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**Policy: 2020002**

**Date in Effect: 11/18/2019**

**Latest Revision: 10/27/2023**

## **FAMILY AND MEDICAL LEAVE ACT POLICY**

### **POLICY STATEMENT**

It is the policy of the City of Findlay “City” to comply fully with the requirements of the federal Family and Medical Leave Act (FMLA) of 1993. FMLA is designed to help employees balance their work and family responsibilities by allowing them to take leave for certain medical reasons; this leave can be used for the employee or the employee’s immediate family (spouse, child or parent). FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

#### **A. General Provisions**

Under this policy, the City will grant up to 12 weeks of leave during a 12-month rolling calendar period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness). The leave will be paid by use of sick leave, vacation, holiday and/or compensatory time, to the extent of the available balances of other leave available to employee

#### **B. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer’s intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave **should not** be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- 3) The employee must work in a worksite where 50 or more employees are employed by the City within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

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### **C. Type of Leave Covered**

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.
- 3) To care for a spouse, child or parent with a serious health condition (described below).
- 4) The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of his or her position.

Under the FMLA, a “spouse” means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the state entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

- a) was entered into in a state that recognizes such marriages; or
- b) if entered into outside of any state, is valid in the state entered into and could have been entered into in at least one state.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the City’s sick leave policy are encouraged to consult with the Human Resource Director.

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

5) Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- a) short-notice deployment
- b) military events and activities
- c) child care and school activities
- d) financial and legal arrangements
- e) counseling
- f) rest and recuperation
- g) post-deployment activities
- h) additional activities that arise out of active duty, provided that the employer and
- i) employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.

- a) A "son or daughter of a covered servicemember" means the covered servicemember's biological, adopted, or foster child, stepchild or legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age;
- b) A "parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents in law;
- c) The "next of kin of a covered servicemember" is the nearest blood relative, other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the

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FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to 29 CFR 825.122(k).

“Covered active duty” means:

- a) “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country;
- b) Covered active duty or call to covered active- duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

(7) Military Caregiver Leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.

An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks of leave in a single 12-month period to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

The term “covered servicemember” means:

- a) a member of the Armed Forces (including a member of the National Guard or Reserve) 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; or;

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- b) 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 Reserve) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

The term “serious injury or illness” means:

- a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserve), means an injury or illness that was incurred by the member in 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 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;
- b)
- c) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.
- d)
- e) Outpatient status, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

#### **D. Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances (No. 1) through (No. 5) above under (C. Type of Leave), during any 12-month period. The City will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (No. 6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the City will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If spouses both work for the City and each wish to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave for those specific reasons. If spouses both work for the City and each wants to take leave to care for a covered injured or ill servicemember, the spouses may only take a combined total of 26 weeks of leave.

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### **E. Employee Status and Benefits During Leave**

While an employee is on FMLA using benefit leave (sick, vacation, holivac, compensatory time) the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the leave period.

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment. The payment must be arranged through the Auditor's Office or the employee's health care coverage may be dropped for an undetermined period to time.

### **F. Employee Status After Leave**

An employee who takes leave under this policy will be asked to provide a fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

### **G. Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid sick leave, vacation and holivac.

Workers' compensation lost time (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, if an employee is off work as the result of a workplace injury for six weeks, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement.

Sick leave may be used as paid leave by both the birthing and non-birthing parent(s). Sick Leave may be used by the non-birthing parent(s) to:

- a) Assist with basic medical, hygienic, nutritional and safety needs;
- b) Psychological comfort
- c) Transportation
- d) Bonding with the child
- e) The care for and bond with a newly adopted child

An employee who is using military FMLA leave for a qualifying exigency must use all paid sick, vacation, holivac and compensatory time prior to being eligible for unpaid leave. An employee using FMLA military



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caregiver leave must also use all paid sick leave, vacation and holiday prior to being eligible for unpaid leave.

#### **H. Consecutive Leave, Intermittent Leave or a Reduced Work Schedule**

Eligible employees may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (to take time off when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the City and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the City before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

#### **I. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must complete the [FMLA Leave Request form](#) as notice of the need for the leave to the Human Resources Director. Within five business days after the employee has provided this form, the HR Director will provide the employee with the appropriate FMLA forms to give to the healthcare provider.

#### **J. Certification for the Employee's Serious Health Condition**

The City will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the [DOL Certification of Health Care Provider for Employee's Serious Health Condition for Employee](#).

The City may directly contact the employee's health care provider for verification or clarification purposes via the Human Resources Director. The City will not use the employee's direct supervisor for this contact. Before the City makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's permission for clarification of individually identifiable health information.

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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 doctor, which the City will select. The City may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary, to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**K. Certification for the Family Member’s Serious Health Condition**

The City will require certification for the family member’s serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the [DOL Certification of Health Care Provider for Family Members Serious Health Condition for Family Members](#)

The City may directly contact the employee’s family member’s health care provider for verification or clarification purposes using a health care professional via the Human Resources Director. The City will not use the employee’s direct supervisor for this contact. Before the City makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee’s family member’s permission for clarification of individually identifiable health information.

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’s family member to get a certification from a second doctor, which the City will select. The City may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary, to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**L. Certification of Qualifying Exigency for Military Family Leave**

The City will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of [Qualifying Exigency for Military Family Leave](#).

**M. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave**

The City will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the [DOL Certification for Serious Injury or Illness of Covered Servicemember](#).



**N. Certification by a health care provider.** Under the FMLA a health care provider includes:

- a) A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which they practice,
- b) A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor -with limitations- authorized to practice in the state and performing within the scope of their practice,
- c) A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state performing within the scope of their practice,
- d) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts, or
- e) Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits

**O. Recertification**

The City may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the City may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The City may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**P. Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the HR Director will complete and provide the employee with a written response to the employee's request for FMLA leave using the [DOL Designation Notice](#).

**Q. Intent to Return to Work from FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, the City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Mayor: Christina M. Murray

Service-Safety Director: [Signature]

Human Resources Director: Ronald S. Essex