FMLA Sample Policy

General Provisions

In accordance with the Family and Medical Leave Act, the City will grant job-protected unpaid family and medical leave to eligible employees for up to 12 weeks per 12-month period for any one or more of the following reasons:

A. In order to care for a child following the child's birth, adoption, or placement in foster care with the employee;
   1. Leave must be taken within the 12-month period following the child's birth or placement with the employee;
   2. If married spouses both work for the City, their total leave in any 12-month period may be limited to an aggregate of 12 weeks if the leave is taken for the birth or placement of a child.

B. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition;

C. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or

D. The employee must attend to a qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.

Servicemember Family Leave

Eligible employees who are the spouse, child, parent, or next of kin of a covered Servicemember are entitled to up to 14 weeks of additional leave during a single 12-Month Servicemember Period (for a total of 26 weeks if combined with other FMLA leave), to care for such covered Servicemember who incurred a serious injury or illness in the line of active duty in the Armed Forces. Available leave not taken during the 12-Month Servicemember Period, which begins on the first day leave is taken, will be forfeited. No more than 26 weeks of leave may be taken in a single 12-Month Servicemember Period, and no additional extended leaves may be taken in other years for the same injury or illness. If married spouses both work for the City, their total Servicemember Family Leave may be limited to an aggregate of 26 weeks.

Definitions

A. "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken.
B. “12-Month Servicemember Period” means a single 12-month period measured forward from the first day Servicemember Family Leave is taken.

C. "Child" means a child either under 18 years of age, or older than 18 who is incapable of self-care because of a disability, for whom the employee has actual day-to-day responsibility for care, including a biological, adopted, foster or step-child. For purposes of a son or daughter on covered active duty or call to covered active duty, or for Servicemember Family Leave, the child may be of any age.

D. “Parent” means a biological parent of an employee or an individual who stood in place of a parent to an employee when the employee was a child.

E. “Next of Kin” means the nearest blood relative of a Covered Servicemember.

F. “Covered Active Duty” means: 1) in the case of a member of a regular component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country; and 2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country where they may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

G. “Covered Servicemember” means: 1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing recuperation for a serious injury or illness; or, 2) a veteran who is undergoing recuperation for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the preceding period of five years.

H. “Veteran” means a person who served in the active military, naval, or air service, and who was discharged or released under conditions that were not dishonorable.

I. “Serious Injury or Illness” means an injury or illness that was incurred by a member or veteran of the Armed Forces in the line of duty while on active duty (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty) and, in the case of a member, renders the member medically unfit to perform his or her duties, or in the case of a veteran, manifested itself before or after becoming a veteran.

J. “Qualifying Exigency” includes: 1) notification of a call to covered active duty seven or fewer days from date of deployment; 2) military events and related activities, including post-deployment activities (e.g. official ceremonies, support programs, counseling, etc. related to covered active duty or a call to such); 3) attending to childcare and school activities; 4) attending to financial and legal matters; 5) to spend up to five days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment; and, 6) any additional activities related to the call to covered active duty otherwise agreed to by the employer and employee.

K. "Serious Health Condition" means an illness, injury, impairment, or a physical or mental condition that involves 1) inpatient care (overnight stay); 2) incapacity requiring absence from work for more
than three calendar days and that involves continuing treatment (two or more visits within 30 days) by a health care provider; 3) continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or 4) prenatal care by a health care provider.

**Coverage and Eligibility**

To be eligible for family/medical leave an employee must have worked for the City for at least 12 months total and have worked at least 1250 hours over the previous 12-month period.

**Intermittent or Reduced Leave**

An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave. An employee may not take intermittent leave following the birth or placement of a child except at the discretion of the City.

**Use of Paid Leave**

An employee will be required to use accrued paid leave (including paid vacation, sick leave, compensatory time and workers' compensation) for any part of a family/medical leave. When an employee has used all of his or her accrued paid leave, the employee may request an additional period of unpaid leave so that the total paid and unpaid leave provided equals 12 weeks (or 26 weeks if combined with Servicemember Family Leave time).

