

I. Family Medical Leave Act (FMLA)

A. Covered Employees

1. All employees, including seasonal, who have been employed for at least 52 weeks with the City and who have worked at least 1,250 hours in the 12-month period immediately preceding the commencement of leave are entitled to FMLA leave.
 - a) The required 52 weeks of employment need not be consecutive, but must have occurred within seven (7) years from the most recent hire date, unless the break in service was for fulfillment of the employee's National Guard or Reserve military service obligation.
2. In calculating the employment requirement, an employee who appears on the City's payroll, whether receiving pay or not, shall have that week counted as "employed."
 - a) The employee's eligibility is determined from the date leave begins.
 - b) Military time is credited as if the employee would have been working.
3. The 1,250 hours shall be based on actual hours worked in accordance with the Fair Labor Standards Act (FLSA).
4. An employee may not waive FMLA Rights. The employer has an obligation under law to designate the leave if the leave qualifies, even if the employee would "prefer" not to be on FMLA.

B. Definitions

1. "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken.
2. "12-Month Service Member Period" means a single 12-month period measured forward from the first day Service Member Family Leave is taken.
3. "Child" means a child either under 18 years of age, or older than 18 who is incapable of self-care because of a disability, for whom the employee has actual day-to-day responsibility for care, including a biological, adopted, foster or step-child. For purposes of a son or daughter on covered active duty or call to covered active duty, or for Service Member Family Leave, the child may be of any age.
4. "Continuing Treatment" by a Health Care Provider for a serious or chronic health condition includes any one or more of the following:

- a) A period of incapacity of more than three (3) consecutive full calendar days;
OR
 - b) Involves medical treatment two or more times within 30-days of the first day of incapacity, and the first treatment must take place within 7-days of the first day of incapacity; OR
 - c) Any subsequent (regimen) treatment relating to the same condition; OR
 - d) Any period of incapacity related to pregnancy or for prenatal care; OR
 - e) Any period of incapacity due to the treatment of a chronic serious health condition with at least two visits to a health care provider per year; OR
 - f) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; OR
 - g) An absence to receive treatment for a condition which, if not treated, would result in more than three days of incapacity.
5. "Covered Active Duty" means:
- a) In the case of a member of a regular component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country; and
 - b) In the case of a member of a reserve component of the Armed Forces, duty during the deployment with the Armed Forces to a foreign country where they may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
6. "Covered Service Member" means:
- a) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing recuperation for a serious injury or illness; or,
 - b) A veteran who is undergoing recuperation for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the preceding period of five years.
7. "Fitness-For-Duty Certifications" may be required to address an employee's ability to perform the essential functions of the job. If reasonable job safety concerns exist, this may be required before an employee is allowed to return to work.
8. "Health Care Provider" means any medical provider authorized to practice by the State of Texas to perform within the scope and practice defined by State Law.

9. "Incapacity" means the inability to work, attend school, or perform other regular daily activities due to the treatment of or recovery from a serious health condition.
10. "Intermittent Leave" means leave taken in separate blocks of time due to any FMLA qualifying illness or injury. An employee may not take intermittent leave following birth or placement of a child until an estimated schedule has been accepted by the supervisor and/or personnel.

Departments must track FMLA using the smallest increment of time used for other forms of leave with a maximum increment of one hour for tracking intermittent leave. This is true even if the department normally requires that vacation or sick time be taken in full day increments. Example: If an employee arrives to work a half-hour late due to an FMLA qualifying condition, then only the amount of leave actually taken by the employee may be counted against FMLA.

