



## ADMINISTRATIVE PROCEDURE

**SUBJECT: FAMILY AND MEDICAL LEAVE**

**No.: HR 8.0 AP 1**

**Date: 12/9/2015**

### **I. PURPOSE**

This procedure is to comply with the FMLA (Family and Medical Leave Act) and NDAA (National Defense Authorization Act).

### **II. SCOPE**

This procedure applies to all employees depending upon meeting the eligibility requirements defined in the Family and Medical Leave Act, and National Defense Authorization Act.

### **III. PROCEDURE**

It is the procedure of the City of Corpus Christi to grant up to 12 weeks of family and medical leave during a 12 month rolling period (measured backward) to eligible employees, in accordance with the Family and Medical Leave Act.

Leave to care for a covered service member with a serious injury or illness can be up to twenty-six (26) weeks in a single twelve (12) month period which begins on the first day the employee takes FMLA leave to care for the covered service member and ends twelve (12) months after that date. If an eligible employee does not take all of his/her 26 weeks of leave entitlement to care for a covered service member during this "single 12-month period", the remaining part of his/her 26 weeks of leave entitlement to care for the covered service member is forfeited.

Leave to care for a covered service member is to be applied on a per-covered-service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different covered service member or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period".

Eligible employees are entitled to a combined total of up to twenty-six (26) weeks of all types of FMLA leave during a single 12-month period.

This leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified by this procedure. FMLA leave will run concurrently with other leave provided by the

city.

**The Family and Medical Leave Act (FMLA) and related Final Regulations, and amendments by the National Defense Authorization Act (NDAA), effective January 16, 2009 will be used to resolve issues not addressed in this procedure.**

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## V. DEFINITIONS

**ACTIVE DUTY OR CALL TO ACTIVE DUTY STATUS** – duty under a call or order to active duty, or notification of an impending call or order to active duty, in support of a contingency operation, as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve.

For the purpose of qualifying exigency leave, families of service members on active duty in the regular armed services are eligible if the service member is deployed on active duty in a foreign country.

**A REGIMEN OF CONTINUING TREATMENT:** Includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen); *unless complications occur, it does not include treatment that involves the taking of over-the-counter medications such as aspirin, antihistamines, salves, bed-rest, drinking fluids, exercise, and other similar activities which can be initiated without a visit to a health care provider.*

*For example, the common cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraine), periodontal disease, etc., do not meet the definition of a serious health condition and do not qualify for FMLA leave. Mental illness which results from stress or allergies may be a serious health condition, but only if it meets all other conditions of the definition of serious health condition. Substance abuse may be a serious health condition if the conditions of this definition are met and treatment is received from a substance abuse health care provider, or by a provider of health care services on referral by a health care provider.*

*Absences due to incapacity may qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an asthma attack; or an employee advised by a health care provider to stay home when the pollen count exceeds a certain level; or a pregnant employee who is unable to report to work because of severe morning sickness.*

**"AS SOON AS PRACTICABLE":** as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For unforeseeable leave where it is not possible to give as much as 30 days notice of the need for FMLA qualifying leave and its anticipated start and duration, "as soon as practicable" would mean verbal notice within the same day or the next business day of when the need for leave became known to the employee.

**CERTIFICATION OF HEALTH CARE PROVIDER FORM (OR COMPARABLE CERTIFICATION INFORMATION):** An employee who is eligible for FMLA leave may meet certification requirements by providing a health care provider's certification on forms other than the recommended Certification of Health Care Provider Forms attached to this Procedure, if the health care provider refuses to complete the Certification of Health Care Provider Form at no cost to the employee. The health care provider's prescription pad sheet or patient disposition form which indicates the employee's medical status and provides equivalent information to that required on the Certification of Health Care Provider Form shall meet the certification requirement if it provides sufficient detailed information to enable certification of the valid use of the FMLA leave taken and if it is provided by the health care provider at no cost to the employee. *In either case, the employee must sign the Medical Authorization Form.*

