

City of Urbandale Family Medical Leave Act (FMLA) Policy

Adoption Date: June 15, 2007

Most Recent Update: June 14, 2011

A. Eligibility

The **Family Medical Leave Act** (FMLA) is a federal law that provides eligible employees the right to take a leave of absence for family or medical reasons while maintaining job protection. In order to qualify for FMLA leave an employee must meet all of the following conditions:

1. worked for the City at least twelve (12) months cumulatively and have worked at least 1,250 hours during the twelve (12) month period preceding the date the Family Medical Leave is to begin; and
2. have a qualifying reason for taking Family Medical Leave as defined below; and
3. have a remaining balance of Family Medical Leave (as defined under "Leave Entitlement").

B. Qualifying Event

In accordance with the FMLA, the City will grant job protected family medical leave to eligible employees for any one of the following reasons:

1. the birth of the employee's child or care of such newborn child (leave must conclude within twelve months after the birth);
2. the placement of a child with the employee for adoption or foster care (leave must conclude within twelve months after the placement);
3. the care of the employee's spouse, child or parent who has a serious health condition;
4. the employee's own serious health condition that prevents him/her from performing one or more of the essential functions of his/her position.
5. Qualifying Exigency Leave – leave because of a qualifying exigency arising out of the fact that a "covered military member" is on active duty in a foreign country or has been notified of an impending call to active duty status in a foreign country.
6. Military Caregiver Leave – leave to care for a "covered servicemember" with a "serious injury or illness."

C. Definitions

1. "Serious Health Condition" - defined by the Department of Labor and will, generally, mean an illness, injury, impairment, or physical or mental condition which involves either:
 - Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e. inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
 - Continuing treatment by a health care provider, which includes:

2. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - Treatment two or more times by or under the supervision of a health care provider (i.e. in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - One treatment by a health care provider (i.e. an in-person visit with within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g. prescription medication, physical therapy); **or**
 3. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
 4. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**
 5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
 6. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.
7. “Incapacity” – the inability to work, attend school or perform other regular daily activities due to the serious health condition or due to the treatment of or recovery from the serious health condition.
 8. “Spouse” – an individual who is a husband or wife pursuant to a marriage that is a legal union including common law marriage in States where it is recognized.
 9. “Child” – a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*. The definition of child is limited to children under the age of 18 or 18 years of age or older and incapable of self-care because of a mental or physical disability.
 10. “In Loco Parentis” – Persons who are *in loco parentis* include those with day-to-day responsibilities to care for or financially support a child. Examples of *in loco parentis* include:
 - A grandfather taking leave to care for a grandchild whom he has assumed ongoing responsibility for raising if the child has a serious health condition.
 - An aunt who assumes responsibility for caring for a child after the death of the child’s parents may take leave to care for the child if the child has a serious health condition.
 - A person who will co-parent a same-sex partner’s biological child may take leave for the birth of the child and for bonding.
 11. “Parent” – a biological, adoptive, step, or foster parent, or an individual who stood *in loco parentis* to an employee when the employee was a child. An employee’s parents-in-law are not included in the definition of “parent” for purposes of FMLA leave. Examples of *in loco parentis* in this case include:
 - An employee taking leave to care for his aunt with a serious health condition if the aunt was responsible for his day-to-day care when he was a child.
 - An employee taking leave to care for her grandmother with a serious health condition if the grandmother assumed responsibility for raising the employee after the death of her parents when the employee was a child.

- An employee who was raised by same-sex parents, only one of whom has a biological or legal connection with the child, may take leave to care for the non-adoptive or non-biological parent on the basis of an *in loco parentis* relationship

Unless an *in loco parentis* relationship existed when the employee was a child, an employee is not entitled to take FMLA leave to care for a grandparent, an aunt, or another non-covered relative with a serious health condition.

12. “Qualifying exigency leave” – There is a list of qualifying exigencies that encompass a wide range of specific activities in the following broad categories. Contact the Director of Human Resources for more information.
 - Short notice deployment
 - Military events and related activities
 - Childcare and school activities
 - Financial and legal arrangements
 - Counseling
 - Rest and recuperation
 - Post-deployment activities
 - Additional activities

13. “Covered military member” – an employee’s spouse, son, daughter, or parent who is on active duty or call to active duty status in a foreign country. “Son or daughter” in this case is defined as the employee’s biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood *in loco parentis*, who is on active duty or call to active duty status in a foreign country, and who is of any age. “Parent” in this case is defined as a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a son or daughter. This does not include parents “in law.”

