

SUBJECT: FAMILY AND MEDICAL LEAVES OF ABSENCE

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I. Designation: The Human Resources Director is designated to administer and ensure compliance with the Wisconsin and Federal Family Medical Leave Acts. The Director shall consult as required with the City Attorney to ensure that the City’s policies and procedures are in compliance with applicable law.

II. Background: The City offers generous and flexible leaves of absence for a wide range of reasons. It is the intent of this policy to outline an employee’s leave entitlements under the Wisconsin and Federal Family Medical Leave Acts. Revisions to this procedure may be required as courts and administrative agencies interpret the Acts.

III. Policy: It is the policy of the City of Madison to comply with all applicable State and Federal Laws concerning unpaid family or medical leave. Copies of postings for the Acts, which prescribe eligibility and other issues, have been distributed to all departments and are available on EmployeeNet (Agency Information, Human Resources, Workplace Poster Requirements).

IV. Definitions:

“CERTIFICATION” is certification from an approved source that an employee’s absence from work is related to the qualifying reason. For qualifying reasons with a medical basis, including leave to care for an ill or injured service member, certification from a health care provider is required. For a qualifying reason arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation, certification requirements will be determined by the Secretary of the U.S. Department of Labor.

“CHILD” means a child either under 18 years of age, or 18 years of age or older who is “incapable of self-care because of a mental or physical disability.” An employee’s “child” is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in loco parentis.

“COMBINED TOTAL” is the total entitlement of leave in a 12-month period.

“CONTINGENCY OPERATION” means a military operation that (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301 (a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

“CONTINUING TREATMENT” means:

- Incapacity and treatment: a period of incapacity of more than three consecutive, full calendar days or other period of incapacity relating to the same condition which involves either two or more visits to a health care provider within 30 days of the first day of incapacity, unless extenuating circumstances exist; or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment;
- Pregnancy or prenatal care;
- Chronic conditions, defined as any period of incapacity or treatment for such incapacity due to a chronic serious health conditions. Chronic conditions require periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse under the direct supervision of a health care provider over a period of time which may cause episodic rather than a continuing period of incapacity;
- Permanent or long term conditions, defined as a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. Examples include Alzheimer’s, a sever stroke, or the terminal stages of a disease; or
- Conditions requiring multiple treatments. Examples include arthritis, cancer treatments, kidney disease (dialysis), etc.

*COVERED ACTIVE DUTY or CALL TO COVERED ACTIVE DUTY STATUS* means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready

Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.

“COVERED SERVICE MEMBER” means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

*Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five-year period.

“DAYS” means calendar days unless the context specifies.

“DOMESTIC PARTNER” is defined in s. 40.02(21c) or 770.01(1) of the Wisconsin Statutes.

Section 40.02(21c) defines a Domestic Partnership as follows:

- Each individual is at least 18 years old and otherwise competent to enter into a contract;
- Neither individual is married to, or in a domestic partnership with, another individual;
- The 2 individuals are not related by blood in any way that would prohibit marriage under s. 765.03 of Wisconsin law;
- The 2 individuals consider themselves to be members of each other's immediate family; and
- The 2 individuals agree to be responsible for each other's basic living expenses; and
- The 2 individuals share a common residence.

Under s. 40.02(21c), individuals in a domestic partnership need not be of the same sex.

Section 770.01 defines a domestic partner as one who has registered with the County. The criteria as defined in s. 770.05 are as follows:

- Each individual is at least 18 years old and capable of consenting to the domestic partnership;
- Neither individual is married to, or in a domestic partnership with, another individual;
- The 2 individuals share a common residence;
- The 2 individuals are not nearer of kin to each other than 2<sup>nd</sup> cousins, including by adoption; and
- The individuals are members of the same sex.

“FAMILY AND MEDICAL LEAVE” means unpaid leave provided by the Acts.

“FAMILY LEAVE” means leave taken for any of the following reasons:

- For the birth of a child, or to care for the newborn child.
- For placement with the employee of a child for adoption or foster care (not applicable to the Wisconsin Act), or to care for the child after placement.
- To care for the employee’s spouse, child, or parent (and domestic partner as defined above, parent-in-law, or parents of a domestic partner under the Wisconsin Act) with a serious health condition.
- To care for the employee’s spouse, son, daughter, parent, or next of kin with a serious injury or illness incurred as a member of the military while in the line of duty on active duty (not applicable to the Wisconsin Act).
- For a “qualifying exigency” arising out of a spouse’s, son’s, daughter’s, or parent’s active duty or notification of impending call or order to active duty (not applicable to the Wisconsin Act).

