CITY OF STOUGHTON
FAMILY MEDICAL LEAVE ACT POLICY
(PROPOSED UPDATES)

I. PURPOSE

This policy outlines the provisions of the Federal and Wisconsin Family and Medical Leave Acts and the rights and obligations of employees and employers under both laws.

II. POLICY

The Family and Medical Leave Acts provide eligible employees with up to 12 work weeks of unpaid protected leave each calendar year for specified family and medical reasons. The eligibility and entitlements are defined differently under federal and state law.

A. ELIGIBILITY

Employees are entitled to FMLA benefits if they:

- ***Federal*** - Have been employed by the City of Stoughton for at least 12 months (not necessarily consecutive); and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave.
  - Time spent on paid or unpaid leave does not count in determining the 1,250 hour eligibility
- ***State*** – Have been employed by the City of Stoughton for at least 52 consecutive weeks and have worked for at least 1,000 hours during the 52 weeks prior to the start of the FMLA leave.
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B. QUALIFYING EVENT & AMOUNT OF LEAVE

1. Eligible employees may take up to a total of 12 work weeks of unpaid FMLA leave in a calendar year for the following qualifying events:

a. The birth or placement of a child for adoption or, under the federal FMLA, for foster care;

- State law provides for up to 6 workweeks of unpaid leave for any one child
- Federal law requires that leave conclude within 12 months after the birth

b. To care for the employee's spouse, child, domestic partner (under Wisconsin FMLA) or parent (includes a parent-in-law and domestic partners' parents under the Wisconsin FMLA) with a serious health condition;

- State law provides eligible employees up to 2 workweeks of FMLA family leave
- Care for a child does not include the children of the employee's domestic partner
- Family leave due to an employee's spouse, child or parent being on exigent active duty or having been notified of an

- impending call or order to exigent active duty as a member of the reserve components of the Armed Forces or a retired member of the Regular Armed Forces or Reserve, in support of a contingency operation.

- For the employee's own serious health condition that renders the employee unable to perform his/her job.
- State law provides eligible employees up to 2 workweeks of FMLA medical leave

2. Eligible employees may take up to a total of 26 work weeks of unpaid FMLA leave during a single 12 month period (beginning on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweek of leave of entitlement for other FMLA-qualifying reasons) to care for a spouse, child, parent, or next of kin who is a member of the Armed Forces who suffered an injury or illness while on active duty that renders the person unable to perform the duties of the member's office, grade, rank or rating.

3. During the single 12 month period, an eligible employee shall be entitled to a combined total of 26 work weeks of leave under federal law.

4. Leave qualifying for both Wisconsin and federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently. When the reason(s) for qualified leave differ, the leave may not run concurrently under federal and state law, and an employee may be entitled to more than 12 weeks of leave in a calendar year. This type of leave occurrence will be evaluated and reviewed with the employee at the time of the leave. Qualified leave taken under Worker's Compensation also will run concurrently with federal FMLA leave.

5. Under the federal FMLA, spouses employed by the City are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

C. NON-CONTINUOUS OR INTERMITTENT LEAVE

Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule (1) when it is medically necessary to care for a family member with a serious health condition or because of the employee's serious health condition; (2) when it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty (3) to care for a newborn, adopted or foster child. Federal FMLA leave for the birth or placement of a child for adoption or foster care may not be taken in non-continuous increments unless approved by the City. Under the Wisconsin FMLA, the last increment of leave for the birth or placement of a child for adoption must begin within 16 weeks of that birth or placement.

Medical or family caretaking leave should be planned so as not to unduly disrupt the City's operations. Employees requesting non-continuous federal FMLA leave that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.
The City allows for intermittent leave to be taken in no less than one hour increments. The employee may not take, or be required to take, more leave than medically necessary to address the circumstances that caused the need for the leave.

D. PAYMENTS ON FMLA LEAVE:
In general, both Wisconsin and Federal FMLA leaves are unpaid. The City may require employees, or employees may choose, to substitute paid leave for which they are eligible(QUESTION: Decide if this should be removed or stay?) (such as vacation days, personal leave, compensatory time or sick leave) for unpaid leave available under the federal FMLA; or employees may choose to substitute available accrued leave for unpaid Wisconsin FMLA.

The City will require that any leave provided by a City collective bargaining agreement be substituted for federal FMLA leave. (?)_

As with all leaves of absence, no employee may pursue or engage in employment when on FMLA leave.

E. HOW TO APPLY FOR FMLA LEAVE

1. The employee must submit a Request for Leave form to the ~~City Clerk/Personnel~~ Human Resources and Risk Management Director at least 30 days, or as soon as practicable, in advance of taking a leave. If circumstances do not permit an employee to give notice in advance of taking leave, the employee must notify the ~~City Clerk/Personnel~~ Human Resources and Risk Management Director and submit the Request for Leave form as soon as possible, but no later than two working days after learning of the need for FMLA leave, absent unusual circumstances (825.303(c)). Failure to give timely notice may result in the delay or denial of FMLA leave and may subject you to discipline under City policies.

2. If the leave is for a family member's or the employee's serious health condition, the employee must submit a medical certification form from the employee's or the family member's health care provider within 15 days. If an employee does not provide the required certification by the designated deadline, or if the City determines that an employee's absence is not covered as FMLA leave, the leave may not be designated as Wisconsin and/or federal FMLA leave, and the employee may be subject to discipline under City attendance policies unless he or she uses accrued paid leave (~~like vacation~~)(QUESTION: Reword like vacation statement?) and/or is granted a non-FMLA leave of absence.

3. Second or third certifications at the City's expense and periodic re-certifications at the employee's expense may be required under certain circumstances. The City requires periodic reports during federal FMLA leave regarding the employee's status and intent to return to work.

4. Forms are available through the Human Resources and Risk Management Director.

(QUESTION: Tracking? 12 weeks per calendar year OR 12 weeks from date of FMLA?)

F. HEALTH INSURANCE BENEFITS

Group health insurance coverage will be maintained for employees while they are on FMLA leave, on the same terms as if the employee continued to work. The employee will be required to pay his/her regular portion of health insurance premium payments on a schedule established by the ~~City~~ Human Resources and Risk Management Department. Other benefits, including cash payments chosen by the employee (QUESTION: What does this mean?) rather than group health insurance coverage, will not be maintained during periods of unpaid FMLA leave.

The City may recover its share of health insurance premiums paid during a period of unpaid FMLA leave from an employee if the employee fails to return to work (for a minimum of 30 calendar days) after the expiration of the leave. The City may not collect the premiums if the reason the employee does not return is due to continuation, recurrence or onset of a serious health condition that would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control.

The City may discontinue health insurance benefits if the employee fails to make a premium payment within 30 days of the due date after providing written notice to the employee of the cancellation of coverage for non-payment.

G. OTHER BENEFITS

Benefits that accumulate based upon hours worked shall not accumulate during the period of FMLA leave. Qualified FMLA leave (may be)(?) counted as an absence under the City's attendance policy. In addition, an employee may be disqualified from an attendance reward program, and/or any reward may be reduced for having taken unpaid FMLA leave. (AJ to check into legal concerns with regard to this statement.)

Other City benefits [i.e. life insurance coverage and income continuation insurance] may be continued during periods of unpaid FMLA leave, and arrangements should be made for employee's portion of the payments with the City Clerk's office.

H. WORKER'S COMPENSATION AND LIGHT DUTY

Federal FMLA will run concurrent with worker's compensation provided that the injury meets the criteria for a "serious health condition," as defined by law. Substitution of accrued paid leave is not allowed for Worker's Compensation absences unless an applicable labor agreement provides otherwise.

If an employee accepts a light duty assignment while on worker's compensation, that time may not count against the employee's family or medical leave entitlement. If the light duty

position is declined and the employee elects to stay on FMLA leave, the employee may give up their worker's compensation benefits.

I. RETURN TO WORK

Any employee returning from FMLA for their own serious health condition must provide a "Fitness for Duty" statement signed by their treating physician. Upon return from FMLA leave, an employee shall be restored to his or her original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

An employee will not be restored to their original or equivalent position if they are unable to perform the functions of their job because of a mental or physical condition. (The City may require that the certification specifically address the employee's ability to perform the essential functions of the job. The City must provide an employee with a list of the essential functions with the "designation notice" and indicate that the certification address the employee's ability to perform those essential functions (825.312(b)). Before an employee who is unable to perform the functions of their job upon expiration of FMLA leave is terminated, the City must consider whether other provisions of City policy or a CBA are applicable or whether the ADA or provisions of the WFEA are applicable.

III. DEFINITIONS

A. Incapable of Self-Care

The individual requires active assistance or supervision to provide daily self-care in three or more of the ***activities of daily living*** (i.e. grooming, hygiene, bathing, dressing, eating) or ***instrumental activities of daily living*** (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).

B. Parent

Biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee or parent-in-law or domestic partners' parents under the Wisconsin FMLA. Under the federal FMLA, "parent" includes an individual who provided day-to-day care to the employee when the employee was a child.

C. Serious Health Condition

An illness, injury, impairment or physical or mental condition that involves:

1. inpatient care in a hospital, hospice or residential medical care facility; or

2. under Wisconsin FMLA, outpatient care that requires continuing treatment or supervision by a health care provider (generally defined as requiring two direct, continuous and first-hand contacts by a health care provider); or

3. under the federal FMLA:

a. A period of incapacity of more than 3 consecutive calendar days (and any subsequent treatment or period of incapacity relating to the same condition) that also involves:

i. treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (i.e. physical therapist) under orders of, or on referral by, a health care provider; or

ii. treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.

- The first or only in person treatment visit must take place within seven days of the first day of incapacity.
- Whether additional visits or a regimen of continuing treatment is necessary within the 30 day period shall be determined by the health care provider.

b. any period of incapacity due to pregnancy or for prenatal care;

c. chronic conditions requiring periodic treatment (defined as at least twice a year) by or under the supervision of a health care provider that continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);

d. permanent/long term conditions requiring supervision for which treatment may not be effective (e.g. Alzheimer's, a severe stroke, or the terminal stages of a disease);

e. multiple treatments by or under the supervision of 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis).

D. Child

Biological, adopted, or foster child, stepchild, legal ward or, under the federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing "in loco parentis," who is under 18 years of age or 18 years of age and older and incapable of self-care because of a serious health condition.

E. Covered Servicemember (Federal FMLA)

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.

F. Domestic Partner (Wisconsin FMLA)
Same-sex couples who register in their county of residence and same-sex and opposite-sex couples who are not required to register.

1. To qualify as registered domestic partners, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, not more closely related than second cousins (whether of the whole or half blood or by adoption), they must share a common residence, and be members of the same sex.

2. To qualify as domestic partners without registration, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, they must share a common residence, they must not be related by blood in a way that would prohibit marriage under Wis. Stat. 763.03, they must consider themselves to be members of each other's immediate family; and they must agree to be responsible for each other's basic living expenses.

G. Next of Kin (Federal FMLA)
The nearest blood relative other than the covered servicemember's spouse parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemembers' next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

H. Work Week
The employee's usual or normal schedule (hours/days per week) prior to the start of FMLA leave.

ADOPTED BY THE COMMON COUNCIL: September 8, 2009
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