**HEALTH CARE PROVIDER:** includes the following if authorized to practice by the State and if performing within the scope of practice as defined under State law: a doctor of medicine, doctor of osteopathy, physician's assistant, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist), nurse practitioner, nurse midwife, clinical social worker, Christian Science practitioners listed with the First Church of Christ, Scientist in Boston Massachusetts, any health care provider recognized by the City's applicable Group Health Plans benefit manager, any health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

**INTERMITTENT LEAVE:** leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time. Intermittent leave is available based on medical necessity for all eligible uses of FMLA except childbirth and child placement. For intermittent leave, the Department Head, at his/her discretion and the employee may agree to provisions for intermittent leave. It is the employee's obligation in scheduling appointments, treatments, and/or procedures to do so without disrupting City operations.

**NEXT OF KIN OF A COVERED SERVICE MEMBER** – the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave:

1. Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions
2. Brothers and sisters
3. Grandparents
4. Aunts and uncles
5. First cousins

**PARENT:** A biological parent or an individual who stands, or stood, in loco parentis to an employee when the employee was a child. The term does not include parents "in-law."

**PHYSICAL OR MENTAL DISABILITY:** a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in the Americans with Disabilities Act (ADA).

**REDUCED LEAVE SCHEDULE:** a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. A reduced leave schedule is required based on medical necessity for all eligible uses of FMLA except childbirth or child placement. For reduced leave schedule, the Department Head, at his/her discretion, and the employee may agree to provisions for a reduced leave schedule.

**QUALIFYING EXIGENCY** – arises out of the fact that the employee's spouse, son, daughter, or parent 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.

Families of service members on active duty in the regular armed services are eligible for this type of leave if the service member is deployed on active duty in a foreign country.

Reasons for which an employee can take leave because of a qualifying exigency are categorized as follows:

1. **Short-Notice Deployment** (a week or less notice)
2. **Military Events And Activities**
3. **Childcare And School Activities** (urgent needs, not recurring or routine)
4. **Financial And Legal Arrangements**
5. **Counseling**
6. **Rest And Recuperation**
7. **Post-Deployment Activities**

**SERIOUS HEALTH CONDITION**: an illness, injury, impairment, or physical or mental condition that involves:

- (1) **inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility including any period of incapacity. "Incapacity" is defined as the inability to work, or attend school, or perform other regular daily activities due to the serious health condition, related treatment, recovery period, or any subsequent treatment in connection with the inpatient care; or,
- (2) **continuing treatment** by a health care provider which includes one or more of the following:
  - (i) a period of incapacity, as defined in (1) above, of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition which also involves (a) treatment two or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or (b) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;  

Note: In both cases (a) and (b) above, the first in-person treatment visit must take place within seven days of the first day of incapacity.
  - (ii) any period of incapacity due to pregnancy, or for prenatal care;
  - (iii) any period of incapacity or treatment for incapacity due to a chronic serious health condition, which (a) requires periodic visits, at least two (2) times per year, for treatment by a health care provider, nurse, or physician's assistant under direct supervision of a health care provider; (b) continues over an extended period of time, including recurring episodes of a single underlying condition; and (c) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.);
  - (iv) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g. Alzheimer's, a severe stroke, or the terminal stages of a disease).

- (v) any period of absence to receive multiple treatments, including any period of recovery therefrom, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis);
- (vi) treatment which includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations, eye or dental examinations.

**SON OR DAUGHTER:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. "Incapable of self-care" means that active assistance or supervision is needed in performing three (3) or more of the activities of daily living, such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, using public transportation, etc.

**SPOUSE:** A lawfully recognized spouse, including common law marriage.

**TREATMENT:** Includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition, but does not include routine physical examinations, eye or dental examinations.

