

Policy No. P14-03

CITY OF COLDWATER FAMILY AND MEDICAL LEAVE ACT (“FMLA”) FACT SHEET AND POLICY GUIDE

This document is based on the U.S. Department of Labor’s (“DOL”) “Fact Sheet No. 28,” and fulfills the City’s statutory FMLA notification requirements. To avoid multiple documents we have modified “Fact Sheet No. 28” by adding pertinent and statutorily permissible FMLA information and/or requirements unique to the City of Coldwater (hereafter “City”).

THE FAMILY AND MEDICAL LEAVE ACT

The FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in any 12 month period for specified family and medical reasons or for any “qualifying exigency” arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a “single 12-month period” to care for a covered service member with a serious injury or illness.

The law contains provisions on employer coverage; employee eligibility for the law’s benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all public employers. The City is therefore a covered employer.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must meet each of the following requirements:**

- (1) have worked for the City for a total of 12 months (if the employee was on the payroll for part of a week, the City will count the entire week. The City considers 52 weeks to be equal to 12 months);
 - While the 12 months of employment need not be consecutive, employment periods prior to a break in service of **seven** years or more need not be counted unless the break is occasioned by the employee’s fulfillment of his/her National Guard or Reserve military obligation (as protected under USERRA), or a written agreement¹ exists concerning the employer’s intention to rehire the employee after a break in service.

¹ Including a collective bargaining agreement.

- (2) have worked at least 1250 hours (1,656 hours for a platoon firefighter on a 53-hour workweek schedule) over the 12 months preceding the leave's commencement; AND
- (3) work at a location where the City has at least 50 employees within 75 miles.

If you do not meet the eligibility requirements you may be able to take time off under another City non-FMLA leave policy.

LEAVE ENTITLEMENT

If you are an eligible employee the City will grant you up to a total of 12 workweeks of **unpaid** leave during a rolling 12-month period measured backward from the date on which the employee uses any FMLA leave for one or more of the following reasons:

- (1) birth and care of your newborn child;
 - (2) placement with you of a son or daughter for adoption or foster care;
 - (3) to care for an immediate family member (spouse, son, daughter or parent) with a "serious health condition";
 - child must be under age 18 unless incapable of self-care due to a physical or mental disability.
 - (4) to take medical leave when you are unable to work (unable to perform one or more essential job function) because of your own "serious health condition," **or**
 - (5) for qualifying exigencies (e.g. short notice deployment, military events, childcare, financial/legal arrangements, rest and recuperation, post-deployment activities, etc.), arising out of the fact that your spouse, son, daughter, or parent is on active duty or is called to active duty status as a member of the National Guard or Reserves in support of a contingency operation (Form WH-384).
- **Special Military Provision:** If you are an eligible employee the City will grant you up to a total of 26 workweeks of **unpaid** leave (Form WH-385) during a "single 12-month period" to care for a covered service member under the following conditions:
 - you must meet the eligibility requirements set forth above, and must be the spouse, son, daughter, parent or "next of kin" of the covered service member.
 - A "covered service member" is a member of the Armed Forces (including National Guard or Reserve) who is undergoing medical treatment, recuperation, therapy, etc., due to a serious injury or illness.

The 12 workweek (or in appropriate circumstances the 26 workweek) total is computed by combining all qualifying leaves (e.g birth, placement of a child for adoption or foster care, care of a qualifying immediate family member, employee's own serious health condition, etc.).

- As part of an FMLA leave of absence for the birth/care of a child, placement of a child for adoption or foster care, to care for a spouse, child or parent who is suffering from a serious health condition, for qualifying exigencies, or for leave due to special military provisions, you will first be required to exhaust all of your available sick, vacation, personal and PTO (personal time off) time. If the leave request is due to your own serious health condition, you will also be required to utilize any accrued sick, vacation, personal and PTO (personal time off) time until such time as workers compensation or disability pay commences. Thereafter, and if still available, you can use paid leave to supplement (up to replacing 100% of your regular base income) your workers compensation or disability payments.
- When paid leave is exhausted, any remaining portion of your FMLA entitlement will be unpaid.
- The City is responsible for designating whether your use of paid leave counts as FMLA leave based on information we receive from you.
- During unpaid FMLA leave you will not earn sick, vacation, personal and PTO (personal time off) time or retirement benefit time.

