

..... **MUNICIPAL COURT**

FAMILY AND MEDICAL LEAVE ACT POLICY

I. Statement of Policy: It is the policy of the Municipal Court (hereinafter, "Court") to grant employees time off without pay for family and/or medical leave of absence with job protection and no loss of accumulated service provided the employee meets the conditions outlined in this policy and returns to work in accordance with the Family and Medical Leave Act of 1993 ("FMLA"). Employees may request Family Medical Leave (hereinafter, "FML") for serious medical conditions. However, the employer has the responsibility to designate appropriate leave as FML. As such, the Employer has the authority to place employees on FML and to require employees to submit documentation from their medical practitioners indicating whether a condition is an FML qualifying condition.

II. Definition: As used in this policy, the following terms and phrases shall be defined as follows:

- A. A family and/or medical leave of absence is defined as an approved absence available to eligible employees for up to twelve weeks of unpaid leave per year under certain circumstances that are critical to the employee's health or the health of the employee's family.
- B. A family care leave is a leave for reason (a) the birth of a child of the employee, (b) the placement of a child with an employee in connection with the adoption or (state-approved) foster care of the child by the employee, or (c) the serious health condition of a child, parent or spouse.
- C. For purposes of this policy, child means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under 18 years old or a dependent adult. Parent means a biological, foster, or adoptive parent, a stepparent, or a legal guardian. Parent does not include a parent-in-law or grandparent.
- D. Serious health condition means an illness, injury, impairment, or physical or mental condition of a child, parent, or spouse which warrants the participation of a family member to provide care during a period of the treatment, or supervision of the child, parent, or spouse and also involves either an (a) inpatient facility or (b) continuing treatment or continuing supervision by a health care provider.

- E. A medical care leave is a leave taken when the employee is unable to perform the functions of his/her job because of a serious health condition.

“Per year” – A rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Court will compute the amount of leave the employee has taken under this policy and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee used four weeks of FML beginning February 4, 2000, and four weeks beginning June 1, 2000, and four weeks beginning December 1, 2000, the employee would not be entitled to any additional leave until February 4, 2001.

“Serious health condition” – Any illness, injury, impairment, or physical or mental condition that involves:

- (1.) Inpatient care
- (2.) Any period of incapacity of more than three (3) calendar days that also involves:
 - a. Two (2) or more treatments by a health care provider; or
 - b. Treatment by a health care provider on one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
- (3.) Any period of incapacity due to pregnancy or for prenatal care
- (4.) A chronic serious health condition which
 - a. Requires periodic visits for treatment to a health care provider;
 - b. Continues over an extended period of time; and
 - c. May be periodic rather than a continuing incapacity
- (5.) Any period of incapacity, which is permanent or long, term and for which treatment may not be effective (i.e. terminal stages of a disease, Alzheimer’s disease, etc.)

- (6.) Absence for restorative surgery after an accident/injury or for a condition that would likely result in an absence of more than three (3) days at a later date without medical intervention at the present time (i.e. chemotherapy for cancer, dialysis for kidney disease, etc.)

“Licensed health care provider” – A doctor of medicine, a doctor of osteopathy, podiatrists, dentists, optometrists, psychiatrists, clinical psychologists, and others as specified by law.

“Key Employee” – The highest paid 10% of all employees in the Court. An employee will be notified in writing of his/her status as a key employee, if applicable; at the time leave is requested.

“Family member” – As defined in the sick leave policy (CITY ORD §35.01).

III. Leave Entitlement: To be eligible for leave under this policy, an employee must meet all of the following conditions:

- A. The employee must have worked for the Court for at least twelve (12) months, or fifty-two (52) weeks. The twelve (12) months, or fifty-two (52) weeks, need not have been consecutive; and
- B. The employee must have worked at least 1250 hours during the twelve (12) month period immediately prior to the date when the FML is scheduled to begin.

The entitlement to FML for the birth or placement for adoption or foster care of a child shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

Spouses who are both employed by the Court are jointly entitled to a combined leave total of twelve (12) weeks (rather than twelve (12) weeks each) for the birth of a child, upon the placement of a child with the employees for adoption or foster care, or for the care of certain family members with serious health conditions.

An employee may only take FML because of his/her own serious health condition if such condition renders the employee unable to perform the functions of his/her position.

IV. Use of Leave: The provisions of this policy shall apply to all family and medical leaves of absence as follows:

- A. Generally: Whether the leave is paid, unpaid, or a combination of both, an employee is only entitled to a total of twelve (12) weeks of leave per year under FML. If an employee has accrued paid leave, such as sick leave or vacation leave, the employee must *use accrued vacation and/or accrued sick leave*, as set forth in this policy, as all or part of the twelve (12) weeks, and take the remainder of the twelve (12) weeks as unpaid leave.