14. “Active duty or call to active duty status” – refers to a member of any branch of the Armed Forces, including the National Guard or Reserves, who is under a call or order to active duty (or has been notified of an impending call or order to active duty) in a foreign country.

15. “Covered servicemember” – A spouse, son, daughter, parent, or next of kin of a current 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 is otherwise on the temporary disability retired list, for a “serious injury or illness incurred in the line of duty on active duty.”

16. “Serious injury or illness incurred in the line of duty on active duty” – any injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

17. “Next of Kin” for purposes of military caregiver leave – The servicemember’s nearest blood relative, other than the covered servicemember’s spouse, parent, son, or daughter, in order of priority. Contact the Director of Human Resources for more information.

E. Leave Entitlement

1. In most cases, an eligible employee is entitled to up to 12 weeks in a 12-month rolling period which looks backward to the 12-month period ending on the date an employee

uses any FMLA leave. That is, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

2. For Military Caregiver leave, when the eligible employee is a spouse, child, parent or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness, they will be entitled to up to a total of 26 workweeks of unpaid leave during a single 12-month period to care for the servicemember. *During a single 12-month period, an eligible employee shall be entitled to a combined total of 26 weeks of leave for reasons under "Qualifying Event," only 12 of which may be for FMLA qualifying reasons other than to care for a covered servicemember.*
3. Although not required by law, when both husband and wife work for the City and both wish to take leave, they are each entitled to the full FMLA entitlement (either 12 or 26 workweeks, depending on the reason) for the qualifying reasons stated in the "Qualifying Event" section.
4. Under some circumstances, employees may take FMLA leave *intermittently* – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual week or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the City's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave or a reduced schedule is subject to the City's approval.
5. When medically necessary, the schedule of leave may be continuous, intermittent (periodic) or a reduced work schedule of partial days or weeks, whereby only the absence may be covered by FMLA leave.
6. If any employee knows that his/her leave will extend beyond the twelve weeks allowed by Federal law, he/she should request an extension at the time the FMLA request is filed.

F. Notice Requirement

Eligible employees are required to give 30 days notice in the event of a foreseeable leave. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known.

G. Certification Requirements

1. For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Certification of Health Care Provider Form" to Human Resources within fifteen (15) calendar days following the City's request, or as soon as is reasonably possible.
2. An employee may be required to submit subsequent recertifications no more frequently than every thirty (30) calendar days, unless an extension or modification is required; changed circumstances occur regarding the serious health condition; or information arises that questions the validity of the earlier certification.

3. In the case of the employee's own serious health condition, the employee may be required, on or before the date he/she returns to work, to provide a certification from a health care provider confirming the employee is able to return to work and perform the essential functions of his/her position.
4. An employee's FMLA leave or return to work may be delayed or denied if the appropriate documentation is not provided in a timely manner. Failure to provide requested documentation of the reason for an absence from work may lead to disciplinary action, up to and including termination of employment.
5. If an employee qualifies for FMLA and is absent because of his or her own health condition for more than three consecutive working days, the City becomes aware that the employee has been hospitalized, or otherwise has received enough information to reasonably determine that the leave is FMLA qualifying, the City may designate that leave as FMLA.
6. When the employee provides a certification which is incomplete or insufficient and the City provides the employee with notice and an opportunity to cure the deficiency, the employee will have seven (7) calendar days to cure the deficiency with a resubmitted certification. Where an employee fails to timely cure a deficiency, FMLA leave may be denied, in which case time off work may be considered unexcused absences subjecting the employee to discipline up to and including termination of employment.
7. The City may obtain clarification and authentication of certifications.
8. Annual certifications may also be subject to second and third opinions.
9. All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in a file separate from other personnel records.
10. At all times, FMLA leave for the employee's or a family member's serious health condition is subject to the certification process. Any absences and time off work which are not covered by FMLA (for example, when an employee fails to provide timely certification, fails to timely cure a deficiency in a certification, fails to allow clarification of a certification, where absences and time off work prior to and during the certification process are later determined to not be covered by FMLA, etc.) may be considered unexcused absences and/or misconduct, and may result in disciplinary action up to and including termination of employment depending on the circumstances. Similarly, an employee's failure to cooperate or comply with the recertification or fitness for duty certification process can result in absences not covered by FMLA, which may result in unexcused absences, and/or may be considered misconduct, which may result in disciplinary action up to and including termination of employment.

