	<b>City of Albany</b> Human Resources Policy Policy #: HR-BC-08-002 Title: Family Medical Leave	<b>Benefits &amp;  Compensation</b>
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**Purpose**

It is the policy of the City of Albany, and in accordance with federal and state law, to grant family medical leave to eligible employees. Generally, eligible employees are entitled up to 12 weeks of unpaid leave of absence per calendar year except as noted below under “special circumstances,” or up to 26 weeks if providing care for a recovering armed forces service member. Federal and state laws protect an employee against loss of employment for reasons related to the leave and, in some cases, against loss of insurance coverage in the event an employee must be absent from the workplace due to his or her own serious health condition, the serious health condition of a family member, to care for a family member injured in the line of duty while on active duty, or for a qualifying exigency for a family member called to active duty or an impending call or order to active duty. The law guarantees a maximum amount of time off which is either paid or unpaid depending upon available unused leave accruals.

**Eligibility**

**Federal Law (Family Leave Act) (FMLA)**

Employees must have worked for the City of Albany at least twelve (12) months (not necessarily consecutive months) and have been employed for at least 1250 hours during the 12-month period immediately preceding the leave.

**State Law (Oregon Family Leave Act) (OFLA)**

Employee must have been employed by the City for at least 180 days immediately preceding the leave and have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the leave to qualify for family medical leave. Employees taking leave to care for a newborn, adopted, or newly placed foster child only have to meet the 180 day employment requirement (regardless of number of hours worked).

In determining the 12 calendar months and 180 calendar days, the employer must count the number of days an employee has been on the payroll, including all paid and unpaid time. The 1250 hours and 25 hours per week minimums are based on actual hours worked.

**Policy**

**Reasons for Family Leave**

An employee may qualify for Family Medical Leave under the federal and/or state law for the following reasons:

- The addition of a child to a family through birth, adoption, or placement by foster care (parental leave).
- The employee’s own serious health condition which prevents the employee from performing his or her job. This includes pregnancy-related disability and absences from work due to prenatal care.



- The employee must care for a family member with a “serious health condition.” A spouse, same sex domestic partner, child (whether or not the employee is the custodial parent), parent, grandparent, grandchild, parent-in-law (including the parent of same-sex domestic partner), or biological, adopted or foster child (or person with whom the employee has or had an “in loco parentis” relationship) is a family member for the purposes of this rule.
- To care for a minor child who is ill and requires home care (but does not have a serious health condition), provided another family member is not available to care for the child. (Sick child leave)
- Due to a member of the Armed Forces being called up to active duty or an impending call or order to active duty in support of a contingency operation. Active duty leave may be taken by a spouse, son, daughter, or parent of service personnel called to active duty for any issues related to the call-up, and the leave may commence as soon as an individual receives a call-up notice.
- To care for an injured armed forces service member as a spouse, son, daughter, parent, or nearest blood relative.

**Family leave to care for a same sex domestic partner, parent-in-law, grandparent, or grandchild with a serious health condition or a dependent minor child who is ill and requires home care but does not have a serious health condition, is covered only by the state family medical leave law (OFLA).**

**Use of Sick Leave and Qualifying Family Medical Leave Conditions**


If an employee has not previously requested Family Medical Leave but has been absent due to illness or injury for more than three (3) consecutive workdays, the employer must inquire into the reason for the use of sick leave in order to determine if an employee’s leave qualifies under FMLA or OFLA leave provisions. Examples of appropriate questions to ask to determine if absence qualifies under the leave acts include:

- “Is this a serious or chronic health condition?”
- “Have you obtained medical treatment?”

**Process for Taking Family Leave**

Employees who take family medical leave must fill out an Employee Leave Request Form and return it to their supervisor. The request must include enough information to make the supervisor aware that the employee needs or is seeking Family Medical Leave and a proposed schedule of leave dates.

