

RELEVANT LINKS:

[Personnel Policy Template](#)

IX. HOLIDAYS AND LEAVE

Overview: While many cities do provide employees with holiday pay and other forms of paid leave, there is no law that requires a city to do so. Compensating employees for city-observed holidays is left to the individual city's discretion. Providing employees with paid leave such as vacation or sick leave is also left up to the individual city. However, those cities with a practice, policy or bargaining agreement that provides these benefits to employees must operate in compliance with such practices or documents.

A. Holidays

As noted above, there is no legal requirement that a city compensate employees when city hall is closed for business in observance of a holiday. Many cities do elect to provide holiday pay for employees who do not work when the city hall is closed for a holiday. While not required by law, some cities also provide additional compensation to employees who must do city work on a scheduled holiday. Whatever a city's practice is in this regard, it is important that the city's policy on holidays is spelled out clearly to avoid confusion.

[Minnesota Statutes 645.44](#)

Minnesota law states that no public business shall be transacted on any holiday, except in cases of necessity. Holidays on which city halls are to be closed for business according to state law are:

- New Year's Day (January 1);
- Martin Luther King's Birthday (third Monday in January);
- Washington's and Lincoln's Birthday (third Monday in February);
- Memorial Day (last Monday in May);
- Independence Day (July 4);
- Labor Day (first Monday in September);
- Christopher Columbus Day (second Monday in October);
- Veterans Day (November 11);
- Thanksgiving Day (fourth Thursday in November); and
- Christmas Day (December 25).

When New Year's Day, January 1, Independence Day, July 4, Veterans Day, November 11, or Christmas Day, December 25, falls on Sunday, the following day shall be a holiday. When any of these holidays falls on Saturday, the preceding day shall be a holiday.

Cities have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving will be observed as holidays. In cities where Columbus Day and/or the Friday after Thanksgiving are not holidays, public business may be conducted on those days.

RELEVANT LINKS:

If the city does provide holiday pay for employees, it is important to note how part-time employees will be compensated for such days. A common practice is to provide prorated holiday pay based on the part-time employee's work hours versus a full-time schedule. Another way to handle holiday pay for part-time employees is to provide holiday compensation only for those hours that the part-time employee would have normally worked (or was scheduled to work) on that day.

In the event that the city provides premium pay for those employees required to work on a holiday (public works, police, utilities, etc.), the city should develop policy language as to how compensation will be determined. It is important to establish the method of compensating an employee if he/she is required to come in to work for a city observed holiday. In addition, the city may want to consider policy language that explains holiday compensation for employees who work on the actual holiday vs. the city-observed holiday.

B. Paid Leave

1. Vacation

Cities are not required to provide paid vacation leave to employees. It is important to remember, however, that any city with a practice, policy or bargaining agreement providing this kind of benefit must comply with that practice, policy or bargaining agreement. In addition, once a benefit such as vacation is offered, there may be laws that govern some aspects of its use. For those cities that do provide vacation time, it is important to clearly define the vacation benefits and the parameters surrounding its use. For example:

[Minnesota Statutes 2005, 181.74](#)

- Which employees qualify to earn vacation leave?
- Is there any period of time during which employees cannot use vacation leave?
- How is the vacation leave accrued?
- Is there a maximum number of vacation hours that can be accrued?
- What happens if an employee reaches maximum accrual?
- When can vacation leave be used?
- How do employees request to use vacation leave?
- Who has the authority to approve and/or question the use of vacation leave?
- Are there any circumstances under which the city would require an employee to use vacation leave?
- Is vacation leave “use it or lose it” or is it paid out when an employee leaves? (The city’s policy should specifically state any circumstances under which earned vacation leave would not be paid out when an employee leaves the city.)
- Can employees with high balances cash out some of their vacation leave hours at any point?
- Are there any rewards for not using vacation during the year?
- Will vacation hours count as “hours worked” for purposes of calculating overtime under the federal Fair Labor Standards Act?