“FOSTER CARE” is 24-hour care for children in substitution for, and away from, their parent or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

“GROUP HEALTH PLAN” means any plan of, or contributed to or by, the City of Madison, to provide health care (directly or otherwise) to the City’s employees, former employees, or the families of such employees or former employees.

“HEALTH CARE PROVIDER” under both Acts means a physician, physician assistant, licensed nurse, nurse practitioner, nurse midwife, chiropractor (under the Federal Act, chiropractors are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), dentist, optometrist, podiatrist, psychologist, social worker, hospice facility, in-patient care facility, community based residence facility, or Christian Science practitioner.

Documentation from any health care provider from whom the City would otherwise accept certification of the existence of a serious health condition to substantiate a claim of group health benefits will also be accepted in support of Federal FMLA leave.

The Wisconsin Act also includes acupuncturist, athletic trainer, audiologist, dietitian, marriage and family therapist or professional counselor, occupational therapist or occupational therapist assistant, perfusionist, pharmacist, physical therapist, respiratory care practitioner, or speech pathologist in its' definition of Health Care Provider.

“IMMEDIATE FAMILY MEMBER” means an employee’s spouse, child or parent. When talking about leave under the Wisconsin Act, immediate family member also includes domestic partner, parent-in-law, or parent of a domestic partner.

“INCAPABLE OF SELF CARE” means that the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living.” Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone or directories, using a post office, etc.

“IN LOCO PARENTIS” is commonly understood to refer to “a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties.” *Niewiadomski v. U.S.*, 159 F.2d 683, 686 (6th Cir. 1947) (quoting DOL Administrator’s Interpretation No. 2010-3 issued June 22, 2010). In general, to be considered as standing in loco parentis, an employee must certify that s/he provides financial and/or day-to-day care for the child.

“INTERMITTENT LEAVE” is leave taken in separate blocks of time rather than for one continuous period of time or leave taken by reducing the usual number of hours per work week or hours per work day of any employee.

“MEDICAL CERTIFICATION” means certification by a health care provider that there exists a serious health condition, the date it began, its probable duration, job limitations (if for the employee), and the medical necessity for the leave.

“MEDICAL LEAVE” means leave taken by an employee who has a serious health condition that makes the employee unable to perform the functions of his or her job.

“NEXT OF KIN” means the nearest blood relative of a covered service member other than the service member’s spouse, parent, son or daughter, in the following order: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins. A covered service member may designate someone as a next of kin and that person will be considered the next of kin for the purposes of FMLA leave.

“PARENT” means a biological, adoptive, step or foster parent, or any other individual who stood in loco parentis to the employee when the employee was a child. Under the Wisconsin FMLA, parent also means parent-in-law and parent of a domestic partner.

“PHYSICAL OR MENTAL DISABILITY” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

“QUALIFYING EXIGENCY RELATING TO ACTIVE DUTY OF A SERVICE MEMBER” means any of the following situations arising out of an employee’s spouse, son, daughter, or parent being on active duty or being notified of an impending call or order to active duty in support of a “contingency operation” (above):

- *Short-notice deployment*-to address issues arising from the fact a covered military member is notified of an impending call or order to active duty seven (7) or less calendar days prior to the date of deployment;
- *Military events and related activities*-including official ceremonies, programs or events sponsored by the military related to the active duty or call to active duty status or to attend family support or assistance programs and informational briefings sponsored by the military, military service organizations, or the American Red Cross;
- *Childcare and school activities*-to arrange for or provide child care or to make different schooling arrangements or attend meetings at school necessitated by a change in the existing arrangements because of the call or order to active duty;
- *Financial and legal arrangements*-including to make or update financial or legal arrangements to address the covered military member’s absence, to act as the covered military member’s representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits while the covered military member is on active duty status and for a period of 90 days following the termination of the covered military member’s active duty status
- *Counseling*-to attend counseling sessions for the employee, for the covered military member, or for a child, provided the need for counseling arises from the active duty or call to active duty status of a covered military member;
- *Rest and recuperation*-employees may take up to five (5) days of leave to spend time with a covered military member who is on short-term temporary rest and recuperation leave. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave);
- *Post-deployment activities*-to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member’s active duty status or to address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;

- *Parental care.* (i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;
- (ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;
- (iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
- (iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings; and
- *Additional activities.*

A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty only.