**Employee Notice Requirement**

A. An employee must give 30 days’ notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form should be completed by the employee and returned to the City. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, followed by the completed form. The notice must indicate that (1) the employee is unable to perform the functions of the job or that a covered family member is unable to participate in regular daily activities; (2) the anticipated duration of the absence; and (3) whether the employee intends to visit a health care provider or is receiving continuing treatment.

B. If an employee fails to give 30 days' notice of foreseeable leave with no reasonable excuse, leave may be denied until 30 days after the employee provides notice.

C. When planning medical treatment, an employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the City’s operations.

D. In the event of leave to attend to a qualifying exigency, the employee shall provide as much notice as is reasonable and practical under the circumstances.

**Employer Notice Requirements**
A. **Notice of Eligibility Rights:** Within five days after the employee requests leave or after the City learns the leave may be for an FMLA-qualifying reason, the City will provide written notice stating whether the employee is eligible for FMLA leave, and if not eligible, at least one reason why.

B. **Notice of Designation of Leave:** Within five days after the employee requests or the City learns of the need for FMLA leave, the City will provide a written notice stating whether leave is available, how much leave has been designated as FMLA leave, and how much leave remains. For a leave of unspecified duration, the City will update the notification every 30 days as to how much leave was designated FMLA and how much leave remains. If any part of the requested leave is not designated as FMLA leave, the City will provide written notice of and reason for denial.

**Medical and Military Certification**

A. **Certification of Serious Health Condition:** For leaves taken because of the employee's or a covered family member's serious health condition, the employee, upon request, must submit a completed "Physician or Practitioner Certification" form and return the certification to the City. Medical certification must be provided by the employee within 15 days after requested. If the employee fails to provide adequate certification within this time period, then the City will inform the employee, in writing, what additional information is necessary and will allow the employee at least seven days to correct the certification. The City may delay leave until such certification is produced. In the case of medical emergency, the employee must submit certification as soon as is reasonably possible.

B. **City May Require Second Opinion:** The City may require a second or third opinion (at its own expense), periodic reports on status and intent to return to work, and a fitness-for-duty report to return to work.

C. **Certification Related to Covered Active Duty or Call to Covered Active Duty:** The employee requesting leave related to a family member's covered active duty or call to covered active duty shall provide supporting documentation of such status issued by the applicable Armed Services branch.

D. **Certification for Extended Servicemember Family Leave:** Employees requesting extended Servicemember Family Leave must provide documentation of the injury, recovery or need for care, such as an official Armed Forces communication, showing that the injury or illness was incurred on active duty and, in the case of a member, renders the member medically unfit to perform military duties, or in the case of a veteran that the veteran was a member of the Armed Forces within the preceding five years.

E. **Confidentiality of Medical Records:** Documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

**Effect on Benefits**
A. An employee granted a leave under this policy will continue to be covered under the City's group health insurance plan with the same conditions as if the employee had been continuously employed during the leave period.

B. Employee contributions will be required either through payroll deduction or by direct payment to the City. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.

C. If an employee's contribution is more than 30 days late, the City may terminate the employee's insurance coverage.

D. If the City pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the City (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.

E. If the employee fails to return from unpaid leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the City may seek reimbursement from the employee for the portion of the premiums paid by the City on behalf of that employee (employer contribution) during the period of leave.

F. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose benefits already accrued prior to the start of the leave. Paid time off does not accrue while on unpaid leave.

**Job Protection**

A. If the employee returns to work within 12 weeks following a family/medical leave (or 26 weeks if combined with Servicemember Family Leave), he/she will be reinstated to his/her former position or an equivalent position in terms of pay, benefits, status, and authority.

B. The employee's restoration rights are the same as they would have been had the employee not been on leave. If the position would have been eliminated or the employee would have been terminated but for the leave, the employee does not have the right to reinstatement upon return from leave.

C. If the employee fails to return to work by the previously agreed upon date, in absence of further communication, he/she will be considered to have abandoned the job.

**Unlawful Actions and Enforcement of FMLA Rights**

It is unlawful for the City to interfere with, restrain, or deny the exercise of FMLA rights, or to discharge or discriminate against anyone for opposing such unlawful practices or for participating in a proceeding
relating to FMLA. An employee may file a complaint with the U.S. Department of Labor's Wage and Hour Division or may bring a private lawsuit against an employer for violating his/her rights under the FMLA.