

**Policy Memorandum #62**  
**City of Portsmouth**

Title: Family Medical Leave

Effective Date: 2/5/94

Revised Date: 1/16/09

**I. PURPOSE:**

To clear up certain questions about the Family and Medical Leave Act (FMLA), not to cover all possible issues. The City reserves the right to alter or amend this policy as precise implementation issues arise and when the U.S. Department of Labor issues final regulations.

**II. PROCEDURE:**

A. GENERAL STATEMENT OF APPLICABILITY OF THE FMLA: An employee is entitled to up to twelve (12) weeks (or 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) of family leave in any twelve (12) month period. Family leave is provided for in the following instances:

1. Birth, and first year care of a child;
2. The adoption or foster placement of a child in the employee's home;
3. Care for an employee's child, spouse or parent who has a serious health condition, and;
4. An employee's own serious medical condition.
5. Military family leave as described below.

Eligible employees are entitled to take unpaid leave in connection with a covered family member's service in the Armed Forces as described below.

Military family leave provides eligible employees unpaid leave for any one, or a combination of the following reasons:

- Military Caregiver Leave: Eligible employees who are family members of covered service members may take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty with the Armed Forces that may render the service member medically unfit to perform his or her duties with the Armed Forces. Eligible employees include the spouse, children, parent or next of kin of a covered service member.
- Qualifying Exigencies: Eligible employees may take up to 12 workweeks of leave during any 12-month period because of a qualifying exigency arising out of the fact that the spouse, child or parent of the eligible employee is on active duty (or has been notified of an impending call or order to active duty)

in the Reserves or National Guard in support of a contingency operation. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

The duration of military family leave is based on the reason for the leave as described below:

- Leave to care for an injured or ill service member, when combined with other FMLA qualifying leave, may not exceed 26 weeks in a single 12 month period.
- Military family leave runs concurrent with other leave entitlements provided under federal and state law.
- In cases of a husband and wife using the leave benefits set forth in this section, the leave will be subject to the limitations set forth by the FMLA.

All FMLA statutory leave is unpaid leave unless existing paid leaves are being substituted for the FMLA statutory leave. See Section IV below for policy regarding substitution.

The City of Portsmouth will designate leave as FMLA-qualifying, based on information provided by the employee. In order to be eligible for FMLA leave, an employee must have:

1. Worked for the City for at least twelve (12) months, and;
2. Worked for at least 1,250 hours during the year preceding the start of the leave.

When existing paid leaves are not being substituted for FMLA statutory leave, an employee shall not be entitled to accrue any other employment benefit.

The regulations established by the Department of Labor under 29 CFR 825.112 shall be used for the implementation of the Act including the employer's and the employees' responsibilities under the Act.

III. TIME FRAME - TWELVE MONTH PERIOD: An employee is entitled to take up to twelve (12) weeks of FMLA leave in a twelve (12) month period. The City of Portsmouth will calculate the twelve (12) month period starting with the first date an employee utilizes such leave.

IV. SUBSTITUTION OF EMPLOYER-PROVIDED LEAVE FOR FMLA STATUTORY LEAVE:

1. Employees will be required to substitute any unused, accrued vacation, earned time, personal leave or comp time for any statutory leave for birth, adoption,

or foster child placement, or for a qualifying exigency,

2. Employees will be required to substitute any unused accrued paid vacation, personal leave, earned time, comp-time or sick leave for any statutory leave for personal or family illness, including military caregiver leave.

*(Example): An employee wants to designate twelve (12) weeks as FMLA statutory leave when going into the hospital for a serious operation. The employee has forty (40) accrued sick days and five (5) vacation days on the books. The employee will receive the leave as FMLA leave but will be required to use his or her entire forty (40) days of accrued sick leave and five (5) vacation days. Thus, the first nine (9) weeks will be paid leave, the last three (3) weeks will be unpaid FMLA statutory leave.*

