
CITY OF KETTERING — ADMINISTRATIVE POLICIES

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Policy No. 310: Family and Medical Leave Act

A. General Provisions

1. The City of Kettering complies with the “Family and Medical Leave Act” (“FMLA”), a federal law which grants eligible employees *unpaid, job-protected family and medical leave from work* when qualifying events occur that affect an employee or certain family members.
 - a. FMLA Leave may be covered by paid time off work, or a combination of paid and unpaid time off work, when an employee is eligible to use accumulated paid leave under other City policies, e.g., Sick Leave, Personal Leave, EDOs, Vacation Leave or Compensatory Time.
 - b. Employees must use accumulated Sick Leave (where appropriate), Vacation Leave, Personal Leave, EDOs or Compensatory Time, before being granted any authorized time off in an unpaid status for FMLA Leave reasons. The Director of Human Resources may grant exceptions to this provision.
2. Employees requesting FMLA Leave and their supervisors should review the following applicable City of Kettering Personnel Policies and Procedures:
 - Policy No. 301: Sick Leave;
 - Policy No. 302: Vacation Leave;
 - Policy No. 303: Holidays, Personal Leave and Earned Days Off;
 - Policy No. 304: Leave of Absence Without Pay;
 - Policy No. 305: Maternity/Paternity/Adoption Leave; and
 - Policy No. 610: Equal Employment Opportunity, Non-Discrimination, Prohibition Against Harassment and Compliance with the Employment Provisions of Title I of the Americans with Disabilities Act.

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B. FMLA Eligibility and Types of FMLA Leave

1. Basic FMLA Leave Entitlement. Under the Family and Medical Leave Act, an employee who has been employed by the City of Kettering for at least one year and worked at least 1,250 hours in the previous 12 months, may take up to 12 weeks of unpaid leave during a rolling 12-month period, for any of the following reasons:
 - a. For incapacity due to pregnancy, prenatal medical care or child birth;
 - b. To care for the employee's child after birth, or placement for adoption or foster care;
 - c. To care for employee's spouse, son or daughter, or parent, who has a serious health condition; or
 - d. For a serious health condition that makes the employee unable to perform the employee's job.

A "rolling 12-month period" means the 365 days immediately preceding any day the employee takes leave.

2. Military Family Leave – Exigent Circumstances. Eligible employees with a spouse, son, daughter or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation, may use their 12-week FMLA Leave entitlement to address certain qualifying exigencies. 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.
3. Military Family Leave – Care of a Covered Servicemember. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of

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leave to care for a covered family servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation or therapy; or is in an outpatient status; or is on the temporary disability retired list.

C. Procedure for Applying for FMLA Leave

1. Applying for FMLA Leave. An employee must provide the City with at least 30 days advance notice before the family or medical leave is to begin if the need for leave is foreseeable, such as for an expected birth or planned medical treatment. If 30 days notice is not practicable, then the employee must provide as much notice as soon as is practicable and generally must comply with the City's and their department's required call-in and leave request procedures.
 - a. The initial notice from the employee must provide sufficient information for the City of Kettering to determine if the leave may qualify for FMLA protection.
 - b. To provide notice and apply for FMLA Leave, an employee shall complete a *City of Kettering Leave Request Form* and submit it to their department as soon as practicable. The employee must list on this form the reasons for the requested leave, the expected start of the leave and the expected length of the leave, along with any accumulated paid leave they wish to use during the period of absence from work. The employee should also designate under remarks that the requested leave is being submitted for coverage the FMLA.
 - c. If an employee does not declare that the leave requested is for FMLA purposes, and if the reason for the leave requested would have otherwise

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qualified as FMLA Leave, the City will treat the request as one for FMLA Leave and will count such leave against the employee's leave entitlement under the FMLA.

- d. A copy of any leave request form which qualifies as FMLA Leave should be submitted to the Human Resource Department, through the appropriate Department Director, to the attention of the Director of Human Resources.
 - e. While on FMLA covered-leave for medical reasons, employees are requested to report periodically to their Supervisor regarding the status of the medical condition and their intent to return to work.
2. Intermittent or Part-Time Work Schedule FMLA Leave. If the employee is requesting Intermittent FMLA Leave or FMLA Leave resulting in a Part-Time Work Schedule, the employee shall state the reasons why the intermittent leave or a part-time work schedule is medically necessary and provide any schedule of treatment. The employee must also state if the requested leave is for a reason for which FMLA Leave was previously taken or certified.
- a. The City may transfer an employee to an available alternative position, with equivalent pay and benefits, if the alternative position would better accommodate the intermittent or part-time work schedule for FMLA Leave purposes.
 - b. 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 FMLA Leave intermittently or work a part-time 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.

