

Family and Medical Leave Policy

Section 1 PURPOSE

To set forth City of Delaware policy for providing leaves of absence for eligible employees in accordance with the federal Family and Medical Leave Act (FMLA) of 1993 and applicable state leave laws, as well as for employees ineligible for FMLA.

Section 2 SCOPE

This policy applies to all eligible employees of the City.

Section 3 RESPONSIBILITY

The interpretation and administration of this policy shall be the responsibility of the Director of Administrative Services.

Section 4 POLICY

It is the policy of the City to provide eligible employees with an unpaid family and medical leave of absence from work in the following circumstances:

- The birth of a child and in order to care for such child;
- In the event of an adoption of a child or to care for a foster child;
- To care for a child, spouse, or parent who has a serious health condition;
- The employee's own serious health condition renders the employee unable to perform the essential functions of his or her position.

Eligible Employees

To be eligible for a leave under the City's family and medical leave policy, an employee must be employed by the City for at least 12 months at the time the leave is requested to commence (these 12 months need not have been consecutive); and have completed at least 1,250 hours of service with the City during the 12-month period preceding the leave request.

Leave Entitlements

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

- The birth of a child and in order to care for such child;
- The adoption of a child or to care for a foster child placed with the employee;
- To care for a child, spouse, or parent with a serious health condition;
- Because of the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her position.

For purposes of this policy the following definitions apply:

Child - a biological, adopted, foster child, stepchild, legal ward, or a child of an employee standing in *loco parentis* (i.e., in place of a parent), who is under 18 or older than 18 if incapable of self-care because of a mental or physical disability.

Parent - biological parent or individual who stood in *loco parentis* to an employee when the employee was a child.

Spouse - a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage.

Serious health condition - an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider (i.e., a doctor of medicine or osteopathy who is licensed to practice medicine or surgery by the state in which he or she practices).

Leave Duration

Leaves may be taken for up to 12 workweeks during any 12-month period. In families where both spouses are employed by the City, their aggregate leave will be limited to 12 workweeks during any 12-month period, except in the case of one spouse's serious health condition, of one spouse or their child, in which case each spouse will be eligible for the full 12 weeks of leave during the 12-month period.

Leave Conditions

a. Birth of a Child, Adoption, or Foster Child

i. Leave for such purposes must be taken in consecutive workweeks and must be completed within the 12-month period following the birth of the child or placement of the child with the employee for adoption or foster care.

ii. At the discretion of the City, leave for these purposes may also be permitted to be taken by the employee on either an "intermittent basis" or on a reduced leave schedule (i.e., a reduced workweek or reduced workdays).

iii. Employees requesting leave for one of these purposes must provide the City with a 30 day advance notice of leave, except when the birth or placement requires leave to begin in less than 30 days. In the latter instance, employees should provide as much advance notice as is practical.

b. Care for Child, Spouse, Parent, or Employee's Own Serious Health Condition

i. Employees may take a 12 week leave for these purposes consecutively, intermittently, or may request to be placed on reduced workweeks or reduced workdays.

ii. If an employee requests an intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the City may require the employee to transfer temporarily to an available alternative position for which the employee is qualified to better accommodate the recurring periods of leave that the employee will require. Employees transferred in such circumstances will receive pay and benefits equivalent to that of their regular position.

iii. Employees requesting leaves for these purposes must make a reasonable effort to schedule the treatment either for themselves or for their child, spouse, or parent so as not to disrupt unduly the City's operations. The employee should endeavor to work with the family health care provider to schedule the treatment to avoid such disruption.

iv. Employees requesting leave for these purposes must provide a 30-day advance notice of leave or, if treatment is required in less than 30 days, as much advance notice as practical.

