



CITY OF DUBLIN

**CITY OF DUBLIN
ADMINISTRATIVE ORDERS
OF THE CITY MANAGER**

ADMINISTRATIVE ORDER 2.60

TO: All City Employees

FROM: Terry Foegler, City Manager

SUBJECT: Family and Medical Leave

DATE: July 1, 2009

This Administrative Order supersedes all previous Administrative Orders regarding this subject.

I. PURPOSE

The purpose of this Administrative Order is to communicate the City's policy. Questions regarding this Administrative Order should be directed to the Division of Human Resources.

II. POLICY

Pursuant to the Family and Medical Leave Act (FMLA), all eligible employees shall be entitled to take up to 12 weeks of job-protected, unpaid leave during any 12 month period for specified family and medical reasons. The following policy provisions are intended to clarify all issues related to the usage of leave under the FMLA. However, the City reserves all rights available to Employers under the FMLA and its corresponding regulations, even if those rights are not specifically referenced herein.

A. Covered Family and Medical Reasons

An eligible employee shall be entitled to 12 weeks of leave during a 12-month period for one or more of the following reasons:

- The birth or placement of a child for adoption or foster care;
- A serious health condition of the employee; or
- A serious health condition of the employee's immediate family member.

A serious health condition, for purposes of the FMLA, is an illness, injury, impairment, or physical or mental condition which involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work or perform other regular daily activities) due to:
 - ▶ a health condition (including treatment thereof, or recovery therefrom) lasting more than (3) full consecutive days, and any subsequent treatment or period of incapacity relating to the same condition; or
 - ▶ requires in-person treatment by a health provider at least once within seven days of the first day of incapacity; or
 - ▶ requires either (i) a regimen of continuing treatment initiated by the health care provider during the first treatment, or (ii) a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity;
 - ▶ pregnancy or prenatal care (a visit to health care provider is not necessary for each absence); or
 - ▶ a chronic serious health condition, which continues over an extended period of time and may involve occasional periods of incapacity for conditions including, but not limited to, asthma and diabetes (a visit to a health care provider is not necessary for each absence); however, the condition must be treated by a health care provider at least twice a year for that condition; or
 - ▶ a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer) (only supervision by a health care provider, rather than active treatment, is required); or

- ▶ Any period of absence to receive multiple treatments (including any period of recovery therefrom) for restorative surgery or for a condition which would likely result in a period of incapacity of more than three (3) full days if not treated (e.g., chemotherapy or radiation treatments for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

B. Employee Eligibility

An employee shall be entitled to leave under the FMLA when he/she meets the following criteria:

- The employee has worked for at least 12 months for the City. The twelve months need not have been consecutive, provided that break-in-service does not exceed 7 years. (If the employee was on the payroll for part of a week, the City will count the entire week. The City considers 52 weeks to be equal to twelve months.)
- The employee has to have worked for the City for at least 1,250 hours over the 12 months before the leave would begin.
- The employee must work in an office or work site which employs 50 or more employees, or there must be 50 employees within 75 miles of the office or work site.
- When both spouses are employed by the City, they are jointly entitled to a combined total of 12 work weeks of leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

C. Leave for Families of Military Personnel

Pursuant to the The United States Department of Labor 2008 amendments, an eligible employee shall be entitled to take leave for the following military leave entitlements:

- Leave Due to a Qualifying Exigency - Leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.
- Military Caregiver Leave - Leave for family members when caring for a covered service member with a serious injury or illness incurred while in the line of duty.

Leave Due to a Qualifying Exigency

An employee whose spouse, son, daughter or parent has been notified of an impending call or order to active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.

For the purpose of this provision, only members of the National Guard or reserves or certain retired members of the regular armed forces or reserves are considered as covered military members. The call to duty must be a federal call as opposed to a state call to duty.

