



**WHAT HR PERSONNEL,  
MANAGER AND SUPERVISOR  
SHOULD KNOW AND  
HOW TO DO IT**

*Family Medical Leave Act*

**ELIGIBILITY FOR FMLA**

**TO BE ELIGIBLE FOR FMLA:**

- **MUST HAVE WORKED FOR AT LEAST 12 MONTHS FOR THE CITY OF MEMPHIS.**
- **MUST HAVE WORKED AT LEAST 1250 HOURS DURING THE 12 MONTHS PRECEDING THE NEED FOR LEAVE.**

**ELIGIBILITY FOR FMLA**

**MUST HAVE WORKED AT LEAST 12 MONTHS FOR THE CITY OF MEMPHIS**

- ❑ 12 months need not be consecutive months.
- ❑ Any portion of a week that an employee is on the payroll counts as a full week for FMLA eligibility.
- ❑ Separate periods of employment in which the break in service is more than 7 years are not used to determine eligibility.
- ❑ Time in military service counts toward the required 12 months.

**ELIGIBILITY FOR FMLA**

• **MUST HAVE WORKED AT LEAST 1250 HOURS DURING THE 12 MONTHS PRECEDING THE NEED FOR LEAVE**

- ❑ Only actual work hours are counted (do **not** count paid time off in calculating hours)
- ❑ This eligibility requirement is applicable for each FMLA request
- ❑ Special rules for returning military personnel

**MISCELLANEOUS FMLA PROVISIONS**

- ❑ If while on non-FMLA leave an employee becomes eligible for FMLA, the remaining portion of the leave is protected by FMLA
- ❑ Employees who unequivocally state their intent not to return to work are no longer eligible for FMLA

**QUALIFYING REASONS FOR FMLA**

- ❑ Birth of a child and to care for a newborn child of the employee or spouse, including placement of a child for adoption or foster care;
- ❑ To care for the employee's spouse, child, stepchild or parent with a serious health condition
- ❑ A serious health condition that makes an employee unable to perform the functions of the employee's job.

### QUALIFYING REASONS FOR FMLA

- A qualifying exigency arising out of a call to active duty in support of a contingency operation (overseas)
- To care for a covered service member with a serious injury or illness incurred in the line of active duty if the employee is the spouse, child, parent, or next of kin of the service member (military caregiver leave)

### QUALIFYING REASONS FOR FMLA

- Employees can take FMLA for more than one qualifying reason in a FMLA rolling year but are limited to a total of 12 weeks in the FMLA rolling year (except military caregiver leave).
- Employees need proper medical certification for each qualifying reason.
- Employees only receive one 12 week period no matter the number of qualifying reasons (except for military caregiver leave).

### MATERNITY LEAVE

#### FMLA

- Applicable to both the mother and father
- One 12 week period to be shared if both parents employed by the City.
- Leave may commence before birth for qualifying medical reason or before placement for limited events (court, attorney)

#### Tennessee Maternity Act

- Applicable only to the mother.
- Applicable only after the birth of the child.
- Time runs concurrent with FMLA
- 16 weeks not 12 weeks.

### DEFINITIONS OF CARE

#### CARE DOES INCLUDE

- Psychological care, such as comfort and support
- Physical care, such as feeding, dressing and transportation to doctor appointments
- Substituting for others who normally care for the family member; the employee need not be the only individual available to care for the family member
- Making arrangements for changes in care such as transfer to a nursing home

#### CARE DOES NOT INCLUDE

- Visiting a sick parent who is being cared for by another family member
- Visiting a parent while the parent is in a hospital or nursing home
- Child care when the child is not incapacitated due to a serious health condition.

### DEFINITION OF HEALTH CARE PROVIDER

- Licensed physician
- Podiatrist
- Dentist
- Clinical Psychologists
- Optometrists
- Physician Assistants
- Chiropractors
- Nurse practitioners
- Nurse Midwives
- Clinical social workers
- Christian Science Practitioners

### FMLA/HR LIAISON RESPONSIBILITY

- Ensuring Division's **compliance** with FMLA
- Determining FMLA **eligibility** of employees
- Overseeing employee FMLA leave balances
- **Training** supervisor and managers on FMLA procedures where necessary
- **Communicating** with HR as necessary
- **Distributing** packets to employees who request FMLA
- **Identify** individuals who may qualify for FMLA and send out appropriate package in a timely fashion
- **Process** FMLA paper work in a timely fashion
- Consistently **enforce** call in and sick leave policies

### EMPLOYEE RESPONSIBILITIES

- ❑ Provide 30 days' advance notice of the need to take FMLA
- ❑ Provide sufficient medical certification in a timely fashion
- ❑ Schedule appointments and leaves with minimum disruption to department
- ❑ Provide re-certifications as requested
- ❑ Inform supervisor/designee when absence is related to granted leave
- ❑ Prepare proper paper work promptly relating to all leaves including FMLA.