Certification

Employees requesting leave because of their own or a covered family member's serious health condition will be required to provide medical certification to substantiate their leave request. Such certification must be provided to the City 30 days in advance of the leave request, or as far in advance of the leave as practical. Certification provided by the employee must consist of the following:

- i. Date on which the serious health condition commenced;
- ii. Probable duration of the condition;
- iii. Appropriate medical facts from the health care provider regarding the condition;
- iv. If the leave is required because of the serious health condition of a son, daughter, parent, or spouse a written statement from the health care provider explaining the need for the employee to care for the covered individual and the amount of time necessary for such care;
- v. If the leave is necessitated by the employee's own serious health condition a written statement from the health care provider that the employee is unable to perform the essential functions of his or her position;
- vi. In the case of certification for intermittent leave or a reduced leave schedule for planned medical treatment for the employee, the dates on which such treatment is expected to be given and the duration of such treatment; or if not for planned treatment but for rehabilitation, a statement of the medical necessity for and duration of such intermittent leave or reduced leave schedule;
- vii. In the case of intermittent leave or leave on a reduced schedule for a son, daughter, spouse, or parent, a statement that the employee's leave is necessary for the care of such individual or will assist in their recovery, and the

expected duration and schedule of the intermittent leave or reduced leave schedule.

The City reserves the right to have an employee or covered family member examined by a health care provider of its choice for a second opinion at any time at its discretion. The City shall pay for any such second opinion examination.

In the event a conflict exists between the medical opinion of the employee's or covered family member's health care provider and that of the City in the second opinion examination, a third examination will be required to be performed by a health care provider mutually agreed upon by the employee and City, and paid for by the City. In such instances, the opinion of the third health care provider shall be final and binding on the City and the employee.

Use of Accrued Leave Time

Employees will be required to use all accrued unused paid vacation, compensatory time, personal leave, or family leave in the event of a leave for the birth or placement of a child for adoption or foster care.

Birth, Adoption or Foster Care: Male employees may elect to use up to one week of sick leave accruals for the initial request, but any time above and beyond that, they must have a statement from their doctor stating that it is medically necessary for the male to not work. Female employees may use sick time as long as they have a doctor's certification that it is medically necessary.

Employees will be required to use all accrued unused paid vacation, compensatory time, personal, medical, or sick leave for leaves for the employee's or covered family member's serious health condition.

All conditions in this section are governed by the individual labor contracts.

Time during which an employee is receiving any such statutory benefits shall also be charged against an employee's FMLA 12-workweek entitlement.

Reinstatement After Leave

Eligible employees taking leave under this policy will be reinstated to their former position or to an equivalent position with equivalent benefits, terms and conditions of employment. However, no employee is entitled under this policy to any right, benefit, or position other than that to which the employee would have been entitled had he or she not taken leave. Thus, for example, if a layoff or some other extenuating circumstance or business condition arises that affects the employee's position, reinstatement may not be possible.

The City also reserves the right to deny leave reinstatement to key employees, where such denial is necessary to prevent substantial and grievous economic injury to the City's operations.

Key employees will be notified of the City's intention in this regard as soon as a determination is made that such an economic injury would occur.

In the event such notice is given to a key employee already on leave, the employee will be offered the opportunity to terminate his or her leave and immediately return to work.

Key employees notified while on leave who decide not to return to work will remain on leave for the balance of the leave period and then be terminated.

Key employees are defined as the most highly compensated 10 percent of the employees employed by the City within 75 miles of the facility at which the employee is employed.

Employees may be required to provide the City with medical certification evidencing their ability to return to work and perform the essential functions of their positions, with or without reasonable accommodations. Such certification may be requested at the City's discretion.

Return to Work Examinations

Before being permitted to return to work from a leave for the employee's own serious health condition, the employee will be required to provide certification from his or her health care provider that he or she is able to return to work and perform all essential functions of the job, with or without reasonable accommodation.

Periodic Notification During Leave

Employees will be required, at least once every 30 days while on leave, to contact their supervisor to report on their status and intentions with respect to returning to work at the end of their leave period. Failure to do so may result in cancellation of FMLA.

