



ADMINISTRATIVE PERSONNEL POLICIES AND PROCEDURES

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.
2. 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 treatments by 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.
3. Use of FMLA Leave. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the City’s operations.
 - a. An employee does not need to use approved FMLA Leave in one block of time. FMLA Leave can be taken intermittently on a reduced work schedule, when medically necessary. Military Family Leave, due to qualifying exigencies, may also be taken on an intermittent basis.
 - b. If both parents 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, they are entitled to only take a combined total of 12 weeks of such leave under FMLA.

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 12 months and worked at least 1,250 hours in the previous 12 months, may take up to 12 workweeks of unpaid leave during a rolling 12-month period, for any of the following reasons:
 - a. For the birth of a child or placement of a child for adoption or foster care;
 - b. To bond with a child after birth or placement (leave must be taken within one year of the child’s birth or placement);

- c. To care for the employee's spouse, son or daughter, or parent (but not in-law) who has a serious health condition; and/or
- d. For the employee's own serious health condition (including any period of incapacity due to pregnancy, prenatal medical care or childbirth) that makes the employee unable to perform one or more of the essential functions of 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. Eligible employees with a spouse, son, daughter, or parent (but not in-law) on covered active duty or called to covered active duty status (or has been notified of an impending call or order to covered active duty) in the Reserve component of the Armed Forces for deployment to a foreign country in support of a contingency operation or Regular Armed Forces for deployment to a foreign country 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, caring for the parents of the military member on covered active duty and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement which permits eligible employees (spouse, son, daughter, parent (but not in-law) or next of kin of a covered service member) to take up to 26 weeks of leave to care for a covered service member with a serious injury or illness during a single 12-month period (one time basis only).

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 Human Resources 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 under the FMLA. The employee must also state if the requested leave is for a reason for which FMLA Leave was previously taken or certified.
 - 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 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. 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 Reduced Work Schedule FMLA Leave. If the employee is requesting Intermittent FMLA Leave or FMLA Leave resulting in a Reduced Work Schedule, the employee shall state the reasons why the intermittent leave or reduced work schedule is medically necessary and provide any schedule of treatment. All requests for a FMLA qualifying reduced work schedule are subject to approval.

- 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 reduced work schedule for FMLA Leave purposes, if the leave is foreseeable based on planned medical treatment or if the City has agreed to permit intermittent or reduced schedule leave for the birth of a child or placement of a child for adoption or foster care.
 - 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 reduced schedule, only if it is medically necessary. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.
3. Approval of FMLA Leave. The City of Kettering Human Resource Department 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.
- a. Whenever the duration of the condition listed in the original certification exceeds 30 days, subsequent new medical certifications may be required by the City. If the reason for FMLA Leave is certified for greater than 30 days, the City may request recertification at the end of the certification period and may also request certification every six months in connection with an absence by the employee.
 - b. For FMLA Leave purposes, the City has the right to ask for a second opinion. The City will pay for any second opinion.
 - c. 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 or covered veteran who is ill or injured with a *serious health condition* (definition above), 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.

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, FMLA Leave will be covered by an employee's accumulated City paid leave. Employees must use accumulated Sick Leave, Vacation Leave, Personal Leave, EDO's, or Compensatory Time before being granted any authorized time off in an unpaid status for FMLA leave. These use of paid leave will run concurrently with FMLA entitlement and the substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leaves.
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 must pay for his or her share of health, dental, vision, and life insurance premiums when those premiums become due. An employee does not accrue Personal Leave, Sick Leave, or Vacation Leave during FMLA leave while in an unpaid status.
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 or Return to Work* statement from their 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. 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.

The City of Kettering will not interfere with an individual's FMLA rights or retaliate against anyone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA or being involved in any proceeding under or related to the FMLA. An employee who has questions about the policy or believes the policy has been violated should contact the Human Resources Department, Assistant City Manager or City Manager. Employees may also file a complaint with the U.S. Department of Labor, Wage and Hour Division 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.