## **VI. ELIGIBILITY**

- A. This procedure covers eligible employees who meet the eligibility requirements for FMLA leave as described in this Section.
- B. In order for an employee to qualify to take family and medical leave under this procedure, the employee must meet **ALL** of the following conditions:
  - (1) The employee must have worked for the City at least 12 months, or 52 weeks. The twelve months, or 52 weeks, need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.

Separate stints of employment will be counted, provided that a break-in-service does not exceed seven (7) years. Separate stints of employment will be counted for breaks-in-service of seven (7) years or longer if one of the following applies:

- i. Break-in-service due to National Guard or Reserve military service obligation;  
or
  - ii. Written agreement (includes CBA) reflecting an employer's intention to rehire the employee after the break-in-service.
- (2) The employee must have worked at least 1,250 hours during the previous 12 month period

immediately before the date when the leave would begin. The 1,250 hours shall be based on actual hours worked under the principles of the Fair Labor Standards Act (FLSA). *For Exempt Employees, see Section XVI, Subsection B.*

(3) The employee must work at a worksite where 50 or more employees are employed by the City of Corpus Christi within 75 miles of that worksite.

C. A temporary City employee, as defined by the Civil Service Board Rules and Regulations, or the temporary employee of an employment agency, may be eligible for FMLA leave. The Director of Human Resources must be consulted for assistance.

## **VII. TYPE OF LEAVE**

1. In order to qualify as basic FMLA leave under this procedure, the employee must be taking the leave for one of the reasons listed below:
  - a. the birth of a son or daughter and to care for the newborn child;
  - b. the placement with the employee of a son or daughter for adoption or foster care;
  - c. to care for the employee's spouse, son, daughter, or parent with a serious health condition, which includes both physical care and psychological comfort and reassurance as a medical necessity; (Note: The employee need not be the only individual available to care for the qualified family member or service member.), or
  - d. because of the serious health condition of the employee, which makes the employee unable to perform the essential functions of his/her position, or
  - e. because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation, or if active duty in the regular armed services and is deployed on active duty in a foreign country.
  - f. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.
2. An employee can take up to 12 weeks of leave under this procedure during a 12-month period (measured backward.) Each time an employee takes FMLA eligible leave, the amount of leave taken is subtracted from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take for the remainder of the 12-month period (measured backward.)
3. An employee's entitlement to FMLA leave for the purpose of birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement. In no case is an employee entitled to more than 12 weeks of FMLA leave in a 12-month period (measured backward.)
4. If a husband and wife both work for the City, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent in-law) with a serious health condition, the amount of FMLA leave entitlement which the



husband and wife may take for those purposes shall not exceed a combined total of 12 weeks of leave in the 12 month period (measured backward.) However, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave for those purposes.

5. Upon notice or request of the employee, as described in Section XI, the Department Head, or designee, must determine if the eligibility requirements in Section VI are met as of the date the requested leave is scheduled to commence, or confirm the employee's eligibility based on a projection that the employee will be eligible on the date leave would commence, or may advise the employee when the eligibility requirements are met. The employee has satisfied the notification requirement, even if he/she is not eligible for FMLA leave at the time the request is submitted. The Department Head, or designee, shall, in writing or verbally, advise the employee of his/her eligibility status within five (5) business days of receiving the employee's notice of the need for FMLA leave and provide written confirmation and notification to the employee no later than the following payday.
6. Where inpatient care is not involved, absence from work of the employee, or incapacity in the case of a family member in performing daily activities for a period of more than three consecutive calendar days while under the continuing medical treatment of a health care provider, shall qualify an employee to request his/her FMLA leave entitlement, as needed, up to 12 weeks in a 12-month period (measured backward.)
7. An employee shall be required to provide a doctor's certification of the serious health condition. This certification process is outlined in Section X.
8. If an employee takes accrued sick leave for a condition of less than three consecutive calendar days, which later progresses into a serious health condition, all or some portion of the related leave previously taken may be counted to the extent such leave meets the necessary FMLA eligibility requirements, and the Department Head provides notification to the employee of the designation of the leave as FMLA leave as provided in Section XII. If an employee uses accrued and/or personal leave under circumstances which do not qualify as FMLA leave, such leave will not be counted against the 12 weeks of FMLA leave to which the employee is entitled in a 12-month period (measured backward.)
9. **INTERMITTENT LEAVE:** FMLA leave may be taken by eligible employees in a block of 12 consecutive weeks, or intermittently by using hours periodically when needed throughout the 12-month period (measured backward.) Such leave can be used rounded to a minimum of 15 minutes intervals for such purposes as medical appointments or medical treatments. The employee must attempt to schedule intermittent FMLA leave so as not to disrupt the Department's operations subject to the agreement and availability of the health care provider. In all cases, the FMLA leave may not exceed a total of 12 weeks during the 12-month period.