RELEVANT LINKS:

2. Sick leave

Cities are not required to provide paid sick leave to employees. It is important to remember, however, that any city with a practice, policy or bargaining agreement providing this kind of benefit must comply with said practice, policy or bargaining agreement. In addition, once a benefit such as vacation is offered, there may be laws that govern some aspects of its use. For those cities that do provide sick leave, it is important to clearly define the sick leave benefit and the parameters surrounding its use. For example:

- Which employees qualify to earn sick leave?
- Is there any period of time during which an employee cannot use sick leave?
- How is sick leave accrued?
- Is there a maximum number of sick leave hours that can be accrued?
- What happens if an employee reaches maximum accrual?
- When can sick leave be used?
- For what reasons can sick leave be used - for employee, for family, etc.?
- How do employees request to use sick leave?
- Who has the authority to approve and/or question the use of sick leave?
- Are there any circumstances under which the city would require an employee to use sick leave?
- What about unplanned use of sick leave versus planned uses?
- When might a medical certification or fitness for duty statement be required?
- Is sick leave “use it or lose it” or is it paid out when an employee leaves?
- Can employees with high balances cash out some of their sick leave hours at any point?
- Can employees with high balances donate hours to those with medical emergencies?
- If an employee is on vacation leave, but is sick for part of that time, which account gets charged?
- Are there any rewards for not using sick leave during the year?
- Will vacation hours count as “hours worked” for purposes of calculating overtime under the federal Fair Labor Standards Act?

If a city does offer paid sick leave, an employee is entitled to use his/her personal sick leave benefits for absences due to an illness of or injury to the employee's child when the employee's attendance with the child is necessary. This sick leave may be used on the same terms as the employee is able to use this benefit for his or her own illness or injury. This requirement applies to employers with 21 or more employees.

[Minnesota Statutes 181.9413](#)

RELEVANT LINKS:

3. Funeral leave

Funeral leave varies from city to city. It can be difficult to administer because it requires the city to make subjective judgments about employees' personal lives. For that reason it is very important to clearly define the parameters of this kind of leave.

- Who is eligible to use funeral leave?
- For whom may funeral leave be used (immediate family, relatives, etc.)?
- How is funeral leave earned?
- Is this completely separate from other leaves or is the time taken from an employee's vacation or sick leave bank?
- Does funeral leave accrue from year to year?
- What if the employee has more than one cause to use funeral leave in the space of one year?
- How is funeral leave requested?
- Who has the authority to approve, extend, and/or question the use of funeral leave?

4. Paid time off (PTO)

There is a wide variety of reasons why employees need to be away from work periodically. Traditional paid vacation, sick leave and funeral leave programs are highly structured with many rules applied to their use. Such rules do not always provide the best "fit" for the circumstances of individual employees. In addition, the more kinds of leave a city provides, the more tracking the city must do regarding leave accrual and use. Finally, employees who rarely have a need for sick leave may feel as though employees using their sick leave and vacation leave are receiving a greater benefit.

Because of these issues, some cities choose to provide employees with one kind of paid leave to be used for any reason that an employee needs to be away from work. This kind of leave is often called "PTO" or "paid time off." A city with PTO would typically not offer vacation, sick or funeral leave. As with the other forms of paid leave, the parameters surrounding a PTO benefit should be clearly defined in the city's personnel policy.

- What leaves does PTO replace?
- Which employees qualify to earn PTO?
- How is PTO accrued?
- Is there any period of time during which an employee cannot use PTO?
- What is the maximum number of PTO hours that can be accrued?
- What happens if an employee reaches maximum accrual?
- When can PTO be used?
- For what reasons can PTO be used - for employee, for family, for fun, etc.?

RELEVANT LINKS:

- How do employees request to use PTO?
- Who has the authority to approve and/or question the use of PTO?
- Are there any circumstances under which the city would require an employee to use PTO?
- What about unplanned use of PTO versus planned uses?
- When might a medical certification or fitness for duty statement be required?
- Is PTO “use it or lose it” or is it paid out when an employee leaves?
- Can employees with high balances cash out some of their PTO hours?
- Can employees with high balances donate PTO hours to those with medical emergencies?
- Are there any rewards for not using PTO during the year?
- Will PTO hours count as “hours worked” for purposes of calculating overtime under the federal Fair Labor Standards Act?

5. Personal day

Some cities provide employees with one or more personal days per year. A common example of a personal day is an employee’s birthday. Personal days are usually in addition to other types of paid leave. Often employees are permitted to take advantage of these days with little or no advance notice to the city. Like other forms of paid leave, requirements surrounding these paid days away from work should be clearly defined.

- Which employees qualify to earn this leave?
- Is there any period of time during which an employee cannot use this leave?
- How is this leave accrued?
- How many personal days do qualified employees earn each year?
- If an employee does not use his/her personal day does it carry over into the next year?
- When can this leave be used?
- For what reasons can this leave be used?
- How do employees request to use a personal day?
- Who has the authority to approve and/or question the use of this benefit?
- Are there any circumstances under which the city would require an employee to use this leave?
- Is this benefit “use it or lose it” or is it paid out at any point?
- Will this paid time off count as “hours worked” for purposes of calculating overtime under the federal Fair Labor Standards Act?