2. Notice of Rights & Responsibilities. A copy of the attached Notice entitled, "*Employee Rights And Responsibilities Under The Family And Medical Leave Act,*" is posted at work locations. A copy of this Notice is printed on the back of the *City of Kettering Leave Request Forms*.

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:

12/20/22
Date

Mark Schwieterman
Mark Schwieterman
City Manager

Issued:

12.22.22
Date

Jenny Smith
Jenny Smith
Human Resource Director

Your Employee Rights Under the Family and Medical Leave Act

What is FMLA leave?

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees with **job-protected leave** for qualifying family and medical reasons. The U.S. Department of Labor's Wage and Hour Division (WHD) enforces the FMLA for most employees.

Eligible employees can take **up to 12 workweeks** of FMLA leave in a 12-month period for:

- The birth, adoption or foster placement of a child with you,
- Your serious mental or physical health condition that makes you unable to work,
- To care for your spouse, child or parent with a serious mental or physical health condition, and
- Certain qualifying reasons related to the foreign deployment of your spouse, child or parent who is a military servicemember.

An eligible employee who is the spouse, child, parent or next of kin of a covered servicemember with a serious injury or illness **may take up to 26 workweeks** of FMLA leave in a single 12-month period to care for the servicemember.

You have the right to use FMLA leave in **one block of time**. When it is medically necessary or otherwise permitted, you may take FMLA leave **intermittently in separate blocks of time, or on a reduced schedule** by working less hours each day or week. Read Fact Sheet #28M(c) for more information.

FMLA leave is **not paid leave**, but you may choose, or be required by your employer, to use any employer-provided paid leave if your employer's paid leave policy covers the reason for which you need FMLA leave.

Am I eligible to take FMLA leave?

You are an **eligible employee** if **all** of the following apply:

- You work for a covered employer,
- You have worked for your employer at least 12 months,
- You have at least 1,250 hours of service for your employer during the 12 months before your leave, and
- Your employer has at least 50 employees within 75 miles of your work location.

Airline flight crew employees have different "hours of service" requirements.

You work for a **covered employer** if **one** of the following applies:

- You work for a private employer that had at least 50 employees during at least 20 workweeks in the current or previous calendar year,
- You work for an elementary or public or private secondary school, or
- You work for a public agency, such as a local, state or federal government agency. Most federal employees are covered by Title II of the FMLA, administered by the Office of Personnel Management.

How do I request FMLA leave?

Generally, to request FMLA leave you **must**:

- Follow your employer's normal policies for requesting leave,
- Give notice at least 30 days before your need for FMLA leave, or
- If advance notice is not possible, give notice as soon as possible.

You **do not have to share a medical diagnosis** but must provide enough information to your employer so they can determine whether the leave qualifies for FMLA protection. You **must also inform your employer if FMLA leave was previously taken** or approved for the same reason when requesting additional leave.

Your **employer may request certification** from a health care provider to verify medical leave and may request certification of a qualifying exigency.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

What does my employer need to do?

If you are eligible for FMLA leave, your **employer must**:

- Allow you to take job-protected time off work for a qualifying reason,
- Continue your group health plan coverage while you are on leave on the same basis as if you had not taken leave, and
- Allow you to return to the same job, or a virtually identical job with the same pay, benefits and other working conditions, including shift and location, at the end of your leave.

Your **employer cannot interfere with your FMLA rights** or threaten or punish you for exercising your rights under the law. For example, your employer cannot retaliate against you for requesting FMLA leave or cooperating with a WHD investigation.

After becoming aware that your need for leave is for a reason that may qualify under the FMLA, your **employer must confirm whether you are eligible** or not eligible for FMLA leave. If your employer determines that you are eligible, your **employer must notify you in writing**:

- About your FMLA rights and responsibilities, and
- How much of your requested leave, if any, will be FMLA-protected leave.

Where can I find more information?

Call **1-866-487-9243** or visit **dol.gov/fmla** to learn more.

If you believe your rights under the FMLA have been violated, you may file a complaint with WHD or file a private lawsuit against your employer in court. **Scan the QR code to learn about our WHD complaint process.**



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