11. "Key Employee" is a salaried FMLA-eligible employee in the highest paid ten percent of all City employees.
12. "Limited Duty." An employee is not on FMLA leave while performing limited duty, since they are in a working status for the city and not actually off work.
13. "Medical Certification" means a written statement by a health care provider on the appropriate form that identifies an employee's qualification for FMLA leave and provides medical facts supporting the need, frequency, and duration of leave.
14. "Next of Kin" means the nearest blood relative of a Covered Servicemember.
15. "Parent" means a biological parent of an employee or an individual who stood in place of the parent to the employee when they were a child (step parent, foster parent, etc). This term does not include parent-in-law(s).
16. "Qualifying Exigency" includes:
 - a) Notification of a call to covered active duty seven or fewer days from date of deployment;
 - b) Military events and related activities, including post-deployment activities (e.g. official ceremonies, support programs, counseling, etc. related to covered active duty or a call to such);
 - c) Attending to childcare and school activities;
 - d) Attending to financial and legal matters;

- e) To spend up to five days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment; and,
- f) Any additional activities related to the call to covered active duty otherwise agreed to by the employer and employee.

17. "Reduced Schedule Leave" is a leave schedule that, based on medical necessity, reduces an employee's usual working hours per week, or hours per workday.

18. "Regimen of Continuing Treatment" includes, for example, a continuing course of prescription medication or therapy required to resolve or alleviate the serious health condition. Unless complications arise, it does not include treatment that involves the taking of over-the-counter medication, bed-rest, drinking fluids, exercise, or other similar activities which can be initiated without a visit to the health care provider.

19. "Serious Health Condition" is:

- a) An illness, injury, impairment, or physical or mental condition that involves in-patient care (overnight stay);
- b) Incapacity requiring absence from work for more than three calendar days and that involves continuing treatment (two or more visits within 30 days) by a health care provider;
- c) Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days;
- d) Or prenatal care by a health care provider.

Short-term conditions requiring only brief treatment and recovery, even if beyond three (3) days, such as the common cold, flu, routine earaches, upset stomach, minor ulcers, minor headaches, and dental care, are not considered "serious health conditions" unless serious complications arise and become qualifying under the law.

20. "Serious Injury or Illness" means an injury or illness that was incurred by a member or veteran of the Armed Forces in the line of duty while on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty) and, in the case of a member, renders the member medically unfit to perform his or her duties, or in the case of a veteran, manifested itself before or after becoming a veteran.

21. "Spouse" means husband or wife, including common law as defined by Texas State Law. Legal documentation for common-law is required and will be reviewed.

22. "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released under conditions that were not dishonorable.

C. General Provisions

1. FMLA leave runs concurrently with any other leave used in accordance with this policy, including workers compensation.
2. An employee may request FMLA leave for any of the following qualifying reasons:
 - a) In order to care for a child following the child's birth, adoption, or placement in foster care with the employee;
 - (1) Leave must be taken within the 12-month period following the child's birth or placement with the employee;
 - (2) If married spouses both work for the city, their total leave in any 12-month period may be limited to 12 weeks if the leave is taken for the birth or placement of a child.
 - b) To care for the employee's child, spouse, or parent of the employee with a serious health condition (in-laws are not a qualifying dependent);
 - c) The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
 - d) The employee must attend to a qualifying exigency arising out of the fact that the employee's spouse, child or parent is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.
3. FMLA shall begin on the employee's requested leave start date or the date the supervisor gained knowledge that an employee's absence qualified, even if the employee did not specifically request FMLA leave.
4. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." Only 12 of the 26 workweeks may be for a FMLA-qualifying reason other than to care for a covered service member.
5. Spouses employed by the same employer, are limited to a combined total of 26 weeks in a "single 12-month period" if the leave is to care for a covered service member with a serious injury or illness.
6. The supervisor shall notify the timekeeper to appropriately record leave taken for FMLA.

