

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

Policy Memorandum No. 33 (R)

February 19, 2023

TO: All Departments, Boards, Agencies, and Commissions

FROM: Gilbert A. Montaña, Chief Administrative Officer



SUBJECT: PARENTAL LEAVE

I. PURPOSE

The City of New Orleans (City) policy on parental leave is hereby revised to provide up to 12 weeks of paid parental leave that may be used in substitution for unpaid Family and Medical Leave Act (FMLA) leave in connection with the birth or placement of a child for adoption or foster care. This document establishes policies and procedures for employees to request and supervisors to grant paid parental leave.

II. GOVERNING AUTHORITY

Home Rule Charter Section 4-302(5) authorizes the Chief Administrative Officer (CAO) to "prescribe accepted standards of administrative practice to be followed by all offices departments, and boards."

Civil Service Rule VIII § 9, LEAVE FOR PARENTAL REASONS, provides that full-time classified employees that meet eligibility requirements are entitled to paid parental leave.

III. DEFINITIONS

Birth. The term "birth" means the delivery of a living child.

Child. The term "child" means a biological, adopted, or foster child who is:

1. Under 18 years of age; or
2. 18 years of age or older and incapable of self-care because of a mental or physical disability.

FMLA leave. The term "FMLA leave" means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as provided under the Family and Medical Leave Act (FMLA) (5 U.S.C. §§ 6381-6387).

Parental role. The term "parental role" shall mean a parent, legal guardian, or a person with whom a child has been placed via adoption or foster care.

Placement. The term "placement" means a new placement of a child with an employee for adoption or foster care. This excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent.

IV. **PAID PARENTAL LEAVE POLICY**

- A. **Paid Parental Leave.** The City will provide up to 12 weeks of paid parental leave in substitution of unpaid FMLA leave to eligible employees following the birth of an employee's child or the placement of a child with an employee in connection with adoption or foster care.

An employee must be eligible for and elect to take FMLA leave in connection with the birth or placement of a child. Once eligibility for FMLA leave is established, the employee may receive paid leave for the FMLA leave taken in lieu of unpaid FMLA leave.

Paid parental leave is limited to 12 work weeks and only may be used during the 12-month period beginning on the date of the birth or placement of the child. During the 12 weeks, the paid parental leave is only available if the employee maintains a parental role with the child whose birth or placement was the basis for FMLA leave entitlement.

The employee will be required to provide supporting documentation, if requested, to their Human Resources Manager to establish that the use of paid parental leave is directly connected to a birth or placement of a child.

An employee shall not receive more than 12 weeks of paid parental leave in a rolling 12-month period, regardless of whether more than one birth or placement event occurs within that 12-month time frame.

- B. **Interaction with FMLA Leave.** An employee's use of FMLA unpaid leave for purposes other than the birth or placement of a child (e.g., leave based on a serious health condition) during a 12-month FMLA period may reduce the amount of FMLA leave available for birth or placement purposes. Therefore, this would reduce the amount of paid parental leave available to the employee.

- **Example.** If an employee has taken four weeks of unpaid FMLA leave during a 12-month period, then the employee will only have eight weeks of FMLA leave available to apply to the birth or placement of the child. In such a circumstance, the employee will only be eligible for eight weeks of paid parental leave at the time of the birth or placement.

An employee may take unpaid FMLA leave *prior* to the birth or placement of a child (e.g., to prepare for childbirth) but cannot receive paid parental leave for the pre-birth/placement leave period. If an employee uses unpaid FMLA leave prior to the birth or placement, that time will also count towards the 12 weeks allowable per 12-month period of paid parental leave.

The substitution of paid parental leave for FMLA leave expends the employee's FMLA leave for the 12-month period in which the paid parental leave is taken. Therefore, if an employee uses all 12 weeks of FMLA leave as paid parental leave following the

birth or placement of a child, the employee will not have any remaining FMLA leave to be used for other purposes for the remainder of the rolling 12-month period.

- C. **Intermittent Use of Parental Leave.** Paid parental leave may not be used intermittently unless the employee's Appointing Authority approves in writing. Employees should consult with their Appointing Authority if they desire to take paid parental leave intermittently. Requests for intermittent use of paid parental leave must be indicated on the Paid Parental Leave Request Form attached to this policy.

If intermittent use of parental leave is authorized by the employee's Appointing Authority, any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation required by Section IV(G) of this policy.

