

City of Northampton, Massachusetts
Human Resources Department

Effective Date: 4/27/94

Updated: 03/2009

FAMILY AND MEDICAL LEAVES OF ABSENCE

POLICY

It is the policy of the City of Northampton to comply with the provisions of the Federal Family and Medical Leave Act and the Massachusetts Maternity Leave Act. These laws entitle eligible employees to take unpaid, job-protected leave for specified family and medical reasons. The City has the right to designate a leave as a qualified FMLA leave, whether the employee actually requested a leave or not, when it appears that the reason for the leave fits the FMLA definitions.

DEFINITIONS FOR FMLA

Eligible Employee: To be eligible for FMLA, an employee must have worked for the City for at least one year (consecutive or non-consecutive) and have worked 1,250 hours (this is actual hours worked and does not include paid time off like vacations and sick time) over the 12 months prior to the commencement of the leave.

Covered Family Member: Employee's lawful spouse, child or parent.*

Child: A child under 18 years of age, or 18 years of age or older who is incapable of self-care because of mental or physical disability. An employee's child is one for whom the employee has responsibility for the actual day-to-day care and includes a biological, adopted, foster or stepchild.*

The 12 Month Period: The eligible period for leave shall be measured by rolling backward from the date an employee uses any FMLA leave. *

*The definition of "covered family member", "child" and "12-month period" are different for Qualifying Event #6.

Qualifying Events - The law provides for six circumstances under which an eligible employee is entitled to unpaid, job-protected leave from work:

- 1) Birth of a child of the employee and to care for the child;
- 2) Placement of a child with the employee for adoption or foster care;
- 3) The employee is needed to care for a covered family member with a serious health condition;
- 4) The employee's own a serious health condition that makes the employee unable to perform the functions of his/her position;

5) A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation (note: this leave entitlement does not extend to family members of the Regular Armed Forces on active duty status), or

6.) To care for a covered service member with a serious injury or illness. Eligible employees, who are the spouse, son, daughter, parent or next of kin, are entitled to a special leave entitlement of up to 26 weeks to care for a covered service member during a single 12-month period.

Limitation - Entitlement to leave for the birth or placement of a child (1) and (2) above, expires at the end of the 12-month period beginning on the date of such birth or placement.

Under Federal law, if both spouses work for the same employer they are entitled (if otherwise eligible) to an aggregate of 12 workweeks for leave during any 12-month period. The rule applies only if the leave is for the birth or placement of a son or daughter, or to care for a sick parent. In addition, this rule only applies if the couple is married. 29 U.S.C. § 2612.

Service Member Family Leave - The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this paragraph, an eligible employee shall be entitled to a combined total of 26 workweeks of leave under any Qualifying Event.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:

- 1) Inpatient care; or
- 2) A period of incapacity of more than 3 days AND any subsequent treatment by a health provider; or
- 3) Continuing treatment by a health care provider for a chronic serious health condition, or;
- 4) Any period of incapacity due to pregnancy or prenatal care.

Qualifying Exigencies for service member family leave may include:

1. Short-notice deployment
2. Military events and related activities
3. Childcare and school activities
4. Financial and legal arrangements
5. Counseling
6. Rest and recuperation
7. Post-deployment activities
8. Additional activities where the employer and employee agree to the leave.

Intermittent or Reduced Leave:

- An employee may take FMLA leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of their own serious health condition *when medically necessary*. Medically necessary means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
- An employee must make a reasonable effort to schedule leave for planned medical treatment so as to not unduly disrupt the employer's operations.
- Intermittent leave for the birth and care of a newborn or placement of a child for adoption or foster care is subject to the City's approval.
- The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
- For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

Active Duty - The term "active duty" means duty under a call or order to active duty members of the uniformed services as described in section 101(a)(13)(B) of title 10, United States Code.

Contingency Operation - A contingency operation is an action or operation against an opposing military force as described in section 101(a)(13)(B) of title 10, United States Code.

Covered Service Member - A current 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 status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

PROCEDURE

Notice Requirement

- An employee is required to give **30 days notice** in the event of a foreseeable leave. A Request for Family and Medical Leave form (see Appendix A) should be completed by the employee and returned to the Human Resources Department. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a completed Request for Family/Medical Leave form.
- In any case in which the necessity for leave under the service member leave section of this

policy is foreseeable, whether because the spouse, or a son/daughter, or parent, of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as is reasonable and practicable.

- If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, an unpaid leave may be granted and the employee is denied access to the substitution of paid leave until 30 days after the employee provides notice (provided paid leave is available).
- Requesting and being approved for an intermittent FMLA leave does not relieve the employee from appropriately requesting time off and/or timely, appropriate notification in advance for the need to take specific time off from work.
- The City retains the right to apply FMLA leave concurrent with any other leave that an employee may qualify for because of the same condition or event.

