

CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE

POLICY MEMORANDUM NO. 108

April 20, 2005

TO: All Departments, Boards, Agencies, and Commissions

FROM: Charles L. Rice, Jr., Chief Administrative Officer

SUBJECT: FAMILY AND MEDICAL LEAVE POLICY AND PROCEDURES

I. PURPOSE.

The purpose of this memorandum is to provide standards and guidelines for all departments, boards, agencies, and commissions of City Government to follow in regard to the Family and Medical Leave Act of 1993 (FMLA).

II. SCOPE.

This policy applies to all classified and unclassified employees who qualify to receive family and medical leave under the provisions of the FMLA.

III. STATEMENT OF POLICY.

The City is committed to assuring that employees know their rights and that their rights are protected and implemented in accordance with the provisions of FMLA.

IV. GENERAL PROVISIONS.

1. FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave in a 12-month period for certain family and medical reasons.
2. Leave under the act must be granted to an "eligible" employee for the following reasons:
 - A. The birth or adoption of a child or the foster care placement of a child;
 - B. To care for the employee's spouse, child or parent who has a serious health condition;
 - C. A serious health condition of the employee that makes the employee unable to perform the functions of the employee's job.

- D. All standards and procedures within this memorandum were established in accordance with Civil Service Rule VIII, Section 10 of the Rules of the Civil Service Commission.
- E. Because the City's Policies and Civil Service Rules meet or exceed FMLA requirements in many respects, this policy authorizes appointing authorities to run FMLA concurrently with other types of leaves where appropriate such as maternity leave, leave with/without pay, worker's compensation and/or sick leave with/without pay.
- F. Upon return from FMLA leave, employers must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. An employee must provide a fitness-for-duty certificate from his or her physician prior to returning to work. A delay in restoring an employee to his position may occur if a fitness-for-duty certificate is not submitted prior to returning to work.

V. **ELIGIBILITY.**

- 1. This policy applies to all classified employees and unclassified employees. To be eligible for FMLA leave, an employee must have completed at least one year of service and worked at least 1,250 hours during the previous twelve (12) months. This 12-month period shall be measured forward from this date the employee first takes FMLA leave.
- 2. Only periods of actual work time including periods of temporary employment, (i.e. transient, provisional, probationary or emergency) count toward the determination of whether the employee has worked at least 1,250 hours during the preceding 12 months. Periods of paid or unpaid leave, holidays, etc. which are not work time for purposes of the Fair Labor Standards Act are excluded.

VI. **DEFINITIONS.**

- 1. **Eligible Employee-** is one who meets all of the eligibility requirements of the FMLA.
- 2. **Family Member**
 - A. "Family member" is defined in FMLA to include the employee's spouse, son, daughter or parent (but not a parent "in-law"). A "son" or "daughter" is any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible or who is an eligible dependent under the City's health benefits

plan (e.g., a foster child). A "son" or "daughter" is also a child over 18 who are incapable of self-care because of a mental or physical disability. A "parent" is any biological parent, or any individual who assumed day to day and financial responsibility for the employee when the employee was a child.

- B. Same-sex domestic partners will be treated as an employee's spouse for purposes of this policy, provided they are registered with the Clerk of Council pursuant to Chapter 87, Section 887-5 of the City Code and they qualify for benefits coverage under the City's benefits program.
- C. The son or daughter of a same-sex domestic partner of a City employee will be treated as the employee's child for the purposes of this policy, provided that the child qualifies for benefits coverage under the City's benefits program.

3. Serious Health Condition

- A. A serious health condition entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves (i.e. an overnight stay):
 - i. Inpatient care in a hospital, hospice or residential medical care facility or a subsequent treatment in connections with such inpatient care; or
 - ii. Continuing treatment by a health care provider.
- B. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - i. A period of incapacity (i.e., inability to work, attend school or perform regular daily activities) of more than **three consecutive calendar days** and any subsequent treatment or incapacity relating to the same condition. This period of incapacity must also involve:
 - Treatment two or more times by a health care provider; or
 - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the provider's supervision.
 - ii. Any period of incapacity due to pregnancy or prenatal care;
 - iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits with a health care provider;
 - Continues over an extended period of time; and

- Causes occasional rather than continuous periods of incapacity (e.g. asthma, diabetes, epilepsy, etc.)
 - iv. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, provided the employee is under the continuing supervision of a health care provider (e.g., Alzheimer's, stroke, terminal stage of disease).
 - v. Any period of absence to receive multiple treatments (including a period of recovery) by a health care provider either for restorative surgery, or for a condition which, if untreated, would likely result in a period of incapacity for more than three consecutive days (e.g., chemotherapy, dialysis, physical therapy).
- C. A serious health condition does not include cosmetic treatments or cosmetic surgery unless hospitalization is required. Common colds, flu, headaches, earaches, routine dental treatments, and similar conditions are not serious health conditions for FMLA purposes. Treatments such as use of over-the-counter medications or bed rest, which can be initiated without visiting a physician, are generally not serious health conditions.