H. Use of Paid and Unpaid Leave

1. If the employee has accrued paid leave (i.e. sick, vacation, compensatory time or personal days,) the employee must use sick leave first, then paid vacation, personal days, and/or compensatory time. Unpaid leave may only be taken after all accrued time (sick, vacation, personal and compensatory time) has been exhausted.
2. Both paid and unpaid leave will be counted toward the maximum FMLA entitlement. This means that an employee is not entitled to 12 (or 26) weeks of unpaid leave in

addition to any paid leave taken under FMLA. The employee must notify their supervisor when they are absent for an FMLA qualifying reason so the time can be tracked appropriately.

I. Injury Leave and Workers' Compensation

When an employee is on injury leave and/or workers' compensation leave, such leave will be designated concurrently as FMLA leave when the employee's condition is qualifying under the FMLA.

J. Effects on Benefits – Insurance

1. The City will continue to pay the employer's portion of the group health, dental, vision, life and LTD coverage premiums for the duration of the FMLA leave for covered employees. If applicable, premiums will automatically be deducted from the employee's paycheck as long as the leave is paid.
2. During the weeks of unpaid leave, the employee will be required to pay his/her portion of all benefit premiums (medical, dental, vision, life, long term disability, etc. as appropriate) by the first of the month each month the premiums would have been deducted or paid.
3. If the employee's portion of the premium payment is more than thirty (30) days overdue, the City may cease to maintain the employee's insurance benefits. Employees may seek reinstatement when they return to duty, with qualifications outlined in the Plan Document.
4. If the City pays the employees contributions missed by the employee while on leave, the employee will be required to reimburse the City for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement authorizing the payroll deduction for delinquent payments.

K. Effects on Benefits – Benefit Accruals

1. While an employee is on paid leave the City will continue to provide benefit accruals consistent with City policy. The City will provide for paid holiday(s) during FMLA leave.
2. An employee is not entitled to accrual of sick leave or vacation during period of unpaid leave but will not lose sick leave, vacation or seniority accrued prior to leave. Seniority will continue to accrue during periods of unpaid leave up to 60 days.

L. Outside Employment

An employee may not seek or perform outside employment while on FMLA leave without the approval of the City Manager.

M. Return from Leave

1. While on leave, the employees are required to report to their respective Department Directors should the status of their leave request change.
2. If the employee returns to work following FMLA leave, he/she will be entitled to return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skills, effort, responsibility and authority. An employee is entitled to reinstatement only if he/she would have continued to be employed had the FMLA leave not been taken. However, if the employee is unable to perform an essential function of the position because of a

physical or mental condition, including the continuation of a serious health condition, the employee is not guaranteed reinstatement except as may be required by applicable law.

3. If the employee does not return to work following the conclusion of the FMLA leave, the employee will be considered to have voluntarily resigned.

N. Additional Information

The City is the sole administrator of this policy and, as such, is the exclusive interpreter of its terms. The City reserves the right to modify this policy at any time.

All provisions of this policy shall be interpreted consistent with the Family and Medical Leave Act of 1993, as amended.

This policy is not a contract and, except where expressly indicated, is not intended to create any rights greater than those conferred on employees by the Family and Medical Leave Act of 1993, as amended.

The existence of this policy does not create or confer any FMLA rights if FMLA does not apply due to any eligibility criteria. The existence of this policy shall not be relied on to determine whether an employee is entitled to FMLA leave. The presence of FMLA posters in the workplace shall not be relied on to determine whether an employee is entitled to FMLA leave. The applicability of FMLA, and the availability of FMLA leave at any given time, shall only be determined by the City's Director of Human Resources or other designated employer representative authorized by the employer to make FMLA determinations.

A fact sheet about the Family Medical Leave Act, authored by the Department of Labor, is attached to this Policy.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees 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 the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

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 support 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.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember 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 servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

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

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by 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 incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

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.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

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 an employer's normal call-in procedures.

Employees must provide sufficient information for the employer 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. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



U.S. Wage and Hour Division

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WHD Publication 1420 Revised January 2009