



**CITY OF WATAUGA – PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL**

<b>POLICY TITLE</b>	<b>Family Medical Leave Act</b>
<b>INITIAL EFFECTIVE DATE</b>	<b>April 25, 2016</b>
<b>LAST REVISION DATE</b>	<b>Replaces <i>Section 14.7</i> of the Personnel, Administration and Financial Policies and Procedures Manual approved on February 24, 2014.</b>
<b>POLICY NUMBER</b>	<b>8.04</b>

**OBJECTIVE** To provide employees with family and medical leave benefits pursuant to the Family Medical Leave Act of 1993, as amended (“FMLA”).

**SCOPE** This policy applies to all eligible employees.

**POLICY**

**A. General Provisions**

In accordance with the Family and Medical Leave Act, the City will grant job-protected unpaid family and medical leave to eligible employees for up to 12 weeks per 12-month period for any one or more of the following reasons:

1. In order to care for a child following the child's birth, adoption, or placement in foster care with the employee;
  - a. Leave must be taken within the 12-month period following the child's birth or placement with the employee
  - b. If married spouses both work for the City, their total leave in any 12-month period may be limited to an combined total of 12 weeks if the leave is taken for the birth or placement of a child.
2. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition;
3. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
4. The employee must attend to a qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.

## B. Eligibility

An eligible employee is one who has worked for the City for twelve (12) months and has worked at least 1,250 hours during the twelve (12) months preceding the first date leave is to be taken. The 12 months need not be consecutive. Employment prior to a break in service of seven (7) years or more will not be considered when determining whether an employee has worked for the city for at least 12 months.

## C. Procedure

1. **Twelve Month Period:** The twelve (12) month period for counting family and medical leave is a “rolling” 12-month period measured backward from the date an employee requests or is placed on FMLA leave. Each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months, or 26 weeks provided in certain circumstances.
2. **Employee Notification:** An employee must give at least thirty (30) days’ advance notice for the need to take foreseeable family and medical leave, unless the need is unforeseeable, in which case, as much notice as is practicable should be given. The *Employee Request for Family and Medical Leave* form is available in the Human Resources Department. If it is determined that the need for family and medical leave was foreseeable, the leave may be delayed until at least thirty (30) days after the date that the employee provides notice to the City.
3. **Department Notification:** Each department supervisor is responsible for notifying the Human Resource Department immediately when an employee is away from work for a family and medical leave qualifying event (if family and medical leave has not been approved), even if the employee is utilizing paid vacation, sick or personal leave, or is out due to a work related injury. An employee using sick leave should be reported to the Human Resource Department if it is anticipated that the duration of the illness will be three (3) or more days, or two (2) or more shifts for Fire Department employees, or once the employee exceeds three (3) days, or two (2) or more shifts for Fire employees of sick leave use.
4. **Human Resource Responsibility:** Human Resources is responsible for central administration of all requests for family and medical leave. The Human Resources Department reserves the right to automatically place an employee on family and medical leave if it is determined that a qualifying event has occurred. The Human Resources Department may retroactively designate the beginning date of FMLA to the beginning date of the employee’s absence for the qualifying event.
5. **Approval:** An employee shall submit a request for family and medical leave through proper channels to the Department Director who will then forward it to the Human

Resource Department for approval. Confidential medical information that accompanies the application can be submitted directly to the Human Resource Department.

6. **Substitution of Paid Leave:** An employee utilizing this policy for the placement of a child for adoption or foster care with the employee shall be required to exhaust all accrued vacation and any other applicable paid leave prior to going on unpaid leave. An employee utilizing this policy for the serious illness of a child, spouse, or parent or their own serious illness must exhaust all accrued sick leave, vacation leave, and any other applicable paid leave prior to going on unpaid leave.

If an employee is on leave from work due to a work related injury and the employee qualifies for family and medical leave, it will run concurrently with any paid leave. *The City reserves the right to count any paid leave that qualifies for family and medical leave toward the twelve (12) or twenty-six (26) weeks allowed under this policy.*

7. **Maximum Time Allowed:** The maximum amount of family and medical leave available is twelve (12) weeks during a twelve (12) month period even if there is more than one family and medical leave qualifying event. The only exception to the twelve (12) week maximum is the leave to provide care of an injured service member, described below, which allows for an extended FMLA leave of 26 weeks.
8. **Medical Certification:** The City requires medical certification from a health care provider to support a claim for leave to care for a seriously ill child, spouse, or parent. Medical certification is required for the employee's own serious health condition. Medical certifications must be returned to the Human Resources Department within fifteen (15) working days. Recertification may also be required every 30 days. An employee will be notified if recertification is required.

The City does not seek and should not be provided genetic information. If an employee or applicant's genetic information is inadvertently received by the City; the City will return it to the health care provider and not use genetic information for any employment decision or action.

9. **Weekly Reporting:** Employees on an extended FMLA leave must check in every Monday by phone or email with the Human Resources Department or supervisor.
10. **Returning to Work:** Upon returning to work after leave for the employee's own illness, an employee is required to provide certification to the supervisor that the employee is able to return to regular duties.
11. **Job Security/Return to Work:** When an employee returns to work after family and medical leave, the employee shall be restored to the same position or to an equivalent position involving the same or substantially similar duties and responsibilities. The employee is also entitled to return to the same shift or an equivalent schedule.