RELEVANT LINKS:

[LMCIT Memorandum: Medical Related Leaves of Absence](#)

[U.S. Department of Labor
FMLA Information Memo](#)

[Wage & Hour Publication 1420](#)

[Department of Labor
FMLA Fact Sheet #28](#)

[Department of Labor
FMLA Form WH 381](#)

C. Medical Related Leaves

A variety of laws come into play when an employee is absent from work for medical reasons. These laws are not only complex, but in many situations may overlap. It is crucial that cities carefully evaluate leave requests and policies when considering how to handle a medical related leave for a city employee.

1. Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) permits certain employees to take up to 12 weeks of unpaid, job-protected leave per year. It also requires that the employee's group health benefits be maintained during the leave.

The FMLA applies to all public agencies. However, the fact that a city is covered by the FMLA does not mean that the city employees will necessarily qualify to use this protected leave. For example, if a city has 12 employees, no employee would qualify for FMLA leave because part of qualifying is working for an employer with 50 or more employees. The number of employees (fewer than 50) would prevent the employee from qualifying for the protections of FMLA.

Like many rules and regulations in human resources, cities can choose to be more generous than the FMLA requires. In other words, a city with fewer than 50 employees could choose to offer employees the protections of the FMLA even though that city is not legally required to do so. In the event that a city decides to offer FMLA leave as a benefit to employees, it is important to consider the precedent such an action might set, to develop a clear policy, and to take steps to ensure that the policy is administered in a fair and just manner. For more information on administering FMLA leave, please refer to the Compensation and Benefits Chapter of this manual.

a. Policy requirements

Even if the city has fewer than 50 employees, the U.S. Department of Labor requires the city to post a notice approved by the Secretary of Labor (WH Publication 1420) explaining employer and employee rights and responsibilities under FMLA.

Cities with 50 or more employees must also take the following steps to provide information to employees about FMLA:

- Include information about employee rights and obligations under FMLA in employee handbooks or other written material, including collective bargaining agreements; OR
- If handbooks or other written material do not exist, provide general written guidance about employee rights and obligations under FMLA whenever an employee requests leave (a copy of Fact Sheet #28 from the U.S. Department of Labor will fulfill this requirement – see link to the left).
- When an employee qualifies for FMLA leave, the city must provide a written notice designating the leave as FMLA leave and detailing specific expectations and obligations of the employee who is exercising his/her FMLA entitlements. The city may use the "Employer Response to Employee Request for Family or Medical Leave" (optional form **WH-381** from the U.S. Department of Labor – see link to the left) to meet this requirement. This notice should be provided to the employee within **one or two business days** after receiving the employee's notice of need for leave and must include specific information.

RELEVANT LINKS:

[Department of Labor](#)[FMLA Compliance Guide](#)**b. Policy considerations**

If a city has fewer than 50 employees (volunteer firefighters are usually included in the employee count for purposes of FMLA), no employees will qualify for FMLA leave. In this case the city may wish to develop some very limited FMLA policy language.

For those cities with 50 or more employees and for any city wanting to provide the benefits of FMLA leave even though not required due to employee numbers, it is important to develop a comprehensive FMLA policy. The following items should be addressed in such a policy:

- What is the Family and Medical Leave Act?
- How are the key qualifiers (e.g., caring, child, parent, serious health condition, etc.) defined?
- What protections are afforded employees under the FMLA?
- What circumstances are covered by FMLA?
- How does an employee qualify for FMLA leave?
- How long can an FMLA leave be?
- How is your city's FMLA year tracked (calendar year, rolling year, etc.)?
- How does an employee request FMLA leave?
- Who has the authority to approve or deny FMLA leave?
- How must the city respond to an employee's request for FMLA leave?
- Does the employee have any responsibilities following the granting of FMLA leave?
- Is the employee required to use paid leave (sick, vacation, PTO) during FMLA leave?
- If the employee goes on unpaid leave, what happens to employee benefits?
- What questions can the city ask before and during FMLA leave?
- Does the city require a fitness for duty certification before an employee out on FMLA can return to work?
- How does FMLA coordinate with other medical leaves of absence and/or other city leave policies?
- What are the entitlements/limitations regarding FMLA leave if both parents work for your city?
- For what reasons might an employee qualify to use intermittent leave under FMLA?
- What happens if an employee does not return after FMLA leave?