- a) For each FMLA leave request, the supervisor should determine the amount of available FMLA leave for the employee based on the 12- or 26-week requirement and any prior qualifying FMLA leave taken in the rolling 12-month period.
7. The City requires employees to use available leave balances (with the timesheet codes noted) in the following order during FMLA leave:
 - a) For a qualifying serious health condition of the employee, spouse, parent or child, other than a qualifying military exigency:
 - (1) Sick leave (SF)
 - (2) Vacation Leave (VF).
 - (3) Other Accrued Leave (Holiday (HF), Compensatory Time (CF),
 - (4) No-Pay (NPF)
 - (5) Available sick or vacation accruals which occur, even when such balances were already depleted on a prior pay period, shall be applied upon the next use of leave prior to moving to another pay type.
 - b) For qualifying military exigency:
 - (1) Vacation Leave (VF), until exhausted or FMLA eligible time runs out. This leave shall continue to be depleted each pay period as accrued for leave used prior to applying other balances.
 - (2) Other Accrued Leave (Personal Holiday, Compensatory Time etc.)
 - (3) No-Pay (NPF)
 - c) If a holiday occurs during FMLA Leave:
 - (1) If the employee takes a full work week of FMLA, and a holiday falls within that full workweek, count the Holiday as FMLA with payroll code → (HF).
 - (2) If the employee only claims FMLA for a partial workweek, the holiday does NOT count as FMLA and should be charged as a regular holiday (HO).
 8. FMLA qualifying absences may not be used in any disciplinary action for attendance.
 - a) However, FMLA does not protect an employee from disciplinary action for failing to comply with other City policies or to meet performance expectations.
 - b) Employees must follow City and departmental policies and provide proper medical certification as required under the FMLA within the timeframes stated.
 9. Where both spouses are employed by the City, the total combined amount of leave taken is limited to 12-weeks for the birth or adoption/placement of a child

or to care for a sick parent. If both the husband and wife use a portion of the 12 weeks of leave for either the birth, adoption, or to care for a sick parent, each would then be entitled separately to the remainder of that combined 12-week period for any other FMLA purpose.

- a) FOR EXAMPLE: If a spouse took 6 weeks of leave to care for a healthy, newborn child, each spouse could use an additional 6 weeks due to their own serious health condition or to care for a child with a serious health condition.
- b) If, however, a spouse used all twelve weeks of the combined FMLA leave to care for the healthy newborn child, then the other spouse employed by the City would not be entitled to protection under the Act if they chose to take leave to care for the child as well. However, the spouse who did not receive the protection under the Act to care for the newborn WOULD be entitled to his own 12 weeks for any other qualifying FMLA condition other than for a birth or to care for a sick parent.

D. Service Member Family Leave

- 1. Eligible employee who are the spouse, child, parent, or next of kin of a covered Service Member are entitled to up to 14 weeks of additional leave during a single 12-month Service Member period (for a total of 26 weeks if combined with other FMLA leave), to care for such covered Service Member who incurred a serious injury or illness in the line of active duty in the Armed Forces. Available leave not taken during the 12-Month Service Member Period, which begins on the first day leave is taken, will be forfeited. No more than 26 weeks of leave may be taken in a single 12-Month Service Member Period, and no additional extended leaves may be taken in other years for the same injury or illness. If married spouses both work for the City, their total Service Member Family Leave may be limited to an aggregate 26 weeks.

E. Employee Requirements For Requesting Leave

- 1. An employee requesting FMLA leave shall complete a City-Wide Leave Request form and provide a 30-day notice in advance of the first date the leave is to begin if the leave is foreseeable.
 - a) The employee shall complete the FMLA section of that leave form so that the supervisor can determine if FMLA applies to the employee or a dependent of the employee.
 - b) If the FMLA section is unmarked, the supervisor shall return the form to the employee and request completion.
 - c) A supervisor has the right to ask the employee calling in for leave as to the basic reason for leave (flu, headache, bronchitis, etc) and for whom the leave is taken (self, parent or child), so that leave can be noted and charged properly through timekeeping.