“SERIOUS HEALTH CONDITION” means an illness, injury, impairment, or a physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

“SERIOUS INJURY OR ILLNESS FOR A COVERED SERVICE MEMBER” is an injury or illness incurred by the member in line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

- (i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; or
- (ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- (iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or



(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Show citation box.

It does not require the service member to be involved with enemy combatants. This expansion of FMLA applies to all service members no matter where they are serving, including in the United States.

“SPOUSE” means an employee’s legal husband or wife. “Spouse” does not include unmarried domestic partners, designated family partners or a former spouse.

“SUBSTITUTION” means substitution of accrued paid leave for benefits provided under the Acts. If substitution occurs, the amount of leave will be deducted from both the Acts’ benefits and the employee’s leave balance, to the extent allowable under each Act.

“TWELVE (12) MONTH PERIOD” means a forward measured twelve (12) month period under the Federal FMLA. Eligible employees are entitled to twelve (12) weeks of leave in the twelve (12) month period that follows their first day of leave taken under the Federal FMLA, except that leave to take care of a covered service member is twenty-six (26) weeks in the twelve (12) month period. Under the Wisconsin FMLA, the twelve (12) month period is defined as a calendar year and eligible employees are entitled to two (2) and/or six (6) weeks of leave within the calendar year depending on the nature of the leave.

“WEEK” means seven consecutive calendar days unless the context specifies (i.e. intermittent leave).

V. Coverage:

- A. **Federal Act:** In order for an employee to be eligible for leave under the Federal Family Medical Leave Act, s/he must have been employed by the City for at least 12 months, which need not be consecutive months, and must have worked for at least 1,250 hours (not including paid leave) during the preceding twelve (12) months.
- B. **Wisconsin Act:** In order for an employee to be eligible for leave under the Wisconsin Family Medical Leave Act, s/he must have been employed by the City for at least 52 consecutive weeks, and must have been paid for at least 1,000 hours (including paid leave) during the preceding 52-week period.
- C. **Partial Weeks:** If an employee is maintained in an active employment status for any part of a week, the week counts as a week of employment for purposes of determining whether an employee has met the twelve (12) months or 52 weeks requirements.
- D. **Greater Benefit Requirement:** An employee qualifying for coverage under both the Wisconsin and Federal Acts shall receive the greater of the two (2) benefits.

VI. Reasons for Leave:

A. **Federal Act:** An employee is eligible to use leave under the Federal Act for the following purposes:

1. Birth/care of the employee's newborn child. This may include a child to which the employee is standing in loco parentis as defined above.
2. Placement of a child with the employee for adoption or foster care.
3. Care of the employee's child, spouse, or parent with a serious health condition. This may include a person who has stood in loco parentis to the employee, as defined above.
4. An employee's own serious health condition that makes the employee unable to perform the essential functions of his/her position.
5. To care for a spouse, son, daughter, parent or next of kin with a serious injury or illness incurred when the family member or next of kin is a member of the military while in the line of duty on active duty.
6. For a "qualifying exigency" arising out of a spouse's, son's, daughter's, or parent's active duty or notification of impending call or order to active duty.

B. **Wisconsin Act:** An employee is eligible to use leave under the Wisconsin Act for the following purposes:

1. Birth/care of the employee's biological child if the leave begins within sixteen (16) weeks before or after the child's birth.
2. Placement of a child with the employee for adoption or as a precondition to adoption, but not both, if the leave begins within sixteen (16) weeks before or after the child's placement.
3. Care of the employee's child, spouse, domestic partner, or parent (including parent-in-law and parent of a domestic partner) with a serious health condition.
4. An employee's own serious health condition that makes the employee unable to perform the essential functions of his/her position.

The Wisconsin Act, while permitting leave for the care of a domestic partner or parent of a domestic partner, does not permit leave for the care of a child of a domestic partner. The Federal Act may allow care for the child of a domestic partner if the employee certifies that s/he is standing "in loco parentis" to that child.

VII. Length of Leave Entitlements:

A. **Federal Act:** Under the Federal Act an employee may take a total of twelve (12) weeks during a twelve (12) month period for:

1. Birth/care of employee's newborn child.
2. Placement of a child with the employee for adoption or foster care.
3. Care of the employee's child, spouse, or parent with a serious health condition.
4. Employee's own serious health condition.

