

Administrative Policy 3-1-2

DISTRIBUTION: City Manager, All Departments

SUBJECT: Family and Medical Leave

APPLICATION: Applies to All Employees (except as may be provided differently under the terms of a collective bargaining agreement (cba) and/or associated cba prevailing practices).

PURPOSE: To establish the policies and procedures to regulate Family and Medical Leave (FMLA) for all employees of the City of Muskogee.

Background: The Family and Medical Leave Act entitles eligible employees of the City of Muskogee to take unpaid, job-protected leave for specified family and medical reasons.

Family and Medical Leave

A. Purpose

1. Family and Medical Leave and all other rights provided under the Family and Medical Leave Act of 1993 shall be granted to regular and part-time employees in accordance with the provisions set forth in this policy.
2. Employees must meet the following criteria in order to be considered eligible for Family and Medical Leave:
 - a. A regular or part-time employee must have worked for the City for at least twelve (12) months in total.
 - b. And must have provided at least 1250 hours of service during the previous twelve (12) months (rolling timeframe) at the time the leave is requested.

B. Definitions: The following words and phrases, as used in the application and interpretation of the Family and Medical Leave policy shall have the meanings listed below:

1. "Child," "Son," or "Daughter" means a biological, adopted, or foster child, a step child, a legal ward, of a child of a person standing in loco parentis (i.e. in the place of a parent) who is under eighteen (18) years of age, or eighteen (18) years or older if the child is incapable of self-care because of a mental or physical disability.
2. "Spouse" means a husband or wife as defined or recongized by state law for purposes of marriage, including common law marriage. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recongized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a

marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

3. *“Parent”* means a biological parent of an employee or an individual who stood in the legal status of loco parentis to an employee.
4. *“Serious Health Condition”* means an illness, injury, impairment, or physical or mental condition involving either inpatient care at a hospital, hospice, or residential medical care facility, or continuing outpatient treatment by a health care provider (i.e. a doctor of medicine or osteopathy, or other person determined by the Secretary of Labor to be capable of providing health care services).
5. *“Covered service member”* means a spouse, son, daughter or parent serving on active duty or who is a member of the National Guard or Reserves of the Armed Forces of the United States.

C. FMLA Provisions

1. Family and Medical Leave for eligible City employees may be used in the following situations:
 - a. For the birth or adoption of a child, or the placement of a child with the employee for adoption or foster care (must be taken within twelve (12) months of the date of birth or placement).
 - b. For the serious health condition of a spouse, child, or the employee's parent.
 - c. For the employee's own serious health condition.
 - d. For up to 12 weeks of leave for certain “qualifying exigencies” arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation.
 - e. Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. (Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period).

- f. Eligible employees who are family members of covered service members will be able to 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.
- g. FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation as follows: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

2. Family and Medical Leave shall be granted in accordance with the following provisions:

- a. Employees who are eligible for Family and Medical Leave are entitled to up to twelve (12) weeks of leave during any twelve (12) month period. The twelve (12) months is measured forward from the date the Family and Medical Leave begins (i.e. if an employee takes the leave starting on 8/15/09, their twelve (12) month time-frame is valid through 8/14/10). Except as provided in Section C parts d to g.
- b. Employees who do not return from leave after the eligible 12 weeks provided under FMLA may make a request for Leave Without Pay or use additional paid leaves available to the employee for non-job related injury and/or illness for a maximum period of time of six (6) months (inclusive of the 12 weeks provided under FMLA). In order to be eligible for additional leave after the FMLA covered 12 weeks, it will be necessary for employees to remain current on any and all employee paid benefits. Delinquency of more than thirty (30) days would result in termination of such benefits.
- c. Just prior to the six (6) month timeframe, a pre-termination process will be utilized to review the employee for disability review separation. An employee who receives medical information during his/her leave time that the non-job related disability will result in the employee never being able to return to employment within the City of Muskogee, shall be reviewed through a pre-termination process at the earliest reasonable time for disability separation. If disability separation is approved, the employee shall be eligible for all accrued leave payouts as a retiree, regardless of normal eligibility for such leave payout benefits. An employee who receives disability separation and later becomes eligible for re-employment with the City of Muskogee may apply through normal

processes, and if rehired, shall be considered a new employee similar to any employee who leaves City employment and returns at a later time.

