

CONNECTING & INNOVATING SINCE 1913

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HUMAN RESOURCES & BENEFITS INFORMATION FAMILY AND MEDICAL LEAVE ACT

The Family & Medical Leave Act (FMLA; 29 U.S.C.A. § 2601-54 and 29 C.F.R. §825.100 et. Seq.) requires covered employers to provide up to 12 weeks of unpaid leave to eligible employees for reasons relating to family and medical care.

Effective January 28, 2008, the National Defense Authorization Act (NDAA) amends FMLA to also permit an eligible employee to take up to 26 workweeks of leave during a 12-month period to care for a servicemember who has suffered a serious injury or illness and who is the employees spouse, son, daughter, parent or "next of kin".

The NDAA also permits an employee to take FMLA leave for "any qualifying exigency (as determined by the Secretary of Labor) arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty or called to active duty in the Armed Forces in support of a contingency operation".

On October 28, 2009, the NDAA for 2010, included amendments that expanded military family leave provisions that were added to FMLA in 2008. These expansions further define "covered active duty", "covered servicemember" and "serious injury or illness".

Covered Employers

All public agencies are covered. However, employees still need to meet eligibility requirements.

Eligible Uses

To be eligible, an employee must:

- ✓ Have worked for the City for at least 12 months;
- ✓ Worked at least 1,250 hours during the 12 months preceding the start of the leave; and
- ✓ Be employed at a worksite with 50 or more employees within 75 miles of that worksite (elected officials are not counted; volunteer firefighters are generally included).

Eligibility Requirements

Eligible employees can take up to 12 workweeks of unpaid leave during a 12 month period for:

- ✓ Care for a newborn or a newly adopted child or a newly-placed foster child;
- ✓ Care for a spouse, son, daughter or parent with a serious health condition;
- ✓ Care for themselves during a serious health condition;
- ✓ Any exigency arising out of the spouse, son, daughter or parent being called to "covered active duty" in the Armed Forces.

- For members of a regular component of the Armed Forces, "covered active duty" means duty during deployment with the Armed Forces to a foreign country.
- For members of a reserve component of the Armed Forces (e.g. National Guard or Reserves), "covered active duty" means duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

Eligible employees can take up to 26 workweeks of unpaid leave during a 12 month period to:

- ✓ Care for a spouse, son, daughter, parent or "next of kin", who is a covered servicemember, with a serious injury or illness.
 - A "covered servicemember" means 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 on the temporary disability retired list, for a serious injury or illness.
 - In 2010, "covered servicemember" was expanded to include a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the 5 years preceding the date in which the veteran undergoes that medical treatment, recuperation, or therapy".

During a single 12-month period, an eligible employee shall be entitled to a combined total leave of 26 workweeks for leave that falls under the general FMLA requirements and for leave under the servicemember family leave requirements.

Serious health conditions

These include:

- ✓ An illness, injury, impairment or physical or mental condition that involves either inpatient care (overnight stay in a hospital, hospice or residential care facility), or continuing treatment by a health care provider for three or more consecutive days;
- ✓ Any period of incapacity because of pregnancy or prenatal care (even without treatment by a health care provider and even if the absence is less than three days; e.g., morning sickness);
- ✓ Any period of incapacity because of chronic serious condition (even without treatment by a health care provider and even if the absence is less than three days, e.g., an asthma attack).
- ✓ Any period of absence to receive multiple treatments by health care providers for reconstructive surgery after an accident or injury, or for a condition that would likely result in a period of incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Serious injury or illness of servicemembers

A serious injury or illness of a servicemember includes:

- ✓ An injury or illness incurred by a member of the Armed Forces while in the line of duty; or
- ✓ A serious injury or illness that existed before the beginning of the member's active duty and was aggravated while in the line of duty which may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Medical Certification

The city may require the employee to document the need for the leave by providing a certification issued by a health care provider. The city must allow the employee 15 calendar days to obtain the medical certification.

Health Care Providers

Generally, these include: doctors of medicine or osteopathy; podiatrists, dentists, clinical psychologists, optometrists, chiropractors (within certain limitations), nurse practitioners, nurse-midwives, clinical social workers (within certain limitations). A few other providers are listed under the law, but will be used in rare circumstances.

Intermittent/Reduced Schedule Leave

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

Substitution of Paid Leave

Employees may choose to use or cities may require the employee to use accrued paid leave to cover some or all of the FMLA leave taken. Use of accrued sick leave is limited by the city's policy governing the use of sick leave.

Job Restoration Requirement

When an employee returns from FMLA leave, the city must "restore" the employee's original job or an "equivalent" job, which means virtually identical to the original job in terms of pay, benefits and other employment terms and conditions.

Requirement to Maintain Health Benefits

The city must keep the employee on its health insurance coverage, including family coverage, and continue to pay the city's share of the coverage as if the employee were still at work. The employee must pay his or her share of the premium. The city may cancel coverage if the employee's premium payment is more than 30 days late and the city has given the employee written notice at least 15 days in advance advising that coverage is going to be canceled if the premium is not received.

Other Benefits

Other benefits, including cash payments chosen by the employee instead of group health insurance coverage do not have to be maintained during periods of unpaid FMLA leave. Vacation, sick leave or other types of paid leave do not have to accrue during unpaid FMLA leave if they would not accrue on other types of unpaid leave.

Since the employee must be restored to his or her original benefits upon return from FMLA leave, it may be easiest for the city to simply maintain life insurance and other non-health insurance coverage benefits as well during the period of FMLA leave. This will avoid any problems restoring the employee's insurance benefits upon his/her return.

Minnesota Parental Leave Law (MN Statutes 181.941)

This law also provides job and benefit protection for a qualified employee's absence after the birth or adoption of a child. When both FMLA and Parental Leave apply the leaves should run concurrently. It is important to note that Minnesota law prohibits 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 and do not require the use of sick leave for those 6 weeks designated as parental leave.

Notice Requirements

The city must:

- 1. Post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA (call Dept. of Labor, (612) 370-3371 to get a copy);
- 2. Include information about employee rights and obligations under FMLA in employee handbooks or other written material, including union contracts, or at time of leave request if these written materials do not exist; AND
- 3. Provide a written notice designating the leave as FMLA leave and explaining specific expectations and obligations of the employee within two business days after receiving the employee's notice of need for leave. The law lists specific items that must be included.

If you have any additional questions, please contact the LMC HR & Benefits Department at 651-281-1200.

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