



# FMLA POLICY

PM-66-06

## Section: 66-00, EMPLOYEE STATUS

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### **I. PURPOSE AND SCOPE**

In compliance with Public Law 103-3, the Family and Medical Leave Act, as amended in February, 2008, leave is available in accordance with the Act to all City of Memphis employees with the exception of employees who work less than 1250 hours during a 12-month period of time and fail to work a total of twelve (12) months for the City of Memphis. This policy is issued to ensure that City employees receive, as a minimum, the level time provided them by the provisions set forth in the Family and Medical Leave Act (FMLA).

### **II. POLICY STATEMENT**

It is the policy of the City of Memphis to ensure that the guidelines of the Family and Medical Leave Act are followed.

### **III. ENTITLEMENT**

#### **A. CRITERIA:**

Eligible employees shall be entitled to a total of 12 workweeks of leave during any 12-month period of time for one or more of the following:

1. Because of the birth of child of the employee and in order to care for the child.
2. Because of the placement of the child with the employee for adoption for the foster care.
3. In order to care for the spouse, child, or parent of the employee, if such spouse, child, or parent has a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
5. For the birth, bonding or care of a domestic partner or same-sex domestic partner, as well as other children for whom an employee has the responsibility for day-to-day care or financial responsibility, even though the employee has no biological or legal relationship with the child ("in loco parentis").



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### B. TIME PERIOD USED TO DETERMINE LEAVE ENTITLEMENT:

1. The entitlement to leave for a birth or placement of a child shall expire at the end of the 12-month period beginning on the date of such birth or placement.
2. The 12-month period in which 12 weeks of leave entitlement occurs is a "rolling" 12 month period measured backward from the date an employee uses any FMLA leave (may not extend back before August 5, 1993).

### C. Military Caregiver Leave:

The new amendments provide military family leave entitlements for eligible specified family members (spouse, son, daughter, parent, or next of kin):

1. Up to 12 weeks of leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation, or
2. Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.

**QUALIFYING EXIGENCY-** is categorized as:

1. Short-notice- deployment
2. Military events and related activities
3. Childcare and school activities
4. Financial and legal arrangements
5. Counseling
6. Rest and recuperation
7. Post deployment activities
8. Additional activities not encompassed in the other categories, but agreed upon by the employee and employer



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### DEFINITION OF SERIOUS HEALTH CONDITION

A serious health condition is defined by the law as an illness, injury impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. A period of incapacity requiring absence of more than **three full calendar days** plus treatment by a health care provider two or more times, or once with a regimen of treatment; or
3. Any period of incapacity due to pregnancy, or for prenatal care; or
4. Any period of incapacity (or treatment therefore) due to a chronic serious health condition; or
5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or,
6. Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated.

\*\*\*\* If an employee asserts a Serious Health Condition under the requirement of a period of incapacity requiring an absence of more than three full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, the employee's first visit must take place within **seven (7)** days of the first day of incapacity.

\*\*\*\* If the employee asserts that the condition involves "treatment two or more times", the two visits must occur within thirty (30) days of the first day of the incapacity.

\*\*\*\* Periodic visits for serious health conditions is defined as a visit to a healthcare provider for the same condition at least twice a year.

- The law does not require paid family or health leave.



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- The City requires that the employee exhaust all unused vacation, bonus days, and other available paid leave as part of their 12-week leave. The employee may use up to 10 work days of their sick leave benefit after other paid leave has been exhausted (or up to 120 hours for a 56-hours employee of the Fire Service Division).
- Once authorized paid leave has been exhausted, the remainder of the 12 weeks of leave will be unpaid.
- Maternity leave shall be counted as part of the 12 weeks of FMLA leave.
- A copy of the entire Family and Medical Leave Act regulations is available in all Divisions.

#### IV. EMPLOYEE BENEFITS

- A. Leave taken under the Act can be taken “intermittently or on a reduced leave schedule” in certain cases.
- B. Employer will maintain employee’s group health coverage during the period of Family Leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- C. Upon return from leave, an employee is entitled to be restored to the same position the employee held when the leave began, or to an equivalent position under most circumstances.

#### V. PROCEDURE

- A. Employee must submit his or her request for family/ medical leave to his or her immediate supervisor. (City of Memphis, Request For and Report of Leave/Absence – F-1120.136)
- B. The immediate supervisor is required to provide the employee the medical certification form and forward the request to the Division personnel analyst or payroll clerk within three (3) business days or as soon as practical. (Certification of Physician or Practitioner,



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Form WH-380-E, WH-380-F, and WH-384, January, 2009, and City FMLA Policy)

- C. The Division personnel analyst/payroll clerk should notify the employee within two (2) business days or as soon as practical of his or her eligibility for family/medical leave.
- D. The employee must submit the appropriate documentation supporting request within fifteen (15) business days or as soon as practical. (Certification of Physician or Practitioner, Form WH-380-E, WH-380-F, and WH-384, January, 2009)
- E. Approval by the employee's Division Director and the Director of Human Resources or designee.

## **VI. RESPONSIBILITY**

- A. It is the responsibility of each employee to adhere to the guidelines and practices of the Family and Medical Leave Act. Also, the employee is responsible for proper documentation concerning leave.
- B. The employee's Division Director shall be responsible for receiving proper documentation and submitting such documentation to the Director of Human Resources expeditiously. Records relating to FMLA leave are required to be retained for a period of three years.
- C. It is the responsibility of each Division to ensure that the Family and Medical Leave Act guidelines are appropriately followed through the approval process.
- D. All questions concerning the administration of this policy shall be addressed to the Director of Human Resources or designee.

## **REFERENCE POLICIES**

- SECTION, 46-00, LEAVE WITH PAY
- SECTION, 50-00, LEAVE WITHOUT PAY
- PM-66-01, SENIORITY RIGHTS/ADJUSTED DATE OF EMPLOYMENT
- PM-66-02, MATERNITY LEAVE
- PM-46-03, SICK LEAVE



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## AUTHORITY

- PUBLIC LAW 103-3, FAMILY MEDICAL LEAVE ACT