Medical Certification of a Serious Health Condition

- A. For leaves taken because of a serious health condition of a covered family member, the employee must submit a completed Certification of Health Care Provider for Family Member's Serious Health Condition form (see attached Appendix B) and return the certification to the Human Resources Department within 15 days of the leave request, or as soon as is reasonably possible.
- B. For leaves taken because of a serious health condition of an eligible employee, the employee must submit a completed Certification of Health Care Provider for Employee's Serious Health Condition form (see attached Appendix C) and return the certification to the Human Resources Department within 15 days of the leave request, or as soon as is reasonably possible.
- C. The City of Northampton *may* require a second or third opinion (at employer's expense), periodic reports on the employee's status to include a new Certification of Health Care Provider form every thirty days and intent to return to work, and a fitness-for-duty report to return to work.
- D. All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained separate from the employee's Human Resources file.
- E. When a request for leave is for the serious health condition of a family member, entitlement to the leave may be subject to medical verification concerning the medical condition of the employee's family member, verification that the seriously ill family member is a covered family member and certification that the employee's presence is necessary or would best for the family member's care.
- F. On leave requests that involve a qualified exigency and to care for a seriously ill service member, leave may be approved pending verification of eligibility.

SUBSTITUTION OF PAID LEAVE

In certain circumstances, the City will allow an employee to elect to take paid leave for an eligible FMLA leave. The rules for the substitution of paid leave (if available) for unpaid leave are as follows:

1. An employee granted Family Medical Leave for their **own serious health condition** must first use available sick leave followed by any other accrued time available (vacation, personal or comp time).
2. An employee granted Family Medical Leave for the **birth/placement of a child** may use up to **eight weeks of sick time** followed by any other accrued time available (vacation, personal or comp time).
3. An employee granted Family Medical Leave for the **serious health condition of a covered family member** may use up to **eight weeks of sick time** followed by any other accrued time available (vacation, personal or comp time).
4. An employee granted Family Medical Leave for the **serious health condition of a covered service member** cannot use any accrued sick time. Paid leave can only be taken from vacation, personal or compensatory time.
5. An employee granted Family Medical Leave for a **qualified exigency** may only use vacation, personal or compensatory time to be paid for this type of leave.

EFFECT ON BENEFITS

- A. An eligible employee on a designated FMLA leave, under this policy, will continue to be covered under the City of Northampton's group health insurance plan and life insurance plans under the same conditions as coverage would have been provided if they had been continuously employed during the leave period.
- B. Employee contributions will be required through payroll deduction if the employee is substituting paid leave for unpaid leave, or by direct payment to the Human Resources office, should the employee be in an unpaid status. Employee contribution amounts are subject to change in rates that occur while the employee is on leave.
- C. If the employee's contribution is more than 30 days late, the Human Resources Department may terminate the employee's insurance coverage.
- D. If the employee fails to return from an approved family/medical leave for reasons other than; (1) the continuation of a serious health condition of the employee or a covered family member; or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the City of Northampton may seek reimbursement from the employee for the City's portion of the premiums paid on behalf of that employee (also known as the employer contribution) for the length of the leave.

JOB PROTECTION

- A. If the employee returns to work at the end of the approved family/medical leave (up to 12 weeks), he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.
- B. The employee's restoration rights are the same as they would have been had the

employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

C. If the employee fails to return to work at the end of the approved family/medical leave (up to 12 weeks), the employee will be terminated, unless the leave can be extended under some other statute or City policy.

DEFINITIONS FOR Massachusetts Maternity Leave Act

Eligible employee-A full time female employee who has completed an initial probationary period of six months.

Qualifying event-Leave is for the purpose of giving birth or adopting a child.

Notice- The employee must give two weeks' notice of her anticipated date of departure and of her intent to return.

Length of leave-Eight (8) weeks of leave each times she gives birth or adopts a child.

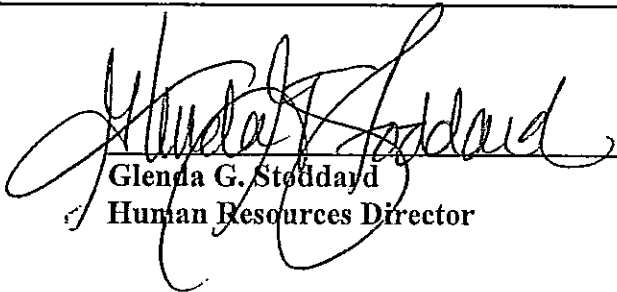
Effect on benefits-Same as under FMLA leave.

Job Protection-Same as under FMLA leave.

Approved:



Mary Clare Higgins
Mayor



Glenda G. Stoddard
Human Resources Director

Revision History: 03/2009, 12/02/2008, 02/04, 4/27/94