

# FAMILY & MEDICAL LEAVE ACT (FMLA)

## Policy

The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 work weeks of protected leave each year for specified family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers and minimizes the potential for employment discrimination.

**Note:** *The eligibility and entitlements are defined differently under Federal and State law. This policy reflects Federal law; however, if an employee is eligible for provisions in the State law, these will be discussed with each individual separately. Federal and State law will run concurrently.*

## Eligibility

Employees are entitled to FMLA benefits if they:

- Have been employed by the City of Racine for at least **12 months**; and
- Have worked at least **1,250 hours** during the 12 months prior to the start of the FMLA leave

## FMLA Qualifying Events and Amount of Leave

Eligible employees may take up to a total of **12 work weeks** of FMLA leave in a calendar year for the following qualifying events:

- The birth of a child and to care for the newborn child;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child;
- To care for the employee's spouse, child, or parent (including a parent-in-law under the Wisconsin FMLA) with a serious health condition (Note: Under Wisconsin FMLA, an employee may take up to 2 work weeks for a parent-in-law);
- Family leave due to an employee's spouse, child or parent being on exigent active duty or having been notified of an impending call or order to exigent active duty in the Armed Forces in support of a contingency operation;
- For the employee's own serious health condition that renders the employee unable to perform his/her job.

Twelve weeks of family leave can be utilized by an employee whose spouse, child, or parent has been called to exigent active duty to make arrangements for child care, make financial and legal arrangements, attend counseling, attend official ceremonies or programs where the military requests participation of the family member, to attend to farewell or arrival arrangements, or to attend to affairs caused by the missing status or death of a service member.

Eligible employees may take up to a total of 26 work weeks of FMLA leave in a calendar year to care for a spouse, child, parent, or next of kin who is a member of the Armed Forces who suffered an injury or illness while on active duty that renders the person unable to perform the duties of the member's office, grade, rank, or rating.

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

Leave qualifying for both Wisconsin and Federal FMLA leave count against an employee's entitlement under both laws and will run concurrently. Qualified leave taken under Worker's Compensation will also run concurrently with Wisconsin and Federal FMLA leave.

## **Leave Duration**

An eligible employee can take up to twelve (12) work weeks of leave during any twelve (12) month period. The City will calculate the twelve (12) month period based on the calendar year. Each time an employee takes a leave, the City will compute the amount of leave the employee has taken under the policy and subtract it from the twelve (12) weeks of leave available, and the balance remaining is the amount the employee is entitled to take at that time.

## **Husband & Wife**

If a husband and wife both work for the City and each wishes to take a leave for the birth, adoption, or placement of a child, or to care for a parent or child with a serious health condition, the husband and wife, combined, may only take a total of twelve (12) weeks of leave.

## **Non-continuous or Intermittent Leave**

Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule:

- When it is medically necessary to care for a family member with a serious health condition or because of the employee's own serious health condition;
- When it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty;
- To care for a newborn, adopted or foster child. Federal FMLA leave for the birth or placement of a child for adoption or foster care may not be taken in non-continuous increments unless approved by the City. Under the Wisconsin FMLA, the last increment of leave for the birth or adoption of a child must begin within 16 weeks of that birth or placement.

Medical or family caretaking leave should be planned so as not to unduly disrupt the City's operations.

The City allows for intermittent leave to be taken in no less than one hour increments or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In *all* cases, the leave may not exceed a total of twelve (12) weeks in a twelve (12) month period.

When requesting an intermittent leave or reduced work schedule, the City AND employee must mutually agree to the schedule before the leave begins. If this is not possible, the employee must prove the use of the leave is medically necessary.

## **Requesting a Leave**

An employee requesting leave under this policy must complete a *Family and Medical Leave of Absence Request Form* and forward it to the Human Resources Department.

The employee must request the leave at least **30** days in advance. If it is not possible to give 30 days' notice, the employee must give as much notice as practicable. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the City's operations.

If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the City receives the notice.

While on leave, employees are required to report periodically to their supervisor regarding the status of the medical condition and their intent to return to work.