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3. Approval of FMLA Leave. All requests for FMLA Leave, Intermittent FMLA Leave and FMLA Leave resulting in a Part-Time Work Schedule, must be approved by the Department Director and the Director of Human Resources. The City of Kettering will designate the leave as FMLA approved, or not, and so notify the employee. If the employee appears to be eligible, the City of Kettering will notify the employee of any additional information required, the amount of leave counted against the employee's FMLA Leave entitlement and the employee's rights and responsibilities. If the City of Kettering determines the employee is not eligible, the City will provide the reason.

4. Medical Certification. An employee requesting FMLA Leave to care for the employee's spouse, child or parent, or due to the employee's own *serious health condition* (definition follows), may be requested by the City to submit a *FMLA Certification of Health Care Provider Form* completed by the health care provider of the employee or the employee's ill family member and returned to the City promptly, but no later than 15 days of the request, or provide a reasonable explanation of the delay. This form may be obtained from the Human Resource Department. Failure to provide timely certification may result in the denial of approved FMLA Leave.
 - a. The Medical Certification should include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For seriously ill family members, the certification should include a statement from a doctor that the patient requires assistance and that the employee's presence would be beneficial or desirable.

 - b. Whenever the duration of the condition listed in the original certification exceeds 30 days, subsequent new medical certifications may be required by the City.

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- c. For FMLA Leave purposes, the City has the right to ask for a second opinion. The City will pay for any second opinion.
 - d. 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 jointly select the third doctor, and the City will pay for the opinion. This third opinion will be considered final.
- 5. Military Family Leave Certification. An employee requesting Military FMLA Leave for exigent circumstances or to care for a covered family servicemember who is ill or injured with a *serious health condition* (definition follows), may be requested by the City to submit an employer-provided *FMLA Certification of Qualifying Exigency Form* or an *FMLA Certification for Serious Injury or Illness of Covered Servicemember Form*, respectively. These forms may be obtained from the Human Resource Department.
- 6. Definition of Serious Health Condition. A *serious health condition* is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in work, school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definitions of a serious health condition or continuing treatment.
- 7. Use of FMLA Leave. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations.

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- a. FMLA Leave is normally taken for a period of time requiring the employee's absence from work; however, an employee does not need to use approved FMLA Leave in one block of time. FMLA Leave can be taken intermittently on a part-time work schedule, when medically necessary and pre-approved by the employer. Military Family Leave, due to qualifying exigencies, may also be taken on an intermittent basis.
- b. If a husband and wife both work for the City, and each wishes to take leave for the birth of a child, adoption of a child or placement of a child in foster care, the husband and wife are entitled to only take a combined total of 12 weeks of such leave under FMLA.

D. Employee Pay and Benefits Status During FMLA Leave and Return to Work Requirements

1. Pay Status. Although FMLA Leave is unpaid by federal law, most FMLA Leave will be covered by an employee's accumulated City paid leave.
2. Group Health & Hospitalization Insurance. Group health and hospitalization insurance will be continued during FMLA Leave under the same terms, conditions and employee contributions applicable to employees who are actively at work.
3. Continuation of Other Benefits. Employees on FMLA Leave that are in an unpaid status should verify with the Human Resource Department whether or not other benefits will be discontinued during the FMLA Leave period and inquire about any alternative arrangements available to continue the same.
4. Returning To Work From FMLA Leave. Employees must tell their supervisor of the date they will be able to return to work from FMLA Leave, in writing, no later than one week in advance whenever practicable. An employee on medical leave due to the employee's own serious health condition may be required by the City, as a condition of returning to work, to submit a *Fitness for Duty* statement from their

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doctor releasing the employee to return to his or her job. Upon return from FMLA Leave, most employees must be restored to their original or equivalent position with equivalent pay, benefits and other employment terms.

E. Notice to Employees – Rights and Responsibilities

1. Limitations and Enforcement. All leaves which may be available or taken under the Family and Medical Leave Act are subject to the restrictions, limitations and conditions provided in that law and related regulations. An employee who believes his or her FMLA rights have been violated should contact the Human Resource Department. The FMLA does not affect any Federal or State law prohibiting discrimination, nor supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

The FMLA makes it unlawful for any employer to:

- Interfere with, restrain or deny the exercise of any right provided under the FMLA;
 - Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.
2. Notice of Rights & Responsibilities. A copy of the attached Notice entitled, *“Employee Rights And Responsibilities Under The Family And Medical Leave Act,”* should be posted at work locations. A copy should also be provided to employees asking about FMLA issues. A copy of this Notice is printed on the back of *City of Kettering Leave Request Forms*.

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The City Manager hereby delegates the appropriate responsibility and authority to administer this Policy to the City's Assistant City Managers and Department Directors.

Approved:

July 24, 2009
Date

Mark Schwieterman
Mark Schwieterman
City Manager

Issued:

July 27, 2009
Date

Richard L. Strader
Richard L. Strader
Director of Human Resources

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EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



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WHD Publication 1429 Revised January 2009