Serious Health Condition: Means an illness, injury, impairment, or physical or mental condition that involves either:

- a. **Inpatient Care:** Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- b. **Continuing Treatment:** Continuing treatment by a “health care provider” which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities) due to:
 - (1) **Absence + Treatment:** A health condition (including treatment therefore or recovery therefrom) lasting **more** than three (3) consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - treatment two (2) or more times by or under the supervision of a “health care provider” (i.e. in-person visits, the first within 7 days and both within 30 days of the first day of incapacity [absent extenuating circumstances]);
or

- one (1) treatment by a “health care provider” (i.e. an in-person visit within 7 days of the first day of incapacity) with a regimen of continuing treatment (e.g. prescription medication, physical therapy, etc.); **or**
- (2) **Pregnancy**: Any period of incapacity related to pregnancy or for prenatal care. A visit to the “health care provider” is not necessary for each absence; **or**
- (3) **Chronic Conditions**: Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a “health care provider,” and may involve occasional episodes of incapacity (e.g. asthma, diabetes). A visit to a “health care provider” is not necessary for each absence; **or**
- (4) **Permanent/Long-Term Conditions**: A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer’s, a severe stroke, terminal cancer). Only supervision by a “health care provider” is required, rather than active treatment; **or**
- (5) **Multiple Treatments (Non-Chronic Conditions)**: Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three (3) consecutive days if not treated (e.g. chemotherapy or radiation treatments for cancer).

Health Care Provider means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; **or**
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**
- nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Mass.; **or**
- any health care provider recognized by the City or the City’s group health plan benefits manager; **or**
- a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

Requirements Unique to Birth or Placement of a Child: Spouses, both of whom are employed by the City, are jointly entitled to a **combined** total of 12 work-weeks of FMLA leave for the birth and care of their newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition (up to 26 weeks if leave to care for a covered service member with a serious injury or illness is involved).

Leave for birth and care, or placement for adoption or foster care must **conclude** within 12 months after the birth or placement.

Intermittent FMLA Leave: Under some circumstances, you may take FMLA leave intermittently – which means taking leave in separate blocks of time, or by reducing your normal weekly or daily work schedule. When intermittent leave is needed for planned medical treatment, you must make a reasonable effort to schedule treatment so as not to unduly disrupt City operations.

- Intermittent FMLA leave cannot be taken for the birth of a child or placement of a child for adoption.
- FMLA leave may be taken intermittently whenever **medically necessary** to care for a spouse, son, daughter or parent with a serious health condition or because of your own serious health condition.
- When FMLA leave is to be taken intermittently or on a reduced schedule, the City may require that you transfer temporarily (for the period of your FMLA leave usage) to an available alternate position (with equivalent pay and benefits) for which you are qualified and which better accommodates recurring periods of leave than does your regular position.

MAINTENANCE OF BENEFITS

The City is required to maintain group health insurance coverage for you while you are on FMLA leave if you were receiving such insurance coverage before FMLA leave was taken. Coverage will be on the same terms as if you had continued to work. When applicable, arrangements will be made for you to pay your share of health insurance premiums while on FMLA leave.

If you inform the City you do not intend to return to work at the end of your FMLA leave period, the City's obligation to provide health insurance benefits ends and COBRA continuation rights notices will be served. If you fail to return to work from an FMLA leave, unless for one of the limited reasons set forth in the FMLA's accompanying regulations and/or as set forth below, the City is entitled to recover premiums the City paid on your behalf during any period you were on unpaid FMLA leave.

- If you have a medical condition that prevents you from returning to work upon exhausting your FMLA entitlement, you may be eligible for additional non-FMLA leave. If approved for additional non-FMLA leave, and provided you are receiving either

Workers Compensation or LTD benefits, the City will continue to pay its share of your health insurance premiums for up to an additional twelve (12) weeks. If you do not thereafter return to work (unless because of ongoing “disability”), you will be required to repay/reimburse the City the premium amounts paid on your behalf during the additional twelve (12) week period, and you will be accorded your COBRA continuation rights.

The use of FMLA leave will not be considered a break-in-service for vesting purposes or when determining eligibility to participate in benefits programs. Your use of FMLA also can not result in the loss of any employment benefit that you earned or were entitled to **before** using FMLA leave, nor can it be counted against you under a “no fault” attendance policy. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked or perfect attendance, and you have not met the goal due to FMLA leave, you may be denied payment, unless such payments are paid to employees on equivalent leave status for reasons that don’t qualify as FMLA leave.

JOB RESTORATION

Upon timely return from FMLA leave you will be restored to your original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. If FMLA was taken because of your own serious health condition, you must timely submit a “fitness for duty” certificate before you will be reinstated. If you fail to timely return-to-work and/or fail to present a “fitness for duty” certificate when your FMLA leave entitlement is exhausted, and absent an appropriate request and approval for continuation of non-FMLA leave, you will be subject to discharge, as may be permitted by other applicable law, including the Americans with Disabilities Act (ADA).

You have no greater right to job restoration or to other benefits and conditions of employment than if you had been continuously employed.

- Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to City operations, the City may refuse to reinstate certain highly-paid “**key**” employees (a salaried “eligible” employee who is among the highest paid 10% of employees). If applicable, you will be notified of your status and rights as a “key” employee.

NOTICE AND CERTIFICATION

Employee Notice:

Employees seeking to use FMLA leave are **required** to provide 30-days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable (e.g. birth of child, planned surgery, etc.).

When the need for leave is foreseeable less than 30 days in advance, or is not foreseeable, you must provide notice as soon as practicable (as soon as possible and practical) under the circumstances – generally, either the same or next business day.

Though you need not mention the FMLA, you must provide at least verbal notice/information sufficient to make the City aware that you need FMLA-qualifying leave (e.g. incapacitated due to pregnancy, hospitalized overnight, etc.), and the anticipated timing and duration of the leave. Calling in “sick” is insufficient. If you have been previously certified/approved for FMLA leave, you must when contacting the City specifically reference the qualifying reason for leave or the need for FMLA leave.

You are obligated to respond to the City’s reasonable inquiries aimed at determining if your absence is potentially FMLA-qualifying. You are required to comply with the below usual and customary notice and procedural requirements for requesting leave (absent unusual circumstances):

- You (or if personally unable, your spokesperson) must contact the City Manager, or if unavailable his/her assistant. During non-working/non-operating hours you must leave a voice-mail message at (517) 279-6913 or send an email to jsherman@coldwater.org. The message or email must provide information “sufficient to make the City aware that you need FMLA-qualifying leave, the anticipated timing and duration of the leave,” and a means for the City to contact you or the person leaving the message or email.

When appropriate, and when we wish your qualifying time off from work to be counted toward your annual FMLA allotment, we will designate the time off as FMLA. Conversely, when you wish to use FMLA to protect your employment status (e.g. avoid being AWOL, avoid an unexcused absence, etc.), it is **your** responsibility to clearly, unequivocally and timely request use of FMLA.

Employer Notice:

When appropriate, the City will:

- a. Notify you within 5 business days (absent extenuating circumstances) of your eligibility to take leave and inform you of your rights and responsibilities (and consequences if you fail to meet those obligations) under the FMLA (form WH-381). If appropriate, the City will provide you at least one reason why you are not eligible to take FMLA leave.
- b. Require that you provide medical certification within 15 calendar days (and the consequences if you fail to do so) supporting the need for leave due to a serious health condition affecting you (form WH-380-E) or a qualifying immediate family member (form WH-380-F);
 - If provided to you, you must specifically identify your job’s “essential functions” with your health care provider who, when filling out the certification form, must specify which functions you cannot perform.

- Notify you if your certification is deficient, explain why it is deficient, and require you to cure the deficiency;
- c. When appropriate, require second or third health care provider opinions (at the City's expense; the third opinion will be considered "final");
- d. Use a health care provider, a human resource professional, a leave administrator, or a management official – but not your immediate supervisor – to authenticate or clarify your medical certification form WH-380.
- e. When the City has sufficient information the City will notify you that your leave will or will not be designated and counted as FMLA leave (form WH-382);
- f. When appropriate, require periodic recertifications at your expense (the City may present your health care provider with your absence record and ask if your need for leave is consistent with this pattern);
- g. When appropriate, require that you provide the City with periodic reports during your FMLA leave regarding your status and intent to return to work; and
- h. If you are returning from leave for your own serious health condition, require that you submit a certification that you are able to resume work (you will also be notified of this requirement in form WH-382). If the City has reasonable safety concerns, the City may require this certification if you are returning from intermittent leave.

When intermittent leave is needed to care for a qualifying immediate family member or your own serious health condition, *or* is for planned medical treatment, you must consult with us and make a reasonable effort to schedule the leave (and treatments) so as not to disrupt unduly the City's operations.

In addition to this policy the City will also post a notice (on all informational bulletin boards) approved by the Secretary of Labor explaining rights and responsibilities under the FMLA.

OTHER/ADDITIONAL PROVISIONS

Salaried employees (e.g., executive, administrative, professional, etc.) who meet the Fair Labor Standards Act ("FLSA") criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under an employment benefit plan.

An employee absent from work on FMLA must not (absent the City Manager’s written authorization) engage in “outside” or “supplemental” employment (including self-employment).

An employee who fraudulently obtains or utilizes FMLA leave is not protected by FMLA’s job restoration or maintenance of health benefits provisions, and is subject to discharge.

FURTHER INFORMATION/ENFORCEMENT

It is unlawful for any employer to interfere with, restrain or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Please contact the City Manager’s office if you have any questions or concerns about the FMLA, this Fact Sheet and Policy Guide, or the City’s application of the FMLA. Or, visit the Wage and Hour Division website: <http://www.wagehour.dol.gov> and/or call 1-866-487-9243.

To the extent anything contained in this “Fact Sheet and Policy Guide” conflicts with the Family and Medical Leave Act, the Act will prevail.

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