In cases where medical documentation does not provide a specific period for intermittent leave, the employee will be required to provide the Certification of Health Care Provider Form, or a comparable certification as defined in Section V, every forty-five (45) days. In other situations recertification requirements will be handled on a case by case basis.

## **10. MEDICAL NECESSITY FOR REDUCED WORK WEEK OR WORK DAY:**

- (a) Employees who have a medically necessary need for intermittent leave or leave on a reduced leave schedule shall advise the Department Head, or designee, of the reasons why the intermittent or reduced leave schedule is necessary and the schedule for treatment which meets the employee's needs while not unduly disrupting the operations of the department. This schedule shall be subject to agreement and availability of the health care provider.
- (b) Reduced work schedule may include a change in the employee's schedule from full-time to part-time for a temporary period of time, e.g. after childbirth, upon agreement of the employee and the applicable department head; or allowing an employee recovering from a serious health condition to work part-time until strong enough to resume full-time work.
- (c) An employee may be temporarily transferred to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.
- (d) For the birth, adoption or foster care of a child, the Department Head and the employee must mutually agree to a leave schedule before the employee may take the leave intermittently or work a reduced hour schedule. Eligibility for leave for the purposes of birth, adoption, or foster care of a child expires within one year of the date of birth or placement of the child.
- (e) If the employee is taking FMLA leave for a serious health condition or because of the serious health condition of a family member, an agreement must be reached between the employee and the Department Head before the employee takes intermittent leave or works a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The Department Head may require certification of the medical necessity, as discussed in Section X.
- (f) Under an intermittent or reduced leave schedule, only the amount of FMLA leave actually taken may be counted toward the 12 weeks of leave in 12-month period (measured backward.)
- (g) In cases where medical documentation does not provide a specific period for intermittent leave, while working a reduced schedule, the employee will be required to provide the Certification of Health Care Provider Form, or a comparable certification as defined in Section V, every forty-five (45) days. In other situations recertification requirements will be handled on a case by case basis.

## **VIII. EMPLOYEE STATUS & BENEFITS**

### **A. DURING FMLA LEAVE:**

1. While on FMLA leave and using and exhausting accrued sick leave, personal leave or vacation leave based on employee's full-time equivalent, the employee's share of the benefit premiums, for those employees who have these benefits, shall be collected by payroll deduction.

2. While on leave without pay, whether FMLA qualified leave or not, the employee will be required to pay the employee portion of benefit premiums (i.e. for health insurance, dental insurance, life insurance, disability plan, etc.), for those employees who have these benefits as per City policy HR 8.0 AP 2 Benefit Coverage During No Pay Status. Upon the employee's return to work or termination of employment any arrears premiums that exist will be deducted from the employee's paycheck.
2. An employee who has exhausted all paid leave is not entitled to accrue additional vacation or sick leave during a period of unpaid leave. The Payroll Clerk shall prepare an Employee Change Form (Form 12) and forward it to the Human Resources Department inactivating the employee during any FMLA-qualifying leave WITHOUT pay.
3. If the employee does not return at the end of the leave period, the employee's notification of his/her intent not to return (terminate, disability or service retire) will be a COBRA qualifying event. Contact the Human Resources Department for information on COBRA and for other health, life or disability insurance questions.

