



FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

References:

U.S. Department of Labor, Wage and Hour Division
Health Insurance Portability and Accountability Act of 1996
29 Code of Federal Regulations (CFR) §§ 825.100, et seq.
U.S. Code, Title 29, Chapter 28 §§ 2601, et seq.
City of Detroit Charter
City of Detroit Civil Service Rules

PREAMBLE:

The Family and Medical Leave Act (FMLA) of 1993 was signed into law by U.S. President Clinton. The FMLA is administered by the Wage and Hour Division of the United State Department of Labor. The two core requirements of FMLA are: (1) entitlement to leave and (2) guarantee of employment upon expiration of an eligible leave.

PURPOSE:

The Family and Medical Leave Act (FMLA) provides eligible employees the opportunity to take job-protected leave for specific reasons. The FMLA seeks to accomplish this in a manner that meets the needs of employers while protecting the rights of employees to take leave for qualifying events.

SCOPE:

This policy applies to all City of Detroit Departments or Agencies and its employees. Employee eligibility is determined by the provisions of the FMLA which require at least twelve (12) months of service and that the employee has worked at least 1,250 hours within the previous twelve (12) months prior to the employee's need for leave.

In addition to classified employees, the City has elected to extend FMLA coverage for non-classified policy-making level appointees in "key" positions throughout the City. The conditions and duration of the appointees' employment remain subject to the City Charter, HR Rules and HR Regulations. Independent Contractors are not covered by the provisions of the FMLA. Elected officials are specifically excluded from coverage under the FMLA.

Employees deemed not eligible for FMLA should contact the HR Department Employee Services Division for additional information.



POLICY:

A. ELIGIBILITY REQUIREMENTS:

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 weeks of unpaid leave for certain family, military caregiver or exigency and medical reasons during a 12 month period. FMLA leaves may be taken for any one, or for a combination, of the following reasons:

- ***Employee’s own serious health condition which prevents the employee from working;***
- ***For the birth and care of the newborn child of an employee;***
- ***For placement with the employee of a child for adoption or foster care;***
- ***Care of a spouse, child, parent with a serious health condition;***

The FMLA also provides specific provisions for military-related leave:

- ***Military Exigency Leave*** – allows eligible employees, who have a spouse, son or daughter, or parent in the National Guard or Reserves, to take FMLA leave due to a qualifying exigency resulting from the covered family member’s active military duty – or called to active duty status – in support of a contingency operation.
- ***Military Caregiver Leave*** – allows eligible employees to take FMLA to care for the service member when:
 - The employee is the spouse, son or daughter, parent or next kin of a service member in the Regular Armed Forces, National Guard or Reserves and;
 - The service member has incurred a serious injury or illness in the line of duty while on active duty.

The maximum amount of Military Caregiver Leave is twenty-six (26) weeks in a single twelve (12) month period on a covered service member per injury/illness basis measured forward from the first date of said leave.

B. CITY OF DETROIT FMLA PERIOD

Eligible employees may be off of work up to twelve (12) or twenty-six (26) work weeks (military caregiver or exigency only) for FMLA purposes in each 12 month period. The twelve (12) month period is defined as the twelve (12) months beginning on the first day of the City’s fiscal year - July 1st.

Employees are entitled to take FMLA leave on a continuous basis or on an intermittent (reduced) leave schedule. If so, it may be necessary to determine hourly equivalents. A “week” is equal to the number of straight time hours the employee is normally scheduled to work or be paid in a work week. The full allotment would be the number of hours, times the number of eligible weeks. For days or part of days off work for FMLA purposes, only the scheduled hours off work can be counted against the employee’s FMLA allotment.



Absences from work due to an exercise of an employee's rights under the FMLA shall not be used against an employee. In addition, absences from work due to an intermittent leave schedule will not be considered in an employee's attendance record for disciplinary, promotional or performance evaluation purposes. An employee has a right to return to the same or equivalent position after the leave.