Employees will be required to exhaust all accumulated leave as allowed by law prior to being granted leave without pay for FML requests. In addition, any time off that may, by law, be counted against an employee's twelve (12) week FML entitlement will be counted against such time.

B. FML Use for Birth of An Employee's Child: An employee who is taking leave for the birth of the employee's child must first use all available accrued paid vacation and personal leave prior to using unpaid leave for the remainder of the twelve (12) week period. However, if the employee requests leave for the employee's own serious health condition as a result of the pregnancy, the employee will also be required to exhaust all of the employee's sick leave prior to using unpaid leave for the remainder of the twelve (12) week period. {Note: see letter (E) below for information on disability leaves.}

C. FML Use for Placement of a Child for Adoption or Foster Care: An employee who is taking leave for the placement of a child with him/her for adoption or foster care must first use all available accrued paid vacation and personal leave prior to using unpaid leave for the remainder of the twelve (12) week period.

D. FML Use Because of the Employee's Own Serious Health Condition or the Serious Health Condition of a Family Member: An employee who is taking leave because of the employee's own serious health condition or the serious health condition of a family member must use all available accrued sick leave, vacation and personal leave, prior to using unpaid leave for the remainder of the twelve (12) week period.

E. FML and Disability / Workers' Compensation Plans or Programs: An employee who is eligible for FML because of his/her own serious health condition may also be eligible for either temporary disability with pay or workers' compensation. Regardless of whether or not an employee is on either program, the Court may designate the absence as FML and count it against the employee's twelve (12) week FML entitlement if the injury or illness constitutes a serious health condition under the FML.

In addition, as these may be compensated absences, if the employee participates in such a program, the employee is not eligible to use paid leave of any type (except as supplemental benefits, if applicable and requested by the employee), nor can the Court require him/her to do so, while the employee is receiving compensation from such a program.

Disability leave for the birth of a child is considered FML for a serious health condition of the employee and will be counted against the employee's twelve (12) week FML entitlement. As described above, because the leave pursuant to a temporary disability may be compensated, the employee is not eligible to use paid leave of any type (except as supplemental benefits, if applicable and requested by the employee), nor can the Court require him/her to do so, while the employee is receiving compensation from such a plan or program. If the disability leave is with pay, the employee will be required to use sick leave, vacation leave and personal leave as set forth in this policy.

V. Procedures for Requesting FML: Requests for FML must be submitted in writing at least thirty (30) days prior to taking leave, or if this is not possible, as soon as practicable. If the employee fails to provide thirty (30) days notice for foreseeable leave with no reasonable excuse for the delay, the leave may be denied until at least thirty (30) days from the date the Court receives notice.

Requests for FML must be submitted on a standard leave form prescribed by the Court. The Court will determine whether the leave qualifies as FML, designate it as leave that counts against the employee's twelve (12) week entitlement, if appropriate, and notify the employee that the leave has been designated as FML.

When a request is made for a foreseeable FML due to a serious health condition of either the employee or a member of the employee's family which involves planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unreasonably interfere with the operations of the Court, subject to the approval of the health care provider of the employee or the employee's family member.

VI. Certification of Need For FML: The Court will require medical certification from the health care provider to support a request for leave for an employee's own serious health condition, or to care for a seriously ill child, spouse or parent. Such certification shall be submitted at the time FML is requested, or when the need for leave is not foreseen, as soon as practicable. An employee requesting FML due to the birth or placement of a child must submit appropriate documentation as required by the Court at the time FML is requested.

For the employee's personal medical leave, the certification must state that the employee is unable to perform the functions of his/her position because of a serious health condition.

For leave to care for a seriously ill child, spouse or parent, the certifications must state that the employee is needed to provide care. At its discretion, the Court may require a second medical opinion, and periodic recertification at its own expense. If the first and second medical opinions differ, the Court, at its own expense, may require the opinion of a third health care provider, approved by both the organization and the employee. This third opinion is binding. Failure or refusal of the employee to submit to or cooperate in obtaining either the second or third opinions, if requested, shall result in the denial of the FML request.

Employees who request and are granted FML due to a serious health condition of the employee or his/her family member may be required to submit periodic written reports to the Court, in order to assess the continued qualification for FML.

The Court may request additional reports if the circumstances described in the previous certification have changed significantly (duration or frequency of absences, the severity of the condition, complications, etc.) or if the Court receives information that casts doubt on the employee's stated reason for the absence.

The employee must provide the requested additional reports to the Court within fifteen (15) days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Any costs associated with the additional reports requested by the Court shall be at the employee's expense.