Benefit Continuation During Leave

1. Group health insurance will continue while an employee is on leave at pre-leave benefit and premium contribution levels. If the leave is granted at an unpaid status, the employee is responsible for paying the usual monthly premium by the 1st of every month.
2. Benefits that operate on an accrual basis (e.g., vacation, sick leave, personal leave) will not accrue during any period of unpaid leave under this policy. Nor will an employee accrue seniority or service time during any period of unpaid leave in connection with the employee's eligibility for a performance review, salary review, and/or adjustment or bonus.
3. An employee's eligibility for qualified benefits (e.g., PERS, Police and Firemen's disability and Pension Fund) will be governed according to the terms of each respective benefit plan.

GENERAL LEAVES OF ABSENCE FOR INELIGIBLE EMPLOYEES

Employees who are not eligible for FMLA leave may apply for a general leave of absence for medical disabilities (including work-related injuries or illnesses, pregnancy, disability, etc.) or for personal reasons.

Medical (including pregnancy) disability leaves of absence may be requested for periods of up to three (3) months (unless applicable law requires a longer leave to be granted). Personal leaves may also be requested for periods up to three (3) months.

In general, a leave of absence is considered a privilege. No leaves are granted automatically; leaves must be requested by the employee in writing and approved by the City. In granting a leave of absence the employee's service record and the circumstances necessitating the leave request will be carefully examined.

Short-Term Absences

Absences for any reason not exceeding four (4) continuous work days do not require the formal filing of a request for a written authorized leave. However, employees taking short-term absences are required to notify their supervisor and comply with the requirements of the City's Sick Leave Policy.

PROCEDURE

Requests for a Leave of Absence

A request for a leave of absence must be initiated in writing by the employee and approved by the employee's supervisor and the Department of Administrative Services prior to the commencement of the leave, using the City's Leave of Absence Request form.

Employees requesting leaves must provide the City with 30 days' advance notice which includes the completed medical certification. Leaves necessitated by emergency circumstances must be requested as far in advance of the requested leave commencement date as practical. No FMLA rights will be granted to anyone who has not completed the above information and returned it to the Department of Administrative Services. Leaves necessitated by an illness or injury must be requested as soon as practical after an illness develops or injury occurs.

Medical (including pregnancy) leaves must be supported by medical certification acceptable to the City.

If the employee becomes ill or is injured off the City's premises, the employee should contact his or her supervisor as soon as practical after the illness or injury occurs and formally requests a leave.

Employment While on Leave

Employment while on an authorized leave of absence is prohibited unless required as part of a remedial therapy program under medical direction as recognized by the City.

Return to Work

Once an employee has been released to return to work, he/she must present the documentation to the Department of Administrative Services. Once the documentation has been reviewed and all return to work concerns are satisfied, DAS will notify the employee's supervisor of the date he/she may return and under what circumstances. Employees should note that they must give DAS reasonable time to respond to their request to return to work and until that time, they will continue on whatever leave has been granted.

Employees granted non-FMLA leaves of absence will only be reinstated in a former position if they have complied with all terms and conditions of the leave and this policy, including attempting to return to work at the end of the authorized leave period (i.e., within three (3) months after the leave commences) and provided the position is available. Unless applicable state law requires otherwise, reinstatement is not guaranteed to employees on non-FMLA leaves. The City will endeavor, however, to place an employee returning from leave who has complied with all terms and conditions of the leave in his/her former position or one comparable in status and pay.

Benefits for employees on non-FMLA leaves will be handled in the same manner as for employees on FMLA leaves.

REQUESTS FOR FMLA AND NON-FMLA LEAVE EXTENSIONS

If an employee is unable to return to work after his or her FMLA time expires or after a non-FMLA leave expires, the employee may file a request for a leave extension in the same manner as he or she filed the initial leave request. For medical leave extension requests, employees must submit additional medical certification to support the leave extension request. Employees requesting a leave extension will only be reemployed at the expiration of such extension if a position is available for which the individual, in the City's opinion, is qualified, with or without a reasonable accommodation. If no position is available, the individual will be laid off due to lack of work.