5. To address qualifying exigencies relating to the active duty status or call to active duty status of an employee's spouse, son, daughter, or parent.
6. In addition, up to twenty-six (26) weeks of entitlement is provided for an employee to care for a spouse, son, daughter, parent, or next of kin of a covered service member who has a serious injury or illness as defined above for which the covered service member is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status, or otherwise on the temporary disability retired list. This leave is available during a forward-counted 12-month period, and is combined with other FMLA leaves, limiting the total of FMLA leave for all purposes to twenty-six (26) weeks in a 12-month period.

Federal FMLA leave is tracked on a forward measured twelve (12) month period commencing from the first date of leave under the Federal FMLA.

**B. Wisconsin Act:** Under the Wisconsin Act employees may take:

1. Six (6) weeks for the birth/care of an employee's child or the placement of a child with the employee for adoption or as a precondition to adoption, but not both, if the leave begins within sixteen (16) weeks before or after the child's placement; and/or
2. Two (2) weeks to care for the employee's child, spouse, domestic partner, or parent/parent-in-law/parent of domestic partner with a serious health condition; and/or
3. Two (2) weeks for an employee's own serious health condition.

Wisconsin FMLA is tracked on a calendar year basis.

VIII. Application and Notice Requirements: If an employee requires a leave for two (2) consecutive weeks or less s/he may use paid leave to the extent paid leave is available without applying for leave under the Acts. However, this time may be charged against the employee's leave entitlements under the Acts if an employee requires additional leave during the same twelve (12) month period. In order to be eligible for an unpaid leave, intermittent leave, or when requesting more than two (2) consecutive weeks of leave an employee shall be required to provide the appropriate leave application.

Any employee requesting the use of leave under the Acts will be required to provide advance notice whenever possible. The failure of an employee to request leave under the Acts or provide notice shall not prohibit the employer from designating qualified leave time under the Wisconsin and/or Federal Acts. Further, the employee need not request State or Federal leave by name. The City will determine the applicable statute(s) which covers the requested leave. Notification should be provided as follows:

- A. **Foreseeable Leave:** The employee must ordinarily provide 30 days advance notice when the leave taken under the Acts is foreseeable. If 30 days notice is not given, the leave may be denied until 30 days after the notice is received. If an employee does not become aware of the need for FMLA covered leave until a period shorter than 30 days in advance but fails to inform the City within a reasonable time, it may result in a delay before the employee is covered by FMLA. Employees are also obligated

under the Federal FMLA to provide the City with a reason, upon request, why the leave was not scheduled with the proper notice.

- B. **Unforeseeable Leave:** The employee should notify the department as soon as reasonable and practicable. This should be interpreted to mean within one (1) or two (2) workdays of the employee learning of the need for the leave.
- C. **Responses to City Inquires as to Type of Leave:** Employees who have FMLA approved and call in to miss work should inform the City whether the leave should be considered FMLA. If the employee fails to do so, the City has the right to inquire whether the absence should be counted as FMLA. Employees are required to provide this information upon request. Failure to do so may result in the leave not being covered by FMLA and appropriate consequences may result.

IX. Medical Condition Certification: An employee requesting the use of leave under the Wisconsin and/or Federal Acts must provide written certification from the responsible health care provider of some or all of the following information:

- The existence of a serious health condition (injury or illness);
- Date of onset and estimated dates of duration;
- Medical facts underlying the serious health condition (injury or illness);
- Nature and duration of treatment;
- Medical, care giving or other basis for the employee being off work;
- Health care provider contact information.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, employees and health care providers should not provide any genetic information when responding to this request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Failure to provide the appropriate medical certification shall not prohibit the City from designating qualified leave time under the Wisconsin and/or Federal Acts. For an employee's serious health condition, the City may periodically require the employee to update his or her status and intention to return to work. At the end of the leave for the employee's serious health condition, the employee may be required to provide medical certification of her/his fitness to return to work with medical limitations or work restrictions, if any. The employee will be informed of such requirement at the time the application is approved.