RELEVANT LINKS:

2. Parental leave (sick or injured child)

[Minnesota Statutes 181.9413](#)

State law requires employers, including cities, to grant an unpaid leave of absence to an employee who is a natural or adoptive parent in conjunction with the birth or adoption of a child. The length of the leave is determined by the employee, but may not exceed six weeks, unless agreed to by the city. In addition, the city must continue to make certain insurance coverage available to the employee on leave and any dependents. This requirement applies to employers with 21 or more employees.

When both the Family and Medical Leave Act (FMLA) and Parental Leave apply the leaves should run concurrently. It is important to note that Minnesota law, while ambiguous, seems to prohibit employers from requiring the use of sick leave for those six weeks designated as Parental Leave. The best practice to follow when an employee's situation is covered by both FMLA and Parental Leave is to be flexible: require/permit the employee to use paid leave according to the city's policies, but do not REQUIRE the use of sick leave for those six weeks designated as parental leave. For more information on coordinating Parental Leave and FMLA see the Compensation and Benefits Chapter of this manual.

3. Leave for bone marrow donation

[Minnesota Statutes 181.945](#)

An employer, including cities, must grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The length of the leave is determined by the employee, but may not exceed 40 work hours, unless agreed to by the city. The city may require a physician's verification of the purpose and length of each leave requested to donate bone marrow. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee prior to that medical determination is not forfeited. This requirement applies to employers with 20 or more employees.

4. Workers compensation

[Minnesota Statutes 176.021](#)

[Minnesota Department of Labor and Industry](#)

Minnesota law states that every employer is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment. The workers' compensation system provides employees with benefits if they become injured or ill from their job. It covers injuries or illnesses caused or made worse by work or the workplace. Workers' compensation benefits are paid regardless of any fault of either the employer or employee.

Workers' compensation laws do not address leave requirements. These laws address benefits, including medical expenses and wage loss that employees are entitled to for work related injuries.

[Evolution of a Workers Comp Claim](#)

[Compensating Employees on Workers' Comp Leave](#)

The city's workers' compensation carrier will make decisions regarding the appropriate length of benefits. **How long a city continues the employment of an individual out on workers' compensation leave is not a workers' compensation decision.** The city should decide each situation on a case-by-case basis, taking into account its obligations under other policies and laws (i.e., sick leave and paid time off policies, FMLA, ADA, etc.).

Some cities have workers' compensation information included in their general personnel policies. Other cities choose to include this information in a separate safety policy. Either way, workers' compensation policy considerations are as follows:

- Where has the city displayed the *Employee Rights and Responsibilities* poster,

RELEVANT LINKS:

[First Report of Injury](#)

[Minnesota Workers' Compensation System Employee Information Sheet](#)

(including the name of the city's workers' compensation insurer)?

- What must an employee do in the event of an on-the-job injury?
- Are actions in response to a minor injury clearly differentiated from those that will be necessary in the event of a major injury?
- What are the supervisor's responsibilities in the event of an injury in the workplace? (State law requires the employee's supervisor to complete the *First Report of Injury*. The employee who was injured is not responsible for completing the FROI.)
- Where does the supervisor obtain the *First Report of Injury Form* and the *Minnesota Workers' Compensation System Employee Information Sheet*? To whom does the supervisor submit the completed FROI?
- Does the city supplement workers' compensation with additional compensation such as injury on the job pay?
- How do the city's existing policies (e.g., sick leave, vacation leave, paid time off, etc.) interact with workers' compensation?
- How does the city coordinate workers' compensation with other state or federal laws (e.g., FMLA, ADA, etc.)?

5. Early return to work / modified duty

In general, promoting the early return to work of an employee who is absent due to an injury or illness is a good idea. This is especially true in cases of an on-the-job injury or work related illness where workers' compensation costs are incurred. The odds that an employee will be able to return to his/her regular job increase if the employee returns to work soon after an injury. In addition, the sooner an employee is able to return to work the less the city will have to pay in both direct and indirect disability costs (e.g., lost time, disability benefits, sick time, etc.).

Even though there are proven benefits to getting people back to work sooner rather than later, an early return to work is not always the right answer for the city or the employee. In some instances, an early return to work is simply not the right option due to the medical treatment necessary for an employee to fully recover. Offering an early return to work might not be an option in many smaller cities because one position is often responsible for so many duties.

Furthermore, case law indicates that a city might be taking a risk if it creates modified duty positions for every employee who requests one. This gives the impression that the city has unlimited capacity for modified duty assignments and could lead to a long term modified duty assignment being considered a reasonable accommodation under the Americans with Disabilities Act (ADA). Modified duty assignments should only be offered to an employee when there really is work to be done.

