



<b>FMLA (Family Medical Leave Act)</b>			
<b>CITY OF APPLETON POLICY</b>		<b>SECTION:</b>	Human Resources
<b>ISSUE DATE:</b>	February 2003	<b>LAST UPDATE:</b>	February 2022
<b>POLICY SOURCE:</b>	Human Resources Department		
<b>POLICY AUDIENCE:</b>	All Employees		

**I. PURPOSE**

To outline the conditions that permit an employee to request time off for a period as prescribed by law with no loss of benefits or accumulated service if the employee returns to work. This policy will also serve to document employee rights and responsibilities.

**II. POLICY**

It is the policy of the City of Appleton to comply with all applicable State and Federal laws concerning military family leave, family, medical or caretaking leave.

This policy applies only to leave designated under State or Federal law. Leave designated under this policy may overlap or duplicate leave available under collective bargaining agreements or other personnel policies. Sick leave, vacation and leave of absence provisions under any collective bargaining agreements remain in effect.

Leave provided by the City which is taken for the same reasons as leave covered by the FMLA is not in addition to leave provided under the FMLA. If leave qualifies for family or medical leave under either or both the Federal and State laws, the leave used counts against the employee's entitlement under both State and Federal FMLA concurrently. Leave covered by the FMLA will be deducted from the entitlement under the FMLA.

Both State and Federal Family and Medical Leave entitlement will be counted based on a calendar year (January-December).

In order for employees to be eligible for leave under the Federal Family Medical Leave provisions, they must have been employed by the City for at least 12 months (whether consecutive or not) and must have worked for at least 1250 hours during the 12-month period immediately preceding the commencement of the requested leave. (Periods of employment preceding a 7-year break in service shall not count toward the 12 months.

- a. Any absence from work due to military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) must be counted toward the employee's 12-month employment period when determining FLMA eligibility.
- b. Time spent on paid or unpaid leave does not count in determining the 1,250 hour eligibility.

In order for employees to be eligible for leave under the Wisconsin Family Medical Leave provisions, they must have been employed by the City for at least 52 consecutive weeks and must have been paid for at least 1000 hours during the preceding 52-week period. If an employee is maintained on the payroll for any part of the week, the week counts as a week of employment.

Wisconsin law allows employees:

1. Up to 6 weeks of family leave for the birth or adoption of a child. This leave must commence within 16 weeks of the birth or adoption of a child. If nonconsecutive leave is taken, the last increment of the nonconsecutive leave must commence no later than 16 weeks after the birth or adoption date.
2. Up to 2 weeks of family leave to care for a child, legal ward, spouse, or parent (including parent-in-laws) suffering from a serious health condition.
3. Up to 2 weeks of medical leave for an employee to care for his/her own serious health condition which renders him/her unable to perform the essential functions of the job.

Federal law allows employees a total of 12 weeks for:

1. Family leave for the birth of an employee's child or because of the placement of a child with the employee for adoption or foster care.
2. Family leave to care for a child, legal ward, spouse, parent, or covered servicemember suffering from a serious health condition.
3. Medical leave for an employee to care for their own serious health condition which renders them unable to perform the essential functions of the job.
4. Exigency leave due to a spouse, child or parent who is on active military duty, or has been notified of an impending call to active-duty status in the National Guard or Reserves, in support of a contingency operation. Also included are servicemembers in the regular armed forces who are on active duty in a foreign country or are called to active duty in a foreign country.
  - a. Eligible employees may take leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
  - b. The amount of time an eligible employee may take for Rest and Recuperation qualifying exigency leave is expanded to a maximum of 15 calendar days.

Federal law also allows employees a total of 26 weeks of leave in a single 12-month period for:

1. Caring for a spouse, son, daughter, parent or next of kin who is a covered servicemember/veteran recovering from a serious illness or injury sustained in the line of duty.
  - a. A covered veteran is defined as an individual who was discharged or released at any time during the five (5) year period prior to the first date the eligible employee takes FMLA to care for the covered veteran. A dishonorable discharge disqualifies the veteran from coverage.