At any time during leave for an employee's serious health condition, the City may, at its expense, require a second medical opinion from a health provider of its choice. If the second opinion reveals that Family and Medical Leave is not appropriate, the employee may request a third opinion, which will be controlling. The City and employee must agree on the provider for the third opinion. If a second and/or third opinion is required, the employee's leave will

only be provisionally approved during the process. If the opinions do not support the need for Family and Medical Leave, any unpaid leave taken to that date under the FMLA will not be considered excused and may be subject to disciplinary action.

For birth or adoption of a child and in order to care for the child, an employee should furnish documentation of the expected date of birth or adoption.

Medical Condition Certification for all categories of leave under the Wisconsin and/or Federal Acts will be submitted to the Human Resources Department marked "Confidential: Benefits." Department review of applications for Family and Medical Leaves of Absence does not include review of supporting Health Care Provider Certification information.

X. Intermittent Leave:

A. **Federal Act:** The Federal Act permits an employee to take leave intermittently under the following conditions:

1. When the leave is medically necessary to care for a family member with a serious injury or illness when the family member is a member of the military and the injury or illness is incurred while in the line of duty on active duty.
2. When the leave is medically necessary to care for an immediate family member with a serious health condition.
3. When the leave is medically necessary for the employee's own serious health condition.
4. If FMLA leave is for the birth and care of a child or placement for adoption or foster care of a child, intermittent leave may be used but is subject to the City's approval.

B. **Wisconsin Act:** The Wisconsin Act permits an employee to take leave intermittently under the following conditions:

1. When the leave is medically necessary to care for an immediate family member with a serious health condition.
2. When the leave is medically necessary for the employee's own serious health condition.
3. For the birth or placement of a child for adoption when the leave begins within sixteen (16) weeks before or sixteen (16) weeks after the birth or placement.

C. **Scheduling Requirements:** Under the Wisconsin and/or Federal Acts, when leave is foreseeable, an employee requesting the use of intermittent leave must schedule all absences so as not to unduly disrupt operations. An employee is deemed to have scheduled intermittent leave so as not to unduly disrupt operations when:

1. The employee provides the appropriate notice of the need for an intermittent leave schedule.
2. The proposed schedule for intermittent leave is provided with at least as much notice as other prearranged leave time.

3. The intermittent leave schedule is sufficiently definite to allow for the ability to schedule replacement employees if necessary.
- D. **Use of Leave for Full-Time Employees:** Under the Wisconsin and/or Federal Acts, when taking intermittent leave only the amount of leave actually taken by the employee may be counted toward the leave entitlement (i.e., an employee who works a standard forty (40) hour workweek must use forty (40) hours of intermittent leave in order to be charged with one (1) week of leave under the Acts).
- E. **Use of Leave for Less-than-Full-Time Employees:** For less-than-full-time employees, the amount of leave to which they are entitled is determined on a proportional basis by comparing the intermittent leave schedule to the employee's normal schedule. For example, if an employee who normally works thirty (30) hours per week now works twenty (20) hours per week the employee will use ten (10) hours of leave per week, and if the employee works the twenty (20) hour schedule for three (3) weeks s/he is charged with one (1) week of leave under the Acts.

XI. Alternative Employment:

- A. **Federal Act:** The Federal Act does not prohibit the City from temporarily transferring an employee to an alternate position with equivalent pay and benefits in order to accommodate a request for an intermittent leave schedule or leave on a reduced schedule that is foreseeable based on planned medical treatment or the birth or placement of a child.
- B. **Wisconsin Act:** The Wisconsin Act allows the employer and the employee to mutually agree to alternate employment for an employee with a serious health condition for the period of time that the serious health condition lasts. The period of alternate employment does not reduce the employee's right to family or medical leave.

XII. Substitution:

- A. **Federal Act:** The Federal Act provides twelve (12) weeks of unpaid leave for reasons other than care of an injured or ill military service member, and twenty-six (26) weeks of unpaid leave for an employee to care for a family member who is a member of the military and incurs a serious injury or illness while in the line of duty on active duty. An employee is, however, permitted and may be required to substitute other appropriate paid leave for unpaid leave. The paid leave runs concurrently with the Federal unpaid leave and under no circumstances are employees entitled to additional leave as a result of the substitution of paid leave for unpaid leave. Paid leave shall be substituted for unpaid leave under the Federal Act as follows:
1. Birth, Adoption, or Foster Care: An employee shall be required to substitute accrued vacation and personal leave for unpaid Federal leave relating to birth, placement of a child for adoption, or placement of a child for foster care. The employee may substitute sick leave or compensatory time to the extent available.