2. If an employee fails to provide a 30-day notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied up to 30 days from the date the employer receives notice of the need for leave.
3. When leave occurs unexpectedly, the employee shall follow usual and customary call-in procedures to notify the supervisor of the need for leave. The supervisor may complete the required City Leave Request Form on behalf of the employee upon the call-in being received or may allow the employee to complete it upon return to work if within the pay period. Employees must answer the FMLA section of the form (regardless of FMLA or non-FMLA qualifying), so the supervisor can properly record the absence on timesheets with the proper codes.
4. If a condition initially does not qualify for FMLA leave, but later turns into a qualifying condition, the employee should provide immediate and proper notice of the change in condition and need for or extension of leave. FMLA notices, both verbal and written as appropriate, should be provided from the point the condition qualified under the Act.
5. The employee must return the certification form to their supervisor, within 15 days of receipt of the certification request. There are currently four (4) certification forms available depending on the reason for leave:
 - a) Certification – Employee’s Own Serious Health Condition;
 - b) Certification – Family Member’s Serious Health Condition;
 - c) Certification - Qualifying Military Exigency;
 - d) Certification - Military Service member injury or illness
6. The supervisor should keep certifications and FMLA information received confidential and secure. Only minimal information as needed to share with those for business operations is appropriate. Information regarding employee FMLA reasons for leave should not be openly shared or discussed with those who do not have a need to know in order to protect privacy. This does not prevent the employee from sharing their own information as they are comfortable.
7. Certification is only required every six months, or for the duration on the most recent medical certification, whichever is less, when intermittent leave is used for the same condition.
8. During FMLA leave, the employee must contact his/her supervisor during the supervisor’s normal work hours and at intervals communicated. Daily contact may be reasonable for intermittent leave, but may not be appropriate for extended absences. The supervisor should consider what is reasonable based

on the duration of leave. A spokesperson for the employee may contact the supervisor if the employee is not able.

F. Supervisor Responsibilities

1. Notice of Eligibility Rights and Responsibilities:

a) Within five days after the employee requests leave or after the City learns the leave may be for an FMLA-qualifying reason, the City will provide written notice stating whether the employee is eligible for FMLA leave, and if not eligible, at least one reason why.

2. Designation Notice:

a) Within five days after the employee requests or the City learns of the need for FMLA leave, the City will provide a written notice stating whether leave is available, how much leave has been designated as FMLA leave, and how much leave remains.

b) If any part of the requested leave is not designated as FMLA leave, the City will provide written notice of and reason for denial.

G. Exhausting and/or Withdrawing FMLA Leave

1. The supervisor should track employees on FMLA leave.

2. Once they approach exhaustion of FMLA leave (or if they choose to withdraw a request for leave), the supervisor must within 5-working days:

a) Provide verbal confirmation to the employee of FMLA leave exhaustion or withdrawal; AND

b) Provide the Designation Notice informing the employee of the same.

H. Retroactive Designation of FMLA Leave

1. A supervisor may retroactively designate FMLA leave after an employee returns to work only in the following instances:

a) If the employee was absent, but the supervisor was not aware the absence qualified until the employee returned. In this case, the supervisor must, within five (5) business days of the employee's return, provide verbal and written notices retroactively to the date leave began.

b) The supervisor is aware of the reason for leave, but has been unable to confirm leave as FMLA qualifying, has requested but not received medical certification, or a second or third medical opinion is in process. A preliminary designation should be provided in writing. Upon receipt of the information confirming FMLA, the preliminary designation becomes final. If medical certification is not received or fails to confirm FMLA eligibility, the supervisor must withdraw the designation.

2. If leave is taken for an FMLA, but the employee fails to timely notify the supervisor of such through usual and customary call in procedures, the employee may not assert FMLA protection for such absence at a later date.
3. A copy of the employee's City Leave Request Form, Notice of Eligibility, Rights & Responsibilities and the Designation Notice must be forwarded to Human Resources in a confidential marked envelope by the next pay period. This must be kept in the employee's confidential file.