- D. **Separate Entitlement.** Each City employee has a separate entitlement to FMLA leave. Therefore, if two eligible employees are parents of the same newly born or placed child, then each employee has a separate FMLA leave entitlement based on the birth/placement event.

- E. **Multiple Births or Placements.** If an employee has multiple children born or placed on the same day, this is considered to be a single event that initiates a single entitlement of up to 12 weeks of paid parental leave.

If an employee has one or more children born or placed during the 12-month period following the date of an earlier birth or placement of a child of the employee, each event will establish a 12-week leave entitlement to be used during the 12-month period following birth/placement. However, any use of paid parental leave during an overlap period (i.e., period containing more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved.

- Example. If an employee has a child born on June 1 and another child placed for adoption on October 1 of the same year, each event would generate entitlement to substitute up to 12 weeks of paid parental leave during the separate 12-month periods beginning on the date of the birth and on the date of the placement, respectively. Those two 12-month periods would be June 1-May 31 and October 1-September 30. The overlap period for these two 12-month periods would be October 1-May 31. If the employee substitutes paid parental leave during that overlap period, that amount of paid parental leave would count towards both the 12-week limit associated with the birth event and the 12-week limit associated with the placement event.

- F. **Unused or Expired Paid Parental Leave.** Paid parental leave may be used no later than the end of the 12-month period beginning on the date of the birth or placement event. At the end of that 12-month period, any unused balance of paid parental leave granted in connection with the given birth or placement permanently expires and is not available for future use. No payment will be made for unused paid parental leave or

paid parental leave that has expired. Paid parental leave is not considered to be annual leave or sick leave and thus may not be included in a lump-sum payment following separation.

- G. **Work Obligation.** An eligible employee shall not be granted paid parental leave under this policy unless the employee agrees in writing, prior to the start of paid parental leave, to subsequently continue employment with the City for at least 12 weeks after the conclusion of the paid parental leave. A template for the written agreement is attached to this policy. This work obligation commences on the last workday on which the employee used paid parental leave in connection with the birth or placement of a child.

If the employee fails to return to work following the use of parental leave, the Appointing Authority may recover an amount equal to the total amount of the employer contributions on behalf of the employee for healthcare during the duration of the paid parental leave.

The employee must complete the 12-week work obligation even if the amount of paid leave taken is less than the full 12 weeks. The work obligation refers to a period during which the employee is actually working for the City. Periods of time where the employee is not actively working for the City, such as usage of other paid leave (e.g., annual leave, sick leave), unpaid leave, or furlough, shall not count toward the 12-week work obligation. For employees that are granted permission to take paid parental leave intermittently, any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation – an employee's 12-week work obligation begins the day after the last day of paid parental leave is used.

- H. **Waiver of Work Obligation.** The City may waive the 12-week work obligation based on a serious health condition of the employee, or the newly born/placed child, but, in the case of the employee's serious health condition, only if the condition is related to the applicable birth or placement. It may also be waived for circumstances beyond the employee's control. The employee must make a request and provide supporting documentation to the CAO in order to waive the work obligation.
- I. **Relation to Annual Leave and Sick Leave.** Paid parental leave and/or FMLA unpaid leave is in addition to accrued annual leave, sick leave, and donated leave.

The City cannot require an employee to use annual leave, sick leave, or other forms of paid personal leave already accrued by the employee before allowing the employee to use paid parental leave. An employee may request to use annual or sick leave without invoking the FMLA.

- Example. An employee who gives birth to a child has an entitlement to use sick leave for the post-birth recovery period. By using sick leave to cover the post-birth recovery period, the employee would preserve the ability to take their

entitled 12 weeks of paid parental leave at a later time (up to one year following birth).

Please note that the Appointing Authority has discretion in approving or disapproving certain other forms of leave (e.g., annual leave). However, FMLA leave is not subject to approval – the employee is entitled to such leave if they meet the eligibility requirements.

V. ELIGIBILITY

A. **Eligibility Requirements.** In order to be eligible for paid parental leave, the employee must meet the following eligibility requirements:

1. The employee must have completed at least 12 months of service (the 12 months do not need to be consecutive).
2. The employee must have a full-time work schedule (i.e., part-time employees, interns, and temporary or intermittent employees are ineligible).
3. The employee must have worked at least 1,250 hours during the previous 12-month period.

- a. Paid time off, including sick leave, vacation time, or any other paid leave where the employee is not actively working, is not counted towards hours worked.