2. Employee's Own Serious Health Condition: An employee shall be required to substitute accrued sick leave for unpaid Federal leave for the employee's own serious health condition. The employee may substitute vacation, compensatory time and personal leave to the extent available.
3. Immediate Family Member's Serious Health Condition: An employee shall be required to substitute sick leave, vacation, and personal leave for unpaid Federal leave needed to care for an immediate family member with a serious health condition and/or to care for an immediate family member or next of kin who is a member of the military and the serious injury or illness is incurred while in the line of duty on active duty. An employee may choose to substitute compensatory time to the extent available.
4. Leave Without Pay: An employee may be required to substitute accrued sick leave, vacation, and personal leave for portions of unpaid Federal leave prior to the use of leave without pay whenever applicable. An employee may choose to substitute compensatory time to the extent available.
5. Leave Designation: Any leave, with or without pay, that is designated as leave under the Federal Act will count against the employee's Federal leave entitlement.
6. Unqualified Leave: Use of paid leave in circumstances that do not qualify under the Federal Act will not count against the twelve (12) week leave entitlement. For example, paid sick leave used for a medical condition that is not a serious health condition does not count against the twelve (12) week entitlement.
7. Disability Leave: Any unpaid leave taken under the Federal Act for an employee's own serious health condition shall automatically count against the employee's six (6) month disability leave of absence, and vice versa.
8. Worker's Compensation: When a serious health condition results from an injury to an employee while on the job, the employee's Federal leave entitlement shall run concurrently with any worker's compensation benefits. An employee may substitute paid leave only for the hours not covered by worker's compensation benefits. If the health care provider treating the employee for the worker's compensation injury certifies the employee is able to return to a "light duty" position, but is unable to return to the same or equivalent job, the employee may decline the offer of "light duty." As a result, the employee may lose workers' compensation, but is entitled to remain on leave until the expiration of leave entitlements under the Federal Act.

- B. **Wisconsin Act**: The rules of substitution listed above also apply to the Wisconsin Act to the extent allowable under the Act except that an employee cannot be compelled to substitute paid leave for unpaid leave, and worker's compensation benefits do not run concurrently with leave taken under the Wisconsin Act.

XIII. Combining the Wisconsin Act and the Federal Act: The following are examples of how the Wisconsin Act and the Federal Act combine for employees meeting the eligibility requirements for both Acts.

- A. Employee requests a leave of absence for a serious health condition that makes the employee unable to perform the functions of her/his position:

1. Leave Entitlements: An employee with a serious health condition who has met the eligibility requirements of both the Federal and Wisconsin Acts as defined by this policy may use up to twelve (12) weeks of unpaid leave in a twelve (12) month period.

During the first two (2) weeks of leave an employee is eligible for leave under the Federal Act and the Wisconsin Act. After the first two (2) weeks, for the remaining ten (10) weeks, the employee is only eligible for leave under the Federal Act.

2. Consecutive Leave: An employee is entitled to twelve (12) consecutive weeks of unpaid leave.
3. Intermittent Leave: An employee may use the entire twelve (12) weeks of leave intermittently.

When leave is foreseeable, the employee requesting the use of intermittent leave must schedule all absences so as not to unduly disrupt operations, as described above in Section X.

4. Substitution: Paid leave shall be substituted for unpaid leave as follows:
  - a. **First two (2) weeks**: The employee, under the WFMLA, cannot be compelled to substitute any accrued sick leave, vacation, compensatory time, or personal leave for unpaid leave, but may choose to do so to the extent available.
  - b. **After the first two (2) weeks**: The employee shall be required to substitute any accrued sick leave until it has been exhausted. The employee may substitute vacation, compensatory time, or personal leave to the extent available.

Any substituted paid leave time will still be counted as FMLA leave to the extent allowable under each Act.

- B. Leave to care for the employee's newborn child, or placement of a child with the employee for adoption or foster care:

1. Leave Entitlement: An employee who has met the eligibility requirements of both the Federal and Wisconsin Acts may use up to twelve (12) weeks of unpaid leave to care for the employee's newborn child or for the placement of a child with the employee for adoption or foster care. The leave must be concluded within twelve (12) months of the birth or placement and no more than one (1) twelve (12) week period of leave may be taken for the birth or placement any one (1) child.