- d. Family and Medical Leave is an unpaid, Federally established benefit right of any employee as defined in Section A part 2, a and b. However, the City requires (as allowed under the Act), that employees must take any applicable paid leave in conjunction with FMLA, to which the employee may be entitled. Employees are also required to use any compensatory leave accumulated.
- e. Such paid leave as set out in Section C, part 2-d above shall apply towards the total twelve (12) week Family and Medical Leave benefit. Any remaining Family and Medical leave beyond applicable injury leave, sick leave, vacation leave, compensatory or annual leave accruals shall be without pay.
- f. The use of Family and Medical Leave shall not be considered negatively or held against the employee in reference to performance evaluations, promotional consideration, or any other employment factors. Supervisors shall not interfere with, restrain, or deny employees their rights under this policy. Nor shall a supervisor discharge or discriminate against an employee based on the employee's exercise of rights under this policy or the filing of a grievance or charge related to this policy and the Family and Medical Leave Act.
- g. An employee who takes a leave under approved conditions and returns is entitled to reinstatement either to the same assignment or to an assignment equivalent in pay, benefits and other terms and conditions of employment.
- h. If an employee takes Family and Medical Leave due to their own serious health condition, the physician certifying the leave as qualified under the FMLA must certify their ability to return to work no earlier than two (2) days prior to their release date.
- i. During Family and Medical Leave, the employee is entitled to the continuation of group health benefits, including continuation of any premiums paid by the City. Any payments normally made by the employee for dependent coverage, or any supplemental policies, must be paid by the employee for those benefits to remain active. If the leave is paid, the employee's share of the premium payments and benefit contributions, if any, will continue to be paid through payroll deduction. Any applicable premiums for coverage, including any premiums normally paid by the City, will be required from the employee if the employee is granted an extension of leave beyond the twelve (12) weeks of FMLA during any leave without pay status. Nonpayment of premiums will result in cancellation of such benefits.

- j. An employee using intermittent or reduced leave schedule may be temporarily transferred during the period the intermittent or reduced leave schedule is required, to an available alternate position for which the employee is qualified and which, in the City's discretion, better accommodates recurring periods of leave than does the employee's regular position. The alternate position will have equivalent pay and benefits to the employee's regular position and must be approved by the HR Director or designee.

D. Requests and Administration of Leave

1. An employee who chooses to request Family and Medical Leave or Military Caregiver Leave must complete the respective forms in which leave applies; these forms shall be obtained from the HR Department. The employee shall return the completed form to the Human Resources Department as soon as it is determined that such leave may be necessary, but at least thirty (30) days before the leave is to begin if the need for the leave is foreseeable (e.g., expected birth of a child, adoption or planned medical treatment). If thirty (30) days advance notice is not possible, then the employee must give notice and complete the form as soon as practical.
2. Supervisors shall notify the HR Department each time an employee utilizes ten (10) or more consecutive days of Sick Leave, Leave Without Pay, Vacation Leave for illness purposes, or when advance notice of an extended absence or ongoing intermittent leave is received. Notification shall include the employee's name, classification, supervisor's name, work location, and home phone number of the employee.
3. The HR Department will contact the employee by mail and/or phone and, as determined appropriate, provide them a copy of this policy along with the required FMLA paperwork to be completed. The contact with the employee is to determine whether the time off qualifies as FMLA Leave. The employee shall have the Certification of Health Care Provider Form completed by their personal physician and returned to the HR Department to determine whether the leave will be designated under the FMLA.
4. An employee shall normally be responsible to provide the HR Department with the Certification of Health Care Provider Form within fifteen (15) calendar days. Failure to return the form to the HR Department within fifteen (15) days may result in disciplinary action and/or discontinuation of eligibility for paid leaves.
5. Upon the HR Department's determination that the period of absence is FMLA qualified, the HR Department shall notify the employee and the employee's supervisor/department of the date on which the FMLA status began and the expected return date.