4. Health Care Provider

Health Care Provider is defined as any physician, podiatrist, dentist, clinical psychologist, clinical social worker, optometrist, nurse or mid-wife who is authorized to provide health care and is acting within the scope of his or her duties as appropriate by the State in which he/she practices. FMLA includes "any health care provider that is recognized by the employer's group health plan (or equivalent program)".

VII. LEAVE ENTITLEMENT.

The City of New Orleans will grant eligible employees up to 12 work weeks of unpaid leave in a 12 month period.

Intermittent/Reduced Leave- FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule when medically necessary to take care for an ill family member, or because of the employee's serious health condition. Also, to care for a newborn or newly placed adopted or foster care child with the employer's approval.

VIII. PROCEDURES.

1. **REQUESTS FOR LEAVE:**

- A. Employees must provide a written request to their appointing authority 30 days in advance of the Family or Medical leave when the need is foreseeable. (Attached is a copy of a request form

which may be used as a substitute.) Employees must also provide medical certification when the request is made due to illness of the employee or a covered family member. (Appointing authorities may require the use of the attached medical certification form.) If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as practicable given the circumstances of learning of the need to take FMLA. It is expected that an employee will give notice to the employer within no more than one or two working days of learning of the need, except in extraordinary circumstances where such notice is not feasible. Within the written request, the employee must indicate whether they are requesting to use paid (sick or annual) or unpaid leave (leave without pay).

- B. Paid sick leave may only be used in the case of leave for and employee's illness or serious health condition (including childbirth).
- C. An employee taking FMLA leave for his/her own serious health condition or to care for a seriously ill spouse, child or parent may request leave on an intermittent basis, or by reducing his/her scheduled work hours. The employee must provide certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner. Intermittent leave will be taken in increments of half hours for non-exempt employees. Monitoring of exempt employees schedules will be coordinated with their supervisors.
- D. If the leave is for the planned medical treatment of the employee or a family member, or requires intermittent or reduced scheduled leave, employees may be required by their supervisor to arrange a particular schedule or to reschedule appointments or treatments, subject to the consent of the health care provider.
- E. If an employee fails to give 30 days' notice for foreseeable leave with no reasonable excuse for delay, the Appointing Authority may delay the taking of FMLA leave until at least 30 days after the employee provides the City with notice of the need for FMLA.

2. REVIEW AND AUTHORIZATION OF LEAVE:

- A. Appointing Authorities must review employee requests and medical documentation and notify the employee in writing as to whether or not the request is approved. By law, the notice should be provided to the employee within one or two business days after the employee's request.

- B. In some cases, the employee may ask for leave without specifying whether the leave is FMLA qualifying or not. It is up to the appointing authority to determine whether the leave requested by the employee is FMLA qualifying. In most cases, the appointing authority cannot count leave as FMLA leave retroactively, so it is important to make an evaluation as soon as possible and notify the employee in writing of your decision.
- C. The appointing authority may require a second opinion from an independent medical provider selected by the appointing authority with the expenses borne by the department where the employee works. If the opinions of the employee's and the department's health care provider differ, then the department can require a third opinion at the department's expense which can be issued by a mutually agreed upon health care provider.
- D. All FMLA leave must be recorded by the appointing authority in the employee's personnel file. All forms of leave require a personnel transaction in the personnel file. All forms of leave require a personnel transaction in the personnel/payroll system to place the employee on leave. Separate actions are available to indicate whether the leave will be paid or unpaid leave. (Please see the AHRS personnel transactions manual)
- E. Appointing Authorities must monitor the time used for FMLA to insure that employees do not exceed the twelve weeks allowed under the law, especially when a request is made for intermittent leave. Appointing authorities may choose to authorize additional sick, annual or leave without pay once FMLA leave is exhausted.
- F. **All information relating to requests for FMLA leave must be kept confidential. This information will only be disclosed to those with a need to know and will be used only to make decisions in regard to the provisions of this policy.**

IX. BENEFITS

1. The City of New Orleans is required to maintain its contribution toward medical coverage for up to the 12 weeks of FMLA leave at the same level as if the employee were actively at work. However, employee contributions are required and remain the employee's responsibility for payment. At the employee's option, payment may be made either in advance, in a lump sum, or monthly, during the leave. Any questions regarding health care coverage should be directed to the Hospitalization Division of the Chief Administrative Office at 658-8615.
2. Contributions for the pension plan will continue to be made during period of paid FMLA leave, but will not be made during 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 Municipal Employees Retirement System at (504) 658-1850; Fire Pension System at (504) 821-4671 or Police Pension System at 1-800-443-4248.

3. 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."

X. POSTINGS.

A photocopy of the FMLA notification to the employee is attached. This poster notification must be placed in a conspicuous place which is readily accessible and which can be read by all employees.

XI. INQUIRIES

Questions concerning this memorandum and Classified Employees may be addressed to the Classification and Compensation Division of the Department of Civil Service at (504) 658-3511.

Questions concerning Unclassified Employees may be addressed to the Personnel Management Division of the Chief Administrative Office at (658-8629).

CLR, Jr./PMRC/rth/emk

Attachments