V. BENEFITS TO EMPLOYEES ON FMLA STATUTORY LEAVES WHEN ACCRUED PAID LEAVE IS EXHAUSTED:

1. Employees who have exhausted accrued paid leaves which are required to be substituted for FMLA statutory leave under Section IV above and still have not used the entire twelve (12) weeks family leave as unpaid leave. While an employee is on FMLA statutory unpaid leave, the employee will be entitled to the following:
  - a. The department will continue to provide group health insurance coverage for the remaining portion of the twelve (12) week FMLA statutory leave period in the same fashion as it would if an employee was still working or in a paid leave status.
  - b. The employee may choose not to have health benefits continue during the remainder of the FMLA statutory leave period.
  - c. Any portion of the group health insurance premiums which an employee is normally responsible for paying must continue to do so while on FMLA leave. If premiums are increased or decreased, the employee will be required to pay a portion of the new premium rates.
    - (1) If the employee is on Leave Without Pay, premium payments are due by the first of the month for that month's coverage. Payment must be made directly to the Human Resources Office. Group Health benefits may be discontinued if an employee's premium payment is more than thirty (30) days late.
  - d. If the employee fails to return to work after the FMLA leave or returns but fails to stay thirty (30) calendar days, the City may recover its share of the total group health premiums paid out for the employee during the FMLA leave unless the employee failed to return due to:

- (1) The continuation, recurrence, or onset of a serious health condition; or
  - (2) Other circumstances beyond the employee's control.
- e. Benefits will cease upon employee's notice of intent not to return to work.

## VI. PROCEDURAL REQUIREMENTS RELATED TO THE USE OF FMLA STATUTORY LEAVE:

### 1. Medical Certification

a. Required Certification: When an employee requests FMLA statutory personal medical leave or FMLA statutory leave to care for a child, spouse or parent, the employee will be required to provide the following information from their health care provider:

- (1) That the employee or family member has a serious health condition;
- (2) The date the serious health condition commenced and its probable duration;
- (3) The medical facts regarding the serious health condition; and
- (4) If FMLA statutory personal medical leave, a description of the extent to which the employee is unable to perform his/her job duties; or
- (5) If FMLA statutory family medical leave, that the employee is needed to care for the child, spouse or parent and the amount of time needed to provide the care.
- (6) If the employee is requesting partial or intermittent leave, the certification must include verification of the schedule of treatment. (29 CFR 825.305-825.311)

2. Additional Certification: For FMLA statutory personal medical leave, the employee may, at the employer's expense, be required to obtain the opinion of a second health care provider chosen by the employer. If a second opinion is required by the City, the expense will be paid by the City. If the two health care providers disagree about any of the information in the certification, the parties may mutually select a third medical provider at the employer's expense. The decision of the third provider shall be final and binding. (29 CFR 825.307-825.308).

3. Recertification: The Department may request recertification at reasonable intervals, but not more than every thirty (30) days. (29 CFR 825.308). However, the Department may request more often if the employee requests an extension, circumstances change, or the validity of an initial certification is questioned.

B. Requests in Writing with Advance Notice: All requests for FMLA statutory leave shall be in writing.

a. Foreseeable Leave: Employees must give thirty (30) days advance notice of the need for FMLA leave when it is foreseeable for the birth or placement of a child for an adoption or for planned medical treatment.

(1) When an employee fails to give adequate notice, leave may be denied until thirty (30) days notice is given.

(2) Unforeseeable Leave: Employees must give notice as soon as practicable, usually within one or two working days. Initial oral notice may be given, followed by a written request.

#### VII. INTERMITTENT AND REDUCED SCHEDULE LEAVE:

1. The Act provides for intermittent or reduced schedule leave for:

a. An employee's own serious health condition; and

b. Care for a family member with a serious health condition.

2. The employee's health care provider must provide written certification that such leave is medically necessary and a description of the expected duration and schedule for such leave.

3. The employee must attempt to schedule such leave so as not to disrupt the operations of their Department.

4. Minimum Leave Increment. Intermittent or reduced schedule leave shall be taken in one-half (1/2)-day increments.

#### VIII. RETURN TO WORK:

1. The City may require periodic reports from an employee regarding the employee's status and intent to return to work.

2. An employee is entitled to be reinstated to the same position or to an equivalent position with equivalent benefits, pay and other terms of employment.

a. There is no obligation to reinstate an employee if the employee would have been laid off due to a reduction in force during the time period the employee was on FMLA leave.

#### IX. PROCEDURE FOR APPLYING FOR FMLA LEAVE:

1. All requests for FMLA Leave will be processed through the Human

Resources Department. Any Department receiving a request for such leave shall bring it to the immediate attention of the Human Resources Department, so that there is no delay in making the determination as to whether or not the FMLA leave request is to be granted.

- a. A Family and Medical Leave Act Eligibility Worksheet will be completed for any employee requesting FMLA Leave.
- b. Employees who are granted FMLA Leave shall complete an Application for Leave, indicating that the Leave taken is FMLA.