12. **Effect on Married Couples:** If a City employee is married to another City employee and either or both employees request family and medical leave for the birth or placement of a child with the employee for adoption or foster care, the total time allowed shall be limited to no more than twelve (12) weeks combined during any rolling twelve (12) month period. For other qualifying family and medical leave events, each employee is entitled to leave as long as the total amount of leave taken during any twelve (12) month period does not exceed twelve (12) weeks or twenty-six (26) weeks if applicable for one employee.
13. **Continuation of Insurance Benefits:** While utilizing unpaid family and medical leave, an employee's insurance benefits will continue without interruption as long as the employee pays their portion of the insurance premiums. Insurance premiums can be deducted from the paycheck before the leave begins, or during the leave, if the employee continues to receive pay bi-weekly.
14. **Intermittent Leave:** When medically necessary, an employee may take family and medical leave on an intermittent basis or work a reduced schedule. Arrangements should be made with the employee's immediate supervisor so that the operations of the department are not unduly disrupted. An employee taking intermittent leave or leave on a reduced schedule may be temporarily assigned to an alternative position with equivalent pay and benefits if it better accommodates the needs of the department.
15. **Holidays:** Holidays will be paid in accordance with the Holidays policy. City holidays will be counted as part of the twelve (12) or twenty-six (26) weeks of family and medical leave, whether the employee is on paid or unpaid leave.
16. **Recordkeeping:** Family medical leave time will be tracked on an hourly basis for payroll and compliance purposes. To determine entitlement for employees who work variable hours, the minimum hours required for eligibility is calculated on a pro rata or proportional basis by averaging the weekly hours worked during the twelve (12) weeks prior to the start of family and medical leave.
17. **Exempt Employees:** Paid leave accounts may be charged for less than one (1) full work day and the salary of an exempt employee may be docked for absences of less than one (1) full work day. Salaried executive, administrative, professional, and other employees of the City who meet the Fair Labor Standards Act (FLSA) criteria for exemption from overtime do not lose their FLSA-exempt status by using any unpaid FMLA leave.

#### **D. Definitions**

1. **12-Month Period:** A rolling 12-month period measured backward from the date leave is taken.

2. **Child:** A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis, who is standing in the place of a parent, who is either under age 18, or age 18 or older and requires active assistance or supervision to provide daily self-care.
3. **Health Care Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services.
4. **Next of Kin:** The nearest blood relative of a Covered Service member.
5. **Parent:** A biological or adoptive parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents-in-law.
6. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves: (1) any period of incapacity or treatment that results in inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; (2) any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or (4) for prenatal care. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgeries after an accident or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met.
7. **Spouse:** A husband or wife as defined or recognized under state or federal law for purposes of marriage, including common law marriage.

#### **E. Military Family Leave Entitlement.**

1. **Military Exigency Leave:** Employees who are otherwise eligible for FMLA and have a spouse, child, or parent on covered active duty (deployed to a foreign country) or called to covered active duty status in the National Guard or Reserves (deployment to a foreign country or in support of a contingency operation) may use their 12-week leave entitlement to address certain qualifying exigencies including: eligible short-notice deployments; attendance at military events and related activities; childcare and school activities; addressing financial and legal arrangements; attending counseling sessions;

attending post-deployment activities; up to 15 days of rest and recuperation; and parental care.

2. **Military Caregiver Leave:** An employee who is the spouse, parent, child, or next of kin of a service member who incurred a serious injury or illness while on active duty in the Armed Forces and is undergoing medical treatment, recuperation, or therapy may take up to 26 weeks of leave to care for the injured service member in a single 12-month period. The covered service member must be a current member or eligible veteran of the Armed Forces (including a member of the National Guard or Reserves) with a serious injury or illness incurred in, or aggravated by, service in the line of duty on active duty that may render him/her medically unfit to perform his/her duties.

#### **F. Coordination with Workers' Compensation Benefits**

1. In those cases where the employee is eligible for FMLA and Workers' Compensation (WC), these benefits shall run concurrently. The City will require the employee to use accrued paid leave (i.e. vacation, sick, etc.) before taking unpaid FMLA leave. This coordination shall occur when an employee sustains a serious work-related injury resulting in an overnight stay in a medical care facility, or misses more than three (3) workdays (in excess of 4 hours a day) due to a compensable work-related injury.

2. Light Duty Position

An employee who is taking FMLA leave and WC leave concurrently cannot be required to work light duty. However, an employee who is physically qualified to work light duty as determined by the treating physician, but declines to do so will forfeit their WC benefits. The employee will be required to use accrued paid leave (i.e. vacation, sick, etc.) prior to taking unpaid FMLA leave.

3. Payment of Worker's Compensation Benefits

At no time shall any employee be allowed to collect Worker's Compensation benefits and sick/vacation leave benefits equal to more than 100% of his/her normal rate of pay.

[See policy 7.02 Workers' Compensation](#)

#### **G. Temporary Replacements**

If, due to business necessity, the department needs to fill the position during the FMLA leave period, authorization may be requested from the City Manager for the hiring of a temporary employee.