Birth or Adoption: During the first six (6) weeks of leave an employee is eligible for leave under the Federal Act and the Wisconsin Act. After the first



six (6) weeks, for the remaining six (6) weeks, the employee is only eligible for leave under the Federal Act.

**Foster Care:** During the entire twelve (12) weeks an employee is eligible for leave only under the Federal Act. Leave may be taken intermittently only when approved by the department head and the Human Resources Director, and the employee shall be required to substitute any accrued sick leave, vacation, and personal leave until such leaves have been exhausted. An employee may choose to use compensatory time to the extent available.

2. Consecutive Leave: An employee is entitled to twelve (12) consecutive weeks of unpaid leave.
3. Intermittent Leave: An employee may use unpaid leave intermittently under the Acts as follows:
  - a. **First six (6) weeks:** Leave taken for the birth or placement of a child for adoption (not including foster care) may be taken intermittently as determined by the employee if the leave begins during the sixteen (16) weeks preceding the birth or placement or during the sixteen (16) weeks following the birth or placement. All leave taken to care for the child, other than those instances required by illness, must be scheduled in advance, with at least as much notice as required when using other forms of prearranged leave.
  - b. **Second six (6) weeks:** Leave may be taken intermittently only when approved by the department head and the Human Resources Director.
4. Substitution: Paid leave shall be substituted for unpaid leave as follows:
  - a. **First six (6) weeks:** The employee, under the WFMLA, cannot be compelled to substitute any accrued sick leave, vacation, compensatory time, or personal leave for unpaid leave, but may choose to do so to the extent available (not including foster care). If the leave is taken for the purpose of placing a child in foster care, since this is only covered by the Federal FMLA, the employee shall be required to substitute any accrued vacation and personal leave until such leaves have been exhausted. The employee may substitute sick leave or compensatory time to the extent available.
  - b. **Second six (6) weeks:** The employee shall be required to substitute any accrued vacation and personal leave until such leaves have been exhausted. The employee may substitute sick leave or compensatory time to the extent available.

Any substituted paid leave time will still be counted as FMLA leave to the extent allowable under each Act.

C. Leave of absence to care for the employee's child, spouse, or parent, other than an active-duty military service member, who has a serious health condition:

1. Leave Entitlement: An employee who has met the eligibility requirements of both the Federal and Wisconsin Acts may use up to twelve (12) weeks of unpaid leave in a twelve (12) month period to care for an employee's child, spouse, or parent, with a serious health condition.

During the first two (2) weeks of leave an employee is eligible for leave under the Federal Act and the Wisconsin Act. After the first two (2) weeks, for the remaining ten (10) weeks, the employee is only entitled to leave under the Federal Act.

2. Consecutive Leave: An employee is entitled to twelve (12) consecutive weeks of leave.
3. Intermittent Leave: An employee may use the entire twelve (12) weeks of leave intermittently.

When leave is foreseeable, the employee requesting the use of intermittent leave must schedule all absences so as not to unduly disrupt operations.

4. Substitution: Paid leave shall be substituted for unpaid leave as follows:
  - a. **First two (2) weeks**: The employee, under the WFMLA, cannot be compelled to substitute any accrued sick leave, vacation, compensatory time, or personal leave for unpaid leave, but may choose to do so to the extent available.
  - b. **Next ten (10) weeks**: The employee shall be required to substitute any accrued sick leave, vacation, and personal leave until such leaves have been exhausted. An employee may choose to use compensatory time to the extent available.

Any substituted paid leave time will still be counted as FMLA leave to the extent allowable under each Act.

D. Leave of absence to care for a spouse, son, daughter, parent, or next of kin who is a member of the military as defined above and has a serious injury or illness as defined above.

1. Leave Entitlement: An employee who has met the eligibility requirements of the Federal Act may use up to twenty-six (26) weeks of unpaid leave in a twelve (12)-month period to care for the employee's spouse, son, daughter, or parent who is a member of the military as defined above and is receiving treatment for a serious injury or illness as defined above that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating. The entitlement is also available to an employee who is identified as the service person's next of kin.