B. **Parental Role in Connection with the Birth or Placement of a Child.** To be eligible for paid parental leave, the employee must serve in a parental role with respect to the child whose birth or placement has triggered the leave entitlement. Paid parental leave under this policy is not available to other family members or caregivers, surrogate mothers, or sperm donors. Further, the adoption of a new spouse's child is not a placement that qualifies for paid parental leave under this policy. Similarly, this policy excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent.

C. **Establishing Eligibility After a Birth or Placement.** An employee who is ineligible for paid parental leave at the time of a qualifying birth or placement, but establishes eligibility within the 12-month period following a qualifying birth or placement may use paid parental leave once the eligibility is established.

- Example. If an employee has completed 11 months of service time at the time of a birth or placement of a child, the employee would not be eligible for paid parental leave. However, after the birth or placement, if the employee reaches 12 months of service and meets all other eligibility requirements, then the employee would be entitled to take 12 weeks of paid parental leave at that point. The 12-month period available to use the paid parental leave would

begin on the date of the birth or placement of the child, not the date that the employee met the eligibility criteria.

- D. **Date of Applicability.** This policy shall cover all births or placements of children occurring on or after February 19, 2023. Births and/or placements occurring before February 19, 2023 shall be covered by the previous iteration of the City's parental leave policy.

VI. SUPPORTING DOCUMENTATION

- A. **Approved Documentation.** An employee requesting paid parental leave must provide supporting documentation, upon request by the City, that establishes that the employee's use of paid parental leave is directly connected to a birth or placement of a child. Examples of approved documents are listed below. Please note that this list is not exhaustive and requesting employees should work with their Human Resources Manager to ensure that satisfactory documentation is provided.

1. Childbirth Documentation:

- a. Birth Certificate;
- b. Document naming employee as second parent, such as declaration of paternity or court order of filiation;
- c. Documentation provided by child's healthcare provider;
- d. Hospital admission form associated with delivery; or
- e. Other documentation approved by the City.

2. Adoption Documentation:

- a. Documentation provided by the adoption agency confirming the placement and date of placement;
- b. Letter signed by the parent's/parents' attorney confirming the placement and date of placement;
- c. Immigrant visa for the child issued by U.S. Citizenship and Immigration Services;
- d. Adoptive placement agreement;
- e. Independent adoption placement agreement; or
- f. Other documentation approved by the City.

3. Foster Care Documentation:

- a. Foster care placement record;
- b. Other documentation from the foster agency confirming the placement and date of placement;

- c. Foster care placement letter issued by the relevant local department of social services or authorized voluntary foster care agency; or
 - d. Other documentation approved by the City.
- B. **Time to Provide Requested Documentation.** An employee must provide any documentation required by the City within 15 calendar days of the request for documentation.

If it is not practicable for the employee to provide the requested documents within the 15-day period, despite the employee's diligent, good faith efforts, the employee must provide the requested documentation no later than 30 calendar days after the date of the City's initial request for supporting documentation.
- C. **Leave Granted Prior to Submission of Documentation.** The City may grant paid parental leave prior to receiving the requested supporting documentation based on the requesting employee's communications with his or her Appointing Authority. Under such circumstances, the granting of paid parental leave is considered to be provisional, pending receipt of the requested documentation.
- D. **Failure to Provide Requested Documentation.** If the employee fails to provide documentation in response to the City's request, the City may determine that the employee is not entitled to paid parental leave. In such circumstances, the City may:
 - 1. Allow the employee to request that the absence be charged to leave without pay, sick leave, annual leave, or other forms leave, as appropriate; or
 - 2. If the employee has acted fraudulently, the City may declare that the employee has an unexcused absence and take further disciplinary or legal action as appropriate.

VII. EMPLOYEE RESPONSIBILITIES

- A. **Provide Proper Notice and Complete the Request Form.** An eligible employee requesting paid parental leave must provide 30 days' notice of intent, or as soon as practicable given the circumstances, to their Human Resources Manager. The employee shall complete the Paid Parental Leave Request Form attached to this policy and submit it to the employee's Human Resources Manager.
- B. **Confirm Eligibility.** An employee must work with their Human Resources Manager to confirm their eligibility for FMLA leave and paid parental leave.
- C. **Sign the 12-Week Work Obligation Agreement.** The employee must sign the 12-week work obligation agreement and submit the signed agreement to their Human Resources Manager. A template of the agreement is attached to this policy.