C. NOTICE TO EMPLOYER

Employees must provide 30 days advance notice of the need to take FMLA when the need is foreseeable. When a 30-day notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide notice of the need for leave as soon as practicable under the facts and circumstances of the particular case. In addition, employee must comply with the City of Detroit's normal call-in procedures.

Employees must also inform the City of Detroit if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees may also be required to provide periodic re-certifications supporting the need for the leave.

In certain cases, leave may be taken on an intermittent basis or the employee may work a reduced schedule. Intermittent leave must be necessary and should be scheduled to avoid disruption insofar as is reasonable.

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

D. NOTICE TO EMPLOYEE

The City of Detroit is required to inform employees requesting leave of their eligibility within 5 days of the date of the employee's request for leave. Upon receipt and review of requested supporting documentation, the City's Human Resources Department will notify the employee in writing if their request is approved or denied via Designation Notice.

E. MEDICAL CERTIFICATION

It is the employee's responsibility to provide a timely, complete and sufficient medical certification. Employees must provide medical certification within 15 calendar days after an FMLA has been requested. The City of Detroit will notify employees if the medical certification is incomplete or insufficient and will provide the employee 7 calendar days to correct any deficiencies. The City may also require a second opinion, by an independent health care provider of its choice. If the two opinions conflict; the Employer may pay for a third and final binding medical opinion from a health care provider approved by both the Employer and Employee.



In accordance with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, Human Resources staff may contact an employee's health care provider for authentication or clarification of the medical certification.

If an employee chooses not to provide authorization to clarify or authenticate certifications with their health care provider, the FMLA leave may be denied.

F. MEDICAL RE-CERTIFICATIONS

Medical certifications may be requested once every 30 days if FMLA time was used within a thirty (30) day period. Employees will be given at least 15 calendar days to provide medical recertification.

G. CERTIFICATIONS SUPPORTING NEED FOR MILITARY FAMILY LEAVE

Employees requesting leave due to a qualifying exigencies arising out of active duty or call to active duty status of a covered military member are required to provide the following:

- A copy of the covered military member's active duty orders or other documentation issued by the military indicating that the covered military member is on active duty or call to active duty status and the dates of the covered military member's active duty service;
- A certification setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of a new active duty order or other documentation issued by the military for leaves due to qualifying exigencies arising out of a different active duty or call to active duty status of the same or a different covered military member.

H. RETURN TO WORK/FITNESS FOR DUTY MEDICAL CERTIFICATIONS

An employee returning to work from FMLA due to their own serious health condition shall provide a medical certification confirming they are able to return to work and the employee's ability to perform the essential functions of the returning position, with or without reasonable accommodations.

I. NOTICE OF ELIGIBILITY

The City will provide written notification of FMLA eligibility within 5 days of receiving the employee's FMLA request. The written notice shall specify the employee's rights and responsibilities; if the leave is designated as FMLA qualifying, conditional or non-qualifying; the amount of leave, if known, that will be counted against the employee's leave entitlement; and their rights and responsibilities in associated with the leave.

If an employee is deemed not eligible for FMLA, the City shall provide a reason for the denial.



J. FMLA DESIGNATION BY THE CITY OF DETROIT

FMLA designation arises whenever the employee requests time off work for a FMLA qualifying leave. The employee does not have to specifically cite the FMLA in order to be entitled to his/her rights under the Act.

Whether or not the employee cites the FMLA, the City of Detroit can designate the time off as FMLA time and notify the employee in writing of this designation and the leave will be counted as FMLA.

K. PAID/UNPAID LEAVE

The City of Detroit may designate time off for a qualifying condition as a FMLA leave. Additionally, the City requires that employees with an approved or designated FMLA use their accrued time-off banks during the leave period.