VII. Intermittent / Reduced Schedule Leave: When medically necessary, an employee of the Court may take FML on an intermittent or reduced work schedule basis for a serious health condition of the employee or a serious health condition of an employee's family member. An employee may not take leave on an intermittent or reduced schedule basis for either the birth of the employee's child or upon the placement of a child for adoption or foster care with the employee. In all cases, the FML granted to any employee shall not exceed a total of twelve (12) weeks per year.

Requests for intermittent or reduced scheduled FML must be submitted in writing at least thirty (30) days prior to taking leave or, if this is not possible, as soon as practicable.

To be entitled to leave on an intermittent or reduced schedule basis, the employee must, at the time such leave is requested, submit additional certification as prescribed by the Court which establishes the medical necessity for such intermittent or reduced schedule leave. This shall be in addition to the documentation certifying the condition as FML qualifying. The additional certification shall include the dates and the duration of treatment, if any, the expected duration of the intermittent or reduced schedule leave, and a statement from the health care provider describing the facts which support the medical necessity for taking FML on an intermittent or reduced schedule basis. In addition, an employee requesting foreseeable intermittent or reduced schedule FML must meet with his/her supervisor to discuss the intermittent or reduced schedule leave.

An employee who requests and is granted FML on an intermittent or reduced schedule basis may be temporarily transferred to an available alternative position with equivalent class, pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

An employee who requests intermittent or reduced schedule leave due to foreseeable medical treatment shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the Court.

VIII. Employee Benefits: Except as provided below, while an employee is on FML, the Court will continue to pay the employer portion of premiums for any life, medical, and dental insurance benefits which the employee receives through the Court, under the same terms and conditions as if the employee had continued to work throughout the leave. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.

The Court will not continue to pay the employer portion of the premiums for any life, medical, and dental insurance benefits which the employee receives through the Court, if, while the employee is on FML, the employee fails to pay the employee's portion of such premiums, if any, or, if the employee's payment for his/her portion of the premium is late by more than thirty (30) days.

If the employee chooses not to continue health care coverage during FML, the employee will be entitled to reinstatement into the benefit plan upon return to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition or circumstances beyond the employee's control, the Court may seek reimbursement from the employee for any amounts

paid by the Court for insurance benefits which the employee received through the Court during any period of unpaid FML.

Leave balances accrued by an employee prior to taking FML and not used by the employee as outlined in the section entitled "Use of Leave" will be retained by the employee.

Paid FML will not constitute a break in service credit. Unpaid FML will not constitute a break in service credit for purposes of vacation and longevity for Court employees. Employees on unpaid FML will not receive holiday pay and will not accrue personal leave or sick leave.

IX. Reinstatement: An employee on FML must give the Court at least two (2) business days notice of his/her intent to return to work, regardless of the employee's anticipated date of return.

Most employees who take leave under this policy will be reinstated to the same or a similar position upon return from leave.

Upon request for reinstatement, if the position that the employee occupied prior to taking FML is not available, the employee will be placed in a position which entails substantially equivalent levels of skill, effort, responsibility and authority and which carries equivalent status, pay, benefits and other terms and conditions of employment as the position the employee occupied prior to taking FML. The determination as to whether a position is an "equivalent position" will be made by the Court.

An employee of the Court will not be laid off as a result of exercising his/her right to FML. However, the Court will not reinstate an employee who has taken FML if, as a result of a layoff with the Court, the employee would not otherwise be employed in the Court at the time reinstatement is requested.

An employee on FML has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during his/her FML period.

Prior to reinstatement, employees who take FML based on their own serious health condition, shall provide certification from the employee's Health Care Provider that the employee is able to resume work, at least two (2) days prior to schedule date of return.

Key employees may be denied reinstatement if:

- (1.) In the sole opinion of the Court, denial of reinstatement is necessary to prevent substantial and grievous economic injury to the Court, and
- (2.) The Court notifies the employee of its intention not to restore the employee to duty before the leave begins; or
- (3.) The Court notifies the employee of its intention not to restore the employee to duty after the leave begins, and the employee does not elect to return immediately to work and be restored to the same or a similar position.

In order to determine whether the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the Court, the Court may consider its ability to replace the employee on a temporary basis, whether a permanent replacement of the employee is unavoidable, and the cost of reinstating the employee.

X. Records: The Court as required by law will maintain all records relative to FML. Any medical records accompanying FML requests will be kept separate from an employee's regular personnel files.

To the extent permitted by law, medical records related to FML shall be kept confidential.

XI. Employee Responsibilities: While under FML, employees will be subject to the same rules and conduct as if on the job. Failure to abide by the rules of conduct will result in disciplinary action.