

## POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

SECTION: HUMAN RESOURCES	REFERENCE NUMBER: 107.04
SUBJECT: EMPLOYEE BENEFITS AND SERVICES	INITIAL EFFECTIVE DATE: 08/05/93
TITLE: FAMILY AND MEDICAL LEAVE	LAST REVISION DATE: 11/19/18

### POLICY STATEMENT

The City of Denton shall provide authorized leave for family and medical reasons to eligible employees in accordance with the provisions of the "Family and Medical Leave Act" (FMLA) of 1993 and its amendments.

The purpose of this policy is to enable eligible employees to take absences from work for up to twelve (12) weeks during a 12-month period for new child leave and/or medically-related reasons due to a serious health condition regarding self, spouse, child or parent.

### ADMINISTRATIVE PROCEDURES

#### I. DEFINITIONS

- A. "Child" is a biological, adopted, foster, legal ward, child of a person standing in the place of a parent, or a step-son or -daughter who is under 18 years old or who is over 18 years old and incapable of self-care because of a mental and/or physical disability. For purposes of a child on covered active duty or called to covered active duty, or for Servicemember Family leave, the child may be of any age.
- B. "Covered Active Duty" is: 1) 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 2) 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.
- C. "Covered Servicemember" means: 1) 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, 2) 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.
- D. "Family leave" is approved leave for the birth of a child or placement of a child for adoption or foster care.
- E. "Health care provider" is an authorized individual who provides health care services.

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

- F. “Intermittent leave” is leave taken in separate blocks of time rather than one continuous period.
- G. “Next of Kin” means the nearest blood relative of a Covered Servicemember.
- H. “Parent” is the biological, legal adoptive or stepparent of an employee or an individual who had day-to-day responsibilities to care for and financially supported the employee when they were a child. The term does not include parents-in-law.
- I. “Period of Incapacity” is an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.
- J. “Reduced schedule leave” is fewer workdays per week or hours per workday than an employee’s normal work schedule. For employees who work part-time or variable hours, the leave is determined on a pro-rata basis.
- K. “A Regimen of Continuing Treatment” includes, for example, a course of prescription medications (e.g., an antibiotic or therapy requiring special equipment to resolve or alleviate the health condition). A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.
- L. “Serious health condition” is an illness, injury, impairment or physical or mental condition that involves inpatient care or any subsequent treatment in connection with inpatient care and/or continuing treatment by a health care provider as described in the FMLA regulations.
- M. “Military Caregiver Leave” is leave taken to care for a covered servicemember or veteran who has incurred a serious injury or illness in the line of active duty in the Armed Forces.
- N. “Spouse” is a husband or wife as defined by State law, including a common law marriage. Common law spouses must provide the City of Denton with an affidavit from each spouse testifying to the marriage relationship.
- O. “Treatment” includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.
- P. “Qualifying Exigency” includes: 1) notification of a call to covered active duty seven (7) or fewer days from date of deployment; 2) 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); 3) attending to childcare and school activities; 4) attending to financial and legal matters; 5) to spend up to five (5) days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment; and, 6) any

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

additional activities related to the call to covered active duty otherwise agreed to by the employer and employee.

- Q. "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. The discharged must have been within a five (5) year period of becoming ill or injured while serving in the line of duty.
- R. "12-Month Servicemember Period" is a single 12-month period measured forward from the first day Servicemember Family Caregiver Leave is taken.
- S. "12-Month Period" is a rolling 12-month period measured backward from the date leave is taken.

## II. Eligibility

In order to be eligible for leave under the FMLA, an employee must:

- A. Have been employed for at least 12 months at any time by the City of Denton prior to the commencement of the leave (12 months need not be consecutive);
- B. Have worked for the City at least 1,250 hours during the 12-month period immediately prior to the commencement of the leave; and,
- C. Have a qualifying condition, as defined in Part III below.

## III. Qualifying Conditions

- A. Birth of a child or placement of a child for adoption or foster care with the employee.
- B. A serious medical condition of self, spouse, parent or child consisting of any of the following:

### 1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence Plus Treatment

A period of incapacity of more than three (3) consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- a. Treatment two (2) or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

care services (e.g., physical therapist under orders of, or on referral by, a health care provider); or

- b. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

### 3. Pregnancy

A period of incapacity due to pregnancy or for prenatal care.