2. Consecutive Leave: An employee is entitled to twenty-six (26) consecutive weeks of leave.
3. Intermittent Leave: An employee may use the entire twenty-six (26) weeks of leave intermittently. When leave is foreseeable, the employee requesting the use of intermittent leave must schedule all absences so as to not unduly disrupt operations.
4. Substitution: Paid leave shall be substituted for unpaid leave as follows:
  - a. **First two (2) weeks**: The employee may substitute accrued sick leave, vacation, compensatory time, or personal leave for unpaid leave to the extent available. This provision is City of Madison policy based on administration of similar FMLA provision for “Immediate Family Member’s Serious Health Condition”; the Federal Act as amended in 2008 does not provide for a two-week employee option regarding substitution, and the Wisconsin Act does not provide for leave to care for a service member.
  - b. **Next twenty-four (24) weeks**: The employee shall be required to substitute any accrued sick leave, vacation, and personal leave until such leaves have been exhausted. An employee may choose to use compensatory time to the extent available.

Any substituted paid leave time will still be counted as FMLA leave.

Please note in the scenarios described above, once an employee has exhausted leave under the WFMLA, the employee shall be required to substitute paid leave time until such leaves have been exhausted.

- XIV. Benefits: The Wisconsin and Federal Acts as well as the disability leave provisions of Madison General Ordinances and collective bargaining agreements require the City to maintain the employee’s health coverage while on such leaves and provide the same contribution to the premium as before the leave began. If the employee fails to pay his/her portion of the premium in a timely manner, the coverage may be canceled.

The City and/or employee shall continue to pay health insurance premiums on the same basis as existed prior to commencement of the leave. In the event that changes occur affecting the premium payment for health insurance during the leave of absence payment arrangements will be adjusted accordingly. In the event the employee does not pay his/her portion of the premium, if any, within 30 days of the due date, coverage will be discontinued.

The City will not continue to pay health insurance premiums when an employee is in disability layoff status unless the disability layoff is running concurrently with leave provided by the Wisconsin and Federal Acts.

Other benefits the employee has which have premium payments made by payroll deduction will be handled in the same manner as described above (i.e., life insurance, dental insurance, flexible spending accounts), with the exception of wage insurance. If the employee is on paid (substituted) leave, wage insurance premiums are handled as they were before the employee

went on leave. If the employee is drawing wage insurance, premiums are waived for the period of disability. If the employee is on unpaid leave, s/he is not eligible to continue wage insurance coverage, as s/he must actively be working (or on paid leave) immediately prior to the commencement of a disability.

- XV. Accrual of Benefits/Job Restoration: During the first 30 days of unpaid leave, an employee shall continue to accrue benefits as provided by Madison General Ordinances and collective bargaining agreements.

An employee substituting accrued paid leave for statutory leave will continue to accrue benefits as provided by Madison General Ordinances and collective bargaining agreements in the same manner as before the leave began. Wages will end when the employee has exhausted the substituted paid leave; however, all other such benefits will continue as described above.


Upon return from leave under the Acts, the City will restore the employee to her/his original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment. An employee returning with a disability may also be subject to the provisions of the Americans with Disabilities Act.

Job restoration upon returning from leave can be denied:

- A. If the employee would have been laid off had s/he not been on leave;
  - B. If the employee fraudulently obtained leave; or
  - C. If the employee fails to provide medical certification that s/he is able to return to work.
- XVI. Falsification of Information: An employee may be subject to disciplinary action for falsifying any information required or requested in applying for or receiving leaves or benefits under the Acts, Madison General Ordinances, collective bargaining agreements, or this APM.
- XVII. No Discrimination: The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA and to discharge or discriminate against any person for opposing any practice made unlawful by FMLA, or for involvement in any proceeding under or relating to FMLA. No employee shall be discriminated against for either requesting or taking leave covered by the Family Medical Leave Act. If an employee believes s/he has been discriminated against for requesting or taking such leave, the employee should contact either their supervisor, department head or the Human Resource Department. Such complaints will be investigated and appropriate corrective action taken if it is found that an employee has suffered discrimination. Finally, no employment or disciplinary action will be taken against any employee who makes a good faith complaint, even if the investigation fails to substantiate any or all allegations of the complaint.

- XVIII. Enforcement and Time Limits: If an employee has a concern with any of the above, he or she may file a complaint with the US Department of Labor or file a private lawsuit. The employee must file the complaint or lawsuit within two years after the employee knew or reasonably should have

known that a violation of the Federal Act occurred or within three years in the case of a willful violation. The employee may also choose to file a complaint with the Equal Rights Division within 30 days after the employee knew or reasonably should have known that a violation of the Wisconsin Act occurred.

  
Paul R. Soglin  
Mayor

APM No. 2-21  
May 16, 2013

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