### MEDICAL CERTIFICATION

- ❑ Medical Certification **must** be requested at the time the employees give notice of the need for FMLA or within 5 days.
- ❑ Notice is derived through:
  - ❑ Request by Employee
  - ❑ Information of incapacity e.g. employee in hospital
  - ❑ After 3rd consecutive day of illness

### Required Employee Notice

- ❑ FMLA Application which sufficiently explains the reason for leave
- ❑ Leave may be denied if employee fails to adequately explain the reason for the leave
- ❑ Calling in sick is not considered sufficient notice



### Notice Letter

(Insert Date)  
(Employee's Name)  
(Address)  
(City, ST, Zip Code)

Dear Employee:

We would like to review your certification. Based on submission, you have been advised that there is a discrepancy between the dates of the leave and the 10 consecutive days. There may also have been a reference about a health care provider. However, we do not have sufficient information to fully understand your case. If your doctor reports the appropriate dates, we will consider it "sufficient" and issue a decision on FMLA accordingly. We will also review all other FMLA information, such as "Answer your Questions" and other information, such as the date of your appointment with the health care provider.

Please consider the dates when requesting to take leave or completing the Certification Request of Absence. The City will decide whether your absence meets one of the FMLA categories for service health conditions, such as "Answer your Questions" and other information, such as the date of your appointment with the health care provider.

If you do not provide further information within 10 days of receipt of the notice the City may consider that the absence does not constitute a health condition. We strongly recommend you contact the City's Human Resources Department for more information regarding the FMLA process. Therefore, you will not have the protection granted under FMLA.

**THE THREE FACTORS TO ASSESS YOUR ABSENCE - SUFFICIENT TREATMENT**

1. If incapacity due to a health condition has been more than 3 consecutive days, and
2. If you have been treated by a health care provider for the condition, and
3. You received a medical prescription or other therapy under order of the provider, and you received a 2<sup>nd</sup> treatment by the health care provider for the same health condition.

If you have already received this notice and you wish to qualify for absence on FMLA, you must file the certification under FMLA, you will need to provide the necessary documentation within 2 work days of this notice, assuming that has been received from your absence.

Some conditions of a leave certification will affect the appropriate amount of time that you are allowed to be absent. Additionally, you are reminded that you will not be automatically eligible for FMLA leave.

You are also reminded that pursuant to City policy, PD-60, medical documentation is required for your absence. Within the necessary medical documentation for your absence the City will consider your absence as a medical condition and you will not be paid for the absent time. In order to provide the necessary medical documentation within 2 days of your return to work you may wish to contact your supervisor, being reminded against you in accordance with the City's policies and any applicable Memorandum of Understanding.

If you believe you are eligible for FMLA, please call the City's HR Department at (703) 792-1234 or the City's Human Resources Department. The City's Policies and Procedures are posted on the City's website at [www.ci.fairfax.va.us](http://www.ci.fairfax.va.us).

### SUFFICIENCY OF MEDICAL CERTIFICATION

- ❑ Medical certification should be complete, sufficient to identify the need for FMLA and legible
- ❑ Incomplete means the submitted documentation is missing one or more of the applicable entries
- ❑ Insufficient means the document is complete but the requested information is vague, ambiguous or non-responsive

### CLARIFICATION/AUTHENTICATION OF CERTIFICATION

- ❑ MUST FIRST GIVE THE EMPLOYEE AN OPPORTUNITY TO CURE ANY DEFICIENCIES
- ❑ REQUEST FOR CURE TO EMPLOYEE MUST BE IN WRITING
- ❑ FORM LETTER: Clarification letter

### CLARIFICATION/AUTHENTICATION OF CERTIFICATION

- ❑ Employer may contact the health care provider to clarify information on medical certification form or to authentic form.
- ❑ Limited to contacting health care provider to:
  - understand handwriting on the certification
  - understand the meaning of a response
  - request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document.

### CLARIFICATION/AUTHENTICATION OF CERTIFICATION

- ❑ HIPAA requirements must be satisfied when employee health information is shared with an employer by a HIPAA-covered health care provider
- ❑ Employee's responsibility to provide complete and sufficient certification and to clarify if necessary
- ❑ Employee does not provide a required HIPAA release, and if employee does not authorize employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, FMLA leave may be denied

### WHO CAN MAKE CONTACT WITH HEALTH CARE PROVIDER?

- ❑ Contact must be made by:
  - Health Care Professional
  - Human resources professional
  - HR Liaison
  - Management Official
- ❑ **UNDER NO CIRCUMSTANCES MAY THE EMPLOYEE'S SUPERVISOR CONTACT THE HEALTH CARE PROVIDER.**

### RECERTIFICATIONS

❑ Generally, a recertification should only be requested as follows:

Minimum Duration of Serious Health Condition	Frequency of Request
30 days or less	Every 30 days
30 days to 6 months	Expiration of Minimum Duration Period
6 months or more	Every 6 Months

### MORE FREQUENT RECERTIFICATION

Recertification may be requested in less than 30 days if:

- ❑ The employee requests an extension of a leave
- ❑ Circumstances in previous certification have changed significantly (e.g. job change)
- ❑ Information is received that casts doubt on the reason for the absence or validity of the previous certification.

