

CITY OF HAMILTON, OHIO

No. 324

ADMINISTRATIVE DIRECTIVE

Effective Date: 1-25-16

Supersedes No. 47 dated 10/07/70, 09/01/93

Approved by: Joshua A. Smith,
City Manager

SUBJECT: FAMILY AND MEDICAL LEAVE

REFERENCES: 29 C.F.R., §§825.100, et seq., the Family and Medical Leave Act of 1993; C.O. 181.01. Vacation Leave; C.O. 181.02. Sick Leave; C.O. 181.08. Disability pay for sworn members of the Fire and Police Divisions; Administrative Directive No. 306. Sick Leave; Administrative Directive No. 332. Vacation Leave

PURPOSE: To give recognition to provisions of the 1993 Family and Medical Leave Act (FMLA); to coordinate certain existing leave benefits with obligations set into the Act; and to serve as an informational reference for those eligible employees anticipating leave usage for reasons consistent with entitlements granted by FMLA.

1. Policy.

a. The City of Hamilton's Family and Medical Leave Act ("FMLA") policy complies with, but does not exceed the mandates of the federal FMLA and applicable state law. If you have questions, please contact the Civil Service and Personnel Department.

2. Eligibility.

- a. To be eligible for FMLA leave, an employee must have been employed by the City:
- i. For at least 12 months which need not be continuous;
 - ii. For at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
 - iii. At a worksite with 50 or more employees or where 50 or more employees are located within 75 miles of the worksite.
 - iv. Special rules apply to breaks in service due to National Guard or Reserve military service.
- b. The FMLA makes no distinction between permanent and temporary appointment status as to coverage for leave eligibility. However, existing City policies do not provide paid leave benefits for other than permanent employees. The FMLA does not mandate paid leave. Thus, leave granted under FMLA to temporary appointees will be unpaid.

3. How much FMLA Leave May be Taken.

- a. An eligible employee is entitled to up to 12 workweeks of unpaid leave during a 12-month period for any FMLA qualifying reason(s). The 12-month period will commence from the first date FMLA leave is used.
- b. Only the time actually taken as FMLA leave may be charged against the employee's 12 week entitlement when leave is taken on an intermittent or reduced leave schedule basis.
- c. This leave may extend to up to 26 weeks in a 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering service member. An employee is also eligible for this type of leave

when the family service member is receiving medical treatment, recuperation or therapy, even if the service member is on temporary disability retired list.

4. Events Which May Entitle an Employee to FMLA Leave.

a. FMLA leave may be taken for any one, or for a combination of, the following reasons:

i. **A serious health condition** that makes the employee unable to perform the employee's job.

1. 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.
2. 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 2 visits to a health care provider or 1 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.
3. A more detailed complete definition of "**serious health condition**," can be found on the Department of Labor's Website: www.dol.gov

ii. **Child Care.**

1. Childcare following birth. Leave for this purpose does not involve an employee disability as in the case of a sick leave covered absence of a female employee disabled by pregnancy or childbirth. Both female and male employees are eligible for leave to care for a son or daughter following birth.
2. Child adoption, foster care. Similar in intent to childcare following birth, the adoption or placement by a state agency of a child for foster care with an employee constitutes a qualifying event for leave request and approval under FMLA.
3. For purposes of this policy, a husband and wife both working for the City are considered one person and may therefore take a total of twelve (12) weeks FMLA leave between them for childcare. Additionally, each individual is entitled to the difference between the amount he or she has taken individually and 12 weeks for another purpose. For example, if each spouse took 6 weeks (for a total of 12) due to childcare, each could use an additional 6 weeks for their own serious health condition or to care for another dependent with a serious health condition.

iii. **To care for the employee's spouse, child, or parent (but not "in-law") with a serious health condition.**

1. For the purpose of this policy, a husband and wife both working for the City are considered one person and may therefore take a total of twelve (12) weeks FMLA between them under this reason. Additionally, each individual is entitled to the difference between the amount he or she has taken individually and 12 weeks for another purpose. For example, if each spouse took 6 weeks (for a total of 12) due to care for a spouse, child, or parent, each could use an additional 6 weeks for their personal serious health condition or for the childcare reason described above.

iv. **Military Family Leave.**

1. 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. This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period. **This provision applies to members of the National Guard or Reserves, but does not apply to members of the Regular Armed Services. Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up before leave is granted.**

v. **Military Caregiver Leave.**

1. 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 (spouse, son, daughter, or next-of-kin) 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. **FMLA leave is not available for servicemembers who are no longer in the military. Employees requesting this type of FMLA leave must provide proof of the qualifying family member's active military service before leave is granted.**

5. **Use of FMLA Leave.**

- a. **All available sick leave, vacation time, floating birthday and holiday time, and/or Paid Time Off (PTO) must be exhausted before unpaid leave status begins. FMLA leave will run concurrently with paid leave set forth in the preceding section.** Leave requests, for reasons qualifying under FMLA whether with or without pay, are to be presented for supervisory approval on a **Leave Request Form**.
 - i. An employee who believes he or she is entitled to FMLA Leave should contact the Civil Service and Personnel Department.
 - ii. A supervisor who believes one of his or her subordinates may need FMLA Leave or may be off a total of 3 or more consecutive calendar days for a serious health condition should contact the Civil Service and Personnel Department.
- b. Where leave requirements are known in advance or are foreseeable by the employee (childbirth, placement of a child or planned medical treatment for the employee's or family member's serious health condition), the Act places an obligation on the worker to provide a thirty (30) day advance notice before the date on which the leave would begin. Additionally, in the event of a foreseeable event the employee shall make reasonable effort to schedule the treatment so as not to unduly disrupt the City's operations. Otherwise, leave notice is to be submitted as soon as practicable (within 1 or 2 business days of learning of the need for the leave). **In view of certain record keeping requirements of the FMLA, all leaves are to be documented using a Leave Request Form. Medical certifications are only to be submitted to the Civil Service and Personnel Department.**
- c. The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a

reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a 12-month period).

