

CITY OF RACINE FAMILY MEDICAL LEAVE ACT (FMLA) POLICY

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The State and Federal Family and Medical Leave Acts (FMLA) provide eligible employees with up to 12 work weeks of protected leave each year for specified family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers and minimizes the potential for employment discrimination.

Note: *The eligibility and entitlements are defined differently under Federal and State law. This policy basically reflects Federal law; however, if an employee is eligible for provisions in the State law, these will be discussed with each individual separately. Federal and State law will run concurrently. An employee must qualify under Federal law to be entitled to the 12 weeks of leave. The employee must qualify under Wisconsin law to be eligible for the Wisconsin leave entitlement. Satisfaction of one law's eligibility requirements does not necessarily mean the employee has satisfied the requirements of the other. If an employee qualifies for Federal family and medical leave and for leave under State law, leave used counts against the employee's entitlement under both laws. If an employee is entitled to leave under only one law, his or her leave used counts against the entitlement under that law. Notwithstanding anything else contained herein, if there are any conflicts between this section and Federal or State law, the provisions of Federal and/or State law will be controlling.*

A. Eligibility:

For Federal FMLA purposes, employees are entitled to FMLA benefits if they:

1. Have been employed by the City of Racine for at least 12 months; and
2. Have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave.

For State FMLA purposes, employees are entitled to FMLA benefits if they:

1. Have been employed by the City of Racine for at least 52 weeks; and
2. Have worked at least 1,000 hours during the 52 consecutive weeks prior to the start of the FMLA leave.

B. FMLA Qualifying Events and Amount of Leave:

Eligible employees may take up to a total of 12 work weeks of FMLA leave in a calendar year for the following qualifying events:

1. The birth of a child and to care for the newborn child;
2. The placement with the employee of a child for adoption or foster care and to care for the newly placed child;
3. To care for the employee's spouse, child, or parent with a serious health condition (Note: Under Wisconsin FMLA, an employee may take up to two work weeks for a domestic partner, a parent-in-law and domestic partners' parents);
4. For a qualifying exigency arising out of the fact that an employee's spouse, child or parent is on active duty or has been notified of an impending call or order to active duty as a member of the Armed Forces (including a member of the National Guard or reserves) and being deployed to a foreign country;
5. For the employee's own serious health condition that renders the employee unable to perform his/her job.

Twelve weeks of family leave can be utilized by an employee whose spouse, child, or parent has been called to active duty to make arrangements for child care, make financial and legal arrangements, attend counseling, attend official ceremonies or programs where the military requests participation of the family member, to attend to farewell or arrival arrangements, or to attend to affairs caused by the missing status or death of a service member.

Eligible employees may take up to a total of 26 work weeks of FMLA leave in a calendar year to care for a spouse, child, parent, or next of kin who is a member of the Armed Forces who suffered an injury or illness while on active duty that renders the person unable to perform the duties of the member's office, grade, rank, or rating. FMLA may also be used to care for a family member who was a member of the Armed Forces any time during the period of five years preceding the date on which the veteran undergoes treatment, recuperation, or therapy.

If an employee takes paid sick leave for a condition that progresses into a serious health condition, the City may designate all or some portion of the related leave as taken under this policy to the extent that the earlier leave meets the necessary qualifications.

Leave qualifying for both Wisconsin and Federal FMLA leave count against an employee's entitlement under both laws and will run concurrently. Qualified leave taken under Worker's Compensation will also run concurrently with Wisconsin and Federal FMLA leave.

C. Leave Duration :

An eligible employee can take up to 12 work weeks of leave during any 12 month period. The City will calculate the twelve month period using the calendar year. Each time an

employee takes a leave, the City will compute the amount of leave the employee has taken under the policy and subtract it from the 12 weeks of leave available, and the balance remaining is the amount the employee is entitled to take at that time.

D. Husband & Wife :

If a husband and wife both work for the City and each wishes to take a leave for the birth, adoption, or placement of a child, or to care for a parent or child with a serious health condition, the husband and wife, combined, may only take a total of 12 weeks of leave.

E. Non-continuous or Intermittent Leave:

Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule:

1. When it is medically necessary to care for a family member with a serious health condition or because of the employee's serious health condition;
2. When it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty;
3. To care for a newborn, adopted or foster child. Federal FMLA leave for the birth or placement of a child for adoption or foster care may not be taken in non-continuous increments unless approved by the City. Under the Wisconsin FMLA, the last increment of leave for the birth or adoption of a child must begin within 16 weeks of that birth or placement.