#### **B. EMPLOYEE STATUS AFTER FMLA LEAVE**

1. An employee who takes leave under this procedure and returns to work prior to the exhaustion of designated FMLA leave, will be able to return to the same job, or a job with equivalent status, pay, benefits and other employment terms and working conditions.
2. If an employee, as a result of taking FMLA leave, is no longer qualified for his/her position because of the inability to attend a necessary course, renew a license, etc., the employee shall be given a reasonable opportunity to fulfill those conditions upon returning to work.
3. If the employee is unable to perform the essential functions of his/her position because of a physical or mental condition, including the continuation of a serious health condition. The employee will be evaluated by the Disability Review Committee pursuant to City Procedure.
4. The FMLA does not extend to the perceived loss or diminishment of opportunities for promotion which may have occurred while the employee was on FMLA leave. An employee has no greater right to restoration or to other benefits than the employee would have possessed had he/she been continuously employed during the leave, e.g. a reduction-in-force, eliminated shift, or eliminated overtime work.

## **IX. USE OF PAID AND UNPAID LEAVE**

- A. If the FMLA eligible employee has accrued paid leave, the employee must use accrued sick leave, personal leave, and vacation leave. All paid leave will be exhausted at the rate of an employee's full-time equivalent. FMLA leave will run concurrently with the other forms of leave for up to a maximum of 12 weeks of FMLA Leave in a 12 month rolling period (measured backward.)
- B. As provided in Workers' Compensation law, the first seven (7) days of lost time from work due to an on-the-job injury is leave without pay. Employees will be required to use accrued sick leave, personal leave or vacation accrual, if any, in that order for these first seven (7) days or be docked for that part of the seven (7) days not covered by such leave.
- C. Employees who lose time in excess of 7 days due to an on-the-job injury will begin receiving Workers' Compensation, if eligible, after the 7th day and will be required to supplement weekly workers' compensation with sick leave accrual, personal leave or vacation accrual, if any, in that order. In no case will the employee be allowed to receive more compensation than the employee would have had he/she not been injured.
- D. If the employee is away from his/her job for more than three weeks due to an on-the-job injury, Workers' Compensation which is reimbursed to the employee for week number one must be returned to the City, and the employee's applicable leave accrual will be reinstated accordingly by the Payroll Clerk.
- E. Occupational diseases and injuries covered by Workers' Compensation which result in a serious medical condition will be counted as FMLA leave for up to 12 workweeks in a 12 month rolling period (measured backward.)

## **X. CERTIFICATION OF THE SERIOUS HEALTH CONDITION**

- A. Upon receiving verbal or written notice from an eligible employee or the employee's spokesperson if the employee is incapacitated (i.e., spouse, adult child, parent, doctor, etc.), of a qualifying need to use FMLA leave, the Department Head shall direct the employee in writing, to obtain certification of the serious health condition by requiring the employee to have his/her medical care provider complete the Certification of Health Care Provider Form, or a comparable certification as defined in Section V. The employee is responsible for (1) providing a response to such a request *within 15 calendar days of the request*, or (2) for providing a reasonable explanation for the delay.
- B. For foreseeable FMLA leave, for which at least 30 day's notice has been provided, the employee is responsible for providing the Department Head with a Certification of Health Care Provider Form (as attached, or a comparable certification as defined in Section V), completed by the health care provider, which provides documentation of the serious health condition of the employee or the FMLA eligible family member before the leave begins. If this is not practicable, the employee must provide the required certification within 15 calendar days of a written request by the Department Head, or designee.

For leave taken because of a qualifying exigency, the City will require the employee to provide a copy of the covered military member's active duty orders the first time the employee requests exigency leave. This information need only be provided to the City once for each separate call

to active duty.