Leave may be taken for one or more of the following qualifying exigencies, all of which must arise from the call or notice of an impending call to active duty of the covered military member:

- **Short-notice deployment:** If a military member receives 7 or less calendar days' notice prior to the date of deployment, an employee may take FMLA leave to address any issue arising from an impending call or order to active duty.
- **Military events and related activities:** An employee may take FMLA leave to attend any official ceremony, program or event sponsored by the military that is related to the active duty status or family support or assistance programs and informational briefings sponsored by the military, military service organizations or the American Red Cross that are related to the call of active duty (e.g. family briefings that occur pre-deployment, during deployment or post-deployment.)
- **Childcare and school activities:** To arrange a change to existing childcare, to provide childcare on an urgent immediate need basis, to enroll in or transfer to a new school or day care facility when necessary due to the call to active duty status, and to meet with school or day care staff when meetings are necessary due to the call to active duty.
- **Financial or legal arrangements:** To make or update financial or legal arrangements to address the covered military member's absence, such as preparing and executing financial and health care powers of attorney, transferring bank account signature or updating a will (excludes routine matters such as paying bills). Also acting as the military member's representative before a federal, state or local agency for purposes of obtaining, arranging or appealing

military service benefits while the military member is on active duty or call to active duty status.

- **Counseling activities:** To attend counseling by someone other than a health care provider (e.g military chaplain, pastor/minister, a non-HCP offered by the military) for the employee, for the covered military member, or for the child of the covered military member.
- **Rest and recuperating activities:** If a military member is granted short-term, temporary, rest and recuperation leave during the period of deployment, an employee may take FMLA to spend time with the military member. This time shall not exceed 5 work days for each instance.
- **Post-deployment activities:** FMLA time may be taken to attend official military events such as arrival ceremonies and reintegration briefings during the 90-day period following termination of active duty status and also to address issues related to the death of a covered military member.
- **Additional activities:** To address other events arising from the call to active duty status, provided that the employer and employee both agree that the event is a qualifying exigency and also agree to both the timing and duration of leave.

Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule. Son or daughter for this leave is defined the same as for child under FMLA except that the person does not have to be a minor.

Military Caregiver Leave

An employee may take up to 26 weeks in a single 12-month period to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty on active duty. "Next of kin" is defined as the next nearest blood relative unless otherwise noted in writing by the covered service member.

A serious injury or illness means an injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating and certified by the service member's health care provider. It is not the same as a serious health condition for other FMLA purposes.

Definition of a Covered Service member - A current member of the regular Armed Forces, National Guard or Reserves:

- Who is undergoing medical treatment, recuperation, or therapy and is otherwise in outpatient status, or is on the temporary disability retired list (TDRL), all of which can be determined by the service member's authorized health care provider.
- Who has suffered a serious injury or illness incurred in the line of duty on active duty, which can be determined by the service member's authorized health care provider.

Leave is not available to care for former service members or members on the permanent disability retired list.

D. Calculation of Leave

Eligible employees can use up to 12 weeks of leave during any 12-month period, with the exception of "military caregiver leave" explained below. The City will use a rolling 12 month period measured backward from the date an employee uses any FMLA leave, with the exception of "military caregiver leave" explained below. Each time an employee uses leave, the City computes the amount of leave the employee has taken under this policy, subtracts it from the 12 weeks, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee has taken 5 weeks of leave in the past 12 months, he or she could take an additional 7 weeks under this policy. Holidays count as FMLA leave if the employee is on FMLA leave the entire week in which the holiday falls, If the employee takes FMLA leave for less than a full workweek in which a holiday falls, the holiday does not count as FMLA leave.

Military Caregiver Leave Exception. Although leave for any other FMLA-qualifying reason may not exceed 12 work weeks in any 12-month period, the entitlement to military caregiver leave is 26 work weeks in a *single* 12-month period. Military care giver leave is generally a one-time entitlement that does not renew each year like other types of FMLA-qualifying leave and is applied on a per-covered service member, per-injury basis (which may be taken continuously, intermittently, or on a reduced schedule basis). The employee is not entitled to an additional 26 work weeks of leave for the aggravation or complication of the initial serious injury or illness. The single 12-month period is measured forward from the date an employee's leave begins to care for the covered service member.