Upon receipt of an employee’s request for leave or information indicating the employee may be eligible for Family Medical Leave, the supervisor shall forward the form to the Human Resources Department. The Human Resources Department will provide the employee with an Employer Response Form that will include, but is not limited to:

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1. Approval, provisional approval, or denial of requested leave;
2. Applicable medical certification requirements and the consequences for not providing such information as requested. Notification of requirements for use of accrued leave in accordance with the Section on Use of Paid Leaves.
3. Notification requirements that employer health care contributions shall continue if leave has been designated as FMLA. In this case, the employee shall be advised of the liability to reimburse the City for health plan premiums if the employee fails to return from the leave provided that such reimbursement conforms to the provisions of the FMLA.
4. Explanations of the employee's return rights in accordance with provisions contained in the designated leave law and applicable labor contract.

If the employee appears to qualify for leave under FMLA/OFLA, the employer must inform the employee that the absence will be counted toward the employee's Family Medical Leave entitlement pending final approval after the medical certification process.

**Eligible Health Care Providers**

- Doctors of medicine or osteopathy who are state licensed
- Podiatrists, dentists, clinical psychologists, optometrists, chiropractors, authorized to practice in their respective states
- Nurse practitioners, nurse midwives, and clinical social workers to authorized to practice under state law
- Christian Science Practitioners listed with the First Church of Christ Scientists in Boston, Massachusetts.
- Naturopaths
- Midwives

**Use of Paid Leave**

Eligible employees are required to use accrued and accumulated paid leaves, including vacation prior to taking unpaid leave.

Use of all paid leaves will run **concurrently** with family medical leave, as well as a federal FMLA qualifying absence resulting from a Workers' Compensation claim or service related disability.

**Notice for Family Leave**

Employees are required to give the City 30 days notice of the need for leave when it is foreseeable (such as in the case of childbirth or non-emergency surgery). If the reason for leave is unforeseeable, the employee must give the City oral notice as soon as it is practicable after the need for leave becomes known to the employee or within 24 hours of when the leave starts and provide notice within two (2) days of his/her return to work. Requests for Family Medical Leave must be made to the immediate supervisor.

An employee must make a reasonable effort to schedule treatment for serious health conditions in a manner that does not unduly disrupt City business.



### **Medical Certification Requirements**

For requests for Family Medical Leave due the serious health condition of the employee or employee's qualifying family member, written certification from a health care provider must be supplied by the employee as soon as possible, but no later than 15 calendar days following a request for certification by the supervisor or Human Resources Department. The City's Certification of Healthcare Provider Form must be used. Failure to return the medical certification form may lead to disciplinary action and the denial of leave.

Employees who use sick child leave on more than three occasions in a 12-month period may be required to provide medical certification for all subsequent uses of sick child leave in a 12-month period. The certification may be a doctor's note but it must include the name of the child, dates the child was sick, the opinion of the doctor that the child was sick and required home care and the doctor's signature.

The Human Resources Department may request a new medical certification under the following conditions:

- The employee requests extension of leave; or circumstances described by the previous certification have changed significantly; or 30 days have passed since the certification was received by Human Resources.

The cost of any medical certification not covered by insurance or other benefits will be paid by the City of Albany.

### **Intermittent/Reduced Schedule Leave**

Employees may take intermittent leave in multiple blocks of time that requires an altered or reduced work schedule for their own serious health condition or to care for a family member with a serious health condition. **Example:** A physician prescribes weekly physical therapy treatments, each lasting an hour.

All intermittent or reduced schedules must be approved at the time leave is requested.

Generally parental leave is taken in one uninterrupted period and must be taken within 12 months of the birth, adoption or placement of the child unless otherwise approved by the Human Resources Department. Parental leave taken for purpose of *arranging* the adoption of a child does not have to be taken in one, uninterrupted period.

An employee may be transferred to an alternative position (with the same pay) during the period of intermittent leave provided that a transfer is voluntary on the part of the employee, that no other options are available and the transfer is consistent with all applicable collective bargaining agreements.