Policy considerations:

- What is the real purpose of the program? Such programs are typically geared for short-term, temporary, disability-type injuries or illnesses.
- Who will be responsible for coordinating the return to work program?
- Who has the final say on approving or denying a request for an early return to work?

RELEVANT LINKS:

- Who will determine job responsibilities during the restricted duty assignment?
- How is an employee to request an early return to work / restricted duty assignment? The best practice is to develop a form and require that it be used for all requests submitted through such a program
- Does the city’s policy clearly establish the city’s rights to:
 - ✓ Evaluate each request on a case by case basis
 - ✓ Request additional supporting documentation as needed
 - ✓ Require an independent medical exam
 - ✓ Re-evaluate arrangement on an ongoing basis
 - ✓ Discontinue arrangement at any time for any reason

D. Other Forms of Leave

1. School conferences leave

[Minnesota Statutes 181.9412](#)

An employer must grant an employee leave of up to 16 hours during any 12-month period to attend school conferences or school-related activities related to the employee's child, provided the conferences or school-related activities cannot be scheduled during non-work hours. This requirement applies to employers with 21 or more employees.

2. Military leave

[Military Leave Information Memo](#)
[ESGR - National Committee for Employer Support of the Guard and Reserve](#)
[Minnesota Statutes 192.26-192.261](#)

State and federal laws provide for and regulate military leave for employees who are called to military service, whether in the reserves or full-time service. These laws apply whether the employee is “called to duty” or volunteers for service. Leave from employment to participate in military duty is addressed in federal law in the Uniformed Services Employment & Re-employment Rights Act (USERRA - 38 USC Sections 4301-4333). Public employees in Minnesota engaged in military service have additional benefits under Minnesota Statutes 192.26-192.261.

3. Jury duty / witness called by court

[Minnesota Statutes 593.50](#)

All cities are required to provide employees with time away from work for jury duty. Requirements for compensating an employee on jury duty vary depending upon the status (exempt or non-exempt under the federal Fair Labor Standards Act – FLSA) of the employee called to jury duty.

[29 CFR 541.602\(b\)\(3\)](#)

The FLSA requires employers to compensate exempt employees who are away from work for jury duty. However, the city may offset any amounts received by an employee as jury fees for a particular week against the salary due for that particular week without risking the employee’s FLSA exemption. No such requirement exists for non-exempt employees.

RELEVANT LINKS:

4. Victim or Witness Leave[Minnesota Statutes 611A.036](#)

An employer must allow a victim or witness, who is subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, reasonable time off from work to attend criminal proceedings related to the victim's case.

5. Voting[Minnesota Statutes 204C.04](#)

Every employee who is eligible to vote in an election has the right to be absent from work to vote during the morning of the day of the election. The city cannot implement any penalty or deduction from salary or wages because of such absence.

6. Emergencies / inclement weather

Often, city facilities remain open even during adverse weather conditions. It is a good practice, however, to enable employees to use their own judgment in evaluating weather and road conditions when deciding whether to report to work (or leave early).

The city's policy should specifically note any employees who will be required to report to work regardless of weather conditions. This requirement typically includes police officers and public work maintenance (snow plow drivers).

This policy should also address the procedure for cancelling city programs or meetings in the event of adverse weather conditions.

E. Leave Without Pay (LWOP)

There are a number of reasons why a city might wish to provide employees with the option of approved time away from work without pay or "leave without pay" (LWOP). It is most commonly used in situations where a long-term medical leave is necessary. For example: An employee is out on medical leave. Her FMLA protection and paid leave have run out. However, the treating physician has indicated that she can come back to work in two weeks with no restrictions. Terminating an employee in this situation is probably not in the city's best interest, nor is compensating that person for work she is not doing. In this scenario permitting the employee to take two weeks of LWOP would probably be in the best interest of both parties.

Policy considerations:

- For what reasons might leave without pay be considered?
- Are the qualifications for LWOP across the board or will they be considered on a case by case basis?
- Does all of the employee's paid leave have to be depleted before an employee can qualify for LWOP?
- How does an employee request LWOP?
- Who has the authority to approve, extend, or deny LWOP?
- What are the time limitations on LWOP?

RELEVANT LINKS:

- Do benefits continue to accrue while an employee is out on LWOP?
- At what point(s) is an employee's approved LWOP situation re-evaluated?
- Is there a maximum amount of time that an employee can use LWOP?