- a. FMLA Personal - Employees who are approved for either a continuous or intermittent FMLA Personal leave are required to use and completely exhaust all sick banks, accrued vacation and other comparable time-off banks prior to placement on an unpaid leave of absence. A cascading order will be utilized when decrementing the employee's available time off banks. (See Appendix A)
- b. FMLA Family - Employees who are approved for either continuous or intermittent FMLA Family leave are required to use three (3) sick days and exhaust all vacation and other comparable time-off banks prior to placement on an unpaid leave of absence. A cascading order will be utilized when decrementing the employee's available time off banks. (See Appendix A)

L. FMLA AND CITY LEAVE POLICIES

Civil Service Rule 14 provides information on existing leaves of absence policies and procedures. City policies and practices remain in effect with modifications necessitated by the FMLA to ensure continued compliance with the law.

Employees who are on a paid FMLA leave, though still considered "Active", will be reflected as being on a Leave of Absence in the City's HR Information Systems (HRIS).

An employee requesting time off for a FMLA-qualifying purpose cannot "waive" their right to a FMLA-designated leave and apply instead for a health or personal leave, e.g., forgo a 12-week FMLA leave for "parenting" purposes and instead request a 6 month personal leave.

Any and all FMLA leaves will run concurrent with a Medical Leave of Absence.



M. HEALTH CARE BENEFITS AND PREMIUM SHARING

Pursuant to the provisions of the FMLA, an eligible employee who currently has health care benefits and is off work on paid or unpaid leave for purposes under the FMLA, is entitled to have his/her health care benefits continued during the period of absence in the same manner as if he/she were actively employed. This includes hospital, medical, dental, vision, and prescription drug programs. The employee must continue to make any premium sharing payments while on unpaid leave. Failure to make such payments will result in a discontinuance of health insurance.

Employees may elect not to have his/her care benefits continued while on an unpaid leave for FMLA purposes. Such an election must be in writing and signed by the employee. For employees on Workers' Compensation, the City of Detroit will provide health care coverage during any period of time the employee is supplementing from his/her sick banks. For employees who are unable to supplement from their sick banks the City provides health care benefits in accordance with applicable law and contractual agreement(s).

N. WORKER'S COMPENSATION, LTD, SICKNESS AND ACCIDENT (S&A)

If an employee is on an approved Worker's Compensation Leave of Absence due to an on the job injury or illness, which also qualifies as a serious health condition under the FMLA, the Worker's Compensation absence and FMLA leave may run concurrently. The FMLA designation will not affect the employee receiving Worker's Compensation benefits.

Similarly, any employee on S&A or Long-term Disability which qualifies as a serious health condition under the law will run FMLA leave concurrently with their short-term and long-term disability.

The time will be designated as FMLA and will count against an employee's FMLA allotment with the notice of action to the employee.

O. NO WORK WHILE ON LEAVE

An employee shall not take another job while on FMLA or any other authorized leave of absence. This will be considered grounds for immediate termination, to the extent permitted by law.



CONCLUSION

The City of Detroit is committed to complying with all federal regulations pertaining to the Family and Medical Leave Act (FMLA). For information relative to leave of absences that may arise when FMLA has been exhausted or an employee is deemed ineligible, employees should contact the Human Resources Department. Any questions relative to this FMLA policy or if an employee believes his/her rights has been violated, please contact the Human Resources Department Employees Services Division.

Attachments:

Appendix A: Time-off Banks Order of Cascade for Paid FMLA

Appendix B: Summary of Policy Changes for Rev. 6 - 10.22.18

Appendix C: Link to U.S. DOL, FMLA Employee Guide

<https://www.dol.gov/whd/fmla/employeeguide.htm>

(hold "Ctrl" button and press "Enter" to open the hyperlink)

Policy Enacted: 1997

Rev. 1- 4/1998

Rev. 2- 2/2007

Rev. 3- 9/2010

Rev. 4- 7/2013

Rev. 5- 10/2013

Rev. 6- 10/2018



FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY
(APPENDIX A)
CASCADING ORDER FOR TIME-OFF BANKS

FMLA PERSONAL - (CONTINUOUS & INTERMITTENT)

When a City of Detroit employee elects to receive payment for an approved **FMLA - Personal leave (Continuous and Intermittent)**, paid time will be deducted from the employee's bank in the following cascading order. Once the highest bank is depleted, the hours from the next bank will be used.