- C. For leave taken to care for a covered service member (military caregiver leave), the City will require the employee to obtain a certification from an authorized physician of the covered service member. The City may seek authentication and/or clarification of the certification; however the City will not require a second or third opinion or recertification.
- D. Failure to provide timely certification may result in a denial of continuation of leave until the certification is submitted. Disciplinary action may be taken against the employee for being on unauthorized leave of absence. If the employee never produces the certification, the employee may not subsequently assert FMLA protection for the absence.
- E. The Department Head may not request additional information, such as diagnosis, from the employee's health care provider. However, the City's designated physician, Disability Review Coordinator, or Director of Human Resources, or designee, may contact the employee's health care provider, without the employee's permission, for purposes of clarification and authentication of the medical certification.
- F. **SECOND OPINION:** The City has the right to direct the employee to obtain a second opinion from the health care provider if he/she has reason to doubt the validity of the initial certification. The employee's department will pay for the employee to get a certification from a second doctor to be selected by the Director of Human Resources, or designee, and the Department Head. This health care provider cannot be the City's medical services provider. A Certification of Health Care Provider Form must be provided by the health care provider. The City will have five (5) business days, following receipt, to provide the employee with a copy of the second opinion. If the employee refuses to release relevant medical records to the health care provider designated to provide a second opinion, the City may deny FMLA leave.
- G. **THIRD OPINION:** When it becomes necessary to resolve a conflict between the original certification and the second opinion, the City shall require the opinion of a third health care provider. The Department Head, Director of Human Resources, or designee, and the employee will jointly select the third doctor, and the employee's department will pay for the opinion. The third opinion will be considered final and binding. A Certification of Health Care Provider Form must be provided by the health care provider. The City will have five (5) business days, following receipt, to provide the employee with a copy of the third opinion. If the employee refuses to release relevant medical records to the health care provider designated to provide a third opinion, the City may deny FMLA leave.
- H. **CERTIFICATION RECORDS:** FMLA medical certifications MUST be treated as confidential medical records MUST be separately maintained in employee medical records files in the Human Resources Department and shall not be maintained in departmental files. Medical information shall be treated as confidential except that:
  - (1) supervisors and managers, as well as Disability Review Committee members, may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
  - (2) first aid and safety personnel may be informed (when appropriate) if the employee's physical or mental condition might require emergency treatment; and,

(3) government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

- I. **PERIODIC REPORTING REQUIRED OF EMPLOYEE:** The Department Head shall require an employee on FMLA leave to report biweekly on his/her status and intent to return to work by contacting the employee's department head, or designee. If the employee advises the Department Head, or designee, that he/she does not intend to return to work, the employee shall be asked to confirm that intent in writing. The employee shall be terminated, and the employee's entitlement to reinstatement, continued leave and health benefits ceases. The employee shall be directed to contact the Human Resources Department regarding COBRA health insurance coverage.

## XI. PROCEDURE FOR REQUESTING LEAVE

- A. An employee's oral or written notice of the need to take FMLA-qualifying leave may be given by the employee or by the employee's spokesperson (e.g. spouse, adult child, parent, doctor, etc.) if the employee is unable to give such notice personally.
- B. An employee, or employee's spokesperson, who gives verbal notice of the need to take FMLA leave shall be directed by his/her Department Head, to complete a FMLA Leave Request Form to enable the Department Head to determine if the leave is FMLA-eligible. Failure of the employee, or spokesperson, to explain the qualifying need for the leave may result in the leave being denied. A copy of this form which will be forwarded to the Director of Human Resources, or designee, covering FMLA leave of any kind, and to the Disability Review Committee when the FMLA leave is taken due to the employee's serious medical condition.
- C. When an employee plans to take foreseeable leave under this procedure, including planned medical treatment for a serious injury or illness of a covered service member, unless not practicable, the employee must give the Department Head 30 day's notice and provide certification by a health care provider, as defined in Section V, before the leave commences to enable the Department Head, or designee, to plan for handling the work during the employee's absence. If it is not possible to give 30 day's notice, the employee must explain in writing why providing notice was not practicable. An employee undergoing planned medical treatment, or who needs leave to assist an eligible family member for planned treatments, is required to make a reasonable effort to schedule the treatment with the Department Head and health care provider to minimize disruptions to the Department's operations.
- D. If an employee fails to provide a 30 day notice for foreseeable leave *with no reasonable excuse* for the delay, the leave request may be denied up to 30 days from the date the City receives verbal notice.
- E. If an employee fails to provide a requested medical certification to substantiate the need for FMLA leave due to a serious health condition in a timely manner, the Department Head may delay continuation of FMLA leave until an employee submits the certification. If the employee does not produce the certification, the employee may not subsequently assert FMLA protection for the absence.