Medical or family caretaking leave should be planned so as not to unduly disrupt the City's operations.

The City allows for intermittent leave to be taken in no less than one hour increments or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In *all* cases, the leave may not exceed a total of 12 weeks in a 12 month period.

When requesting an intermittent leave or reduced work schedule, the Administrative Manager AND the employee must mutually agree to the schedule before the leave begins. If this is not possible, the employee must prove the use of the leave is medically necessary.

F. Requesting a Leave:

An employee requesting leave under this policy must complete a *Family and Medical Leave of Absence Request Form* and forward it to the Human Resources Department.

The employee must request the leave at least 30 days in advance. If it is not possible to give 30 days' notice, the employee must give as much notice as practicable. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the City's operations.

If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the commencement of the leave may be delayed or denied until at least 30 days from the date the City receives the notice. Failure to provide timely notice allows the City to count any absences during the delay as non-FMLA absences and apply the attendance policy.

While on leave, employees are required to report periodically to their supervisor regarding the status of the medical condition and their intent to return to work.

Calling in "sick" is not enough to trigger the FMLA requirements. When an employee seeks leave due to a particular FMLA-qualifying condition for which the City has previously provided FMLA leave to the employee, the employee must specifically reference either the qualifying reason for the leave or the need for "FMLA leave."

G. Certification of the Serious Health Condition:

If the requested leave is for a family member's or the employee's serious health condition, the employee must submit medical certification from the employee's or the family member's health care provider. The employee must respond to this requirement within 15 days or provide a reasonable explanation for the delay.

Certification of the serious health condition shall include: The date when the condition began, its expected duration, diagnosis, and a brief statement of treatment. For leave for an employee's own serious health condition, the certification must include a statement that the employee is unable to perform work of any kind or is available for light duty (list restrictions and recommend accommodations). (Note: The Human Resources Department has a *City of Racine Family and Medical Leave Health Care Provider Certification* form which may be attached to the response for FMLA for completion by the health care provider).

If the medical certification is insufficient or incomplete, the employee will be provided with a list of what information is still needed and will have seven days in which to provide the information. If the employee does not provide the information within seven days, the leave can be denied.

The city also reserves the right, once the leave begins, to ask for the attending physician to complete a *City of Racine Family and Medical Leave Health Care Provider Certification* form periodically regarding the employee's status and intent to return to work. Recertification may be requested no more often than every 30 days in most cases. However, recertification may be required at any time if an extension to a leave is requested, circumstances described in the last certification have changed (such as a

pattern of absences around an employee's scheduled days off), or the City receives information casting doubt on the employee's stated reason for an absence or the continuing validity of the last certification (such as an employee observed engaging in activities that are inconsistent with a need for time off due to the certified condition).

If the employee plans to take intermittent leave or work a reduced work schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking an intermittent leave or work a reduced schedule.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second physician, which the City will select.

If necessary to resolve a conflict between the original physician and second opinion, the City will require the opinion of a third physician. The City and employee will jointly select the physician and the City will pay for the opinion. This third opinion will be considered as binding and final.

H. Use of Paid or Unpaid Leave:

Under Wisconsin law, an employee has the option to substitute accrued, but unused vacation, comp time, or sick leave to remain in a paid status. However, under Federal law, the city may require substitution of vacation, comp time, or sick leave.

The city will allow an employee to take up to two weeks (10 days) of unpaid leave. For the remainder of the leave, the city will require the substitution of available accrued vacation, comp time, and/or sick time.

Note: Police and Fire personnel – where holidays are an accrued benefit, may substitute holiday pay during a FMLA leave or holiday substitution may be required.

I. Employment Status & Benefits During the Leave:

While the employee is on leave, the City will continue the employee's benefits as set forth in this employee handbook.

Other benefit deduction(s): While on paid leave, benefit deductions (such as AFLAC, etc.) will continue through payroll deductions. While on an unpaid leave, the employee is responsible for the payment of other benefit premiums when required by making arrangements with the Payroll Department for timely payment. If payments are not made, the City will discontinue these benefits during the leave or will recover the payments at the end of the leave period.

J. Employment Status After the Leave:

An employee who takes leave under this policy will be able to return to the same job or to a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority (provided the employee is physically capable of performing the job).

K. Return to Work:

An employee returning from FMLA for their own serious health condition must provide a fitness for duty certification/physician's statement releasing the employee back to full or restricted duty. If returning to restricted duty, the return to work slip should indicate the limitations and suggested accommodations, as well as the duration of the restrictions. You may be asked to have your physician complete an *Attending Physician Report Form* which allows your physician to be specific on the restrictions.

L. Definitions:

1. *Child* – Biological, adopted, or foster child, stepchild, legal ward or, under the Federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing “in loco parentis,” who is under 18 years of age or 18 years of age and older and incapable of self-care because of a serious health condition.
2. *Spouse* – Husband and wife (does not include unmarried partners).
3. *Domestic Partner* – Covered under Wisconsin FMLA, includes same-sex couples who are registered in their county of residence and same-sex and opposite-sex couples who are not required to register. To qualify as registered domestic partners, the couple must be at least 18 years of age and capable of consenting to the relationship, may not be married to or in a domestic partnership with another individual, must share a common residence, must not be more closely related than second cousins and must be members of the same sex. To qualify as domestic partners without registration, the couple must be at least 18 years of age and capable of consenting to the relationship, must not be married to or in a domestic partnership with another individual, must share a common residence, must not be related in a way that would prohibit marriage under Wisconsin law, must consider themselves to be members of each other's immediate family and must agree to be responsible for each other's basic living expenses.
4. *Immediate Family Member* – The employee's child, spouse, or parent (does not include brothers or sisters, and, under Federal law, does not include parents-in-law).

5. *Covered Service Member* - (a) A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient treatment status, or is otherwise on the temporary disability retired list, for a serious injury or illness; (b) or a veteran who is undergoing medical treatment, recuperation, or therapy 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 period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
6. *Next of Kin* – Used with respect to an individual, means the nearest blood relative of that individual.
7. *Parent* – Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee, or parent-in-law or domestic partners' parent under the Wisconsin FMLA.
8. *Qualifying Exigency under Military Leave* – A non-medical activity that is directly related to the covered military member's active duty or call to active duty status. For an activity to qualify as an exigency, it must fall within one of seven categories of activity: short-notice deployment (leave permitted up to seven days if the military member receives seven or less days notice of a call to active duty), military events and related activities, certain temporary childcare arrangements and school activities (but not ongoing childcare), financial and legal arrangements, counseling, rest and recuperation (leave permitted up to five days when the military member is on temporary rest and recuperation leave), and post-deployment military activities.
9. *Incapable of Self-Care* - The individual requires assistance or supervision to provide self-care in three or more of the *activities of daily living* (i.e. grooming, hygiene, bathing, dressing, eating) or *instrumental activities of daily living* (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).
10. *Serious Health Condition* – An illness, injury, impairment, or physical or mental condition that involves:
 - a) Inpatient care in a hospital, hospice, or residential medical care facility;
or
 - b) A period of incapacity of more than three consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition that requires in-person treatment by a health care provider at least once within seven days of the first date of incapacity and requires either a regimen or continuing treatment under the

supervision of a health care provider or a second in-person visit to the health care provider for treatment within 30 days of the first day of incapacity;

- c) Any period of incapacity due to pregnancy or prenatal care;
- d) Chronic conditions requiring treatment by a health care provider at least twice per year that continue over an extended period of time and may cause episodic incapacity rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy, etc.).
- e) Permanent or long-term conditions requiring supervision for which treatment may not be effective (i.e. Alzheimer's, severe stroke, or the terminal stages of a disease);
- f) Multiple treatments by or under the supervision of a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis).
- g) In the case of a member of the Armed Forces (including a member of the National Guard or reserves), means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran who was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes treatment, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty and that manifested itself before or after the member became a veteran.

M. Steps for Applying for a Leave:

1. The employee should discuss the situation with his/her immediate supervisor and the Human Resources Department.
 - a) If the precipitating event is foreseeable, the employee shall notify the City at least 30 days prior to the leave.

- b) If the precipitating event was unanticipated, the employee shall notify the City as soon as practicable.
- 2. Complete the Family and Medical Leave of Absence Request form and forward it to his/her immediate supervisor, who will then sign it and have the employee send the copy to the Human Resources Department.
 - a) All requests **MUST** include an anticipated start and ending date.
- 3. The Human Resources Department will provide a Response to Request for Family and Medical Leave confirming the approval/denial of the leave, as well as salary and benefit information.
- 4. The employee is responsible for notifying his/her immediate supervisor **AND** Human Resources of any changes in his/her leave status.
- 5. The employee is responsible for providing recertification of status or leave reports as specified in the Response to Request for Family and Medical Leave form or when otherwise requested.
- 6. The employee is responsible for providing evidence of fitness for duty to certify the employee is capable of returning to work with restrictions or full duty. Delays in turning in this certification may result in delays in returning the employee to duty and pay status.