- D. **Submit Requested Supporting Documentation.** The employee must provide all required supporting documentation as requested by the City within the required timeframe.

VIII. APPOINTING AUTHORITY RESPONSIBILITIES

The Appointing Authority, or their designee, shall:

- A. **Inform Employee of Employee's Rights under FMLA.** Appointing Authorities must ensure that all employees are informed of the provisions of the Family and Medical Leave Act and their rights under that law.
- B. **Request and Review Documentation.** The Appointing Authority shall request that the employee submit the Paid Parental Leave Request Form, the 12-week work obligation agreement, and any necessary supporting documentation.

Upon receipt, the Appointing Authority shall ensure that they have received all necessary documentation and that the necessary forms and agreements have been properly filled out and executed before approving the use of paid parental leave.

- C. **Determine Eligibility.** The Appointing Authority shall determine whether the employee is eligible for FMLA leave and paid parental leave. The Appointing Authority shall calculate the amount of available FMLA leave the employee has available that can be used as paid parental leave and advise the employee of the amount of paid parental leave available to the employee.
- D. **Review Waiver Requests.** The Appointing Authority shall forward any request and supporting documentation for a waiver of the 12-week work obligation to the CAO for a determination on whether the waiver is warranted.
- E. **Initiate Process to Recoup City's Health Insurance Payments.** If the employee fails to fulfill the 12-week work obligation upon conclusion of the paid parental leave, the Appointing Authority must work with the Department of Finance to recoup the City's contribution towards the employee's health insurance premium during the employee's use of paid parental leave.
- F. **Maintain Records.** The Appointing Authority shall document the employee's use of parental leave as set forth in this policy. All medical documentation related to parental leave shall be confidential and kept in the employee's personnel file.

IX. RETURN TO WORK

- A. **Employee to be Reinstated to the Same Position.** An employee on approved parental leave shall be reinstated to his or her former position, or a comparable position in supervisory and duty responsibilities at the same pay, upon return to work within the 12 weeks provided by FMLA.

- B. **Requests for Accommodation.** Appointing Authorities must review any employee's request for accommodation to transfer to a less strenuous or hazardous position if recommended by a physician.
- C. **Nursing Mothers.** Upon return to work, the Appointing Authority shall ensure that nursing mothers are provided with a private, sanitary place outside of a restroom to express breast milk or nurse the child until the child is one year old and provide reasonable unpaid break time for hourly employees to express breast milk or nurse.
- D. **Return-to-Work Statement.** An Appointing Authority may request that an employee who has utilized parental leave submit a return-to-work statement authorized in writing by a physician. The return-to-work statement must affirm, before returning to work, that the employee is able to perform the essential functions of the job.

X. ADDITIONAL LEAVE

The Appointing Authority may authorize leave for a period of up to six months depending on medical necessity, but only the first 12 weeks, if an employee has the requisite FMLA leave balance, are eligible for paid parental leave under this policy.

XI. BENEFITS DURING LEAVE

- A. **Medical Coverage.** The City will maintain its contribution toward medical coverage for up to 12 weeks of paid parental leave at the same level as if the employee were actively at work. However, employee contributions are required during any period of leave without pay and remain the employee's responsibility for payment. During the periods of unpaid leave, at the employee's option, payment may be made either in advance, in a lump sum, or monthly. If both parents are employees, both employees may access the paid benefits of this policy. Any questions regarding healthcare coverage should be directed to the Chief Administrative Office, Benefits Administration Division at (504) 658-8615.
- B. **Retirement Plans.** Contributions for the pension plan will continue to be made during periods of paid leave but will not be made for periods of unpaid leave. Employees should contact their respective retirement system to make arrangements to pay missed contributions. Any questions regarding pension contributions should be directed to the applicable retirement system (Municipal Employees Retirement System at (504) 658-1850, Fire Pension System at (504) 366-8102, or Police Pension System at (800) 443-4248).
- C. **Leave Accrual.** In accordance with Civil Service Rule VIII, Section 1.1, (e), "no annual leave shall accrue to an employee during any bi-weekly period, or part thereof, in which an employee is on leave without pay."

XII. INQUIRIES

Questions regarding this memorandum should be directed to the Chief Administrative Office, Employee Relations Division at 658-8600.

Attachments:

- Paid Parental Leave Request Form
- 12-Week Work Obligation Agreement