6. Required Documentation.

- i. Absences of three (3) or more workdays for FMLA qualifying events require medical certification.
- ii. An employee will be required to submit medical certification from a health care provider to support a request for FMLA leave for the employee's or a family member's serious health condition.
- iii. Employees requesting leave due to a covered family member's (spouse, son, daughter, or parent) impending call or order to active duty must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.
- iv. Employees requesting FMLA leave to care for an injured or ill service member must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.
- v. FMLA leave or return to work may be delayed or denied if the appropriate documentation is not provided in a timely manner. Also, a failure to provide requested documentation of the reason for an absence from work may lead to termination of employment.
- vi. If the City has reason to doubt the employee's initial certification, the City may:
 1. With the employee's permission, contact the employee's health care provider in an effort to clarify or authenticate the initial certification; and/or
 2. Require the employee to obtain a second opinion by an independent City-designated provider at the City's expense.
- vii. If the initial and second certifications differ, the City may, at its expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider.
- viii. During FMLA leave, the City may request that the employee provide re-certification of a serious health condition at intervals in accordance with the FMLA. In addition, during FMLA leave, the employee must provide the City with periodic reports regarding the employee's status and intent to return to work.
- ix. If the employee's anticipated return to work date changes and it becomes necessary for the employee to take more or less leave than originally anticipated, the employee must provide the City with reasonable notice (i.e., within 2 business days) of the employee's changed circumstances and new return to work date.
- x. In emergency situations, the employee will complete the required request form upon return to duty. The employee is required to properly report off from work, unless precluded from doing so by the nature of the situation. A report will be accepted from a family member or designate of the employee.
- xi. Every employee returning to work from FMLA leave must complete the attached **Return to Work Form** or have a doctor's certification that has the same information as the Return to Work Form.

7. Benefit Administration during FMLA Leave.

- a. Sick Leave: During an unpaid leave, credit for sick leave will not be added to the employee's accrual in any month in which the employee has not been actively at work.
- b. Medical/Surgical: Benefit coverage will continue uninterrupted during a leave taken in accordance with FMLA. The City will continue payment of its portion of monthly premiums provided the employee continues their contributions for health coverage.
- c. The City may recover health insurance premiums that the City paid on behalf of the employee during any unpaid FMLA leave except that the City's share of such premiums may not be recovered if the employee fails to return to work because of the employee's or a family member's serious health condition or because of other circumstances beyond the employee's control. In such cases, the City may require the employee to provide medical certification of the employee's or the family member's serious health condition.
- d. Group Life Insurance: Coverage will continue during FMLA leave. The Department of Finance will bill the employee for monthly premium costs of optional coverage amounts for any month in which the employee receives no earnings from which such premium are normally deducted.
- e. Merit Adjustments: The timing of merit adjustments may be extended to accommodate periods of leave time during which no services are performed and thus cannot be evaluated.
- f. Retirement: Service credit in PERS or PFDPF is based upon contributions made by the employee and employer and is calculated based upon salary earned in a calendar year. Thus, during an unpaid leave, no such contributions are made by the employer.
 - i. Longevity: An employee's service (seniority) continues during an authorized leave status. A pro-rated benefit is payable to employees who separate for reasons other than dismissal.
 - ii. Funeral Leave: No payment for funeral leave purposes will be made to an employee on either paid or unpaid leave status.
 - iii. Hours of Work: An employee taking FMLA leave on an intermittent or reduced schedule basis will be paid only for hours worked unless periods of time off are covered by authorized paid leave.

8. Return to Active Service.

- a. Employees returning from a certified FMLA leave of absence will be placed in their former position or an equivalent one with equivalent status and pay, as required by law. If the same position or one of equivalent status and pay is not available as a result of a reduction in force or other reason, the employee will be treated in the same manner as though he or she were not on leave at the time of the workforce reduction.
- b. Upon return to active service, the employee must present all required medical statements or releases, including a **Return to Work Form** or doctor's certification that has the same information as the Return to Work Form from their treating physician.
- c. If an employee fails to return to work at the conclusion of an approved leave or any extension thereof, the employee will be considered to have resigned. If the employee gives the City notice of the employee's intent not to return to work, the employee will be considered to have voluntarily resigned.

9. Records Maintenance.

- a. Payroll records are to reflect leave periods taken under provisions of the FMLA.
- b. All written leave requests associated with FMLA, physician certificates or statements of health care providers attesting to the employee's need for leave will be confidentially maintained by the Civil Service and Personnel Department in accordance with the Records Retention Schedule for such documents.



10. Notifications.

- a. It is unlawful, under provisions of the Family and Medical Leave Act of 1993, for the employer to interfere with, restrain or deny the exercise of any right provided by the FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or being involved in any proceeding under or relating to the FMLA.

11. Additional Information.

- a. If you need clarification or further information, do not hesitate to contact the Civil Service and Personnel Department: 513-785-7030; cspersonnel@hamilton-oh.gov