

Human Resources Policy Bulletin

Number: 2023-1

City of Lincoln

Date: January, 2023

Reference:	Title:
Family and Medical Leave Act of 1993 (FMLA) and 29 C.F.R. Part 825 Supersedes Personnel Policy Bulletin 2009-1	Family and Medical Leave Act

- Purpose. The purpose of this policy is to provide a general description of the City of Lincoln's procedure with regard to family and medical leave in accordance with the provisions of the Federal Family and Medical Leave Act (FMLA) of 1993 and the federal regulations pertaining thereto. In addition to all applicable Federal and State regulations, this policy adheres to any additional provisions specifically addressed in relevant City labor contracts.
- Eligibility. Employees who have been employed for at least 12 months, and for at least 1,250 hours during the preceding 12-month leave period.
- Amount of Leave. An eligible employee is entitled to up to 12 workweeks of unpaid FMLA leave per 12-month leave period.
- Twelve-Month Period. The 12-month leave period for taking FMLA shall be defined as a rolling 12-month period measured backward from the date an employee first uses FMLA leave. Each time an employee takes FMLA leave, the Human Resources Leave Manager will compute the amount of leave time taken in that 12-month period and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to at that time.
- FMLA Qualified Leave Events. Up to 12 weeks of FMLA leave may be granted for the following reasons:

 - The birth and care of the employee's newborn child within one year of birth;
 - Placement with the employee of a child for adoption or foster care within one year of placement;
 - Bonding with a child within one year of child's birth or placement;

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- d. To care for a spouse (legal), child (biological, foster, adopted, step, legal ward); in loco parentis – (assumed parental status and responsibilities) or parent (in-laws excluded) who has a serious health condition; or
- e. To take personal medical leave when the employee is unable to work because of a serious health condition.

6. General Information and Effect on Paid Leaves.

Employees are required to use paid leave in the event of an FMLA leave. The unpaid FMLA leave will run concurrently with paid leaves (sick leave, personal holidays, vacation (accrued and banked), injury leave, and workers' compensation leave). Accrued sick leave may be used for any FMLA-qualifying events. Following the exhaustion of applicable paid leave, any remaining FMLA leave will be unpaid.

When spouses work for the same employer and each spouse is eligible for FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all FMLA-qualifying leave events. Eligible spouses who work for the same employer are limited to a combined 12 weeks of leave in a 12-month period for the following FMLA-qualifying events:

- a. The birth of a child and bonding with the newborn child.
- b. The placement of a child with the employee for adoption or foster care and bonding with the newly placed child.
- c. The care of a parent with a serious health condition.

The limitation on the amount of leave for spouses working for the same employer does not apply to leave taken for some qualifying reasons. Eligible spouses are each entitled to up to 12 weeks of FMLA leave in a 12-month period for the following FMLA-qualifying events:

- a. The care of a spouse or child with a serious health condition.

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- b. A serious health condition that makes the employee unable to perform the essential functions of their job.

Reference: Lincoln Municipal Code 2.76.402 – City Protected Family Leave:
<https://www.lincoln.ne.gov/City/Departments/HR/City-PersonnelHuman-Resources-Policy-Information>

7. Intermittent/Reduced Schedule Leave. FMLA leave may be taken on an intermittent basis or to work a reduced schedule when (1) medically necessary to care for a seriously ill immediate family member; or (2) because of the employee's own serious health condition. Intermittent or reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child *only* with the Human Resources Leave Manager in conjunction with the Department Head's approval.

If an employee's schedule varies week to week to the extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period would be used for calculating the employee's leave entitlement. Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.

8. Serious Health Condition Defined. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:

(1) 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

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(2) 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:

- A. A health condition lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes: (1) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by or under the supervision of a health care provider; or (2) one treatment by a health care provider with a continuing regimen or treatment;
 - (i) The requirements of paragraphs (A)(1) and (2) of this section for treatment by a health care provider means an in person visit to a health care provider. The first (or only) in person treatment visit must take place within seven days of the first day of incapacity; or
- B. Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or
- C. A chronic serious health condition which continues over an extended period of time, requires periodic visits (defined as 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
- D. A permanent or long-term 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

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- E. Any absence to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).
9. Health Care Provider Defined. Health care provider means (1) doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or (2) podiatrists, dentists, clinical psychologists, optometrists and chiropractors authorized to practice, and performing within the scope of their practice, under state law; or (3) nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or (5) any health care provider recognized by the employer's group health care plan manager.
10. Employer Notification of Rights Requirements. City of Lincoln Human Resources will post an FMLA notice, policy, and application materials on the Intranet for employees. Posters will be displayed in general areas for all employees and applicants.
11. Employee Notice of Leave. All employees must submit an application for FMLA leave to the Human Resources Leave Manager at least 30 days before leave is to begin. When 30 days' notice is not possible, the employee must provide notice as soon as practicable.
12. Application for Leave.
- a. Employee initiated leave. In all cases, an employee requesting leave must complete an "Application for Family or Medical Leave" and "Medical Certification Statement" and return both to the Human Resources Leave Manager. The completed application must state the reason for the leave and the starting and ending dates of the leave. The Human Resources Leave Manager will provide the

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employee with the Notice of Eligibility & Rights and Responsibilities form (WH-381) within 5 days of receiving the application for FMLA leave.

