

## CITY OF WACO

### FAMILY AND MEDICAL LEAVE ACT

Policies and Procedures

AVL-6

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Revised 07/17/09

#### A. Statement of Purpose

The City of Waco is required to comply with the Family and Medical Leave Act (FMLA) of 1993. This policy will inform employees concerning their rights and duties and the City's obligations under the FMLA. For those employees covered by collective bargaining agreements, in no event shall those agreements diminish the rights established for employees by the FMLA.

The Human Resources Department administers FMLA leave for the City. All employees should be directed to Human Resources to apply for or receive more information.

#### B. Basic Leave Entitlement

The City of Waco must provide eligible employees up to twelve (12) weeks of unpaid, job-protected leave for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition, as defined by applicable law; or
- For a serious health condition, as defined by applicable law, that makes the employee unable to perform the employee's job.

Local policy will govern leave hours for Fire Suppression personnel.

A husband and wife, both employed by the city and who are eligible for FMLA leave, are allowed a combined total of 12 weeks of leave during any twelve month period if the leave is taken:

- a. for the birth of the employee's child or to care for the child after birth; or
- b. for placement of a child with the employee for adoption or foster care, or to care for the child after placement.

#### C. Military Family Leave Entitlements

- a. Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in supports of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

b. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member may take up to 26 work weeks of leave in a single 12-month period to care for a covered service member. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

c. During any single 12-month period, the employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave.

**D. Benefits and Protections**

a. During FMLA leave, the City of Waco must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work.

b. Upon return from FMLA leave, employees must generally be restored to their original or equivalent position with equivalent pay, benefits, and other employment terms.

c. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

**E. Eligibility Requirements**

To be eligible for FMLA leave, an employee must:

a. have at least one year of employment with the City; which need not be consecutive months; and

b. have worked at least 1,250 hours during the twelve months immediately prior to the requested leave.

**F. Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either:

- a. an overnight stay in a medical care facility; or
- b. continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job for a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment; or
- c. prevents the qualified family member from participating in school or other daily activities; or
- d. incapacity due to pregnancy; or
- e. incapacity due to a chronic condition; or
- f. other conditions may meet the definition of continuing treatment

**G. Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

**H. Substitution of Paid Leave for Unpaid Leave**

The City of Waco requires employees to use any accrued vacation, sick, and holiday leave and must comply with the City's normal paid leave policies and procedures. The option of which type of accrued leave to use while on FMLA will be at the employee's discretion, subject to city policy. The employee may also use, but cannot be required to use compensatory time.

**I. Employee Responsibilities**

- a. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the departmental or City call-in procedures.

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- b. Employees must provide sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave.
- c. Employees must inform the City of Waco if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- d. Employees may be required to provide a certification and period recertification supporting the need for leave.

#### **J. Employer Responsibilities**

- a. The City of Waco must inform employees requesting leave whether they are eligible under FMLA and if they are, the notice will specify any additional information required as well as the employees' rights and responsibilities.
- b. If an employee is not eligible, the City must provide a reason for the ineligibility.
- c. The City of Waco must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement.
- d. If the City of Waco determines that the leave is not FMLA-protected, the employee will be notified.

#### **K. Intermittent Leave**

- a. FMLA leave taken because of the serious health condition of either the employee or a covered family member may be taken on an intermittent basis as allowed and governed by applicable law.
- b. If an exempt employee takes intermittent FMLA leave, the employee will only be paid for the hours actually worked, and the hours not worked will be unpaid unless the employee has accrued paid leave.

#### **L. Employee Absence**

- a. Supervisors are responsible for notifying Human Resources if any of their employees are off work for more than three work days without requesting FMLA leave. If necessary, the Employee Relations Manager or designee will contact the employee in order to determine whether such time off needs to be designated as FMLA leave.

b. Supervisors of fire suppression employees are responsible for notification under this provision if any of their fire suppression employees are off work for more than one 24-hour work shift.

**M. Recertification**

a. Human Resources will provide the employee with a certification form that must be completed by the employee's health care provider in order to determine whether the employee's medical condition qualifies the employee for FMLA leave. The employee is required to return the completed certification to Human Resources within 15 calendar days after the City notifies the employee of the need for such certification. The employee may also be required to provide to Human Resources a recertification every 30 days.

b. The employee must provide Employee Health Services with a medical certification of fitness for duty prior to returning to work when the leave is taken due to the employee's serious health condition.

**N. Provisions of FMLA Prevail**

In the event of a conflict between this policy and the provisions of the FMLA, the provisions of the FMLA shall prevail. This policy does not create any new leave benefits (paid or unpaid) except as may be required to comply with the FMLA and is intended solely to ensure compliance with the FMLA.



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Larry D. Groth, P.E., City Manager  
July 17, 2009