### 4. Chronic Conditions Requiring Treatments

A chronic condition which:

- a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and,
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

### 5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or terminal stages of a disease.

### 6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, 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 (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

## IV. Types of Leave

- A. Leave to **care for a child** following the child's birth, adoption, or placement in foster care with the employee;

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

- B. Leave to **care for an immediate family member** (spouse, child, or parent) of the employee if such immediate family member has a **serious health condition**;
- C. Leave due to **employee's own serious health condition** that makes the employee unable to perform the essential functions of his/her position;
- D. Leave necessary for an employee to 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.
- E. Leave to care for such covered Servicemember who incurred a serious injury or illness in the line of active duty in the Armed Forces (hereafter referred to as "Servicemember Family Caregiver Leave.")

Note: All injuries covered by workers' compensation that also constitutes a "serious health condition" will be designated as FMLA leave. Please contact the designated representative for more information.

#### V. Duration of Leave

##### A. Leave Maximum

1. Twelve (12) workweeks of leave during a 12-month period (known as the "leave year" for all types of leave)

*Exceptions: Military Caregiver Leave*

- a. Eligible employees who are the spouse, child, parent, or next of kin of a covered Servicemember are entitled to up to 14 weeks of additional leave during a single 12-Month Servicemember Period (for a total of 26 weeks if combined with other FMLA leave).
  - b. Available leave not taken during the 12-month Servicemember Period, which begins on the first day of leave is taken, will be forfeited.
  - c. No more than 26 weeks of leave may be taken in a single 12-Month Servicemember Period, and no additional extended leaves may be taken in other years for the same injury or illness.
  - d. If married spouses both work for the City, their total Servicemember Family Caregiver Leave may be limited to an aggregate of 26 weeks.
2. If an employee has accumulated sick or vacation time, they must take paid leave first until paid leave is exhausted. The balance of the employee's FMLA entitlement will be provided without pay.

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

- a. An employee on medical leave must first use accumulated sick leave. When the sick leave is exhausted, an employee must then use any accumulated vacation time.
  - b. Upon the approval of family leave, an employee may choose to first use accumulated sick leave. When sick leave is exhausted, an employee must then use any accumulated vacation time. If an employee on family leave does not choose to use accumulated sick leave, the employee must use any accumulated vacation leave.
3. When both spouses are employees of the City, they are entitled to a total combined twelve (12) weeks for family leave to care for a newly born or placed child and/or medical leave to care for a parent with a serious health condition. Each employee separately, however, is entitled up to twelve (12) weeks total leave for a medical leave due to a serious health condition of self, spouse or child.
  4. A paid holiday occurring during a week of FMLA leave has no effect on FMLA time used and is still counted as FMLA leave.
- B. "Leave Year"
1. The City uses a "rolling" 12-month period measured backward from the date an employee uses any leave under the FMLA.
  2. For Military Caregiver Leave, the City uses a "12-Month Period" which is a single 12-month period beginning on the first day the employee takes leave for this reason and ends 12 months later.
- C. Reduced Schedule/Intermittent Leave
1. Family leave may be used intermittently but only with approval from the employee's supervisor and it must be completed within twelve (12) months of the date of birth or placement of the child.
  2. Medical leave to care for a seriously ill family member or because of the employee's serious health condition may be used intermittently or on a reduced schedule if all of the following apply:
    - a. Must be medically necessary;
    - b. The employee must present a medical certification; and
    - c. The employee must consult with his/her supervisor and make a reasonable effort to schedule foreseeable leave so as not to unduly disrupt the department's operations.
  3. The City may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

4. Intermittent and reduced schedule leave absences will be measured in 15 minute increments.

**VI. Coordination of Benefits**

- A. During approved FMLA leave, the City will continue to pay the employer's portion of the health insurance premium. The employee is required to pay health insurance premiums through payroll deduction or personal finances. The employee is also responsible for other benefit premiums normally taken from their paycheck.
- B. Vacation/bonus time, sick leave, and longevity benefits will not accrue during an employee's *unpaid* FMLA leave status. The employee will not receive holiday pay or any other paid benefit during an *unpaid* consecutive FMLA leave. These benefits will resume upon the employee's return to work.
- C. The FMLA policy is administered concurrently with all other relevant City policies. For questions regarding sick leave, holiday pay, death in the family leave, vacation/bonus time, and longevity pay , please see the specific policy for details.