E. Maintenance of Benefits

An employee shall be entitled to maintain group medical, dental, vision, and life insurance coverage on the same basis as if he/she had not been approved for leave under the FMLA. To maintain uninterrupted coverage, the employee will have to continue to pay his/her share of insurance premium payments (if applicable). If the employee informs the City that he/she does not intend to return to work at the end of the leave period, the City's obligation to provide the above benefits ends. If the employee chooses not to return to work for reasons other than a continued serious health condition, the employee is obligated to reimburse the City the amount the City contributed (Single/Family funding rate) towards the employee's benefits during the leave period. The City may, at its sole discretion, waive the repayment of such amount. The City will be responsible for the 30-day plan costs under COBRA.

F. Job Restoration

An employee who utilizes leave under the FMLA will be restored to the same job or a job with equivalent status, pay, benefits and other employment terms. The City may choose to exempt certain highly compensated, "key" employees from this job restoration requirement and not return them to the same or similar position at the completion of FMLA leave. Under the FMLA regulations, a "key" employee is defined as a salaried employee eligible for leave under the FMLA whose salary is among the top 10% of all City employees. Employees who may be exempted will be informed of this status when they request leave. If the City deems it necessary, during the period of leave, to deny job restoration for a "key" employee on FMLA leave, the City will inform the employee of its intention and will offer the employee the opportunity to return to work immediately. The City will normally require that employees who take FMLA leave due to their own serious health condition provide a fitness for duty certification form from their health care provider before returning to work. The health care provider must certify that the employee is able to perform the essential functions of the job. Whether the City will require this certification will depend on the nature of the health condition and the functions of the position held by the employee. The City will require certification in all cases where job safety, to the employee or others, is a concern. Upon return from FMLA leave, with the proper fitness-for-duty medical certification, an employee will be returned to the same or an equivalent position with the same pay and benefits. Should the employee fail to provide a required fitness-for-duty medical certification, the City may delay the employee's return until the certification is provided.

G. Use of Paid and Unpaid Leave

If an employee has accrued paid leave of less than 12 weeks or 26 weeks if using Military Caregiver Leave, the employee must use paid leave first and take the remainder of the 12 or 26 weeks as unpaid leave. If an employee uses leave because of his/her own serious medical condition or the serious health condition of an immediate family member, the employee must first use all paid sick leave, followed by all paid vacation, personal leave, and compensatory time before going on unpaid leave. An employee using leave for the birth of a child must use paid sick leave for physical recovery after childbirth. The amount of sick leave utilized after this point must be justified, on a case by case basis, by the submission of a doctor's certification. The employee may then use all paid vacation, personal or compensatory time, and then will be eligible for unpaid leave for the remainder of the 12 weeks. An employee using leave for the adoption or foster care of a child must use all paid vacation, personal or and compensatory time first, and then will be eligible for unpaid leave for the remainder of leave taken.

H. Intermittent Leave and Reduced Work Schedules

Intermittent use of the 12 weeks of family or medical leave or use of FMLA leave on a reduced workweek basis will be allowed by the City for medical necessity. However, employees wishing to use leave intermittently or to utilize a reduced workweek for birth or adoption purposes must discuss and gain approval for such use from the employee's Division Head as the use of intermittent leave or a reduced workweek under the FMLA for this purpose is not an entitlement. If the need to use leave is foreseeable and based on pre-planned and pre-scheduled medical treatment, then the employee is responsible to schedule the treatment in a manner that does not unduly disrupt the City's operations. This provision is subject to the approval of the health care provider. In some cases, the City may temporarily transfer an employee using intermittent or a reduced workweek to a different job with equivalent pay and benefits if another position would better accommodate the intermittent or reduced schedule.