### **III. DISCUSSION**

This policy provides an introduction to the rights and provisions of the family and medical leave laws. Specific questions an employee may have about this law should be directed to the City Human Resources Department.

### **IV. DEFINITIONS**

- A. **FMLA:** Family and Medical Leave Act
- B. **Parent:** The biological parent of the employee, or an individual who stands or stood in loco parentis.
- C. **Son/Daughter (Federal FMLA definition):** A biological, adopted or foster child, a stepchild, a legal ward who is either under 18 years of age, or a child 18 years of age or older and incapable of self-care because of a physical or mental disability as defined by the Americans with Disabilities Act. (For the purposes of exigency and military leave a son/daughter is simply defined as a biological, adopted, foster child, or stepchild, without reference to age)

- D. **Son/daughter (State FMLA definition):** A biological, adopted or foster child, a step child, or legal ward.
- E. **In Loco Parentis:** An individual who stands in place of the parent, this may include day-to-day responsibilities to care for and/or financial support of a child. A biological or legal relationship is not necessary.
- F. **Registered Domestic Partners:** Registered same-sex domestic partners must meet the following requirements:
  - a. Be at least 18 years old and competent to consent to the relationship
  - b. Not married or in a domestic partnership with anyone else
  - c. Reside together
  - d. Not related closer than second cousin.
  - e. Be members of the same-sex
  - f. Have registered their domestic partnership with the Register of Deeds in the county in which they reside prior to April 1, 2018.
- G. **Spouse:** A husband or wife or registered domestic partner.
- H. **Injured Servicemember:** A member of the Armed Forces, National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.
- I. **Qualifying exigencies:** Include one or more of the following:
  - a. Short notice deployment
  - b. Military events and related activities
  - c. Childcare and school activities
  - d. Financial and legal arrangements
  - e. Counseling
  - f. Rest and recuperation
  - g. Post-deployment activities and/or
  - h. Such additional activities agreed to in advance by the Employer.

There are limits on the amount of leave available for a particular qualifying exigency and such limits may be less than 12 weeks.

- J. **Next of Kin:** The nearest blood relative of the servicemember in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative.
- K. **Active Duty:** Under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code. Section 101(a)(13)(B) of Title 10 cover a broad array of military assignments during a war or national emergency.
- L. **Contingency Operation:** Any military operation or hostilities against an enemy of the United States or a broad array of military assignments during a war or national emergency, as designated by the U.S. Secretary of Defense.
- M. **Outpatient Status:** The status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and

control of members of the Armed Forces receiving medical care as outpatients.

- N. **Temporary Disability Retired List:** Members of the Armed Forces who are not fit for duty but that may become fit for duty at a later time are placed on this list. This is not a permanent classification, rather the status of each person is reviewed periodically.
- O. **Serious Health Condition:** Under **Wisconsin** FMLA, a serious health condition is defined as a disabling physical or mental illness, injury or impairment involving:
  - a. Inpatient care in hospital, nursing home or hospice; or
  - b. Outpatient care with continuing treatment or supervision by a health care provider.

**Serious Health Condition:** Under **Federal** FMLA, a serious health condition is defined as physical or mental illness, injury or impairment that involves:

- a. Inpatient care in a hospital, hospice or residential medical care facility; or
  - b. Continuing treatment by a health care provider which includes:
    - i. A period of incapacity of more than three (3) full consecutive calendar days, and any subsequent treatment or period of incapacity that involves:
      - (A) treatment two or more times by a health care provider the first visit within 7 days, second visit within 30 days of the first day of incapacity, unless extenuating circumstances exist.
      - (B) treatment by a health care provider on at least one occasion within 7 days of the first day of incapacity that results in a regimen of continuing treatment (i.e., prescription medication or other treatment) which is under the supervision of a health care provider.
    - ii. Incapacity due to pregnancy or prenatal care.
    - iii. Incapacity or treatment for such incapacity due to chronic serious health condition. A chronic serious health condition is one which requires periodic visits, continues over an extended period of time and may cause episodes of incapacity. "Periodic" is defined as at least two (2) visits per year.
    - iv. Incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
    - v. Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment.
- P. **Serious Injury or Illness for a Covered Veteran:** An injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:
- a. A continuation of a serious injury or illness that as incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; OR
  - b. A physical or mental condition for which a covered veteran has received a VA Service Related Disability Rating (VASRD) or 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; OR
  - c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR

- d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

## V. PROCEDURE

- A. **Employee's Request:** Employees requesting leave must complete FMLA forms and submit to the employee's supervisor at least 30 days before the need. The supervisor must forward the written request to the department head and Human Resources Department. If the 30-day notice is not possible, the employee will notify his/her supervisor as soon as reasonable and practical. This should be interpreted to mean within one to two working days of the employee learning of the need for leave.

In emergencies, if the leave request cannot be made by the employee in writing, the supervisor must fill out the leave request in writing and forward it to the department head and the Human Resources Department.

Employees who take medical leave should make reasonable efforts to schedule planned medical treatments so as not to unduly disrupt business operations.

Employees who return from an absence that they desire to be counted as FMLA must give notice within two days of returning to work. If notice is not timely, the employee may not assert FMLA protection.

Spouses employed by the City of Appleton are entitled to 12-week(s) each of leave, if the leave is taken:

1. For the birth of a son or daughter or to care for the child after birth;
2. For the placement of a son or daughter for adoption or foster care, or to care for the child after placement; or
3. To care for a parent with a serious health condition.
4. For exigency leave of a spouse, child or parent who is on active military duty, or has been notified of an impending call to active-duty status in the National Guard or Reserves, in support of a contingency operation.

Spouses employed by the City of Appleton are entitled to 26-week(s) each of leave if the leave is taken for care for a covered servicemember recovering from a serious illness or injury sustained in the line of duty.

- B. **Employer Designation:** The City of Appleton will require completion of the FMLA forms when an employee misses more than three consecutive scheduled workdays due to a qualifying FMLA event. If the leave is determined eligible, it will automatically be counted against the employee's FMLA entitlement.
- C. **Medical Certifications:** Prior to leave commencing, medical certifications will be required to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse, parent or military family leave. All requests for family and medical leaves of absence due to illness must include sufficient medical certification from the physician stating:
  1. The date on which the serious health condition began;
  2. The probable duration of the condition and;
  3. The appropriate medical facts that the health care provider knows about the condition.

For the employee's own medical leave, the certification must include a statement that the employee is unable to perform the functions of their position. For leave to care for a seriously ill child,

spouse, or parent, the certification must include an estimate of the amount of time that the employee is needed to provide care.

The employee will be responsible for obtaining these certifications from the health care provider. These forms are available from Human Resources and department Supervisors. Forms must be completed and returned no later than 15 days of receipt. If the employee does not obtain the certification from the health care provider within 15 days, the leave will be treated as other available paid leave or unpaid leave.

The City of Appleton Human Resources Department may directly contact the health care provider or other third-party to verify and clarify information contained in the certification. Employees are responsible for signing or obtaining any authorization necessary to permit the health care provider or other third-party to provide the City of Appleton with the required information.

**Military Certifications:** Prior to leave commencing, military certifications will be required to support a claim for leave. Certifications shall be in the form of military orders or discharge documents and shall identify who the leave is for.

- D. **Status while on Leave:** During the leave the employee must update their supervisor at least every 30 days of his/her status with health care provider certification and the intention to return to work.
- E. **Second Opinion:** The City may require a second opinion and periodic recertification. If a first and second opinion differ, the City may require the binding opinion of a third health care provider, approved jointly by the City and the employee and paid for by the City.
- F. **Workers Compensation:** Workers' compensation will automatically be counted against your Federal Family Medical Leave entitlement provided it meets the requirements.
- G. **Intermittent Leave:** Under the Wisconsin FMLA provision, intermittent leave may be taken as long as it does not unduly disrupt the department's operations. Departments must notify Human Resources before approving such a request.