### SUSPICIOUS ABSENCES

- ❑ In addition to recertification, the City can request verification that absences are consistent with employee's serious health condition.
- ❑ Form Letter \_\_\_\_\_

### FITNESS FOR DUTY EXAMS FOR RETURNS TO WORK

- ❑ AN EMPLOYEE CAN BE REQUIRED TO SUBMIT TO A FITNESS FOR DUTY EXAM PRIOR TO RETURNING FROM A FMLA LEAVE.
- ❑ EMPLOYEE MUST BE NOTIFIED AT TIME LEAVE IS REQUESTED AND MUST BE PROVIDED LIST OF ESSENTIAL JOB FUNCTIONS
- ❑ NOT FOR EACH INTERMITTENT LEAVE – UNLESS REASONABLE SAFETY CONCERNS

### INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

- ❑ Allow only as much FMLA as needed:
  - ❑ Do not grant 12 weeks of leave if employee must see doctor 1 a month.
  - ❑ Require employees to return to work after doctor's visits
  - ❑ City dictates reduced work schedule unless health care provider has indicated otherwise.

### 10 RULES TO PREVENT INTERMITTENT LEAVE ABUSE

- ❑ Rule 1: Inform the supervisor
- ❑ Rule 2: Two Day Rule
- ❑ Rule 3: Leave Forms
- ❑ Rule 4: Call in procedures enforced
- ❑ Rule 5: Minimize Disruptions



### 10 RULES TO PREVENT INTERMITTENT LEAVE ABUSE

- ❑ Rule 6: Transfer employee when appropriate
- ❑ Rule 7: Bonding minimum leave periods
- ❑ Rule 8: Clarification
- ❑ Rule 9: Recertification and Verification
- ❑ Rule 10: 60 day Rule



### PROPERLY CALCULATING AND RECORDING LEAVE

- ❑ Responsibility is on both employee and division to properly track and record FMLA leave
- ❑ Overtime, if regularly scheduled, should be counted as leave time
- ❑ Holidays count toward FMLA leave if employee is on leave the entire week.
- ❑ Holidays that an employee is scheduled to work can be counted against FMLA

#### CITY OF MEMPHIS FMLA TRACKING SHEET

This form is to be used to track employee hours in each calendar year for FMLA leave. This applies to ALL City of Memphis appointed and hourly employees.

Employee Name: \_\_\_\_\_ Date: 10/11/12 Employee ID#: 1234  
 Division: \_\_\_\_\_ Division Service: \_\_\_\_\_

YEAR: 2012 (Enter leave taken per each calendar year)

Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Balance	YTD	
JAN																																		
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NOV																																		
DEC																																		
(Employee initials/signature) _____ (Department HR/HRIS/HRIS) _____ Date: _____																																		

THIS IS AN UNOFFICIAL DOCUMENT AND NOT TO BE USED FOR OFFICIAL PURPOSES. ONLY THE ORIGINAL DOCUMENT IS VALID. A COPY OF THIS FORM SHOULD BE KEPT IN YOUR WORK AREA FOR APPROVAL OF LEAVE BY YOUR SUPERVISOR.

CITY OF MEMPHIS HRIS/HRIS/HRIS HRIS/HRIS/HRIS

### REINSTATEMENT UPON RETURN

- Always require a Fitness for Duty Return to Work Exam
- Cost of Exam on employee
- Can prevent abuse of system



### Division's Responsibilities

- Designation of absences as FMLA related
- Establish and Enforce Call in procedures
- Post information about FMLA in conspicuous places
- Record FMLA in conjunction with other leave (e.g. OJI)
- Promptly notify the employee of FMLA availability after 3<sup>rd</sup> day of consecutive illness
- Require recertification as appropriate

### Manager's Do's & Don'ts

Do's	Don'ts
<ul style="list-style-type: none"> <li>Ask appropriate questions relating to the reason for time off</li> <li>Provide the employee with necessary paperwork</li> <li>Properly record FMLA absences (Track FMLA time)</li> </ul>	<ul style="list-style-type: none"> <li>Interfere, restrain or deny the exercise of rights under FMLA</li> <li>Discourage employees from using FMLA</li> <li>Discriminate against a person for using FMLA</li> </ul>

### Employee Responsibilities

- Giving the appropriate amount of notice of the need for FMLA.
- Providing a complete and sufficient medical certification, if requested.
- Responding to questions to determine whether an absence qualifies for FMLA.
- Following the department's call-in procedure.
- Providing intent to return and fitness for duty medical release, if requested.
- Performing the essential functions of the job with or without reasonable accommodations

# Q & A

You are now FMLA equipped!