***For all Police and Fire Department Personnel\*:*** Parental leave must be taken in one continuous block of time up to 12 weeks, except during the legal phase of an adoption or foster child placement. During this legal



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*phase, intermittent leave can be taken; but once the employee takes physical custody, then the remaining time must be taken in one continuous block. If the employee chooses to return to work before using all 12 weeks, the parental leave ends on the return to work date and the remainder can not be used later as parental leave during the same rolling backward 12-month period.*

*\*Does not include American Federation of State, County, and Municipal Employees (AFSCME) employees who work in the fire department.*

### **Continuation of Benefits**

If an employee is eligible and qualifies for Federal Family Medical Leave (FMLA), the City will maintain his or her group health insurance coverage as if the employee has been continuously employed up to a maximum of 12 weeks per calendar year.

Any share of health plan premiums that an employee is required to pay must continue to be paid by the employee during the leave period. If the leave qualifies only for Oregon Family Medical Leave (OFLA) continued health care benefits may not be paid for by the City. Employees should check with the Human Resources Department to resolve any questions regarding the continuation of health care benefits.

If the employee's failure to make the premium payment leads to a lapse in coverage, the City must restore the employee upon return to work to the health coverage equivalent to that which the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or preexisting condition limitations.

The Human Resources Department will notify an employee as to the status of their health benefits.

The City may recover premiums paid for an employee's insurance if the employee fails to return after the period of leave to which the employee is entitled has expired unless there is a continuation, recurrence or onset of a serious health condition.


### **Applicability of Most Generous Provisions**

Provisions under FMLA controls unless OFLA, Human Resources Policies, or applicable collective bargaining agreements provide more generous provisions for the employee. In that case, the City will grant the employee the more generous provision.

Where the leave is authorized under FMLA and state law, Human Resources Policies, and/or collective bargaining agreement, the leave shall be designated as FMLA qualifying and shall simultaneously exhaust both FMLA and OFLA, Human Resources Policy and contractual leave entitlement.

### **Return to Work**

When an employee takes leave for his/her own serious health condition, the supervisor must require a treatment provider's release for the employee to return to

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work. The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits and other conditions of employment.

An employee must return to work on the date specified and mutually agreed upon by the parties. Failure to return to work on the date designated, unless extended, will be treated as any other unauthorized absence.

**Definition of 12 month period**

The 12 month period in which family medical leave is measured starts from the date of the leave looking back 12 months.

Example: An employee requests leave beginning July 1. To determine if the employee is eligible for leave, we would review the leave taken for the previous 12 months looking back from July 1. If the employee had taken leave from January 1 – January 31 (counted as 4 weeks) of the same year, the employee would be eligible for 8 weeks of leave.

**Designation of Leave**

It is the responsibility of the employer to designate unpaid leave as FMLA/OFLA qualifying and to give notice to the employee as soon as the employer has received sufficient documentation to make a determination.

**Extension of Family Medical Leave**

Employees who require additional leave from work beyond the 12 weeks provided within this rule may require the use of any remaining accrued paid leave or unpaid leave, but such additional leave is granted solely at the discretion of the Department and Human Resources Director unless otherwise required by law. If additional leave is granted, the provisions of state and federal law governing family medical leave do not apply, including, but not limited to, continued City-paid benefits unless the employee continues in pay status during the extension.

**Definitions**

N/A

**References**

Family Medical Leave Act 29 USC 2601-2654 and Federal Regulations Part 825; Oregon Revised Statute 659.479-659.494; Americans with Disabilities Act 42 USC 2101 et seq; Fair Labor Standards Act 29 USC 216(b); BOLI regulations.

**Forms:**

Employee Leave Request/What is a “serious health condition”  
Certification of Health Care Provider

**Review and Authorization**



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Supersedes: LB; 10/1/2004	Created/Amended by/date: DD; 04/15/2008	Effective Date: 01/01/2008
HR Director:		City Manager:

1. Form or worksheet revision related to this document? No  Yes

If yes, attach a copy of the revised form or worksheet.

2. Training required? No  Yes

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