I. Procedure for Requesting Leave

All employees requesting leave for FMLA purposes must complete the applicable "Leave Request Form". If the employee is requesting the use of paid leave (i.e. sick, personal, vacation, comp. time) for FMLA purposes, he/she must indicate such in the space requesting the reason for leave (see attached "Exhibit 1"). If requesting unpaid leave for FMLA purposes, the employee must enter "Leave Without Pay for FMLA

purposes” in the space requesting a reason for leave (see attached “Exhibit 2”). When an employee plans to take leave under the FMLA, the employee must give the City 30 days notice. If it is not possible to give 30 days notice, the employee must give as much notice as is possible. If time off is foreseeable and 30 days notice is not given, the employee may be required to give a written explanation giving details as to why 30 days advance notice was not practicable. Likewise, if timely notice was not given, the period of delay counts as a non-FMLA absence. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the City’s operations. While on leave, employees are requested to report periodically to the City regarding the status of the medical condition, and their intent to return to work.

J. Procedure for Notice and Certification of Serious Health Condition (Non-Military Purposes)

The City may require the employee to provide notice of the need to use leave (where it is possible to know beforehand) and/or may require the employee to provide a complete certification of an employee’s or immediate family member’s serious health condition by a qualified health care provider. The employee must provide the medical certification within 15 calendar days of the request, unless it is not practicable to do so under the particular circumstances. Failure to provide timely medical certification may delay the leave for a reasonable period after receipt of the certification or may result in disapproval of the leave. When leave is not foreseeable, an employee must provide certification as soon as reasonably possible under the circumstances. Should the employee never produce the required certification, the leave will not be approved as FMLA leave and the employee will not be entitled to FMLA protection. When certification of a serious medical condition is required by the City, the employee must submit certification from a qualified/appropriate health care provider containing the following information:

- the medical facts which support the certification that the leave is for a serious health condition as defined under the FMLA;
- the approximate date on which the serious health condition began;
- the probable duration of the condition;
- whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis as a result of the condition and the probable duration of such schedule;

- if the condition is pregnancy or a chronic condition, whether the patient is incapacitated and the likely duration and frequency of episodes of incapacity;
- if additional treatments will be required:
 - the probable number of such treatments;
 - whether the treatments will be intermittent or require a reduced schedule and an estimate of the probable number of treatments, the interval between such treatments and the period required for recovery if any;
 - if any of the treatments will be provided by another health care provider and the nature of the treatments.
- for a serious health condition of the employee:
 - whether the employee is unable to perform work of any kind;
 - whether the employee is unable to perform any one or more of the essential functions of the employee's position (based on a job description that will be provided by the employer to the health care provider);
 - whether the employee must be absent from work for treatment.
- for a serious health condition of an employee's family member, the care the employee will provide, an estimate of the time period, and:
 - a statement that the employee is needed to assist the patient for basic medical or personal needs or safety or transportation or a statement that the employee's presence to provide psychological comfort to the patient would be beneficial to the patient or assist in the patient's recovery;
 - if the leave needs to be intermittent or on a reduced leave schedule and the probable duration of the need.

If the certification is submitted timely and is not complete or sufficient, the employee may have seven days to cure the deficiencies after the City has provided a list of what information is still needed. If the employee

does not correct it within the cure period, leave may be denied. If practicable and certification is not returned within 15 days, leave may be denied.

The City, at the City's expense, may require a second opinion on the validity of the certification. If the second opinion contradicts the first opinion submitted by the employee, a third opinion, at the City's expense, may be sought from a mutually agreeable physician, which shall be binding on both the employee and the City.

K. Certification of Leave for Families of Military Personnel

1) Leave Due to a Qualifying Exigency - The City may require certification of the need for leave from the employee, which may include, among other things, a copy of the call to order to active duty upon the employee's first request for leave. Additional documentation may be required based on qualifying exigency.

2) Military Caregiver Leave – The City may require the employee to obtain a certification from an authorized health care provider of the covered service member.

L. Procedure for Requesting Other Available Leave

Employees who do not qualify for FMLA Leave or who have exhausted FMLA leave, may request additional leave in accordance with the City's other leave policies. Inquiries regarding the availability of such additional leave should be directed to the Division of Human Resources.