition. If leave is taken in combination with leave to care for a covered service member, spouses are entitled to a combined total of 26 work weeks of leave.
- G. Employees who are considering taking FMLA shall inform their supervisors about their need. Employees can either pick up the FMLA paperwork from the Personnel Department or print out the forms at their convenience from the City website.

The following packages have been designed to cover each FMLA qualifying condition:

Package 1- Employees own Serious Health Condition

- Attachment A: Request Form
- Attachment B: Notice of Eligibility and Rights & Responsibilities
- Attachment C: Certification of Health Care Provider for Employee's Serious Health Condition
- Attachment G: Designation Notice
- Attachment H: Notice of Intention to Return From Leave Form

Package 2- Family Member's Serious Health Condition

- Attachment A: Request Form
- Attachment B: Notice of Eligibility and Rights & Responsibility
- Attachment D: Certification of Health Care Provider for Family Member's Serious Health Condition
- Attachment G: Designation Notice

Package 3- Serious Health Condition of a Covered Service Member

- Attachment A: Request Form
- Attachment B: Notice of Eligibility and Rights & Responsibilities
- Attachment E: Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave
- Attachment G: Designation Notice

Package 4- Qualifying Exigency of a Covered Service Member

- Attachment A: Request Form
- Attachment B: Notice of Eligibility and Rights & Responsibilities
- Attachment F: Certification of Qualifying Exigency for Military Family Leave
- Attachment G: Designation Notice

- H. Personnel will inform Department Supervisors about the eligibility of an employee for FMLA, how long the employee will be absent, and when the employee is scheduled to return to work.
- I. The supervisor shall ensure that absences related to FMLA are reported and recorded correctly for payroll purposes.
- J. Personnel will give the employee a written notification of benefits termination within 15 calendar days prior to terminating his/her benefits.
- K. Employees on FMLA without pay will not accrue vacation, personal leave, or short term disability.
- L. For authentication/clarification of medical information, contact with the employee's physician may be made by a Personnel Representative. If an employee chooses not to authorize communication with the health care provider and does not otherwise clarify the information, the City may deny leave. An employee's direct supervisor is expressly prohibited from contacting the employee's health care provider.
- M. An employee who is absent from work with a qualified charge of time to FMLA shall not engage in secondary employment. Once an employee is released to full duty, he/she may engage in secondary employment in accordance with the City's Conditions of Work including

Outside Employment Policy 3.0 VIII. A violation of this policy may result in disciplinary action up to and including termination.

N. If a holiday falls during the time an employee is on FMLA, the following guidelines apply:

1. An employee taking a full week of FMLA leave during a week containing a holiday will have the holiday counted against his/her FMLA entitlement;
2. An employee taking less than a full week of FMLA leave during a week containing a holiday will not have the holiday counted against his/her FMLA entitlement unless the employee was otherwise scheduled and expected to work the holiday.

VII. EXCEPTIONS

Under limited circumstances where restoration to employment will cause “substantial and grievous economic injury” to the City, the City may refuse to reinstate certain highly paid, salaried “key” employees. In order to do so, the City must notify the employee in writing of his/her status as a “key” employee (as defined by FMLA), the reason for denying job restoration, and provide the employee with a reasonable opportunity to return to work after notification.