**XII. NOTIFICATION AND DESIGNATION OF LEAVE AS FMLA ENTITLEMENT**

- A. Upon receiving verbal notice from an employee of the need for FMLA leave, the employee shall be directed to complete a FMLA Leave Request Form providing information on his/her need to take FMLA-qualifying leave. The Department Head, or designee, shall within five (5) business days of the time the employer has sufficient information to determine whether leave is FMLA qualifying, absent extenuating circumstances, provide a written confirmation to the employee which provides information the employee needs to know about his/her leave designation rights, certification requirements, and responsibilities while on FMLA leave.
- B. The memorandum shall include:
- (1) notification that the leave is FMLA eligible and will be counted toward the employee's entitlement of 12 weeks in a 12-month period (measured backward.)
  - (2) a requirement that the employee provide certification of medical necessity for the leave by providing a Certification of Health Care Provider Form or equivalent certification as defined in Section V, by their health care provider within 15 days of the request and that failure to do so may result in continuation of the leave being denied until the certification is received;
  - (3) provide clear reporting instructions to the designated department head, or designee, every two weeks on the status of the leave and intention to return to work;
  - (4) provide information regarding the employee's available accrued leave time and the required use of any accrued leave the employee may have;
  - (5) provide information on health insurance premium payments of the employee's portion of the premium while on unpaid leave;
  - (6) provide information on the requirement of a fitness-for-duty certification before the employee can return to his/her position;
  - (7) provide notice of a drug test upon returning from a leave of more than 30 continuous days;
  - (8) notice that should the employee not be medically able to perform the essential functions of the position held prior to the leave, or to a comparable position, that the employee's medical information shall be reviewed by the City's Disability Review Committee pursuant to City Policies; and,
  - (9) notice of the consequences of the fraudulent use of FMLA leave which is termination on the first offense. The employee is required to sign this memorandum acknowledging the receipt of a copy of it and his/her understanding of its contents.

- C. In the case of an employee who takes sick leave for a non-serious health condition which turns into a serious health condition ( e.g. bronchitis that turns into bronchial pneumonia) and the employee subsequently gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave provided timely oral and written notification is provided by the Department Head, or designee, to the employee of the designation of the leave as FMLA leave.
- D. The Department Head, or designee, may not designate leave as FMLA after the employee has returned to work with two exceptions:
- (1) If the employee was absent for a FMLA reason and the employer did not learn the reason for the absence until the employee's return (e.g. for a brief period) the Department Head may, upon the employee's return to work, designate the leave retroactively with appropriate notice to the employee within two business days of the employee's return to work.

If leave has been taken for a FMLA reason and has not been so designated by the Department Head, but the employee desires that the leave be counted as FMLA leave, the employee must notify the employer within two business days of returning to work that the leave was for a FMLA reason. In the absence of such timely notification by the FMLA-eligible employee, the employee may not subsequently assert FMLA protection for the absence.