Under the Federal FMLA provision, intermittent leave may be taken for a birth or placement of a child for adoption, foster care or military family leave. Employees may take leave intermittently or on a reduced leave schedule with prior approval by the Department Director and Human Resources. When FMLA is taken to care for a sick family member or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary.

- H. **Substitution:** Under the Wisconsin FMLA, employees have the ability to substitute leave.

Under the Federal FMLA, the City of Appleton requires the leave to be charged against any leave available such as vacation, floating holidays, personal days or compensatory time in the order to be chosen by the employee. Sick leave may be used only if the reason for the sick leave use qualifies under current City policy or collective bargaining agreements, whichever applies. Leave can only be substituted up to the amount the employee has accrued and on the books.

An employee will continue to accrue all benefits provided by City policies and collective bargaining agreements.

Leave beyond the FMLA entitlement must be approved in advance, and is subject to

any collective bargaining agreements or policies and procedures.

- I. **Proof of parentage or placement:** May be required prior to family leave being granted.
- J. **Return to Work:** Employees off on medical leave will be required to provide a "return to work" certification before they return to work indicating that the essential functions of the job can be performed. This must be obtained from the health care provider.
- K. **Approval:** Human Resources must approve or deny all requests.
- L. **Return from FMLA:** Upon return from family or medical leave, an employee will be returned to the position he/she held immediately prior to the leave if the position is vacant. If the position is not vacant, the employee will be placed in an equivalent employment position. Job restoration upon returning from FMLA leave can be denied if:
  - 1. The employee would have been laid off had they not been on leave;
  - 2. The employee fraudulently obtained leave under the Acts; or
  - 3. The employee fails to provide medical certification that they can return to work.

If the employee extends his/her leave beyond the FMLA provisions and has had prior approval, job restoration and recall is subject to the terms of City personnel policies and or the applicable collective bargaining agreement.

- M. **Group Health Coverage:** Group health care coverage will continue for employees on leave as if they were still working. ~~If applicable, employees who are granted a leave under this policy are advised to arrange to pay their share of premiums during the absence.~~ If the leave is paid, premiums will continue to be paid through payroll deductions. If the leave is unpaid, ~~employees are responsible for making sure the City receives premium payments by the normal payroll dates. If payments are not received within 30 days of the due date, coverage may be discontinued the missed premiums will be collected through payroll deduction(s) when the employee has returned to work and is on the City's payroll again.~~ This includes other benefits such as disability, life, medical, dental, vision, flexible spending accounts, etc. ~~If the leave continues into the new year, the employee will receive an invoice on the missed premiums.~~
- N. **No Return to Work from FMLA:** If an employee chooses not to return to work (i.e. return to work for 30 calendar days) after an approved leave, the City may recover from the employee the cost of any premiums made to maintain the employee's health insurance, unless the failure to return is because of a serious health condition or reasons beyond the employee's control, as defined in 29 CFR 825.213. Benefit entitlements based on length of service will be calculated as of the last paid workday before the start of the unpaid absence. If the employee substitutes leave, the length of service will be calculated as of the last paid workday substituted.
- O. Any correspondence sent to the employee will be sent to their last known address filed with Human Resources. Employees must notify Human Resources with any change of address.
- P. **Nursing Mothers:** Under the section 4207 of the Patient Protection and Affordable Care Act of 2010, employees are allowed unpaid reasonable break time to express breast milk. Interested employees should contact their supervisor or Human Resources and a private location will be identified.

## VI. FALSIFICATION OF FORMS

An employee will be subject to disciplinary action up to and including discharge for falsifying any information required or requested as part of the application process or receiving leave or benefits under the FMLA or this policy.

## **VII. EMPLOYER RESPONSIBILITIES**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## **VIII. UNLAWFUL ACTS BY EMPLOYERS**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.