All City of Detroit departments and agencies will use this cascade. Therefore, only the time-off banks associated with the employee's job, bargaining unit and department will apply. For example: A general City employee must exhaust all Sick banks prior to using Vacation time. Likewise, an employee at DDOT who does not accrue Sick or Vacation time will be paid from their CLD bank until exhausted before the cascade will flow to the CLT.

- FMLA - Prior Sick
- FMLA - Reserve Sick
- FMLA - Sick
- FMLA - Swing Holiday
- FMLA - Floating Holiday
- FMLA - Must Use Vacation
- FMLA - Bonus Vacation
- FMLA - Bonus Furlough
- FMLA - Extra Furlough
- FMLA - Prior Furlough
- FMLA - Furlough
- FMLA - Vacation
- FMLA - Must Use Comp time
- FMLA - Comp Time
- FMLA - CLD
- FMLA - CLT
- FMLA - Unpaid



FMLA FAMILY - (CONTINUOUS & INTERMITTENT)

When a City of Detroit employee elects to receive payment for an approved **FMLA - Family leave (Continuous and Intermittent)**, paid time will be deducted from the employee's bank in the following cascading order. Once the highest bank is depleted, the hours from the next bank will be used.

All City of Detroit departments and agencies will use this cascade. Therefore, only the time-off banks associated with the employee's job, bargaining unit and department will apply. For example: A general City employee must exhaust all Sick banks prior to using Vacation time. Likewise, an employee at DDOT who does not accrue Sick or Vacation time will be paid from their CLD bank until exhausted before cascading to their CLT bank.

- FMLA - Family Sick Prior
- FMLA - Family Sick Reserve
- FMLA - Family Sick *Note: An employee on FMLA Continuous Family will only be allowed 3 days of sick leave*
- FMLA - Swing Holiday
- FMLA - Floating Holiday
- FMLA - Must Use Vacation
- FMLA - Bonus Vacation
- FMLA - Bonus Furlough
- FMLA - Extra Furlough
- FMLA - Prior Furlough
- FMLA - Furlough
- FMLA - Vacation
- FMLA - Must Use Comp time
- FMLA - Comp Time
- FMLA - CLD
- FMLA - CLT
- FMLA - Unpaid



FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY
(APPENDIX B)
SUMMARY OF POLICY CHANGES & POLICY HIGHLIGHTS
Rev. 6 - 10.22.2018

Appendix B is intended to identify revisions made to the FMLA Policy. This is not intended to substitute, amend, or otherwise alter the approved Rev. 6 of the FMLA Policy.

SECTION B. CITY OF DETROIT FMLA PERIOD

- On May 1, 2018 the City of Detroit Human Resources Department issued a Change in FMLA Calendar Notification. Effective July 1, 2018, all FMLA counters were re-set and will re-set every July 1st thereafter until further notice.

SECTION C. NOTICE TO EMPLOYER

- Employees who are approved for FMLA leave on an intermittent basis or reduced schedule, insofar as is reasonable, should schedule their time off in a manner that avoids disruption.
- Employees must provide 30 days advance notice of the need to take FMLA when the need is foreseeable. Otherwise, employees must provide notice as soon as possible.
- Employees on an approved FMLA must comply with the City of Detroit's normal call-in procedures.

SECTION K. PAID/UNPAID LEAVE

- The City may designate time off for a qualifying condition as FMLA leave. The City requires that employees with an approved or designated FMLA exhaust all of their accrued time-off banks prior to placement on an unpaid leave of absence. A cascading order is utilized when decrementing the employee's available time off banks. (See Appendix A)

SECTION L. FMLA AND CITY LEAVE POLICIES

- All FMLA leaves will run concurrent with the City's Leave of Absence Policy.