6. When the Family and Medical Leave is requested for a serious health condition or an employee is placed on FMLA, the employee must be requested to provide and/or provide related medical certification of that serious health condition of the employee or that of a family member to the Human Resources department. Copy shall be sent to the department.
7. The Certification must state that the employee cannot perform the functions of his or her job and an estimate of the amount of time the employee will need to be off work. For leave to care for a spouse, son, daughter, or parent with a serious health condition, the Certification must indicate the person's name and relationship to the employee and include an estimate of the amount of time the employee will need to remain off work to provide care.
8. If an employee requests Family and Medical Leave for the employee's own serious medical condition, the employee may be required, at the City's expense, to provide a second opinion obtained by a health care provider chosen by the City at the request of the HR Director or designee. If the two (2) health care providers disagree about any information in the certification, the parties may mutually select a third medical provider at the City's expense. The decision of the third provider shall be final and binding.
9. During Family Medical Leave, the employee must provide subsequent medical re-certification of a serious health condition of the employee or that of a family member each thirty (30) calendar days to the Human Resources Department.
10. Employees are required to make a reasonable effort to schedule any planned medical treatment for the employee or that of a family member in order to not disrupt the operations of the City.
11. A request for leave based on a qualifying exigency for military family leave or a certification for serious injury of a covered service member must be submitted and may be obtained through the HR Department. The qualifying exigency for military leave form must be filled out by the employer and the employee. The form for serious injury of a covered service member must be filled out by the employer, employee and a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. After completion, forms should be returned to the HR Department.
12. Family and Medical leave may be taken on an intermittent or reduced schedule basis when medically necessary. Medical certification must be provided and must state the dates on which medical treatment is to be given and the duration of the treatment. Minimum Family and Medical Leave expended shall be one (1) hour.

Leave for the birth, adoption, or placement of a child may only be taken on an intermittent or reduced schedule when approved by the immediate supervisor and Department Head.

13. Employees may be temporarily transferred to an assignment more suitable for recurring periods of absence or have their duties slightly altered to better accommodate intermittent or reduced schedule Family and Medical Leave.
 14. An employee who enters into a period of Leave Without Pay status must be placed on inactive status at the end of the pay period following the first day of unpaid absence from a covered illness or injury to stop leave accruals and effect benefit tracking. The department payroll clerk/secretary shall submit a Personnel Action Form indicating "FMLA Inactive Pay Status" to the Human Resources Department once the employee enters LWOP status. When the employee returns to work and "active pay" status, the department shall submit a Personnel Action Form indicating the change. Family and Medical Leave shall also be tracked by the employee's department.
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15. Holidays observed by the City, and normally paid to employees, will not be paid when an employee is on leave without pay.
 16. An employee eligible for Family and Medical Leave (except "key employees" as that term is defined by the FMLA) shall be restored to his or her former position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The City cannot guarantee that an employee will be returned to his or her former job. The Human Resources Director or designee will determine whether a position is an "equivalent position".
 17. An employee must notify the HR Department as soon as a date of return to active status is known. Notification shall normally be given to the HR Department no more than (2) working days prior to the employee's planned return. A doctor's release from the applicable health care provider will be required upon returning to work if the leave involved a serious health condition of the employee and the employee utilized more than ten (10) days of sick leave or vacation, compensatory time or unpaid leave for sick leave purposes.
 18. If an employee and the employee's spouse are both employed by the City, the following provisions apply:
 - a. If the leave is taken for birth, adoption, or placement into foster care of a child, the employee and spouse can not take more than twelve (12) weeks combined Family and Medical Leave during any given twelve (12) month period.

- b. If the leave is taken for the care of a sick child or because of the illness of the other spouse, each spouse is entitled to twelve (12) weeks of Family and Medical Leave during a twelve (12) month period.

REFERENCES: Family and Medical Leave Act of 1993 (FMLA).

RESPONSIBLE DEPARTMENT: Human Resources

EFFECTIVE: This policy is in effect from the date of issuance until amended or rescinded.

Dated this 10 day of December, 2018.



Mike Miller, City Manager

Approved as to form and legality this 10 day of December, 2018.



Roy D. Tucker, City Attorney