**VII. Notification by Employees**

- A. If the need for leave is foreseeable, an employee must give at least a 30-day notice (oral or written) of their desire to take family and/or medical leave. The City may delay the requested leave for up to thirty (30) days after the notice is provided to the City if an employee fails to give adequate notice of foreseeable leave.
- B. If the need for leave is unforeseeable, an employee must give notice as soon as practicable. Typically, this is within one (1) or two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.
- C. If the City had not been made aware that an employee was absent for FMLA reasons and the employee wants the absence counted as family or medical leave, the employee must give notice within two (2) business days of their return to work that the leave was taken for an FMLA-qualifying reason.
- D. Employees are required to follow department call-in procedures.

**VIII. Paperwork and Timelines**

- A. All FMLA leave, including intermittent leave, must be documented through the on-line timekeeping system and will be charged against the employee's FMLA entitlement.
- B. An employee requesting leave for medically related reasons must also provide medical

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

certification by submitting a completed “**Certification of Health Care Provider**” form when requested to do so by the City.

1. If the City has reason to doubt the validity of a medical certification provided by an employee’s health care provider, the City may require the employee to obtain a second opinion at the City’s expense from a health care provider chosen by the City. If the first and second opinions differ, a third opinion from a health care provider chosen jointly by the City and the employee may be requested at the City’s expense. The third opinion is final and binding.
  2. The City may request re-certification during an employee’s approved FMLA leave, although such re-certification will not be more often than every thirty (30) days.
- C. All necessary paperwork must be completed and returned to the Human Resources department within fifteen (15) calendar days of the employee receiving the paperwork. If an employee fails to provide medical certification in a timely manner, the City may deny the leave request until certification is submitted.
- D. During approved FMLA leave, the City may require an employee to periodically report to their supervisor about the employee’s status and intent to return to work.

#### IX. Other Employment

Provided an employee is absent due to consecutive FMLA leave for a medical condition and the employee asserts they are unable to perform their job duties, the employee is prohibited from engaging in outside employment that would conflict with any medical restrictions.

#### X. Return to Work

- A. If an employee is out due to a serious health condition of self, they must provide a “Return-to-Duty Certification” completed by the employee’s health care provider at the time the employee returns to work. If an employee fails to provide return-to-duty certification, the City may deny job restoration until the certification is submitted.
- B. When the employee returns to work the employee will return to an equivalent position with equivalent benefits, pay and other terms and conditions of employment, in accordance with FMLA regulations.

#### XI. “Key Employee” Exemption

- A. A “key employee” is a salaried employee (exempt from the minimum wage and overtime requirements of the Federal Labor Standards Act as an executive, administrative or professional employee) who is among the highest paid 10 percent of all the City of Denton’s employees. The determination whether an employee is among the highest paid 10 percent of the City’s employees is determined from the time the employee first gives notice of the need for leave.

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE (Continued)**

TITLE: FAMILY AND MEDICAL LEAVE	REFERENCE NUMBER: 107.04
---------------------------------	-----------------------------

- B. Where restoration of a key employee to their position at the end of their leave will cause substantial and grievous economic injury to the City's operations, the City may refuse to reinstate a key employee.
- C. In the event that restoration of a key employee would cause the City substantial and grievous economic injury to the City's operations, the employee will be notified in writing of their status as a key employee, the reasons for denying job restoration, and will further be provided a reasonable opportunity to return to work after so notifying the employee. The City of Denton shall determine, in its sole discretion, what constitutes substantial and grievous economic injury to its operations.

**Department of Labor regulations governing the FMLA are available for review at the Human Resources Department. Employees who fraudulently misrepresent themselves and/or circumstances regarding this policy will be subject to disciplinary action. If there is any language in this policy that conflicts with the federal statute, the language in the federal statute will be the controlling language.**