- b. Human Resources initiated leave. All qualifying events, including employee absences greater than three consecutive calendar days should be reported to and confirmed by the Human Resources Leave Manager. The City of Lincoln may initiate the process of FMLA designation once they learn that an eligible employee has taken leave for a FMLA-qualifying reason.
13. Medical Certification for Leave. An employee requesting leave based on a serious health condition of the employee or the employee's spouse, child, or parent must have their health care provider complete a "Medical Certification Statement" form. Copies of the "Medical Certification Statement" forms may be obtained through the Human Resources Leave Manager. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the employee is needed to care for a spouse, child, or parent, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of their job.

When submitting a medical certification for Intermittent Leave, the health care provider will need to specifically clarify the frequency and period of time the employee will need to be absent.

The employee shall have 15 calendar days to provide the completed Medical Certification Form to the Human Resources Leave Manager. Failure to provide the Medical Certification Form within 15 calendar days of the request for leave may result in denial of FMLA leave.

Within 5 business days after the employee has submitted the completed Medical Certification Form, the Human Resources Leave Manager will complete and provide

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the employee and the Department Head with a written FMLA Designation Notice indicating whether or not the FMLA leave is approved.

In the event the medical certification is incomplete or insufficient (vague, ambiguous, or non-responsive), the employee shall have 7 calendar days to cure any deficiency. Failure to cure the deficiencies may result in the denial of FMLA leave.

The City of Lincoln may require employees to provide subsequent recertifications of the employee's continued need for leave, but not more often than every 30 days. The City of Lincoln may require, at its own expense, a second opinion from an independent health care provider. If there is a conflict between the two medical opinions, a third and binding medical opinion may be obtained at the employer's expense.

14. Benefits Coverage During Leave. During a period of FMLA leave, an employee will be retained on the employer's health and dental care plans under the same conditions that applied before leave was commenced. To continue health and dental coverage, the employee must continue to make any contributions that they made to the plan before taking leave. Failure of the employee to pay their share of the health or dental care monthly cost may result in loss of coverage.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the City of Lincoln for payment of health/dental care monthly costs incurred during the FMLA leave, unless the reason the employee fails to return is the presence of the serious health condition which prevents the employee from performing their job, or other circumstances beyond the control of the employee.

15. Restoration to Employment. Unless the employee is a "key employee," as defined by the Act, at the end of the FMLA leave, an employee will be restored to their old position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The City of Lincoln cannot guarantee that an employee will be returned to their original job. A determination as to whether a position is an "equivalent position" will be made by the Human Resources Leave Manager. A "key

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employee” is a salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the City.

16. Return From Leave. An employee must complete a “Notice of Intention to Return to Work” form before they can be returned to active status. These forms may be obtained from the Human Resources Leave Manager. If an employee wishes to return to work prior to the expiration of a FMLA leave of absence, notification must be given to the Human Resources Leave Manager at least 2 working days prior to the employee’s planned return.
17. Failure to Return From Leave. The failure of an employee to return to work upon the expiration of FMLA leave will be considered a resignation unless an extension is granted, other leave is required by applicable law, or other paid leave is available and approved for use. An employee who has requested less than 12 weeks of FMLA leave may request an extension of FMLA leave by submitting a written request to the Human Resources Leave Manager setting forth the reasons for the extension, along with a new “Medical Certification Statement” form. This written request should be made as soon as the employee realizes that they will not be able to return at the expiration of the leave. In no circumstances will an extension beyond the 12-week period authorized pursuant to the FMLA be granted, unless other leave is required by applicable law or other paid leave is available and approved for use. However, the City of Lincoln will review business considerations and the individual circumstances involved to determine if additional unpaid leave is available pursuant to the Americans with Disabilities Act of 1990, as amended.
18. Unlawful Acts. It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the 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 the FMLA.

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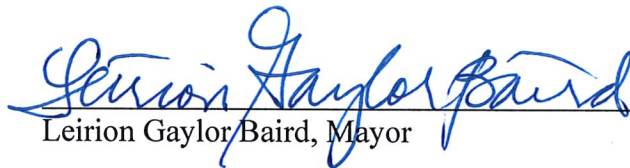
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Barb McIntyre, Director of Human Resources

12/1/2022

Date



Leirion Gaylor Baird, Mayor

December 1, 2022

Date

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