I. Medical Certification

1. Medical certification is required within 15 days of an employee's 1st date of requested FMLA leave or from the date of the supervisor's written request for such documentation, whichever occurs first, to support any claim for FMLA leave.
2. More frequent certification may be required by the City when:
 - a) The employee requests an extension of previously certified FMLA leave; or
 - b) The nature or duration of the condition has changed; or
 - c) The City receives information casting doubt on the validity of the original or any subsequent certifications or the employee's condition.
3. Physician Certification/Re-certification must be thorough and complete. If a supervisor receives an incomplete, insufficient, or questionable certification, he/she should immediately contact the Human Resources representative and provide a copy for review.
4. Human Resources has 5-business days to specify in writing to the employee what information is lacking and must allow the employee seven (7) calendar days to cure the deficiency.
5. Human Resources may contact the employee's health care provider, but may NOT ask for any information beyond that required by the certification form. ***The supervisor is prohibited by law from contacting an employee's provider for information on the employee's absence, certification form, etc.***
6. Medical certifications are considered confidential and should be immediately forwarded to Human Resources in a sealed envelope. These will be maintained in the employee's confidential file.
7. If leave is for the employee's own condition, certification must also include whether the employee can perform work of any kind or limited duty, is unable to perform any one or more of the job's essential functions or must be absent from work for treatment.
8. If leave is requested to care for a parent, child, or spouse, certification must specifically state what type of assistance is needed by the employee and for how long.

J. Employee Status and Benefits During Leave

1. While on FMLA leave, the employee's group benefits continue as if the employee had continued to work. If the leave becomes unpaid, the employee's portion must be paid by the employee for coverage to continue. If FMLA exhausts and remains unpaid, the employee must pay for the employee and City costs in order to continue benefits.
2. Payments for group benefits during unpaid leave shall be paid in Human Resources by the first of each month. If payment for group benefits coverage is not received within 30 days after the due date, coverage will be cancelled retroactive to the last date paid through. Coverage will not be reinstated until the employee returns to active status.
3. Employees who enter a no-pay status on FMLA will no longer accrue vacation, sick, holiday, longevity, or stability during a period of unpaid leave.
4. If the employee fails to return to work at the conclusion of FMLA leave, the City may require the employee to reimburse the City for the full cost of insurance coverage during the period of unpaid leave. However, the employee will not be asked to reimburse the City if the failure to return to work is for legitimate medical reasons, circumstances beyond the employee's control or the continuation, onset or recurrence of a serious medical condition.
5. While on FMLA, employees will not be allowed to work secondary jobs or perform any work or activity inconsistent with the need for leave during the continuous leave period until the day of return from leave or a full duty release date is obtained. This includes non-work days for those on shift schedules.

K. Returning from Leave

1. Any employee who takes leave for FMLA will be restored to the same position held prior to the leave OR to an equivalent position that is virtually identical to the former position in terms of pay, benefits, and working conditions, including privileges, prerequisites and status, as well as similar duties, entailing equivalent skill, effort, responsibility and authority.
2. If the position would have been eliminated or the employee would have been terminated but for the leave, the employee does not have the right to reinstatement upon return from leave (for instance if a division or group of employees is laid-off, unrelated to leave and the employee on leave is in that group, they may be laid off as with any other employee and are not protected by the act).

L. Unlawful Actions and Enforcement of FMLA Rights

1. It is unlawful for the City or any supervisor in the City to interfere with, restrain, or deny the exercise of FMLA rights, or to discharge or discriminate against anyone for opposing such unlawful practices or for participating in a proceeding relating to FMLA. An employee may file a complaint with the U.S. Department of Labor's Wage and Hour Division or may bring a private lawsuit against an employer for violating his/her rights under the FMLA.

M. Genetic Non-Discrimination Act

1. City of Celina FMLA record keeping must comply with the confidentiality requirements of GINA (the Genetic Non-Discrimination Act).