

Policy No. P15-01

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

This policy outlines an employee’s benefits and rights under the federal Family and Medical Leave Act (“FMLA”). The FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding relating to the FMLA.

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. Nothing in this policy, however, gives employees greater rights to continued employment than they would have had if they had not taken FMLA leave. The FMLA and its implementing regulations are very detailed. Specific questions regarding this policy should be directed to the City Manager’s office.

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 agreement (including a collective bargaining agreement) exists concerning the employer’s intention to rehire the employee after a break in service.
- (2) have worked at least 1250 hours (1,656 hours for a platoon firefighter on a 56-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 FMLA leave commences for one or more of the following reasons:

- (1) birth of a child and to care for the newborn child within 12 months of the child's birth;
 - (2) placement with you of a child for adoption or foster care and to care for the child within 12 months of the child's placement;
 - (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 (which may include incapacity due to pregnancy, a prenatal medical condition, or child birth)"; **or**
 - (5) because of any qualifying exigency arising out of the fact that a parent, spouse, or child is a military member on covered active duty or has been notified of an impending call or order to covered active duty status (the length of time allowed for leave for qualifying exigencies will depend on the type of qualifying event).
- **Special Military Provision:** If you are an eligible employee the City will grant you up to a total of 26 workweeks of **unpaid** leave 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 current member of the Armed Forces (including National Guard or Reserves) who is as the result of a serious injury or illness is (a) on the temporary disability retired list; (b) undergoing medical treatment, recuperation, or therapy for the serious injury or illness; or (c) assigned to a military medical treatment facility as an outpatient or otherwise be receiving outpatient care at a unit established for members of the Armed Forces. This provision also applies to veterans (including a member of the National Guard or

Reserves) who were discharged or released under conditions other than dishonorable within the five-year period before the family first takes military caregiver leave to care for the veteran, and who is undergoing medical treatment, recuperation, or therapy for 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.).

- Although the law indicates an employee is entitled to 12 (or 26) weeks of **unpaid** leave of absence, the City has the right, and shall require, its employees to use their available, sick, vacation, personal and PTO (personal time off), if any, as part of, and to cover, his/her leave. Employees who qualify for workers compensation or disability benefits can, if available, use paid leave to supplement (up to replacing 100% of their regular base income) those benefits.
- When paid leave is exhausted, any remaining portion of your FMLA entitlement will be unpaid.
- During unpaid FMLA leave you will not earn sick, vacation, personal and PTO (personal time off) time or retirement benefit time.

Definition of "Serious Health Condition": Means an illness, injury, impairment, or physical or mental condition that involves either: (1) an overnight stay in a medical care facility, or (2) 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, a chronic condition, a permanent/long-term condition, or to receive multiple treatments for a condition that would likely result in incapacity for more than 3 consecutive days if not treated. Other conditions may meet the definition of continuing treatment. If you are not sure whether your condition qualifies for FMLA leave, you may apply for such leave and, after review of appropriate medical documentation, the City will advise you of whether you are covered under this provision.

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.
- If you need intermittent FMLA leave or FMLA leave on a reduced leave schedule that is foreseeable based on planned medical treatment for yourself, a family member, or a covered servicemember, including during a period of recovery from your own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, 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. The City shall continue to pay its portion of the cost of the health care premiums and you will be required to pay the active employee portion of the insurance premiums, if applicable. If your portion of the health care premium is more than 15 days late, the City will notify you in writing. Your health insurance coverage will be cancelled if the premium payment is more than 30 days late. Thereafter, you will have the opportunity to continue health insurance at your own cost under the COBRA law, if applicable. Your responsibilities regarding payment of your portion of plan premiums will be explained to you at the time your leave is granted.

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, 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.). If 30 days’ notice is not practicable, then you must provide notice as soon as is practicable. If the dates of the leave change, you must advise the City of such a change as soon as practicable.

If you are seeking FMLA leave because of scheduled or planned medical treatment, you must consult with your department head to schedule the treatment so as not to unduly disrupt the City's operations.

When the need for leave 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 also 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 the City determines that your leave is FMLA-qualifying and should 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:

Once you request FMLA-qualifying leave, the City will advise you of your eligibility for such leave. You may also be required to provide certain information, such as medical certification, to determine whether you have a qualifying reason for FMLA leave. At the time you request leave, you will be provided additional information regarding your FMLA rights and responsibilities. You will be advised in writing regarding whether your request for FMLA has been granted and, if it is being denied, the reasons for the denial.

If the City requires you to provide a medical certification, the completed certification must be provided to the City within 15 days after it is requested and must include the date the condition began, its probable duration, appropriate medical facts within the knowledge of the health care

provider regarding the condition, and a statement the employee is unable to perform his/her job function or is needed to care for a sick family member for a specified time. An employee must obtain the appropriate certification form(s) from the City Manager's office.

FAILURE TO PROVIDE THE NECESSARY NOTICE OF THE NEED FOR FMLA LEAVE OR TO PROVIDE THE NECESSARY DOCUMENTATION SUPPORTING THE LEAVE WITHIN THE TIME REQUIRED MAY RESULT IN YOUR FMLA LEAVE BEING DELAYED OR DENIED ALTOGETHER.

The City may require, at its own expense, a second medical opinion from a health care provider designated by the City, but not employed on a regular basis by the City. In the event of a dispute concerning the second certification, the City may require, at its own expense, a third opinion from a health care provider. The employee and the City must agree on the selection of the third health care provider whose opinion is binding on both parties.

The City may require the employee to obtain subsequent re-certification on a reasonable basis (the City may present your health care provider with your absence record and ask if your need for leave is consistent with this pattern).

When appropriate, the City may require that you provide periodic reports during your FMLA leave regarding your status and intent to return to work.

If you are returning from leave for your own serious health condition, the City may require that you submit a certification that you are able to resume work. If the City has reasonable safety concerns, the City may require this certification if you are returning from intermittent leave.

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

An employee absent from work on FMLA leave 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.

Any time off during which an employee is receiving workers compensation or disability benefits will generally be counted as part of the 12 weeks allowed under the FMLA.

Absent extraordinary circumstances or other reasons protected by law, an employee who fails to return to work on the first business day after the expiration of the FMLA leave period will be considered a voluntary quit.

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