## **Certification of the Serious Health Condition**

If the requested leave is for a family member's or the employee's serious health condition, the employee must submit a medical certification from the employee's or the family member's health care provider. The employee must respond to this requirement within fifteen (15) days or provide a reasonable explanation for the delay.

Certification of the serious health condition shall include: The date when the condition began, its expected duration, diagnosis, and a brief statement of treatment. For leave for an employee's own serious health condition, the certification must include a statement that the employee is unable to perform work of any kind or is available for light duty (list restrictions and recommend accommodations).

The city also reserves the right, once the leave begins, to periodically ask the attending physician for updated medical information regarding the employee's status and intent to return to work.

If the employee plans to take intermittent leave or work a reduced work schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking an intermittent leave or work a reduced schedule.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second physician, which the City will select.

If necessary to resolve a conflict between the original physician and second opinion, the City will require the opinion of a third physician. The City and employee will jointly select the physician and the City will pay for the opinion. This third opinion will be considered as binding and final.

## **Use of Paid or Unpaid Leave**

Under Wisconsin law, an employee has the option to substitute accrued, but unused vacation or sick leave to remain in a paid status. However, under Federal law, the city may require substitution of vacation or sick leave.

The city will allow an employee to take up to 2 weeks (10 days) of unpaid leave. For the remainder of the leave, the city will require the substitution of accrued vacation and/or sick time.

**Note:** *Police and Fire personnel – where holidays are an accrued benefit, may substitute holiday pay during a FMLA leave or holiday substitution may be required.*

## **Employment Status & Benefits During the Leave**

While the employee is on leave, the City will continue the employee's benefits governed by either his/her labor contract or non-rep manual.

**Other benefit deduction(s):** While on paid leave, benefit deductions will continue through payroll deductions. While on an unpaid leave, the employee is responsible for the payment of other benefit premiums when required. If payments do not continue, the City will discontinue these benefits during the leave or will recover the payments at the end of the leave period.

## **Employment Status After the Leave**

An employee who takes leave under this policy will be able to return to the same job or to a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority (provided the employee is physically capable of performing the job).

## **Return to Work**

An employee returning from FMLA for their own serious health condition must provide a fitness for duty certification/physician's statement releasing the employee back to full or restricted duty. If returning to restricted duty, the return to work slip should indicate the limitations and suggested accommodations, as well as the duration of the restrictions. You may be asked to have your physician complete an Attending Physician Report Form which allows your physician to be specific on the restrictions.

### **Definitions:**

**Child** – Biological, adopted, or foster child, stepchild, legal ward or, under the Federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing “in loco parentis”, who is under 18 years of age or 18 years of age and older and incapable of self-care because of a serious health condition.

**Spouse** – Husband and wife (does not include unmarried partners).

**Immediate Family Member** – The employee's child, spouse, or parent (does not include brothers or sisters, and, under Federal law, does not include parents-in-law).

**Covered Service Member** - 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 treatment status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

**Next of Kin** – Used with respect to an individual, means the nearest blood relative of that individual.

**Parent** – Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee, or parent-in-law under the Wisconsin FMLA.

**Incapable of Self-Care** - The individual requires assistance or supervision to provide self-care in three or more of the *activities of daily living* (i.e. grooming, hygiene, bathing, dressing, eating) or *instrumental activities of daily living* (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).

**Serious Health Condition** – An illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care in a hospital, hospice, or residential medical care facility; or
2. A period of incapacity of more than three (3) consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition that involves treatment two (2) or more times by or under the orders of a health care provider or treatment by a health care provider on at least one occasion that results in a regimen or continuing treatment under the supervision of a health care provider;
3. Any period of incapacity due to pregnancy or prenatal care;
4. Chronic conditions requiring periodic treatment by or under the supervision of a health care provider that continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy, etc.).
5. Permanent or long-term conditions requiring supervision for which treatment may not be effective {i.e. Alzheimer's, severe stroke, or the terminal stages of a disease};
6. Multiple treatments by or under the supervision of a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three (3) calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis).