



## CITY OF GREEN BAY PERSONNEL POLICY

<b>Policy Title</b> Family and Medical leave	<b>Policy Reference</b> Chapter 23
<b>Policy Source</b> Human Resources Department	<b>Legal Review Date</b> December, 2009
<b>Personnel Committee Approval</b> August 13, 2013	<b>City Council Approval</b> August 20, 2013

23.1 **PURPOSE.** The purpose of this policy is to provide an overview of the Federal Family and Medical Leave Act and the Wisconsin Family and Medical Leave Act which requires covered employers to grant eligible employees with job-protected, unpaid leave due to medical, caretaking or family/parental reasons.

23.2 **POLICY.** The City of Green Bay provides family and medical leave in accordance with the Federal Family and Medical Leave Act (FMLA) and the Wisconsin Family and Medical Leave Act. The Military Family Leave Amendment extends the FMLA to provide military exigency leave and caregiver leave.

For the most part, the federal and state family and medical leave laws overlap. When an employee's absence qualifies as FMLA leave under state and federal laws, the employee will use up his/her entitlement under each law at the same time. Where one law provides a greater benefit than the other, the employee will receive the greater benefit. Entitlements are calculated on a calendar year, January 1 to December 31 for both state and federal purposes.

23.3 **ELIGIBILITY.** An employee is eligible for FMLA under state law if they have been employed by the City for more than 52-consecutive weeks and have been paid for at least 1,000- hours during the preceding 52-week period. Service has to be consecutive to be considered. Under federal law, eligibility requires at least twelve months of service and at least 1,250-hours worked during the twelve-month period preceding the leave.

23.4 **LEAVE AVAILABLE.**

23.4.1 State law allows 2-weeks of medical leave due to an employee's serious health condition; 2-weeks of family leave to provide care to an immediate family member (child, spouse, domestic partner or parent) with a serious health condition; and 6-weeks of family leave for the birth of an employee's natural child or adoption. Federal law allows 12-total weeks of medical and/or family leave due to an employee's serious health condition, the birth of an employee's natural child or adoption, or to provide care for the serious health condition of an employee's child, spouse or parent.

23.4.2 Military Family Leave. Eligible employees may take up to 12-weeks of family leave due to a qualifying exigency when the employee's spouse, son, daughter or parent is on covered active duty, or has been called to covered active duty status and deployed to a foreign country. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

The military FMLA also allows up to 26-weeks of leave for a spouse, son, daughter, parent or next of kin to care for a covered service member during a single 12-month period. A covered service member is:

- (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness or
- (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

23.4.3 Other Leaves. If an employee is not eligible for FMLA, or has exhausted their FMLA entitlement, or wishes to take leave for a purpose that does not qualify for statutory leave, please consult the other leave policies of the City to determine if other leave might be available.

23.4.4 Eligibility. Eligibility requirements for the City's sick leave benefits and worker's compensation will normally meet requirements for the Federal Medical Leave Act and allow the City to count the amount of time used for these leaves against employees' FMLA entitlement. Therefore, FMLA forms are required for all leaves in excess of 3-consecutive scheduled workdays and may be required for less than 3 days given the circumstances.

23.5 PROCEDURES FOR REQUESTING LEAVE. Leave request forms are available from the Human Resources Department. Failure to comply with the following rules may result in the delay of leave or denial of leave.

23.5.1 Foreseeable Leave. Where leave is foreseeable, employees must make a written request for leave at least 30-days in advance.

23.5.2 Unforeseeable Leave. Where advance written notice of the need for leave is not possible (such as where there is an emergency need for medical consultation or treatment) advance oral notice (in person or by telephone) is required. When advance written or oral notice is not possible, then oral notice must be provided as soon as reasonably practical followed by written documentation.

In order for an absence to be covered by FMLA leave, the employee must give the City sufficient information no later than 2-days after returning to work following the absence. Employees will not be allowed to have such a designation made later.

- 23.6 SCHEDULING LEAVE. Leave must be scheduled in such a fashion that it does not unduly disrupt the City's operations.
- 23.7 SUBSTITUTION OF BENEFITS. Under Federal leave, the City has the ability to require employees to substitute all vacation, personal leave, safety day, or sick leave, during the leave period. Under State leave, employees have the option of substituting benefits for their State leave period. When paid leave is substituted for unpaid leave, the paid leave will not be available to the employee later, nor will the employee be entitled to additional family and/or medical leave as a result of the substitution of paid leave. In addition, because the eligibility requirements for worker's compensation benefits require a medical condition that meets the eligibility requirements for family medical leave, the time an employee is off due to an on-the-job injury will automatically be counted against the employee's Federal FMLA entitlement.
- 23.8 MEDICAL CERTIFICATION AND EXAMINATIONS. Where leave involves a serious health condition, the City requires an employee to provide a medical certification form from the health care provider within 15-days of the Employer's request for certification. The City reserves the right to require a second opinion or even third opinion, or may require recertification of a serious health condition when appropriate.
- 23.9 REPORTING WHILE ON LEAVE. While an employee is on leave, the City may require the employee to report periodically on their status and intent to return to work.
- 23.10 FITNESS FOR DUTY REPORT. If an employee has taken medical leave of more than 3-consecutive days as a result of their own serious health condition, then the employee must provide a fitness for duty certificate before returning to work. The City may waive this requirement at its discretion.
- 23.11 INSURANCE AND BENEFITS. To maintain insurance coverage employees must continue to pay their portion of the premium on a bi-weekly basis while on leave. Coverage will cease if payment is not received by the Human Resources Department within 30-days of the premium due date. While on unpaid leave, employees may not accrue benefits (ex. vacation, personal or sick leave) and benefits will be prorated by the City accordingly. If the employee is currently participating in the City Flexible Benefits Plan and takes an unpaid leave of absence exceeding a full pay period, contact the Human Resources Department to modify the payment schedule for the remainder of the year.
- 23.12 FAILURE TO RETURN TO WORK. If an employee fails to return to work for reasons other than a continuation of a serious health condition, the employee will be required to reimburse the City for any insurance premiums paid by the City on their behalf while on leave. Further, any leave used in excess of earned leave will subject the employee to a payback provision as outlined in the Policy and Procedures Manual.
- 23.13 DESIGNATION OF LEAVE. If an employee specifically applies for FMLA leave, Human Resources will notify the employee as soon as possible whether the leave has been approved. If the leave does qualify as FMLA leave, the employee will receive confirmation of the leave approval. Approval or denial of the leave will be made only through the Human Resources Department in writing. Until notification is received from the Human Resources Department in writing that the leave was approved, the employee must continue to call in to their supervisor notifying them of their absence.

Any change in the originally approved leave must be submitted and approved using the same procedure as above.

There may be times when an employee is absent under circumstances that would qualify as FMLA leave, and the employee has not specifically applied for FMLA leave. The City has the right to designate such absences as FMLA leave, and may also waive the requirement of medical certification at its discretion. If an absence is designated as FMLA leave, the employee will receive written notice of the designation. If the employee does not receive notice from the City that an absence has been designated as FMLA leave, the employee should assume that the absence will not be treated as FMLA leave.

- 23.14 EMPLOYMENT PROTECTION. Upon return from family or medical leave, the employee will be returned to the position they held immediately prior to the leave if the position is vacant. If the position is not vacant, the employee will be placed in an equivalent position.
- 23.15 KEY EMPLOYEES. A salaried employee, whose salary rate is in the top ten percent of the City of Green Bay employees, may be denied restoration to employment on the grounds that such restoration will cause substantial and grievous economic injury to the City.
- 23.16 INTRODUCTION. This policy provides an introduction to the rights provision of the family and medical leave laws. Specific questions an employee may have about this law should be directed to the Human Resources Department.