- (2) If the Department Head, or designee, knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the Department Head, or designee, has requested medical certification which has not yet been received, or the parties are in the process of obtaining a second or third medical opinion, the Department Head, or designee, shall make a preliminary designation and notify the employee in writing, at the time the leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the needed information from the employee, or of the medical certification which confirms the leave is for a FMLA reason, the preliminary designation becomes final. If the medical certification fails to confirm that the absence was FMLA eligible, the Department Head, or designee, must withdraw the designation and provide written notice to the employee.

### **XIII. AFTER EXPIRATION OF FMLA ENTITLEMENT**

After the expiration of the employee's entitlement to 12 weeks of FMLA leave within a 12-month period (measured backward), or of an approved non-FMLA medical leave, employees must return to duty. If the employee is unable to return to duty to perform the essential functions of his/her position because of a medical restriction, including the continuation of a serious health condition the employee will be **placed on a non-FMLA leave.**

### **XIV. PROTECTION FOR EMPLOYEES WHO EXERCISE THEIR FMLA RIGHTS**

It is the procedure of the City of Corpus Christi to comply with the entitlement provided in the Family and Medical Leave Act (FMLA). Employees exercising their rights under this procedure shall not be discriminated against. It is a violation of this procedure for supervisors to interfere with, restrain or deny the exercise of rights under this Act.



## **XV. POSTING REQUIREMENTS**

During the new employee orientation program, new employees will be provided a copy of this policy, along with a copy of the Department of Labor Notice to Employees of Rights And Responsibilities Under FMLA. Notices in English and Spanish are required to be posted on each department's official employee bulletin board. These posters explain the employee's rights under the Act's provisions and provide information on the procedures for filing complaints with the Wage and Hour Division of the Department of Labor.

## **XVI. RECORDS RETENTION**

- A. Records related to the administration of FMLA leave are to be retained for three (3) years and made available to representatives of the Department of Labor. Records include:
- (1) basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid;
  - (2) Dates FMLA leave is taken by employees;
  - (3) If FMLA is taken in increments of less than one full day, the hours of leave taken;
  - (4) copies of employee notices of leave and copies of all general and specific notices given to employees as required under FMLA;
  - (5) any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;
  - (6) premium payments of employee benefits;
  - (7) Records of any dispute between the Department Head and the employee regarding designation of leave as FMLA leave;
- B. If the employee is not subject to the FLSA's record keeping regulations, a record of the employee's actual hours worked is not required if the following conditions are satisfied: (1) FMLA eligibility is presumed for an employee who has been employed 12 months, and (2) in working out intermittent or reduced leave schedules, a written record of the employee's agreement on his/her normal schedule or average hours worked each week is maintained in accordance with the records retention procedure.
- C. Records and documents relating to medical certifications, recertification or medical histories of employees or their family members shall be maintained in separate medical files in the Human Resources Department and shall be treated as confidential medical records with restricted access except that:
- (1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

- (2) first aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

#### **XVII. CONSEQUENCES FOR VIOLATION OF THIS PROCEDURE**

An employee who submits fraudulent documentation to obtain FMLA leave is not protected by FMLA job restoration or maintenance of health insurance benefit provisions. Fraudulent requests for FMLA leave will be considered a violation of departmental procedure and will result in termination on the first offense. Fraudulent documentation, for example, would include falsified or forged Certification of Health Care Provider Form or comparable certification as defined in Section III.

Failure of an employee to comply with the reporting requirements of this procedure may result in disciplinary action up to and including termination.

Failure to otherwise comply with this procedure will result in disciplinary action up to and including termination.

#### **XVIII. ADDITIONAL PROVISIONS**

This procedure ~~policy~~ does not in any way create a contract or affect legal relations between the City and its employees. The terms of this policy may be altered at any time by the City Manager. This procedure ~~policy~~ shall not in any way enlarge the legal responsibilities or liabilities of the City beyond that required by law.

#### **XIX. QUESTIONS REGARDING THIS PROCEDURE**

Questions regarding this Procedure shall be directed to the Director of Human Resources, or designee, who may be contacted at 361-826-3315.