



**CITY OF MARSHFIELD, WISCONSIN
POLICIES AND PROCEDURES**

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CHAPTER: Employee Benefits

SUBJECT: Family and Medical Leave

POLICY NUMBER: 3.525

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DEPARTMENT OF PRIMARY RESPONSIBILITY: City Administrator's Office

SPECIAL NOTES: This policy/procedure manual do not in any way constitute an employment contract and the City of Marshfield reserves the right to amend this manual at any time subject only to approval by the Common Council.

Purpose

It is the policy of the City of Marshfield to comply with state and federal laws by providing time off for serious health conditions for eligible employees and certain immediate family members; and to care for newborn children as well as children placed through adoption or foster care. The City provides time off for eligible employees for any qualifying event while the covered military family member is on active duty or call to active duty status, or to care for a service member with a serious injury or illness.

Employees may be eligible for sick leave or workers' compensation ("WC") benefits during family and medical leave ("FML") periods. Sick leave benefits run concurrently with FML and will not extend FML time beyond the maximum allowed in a calendar year. Similarly, WC benefits will run concurrently only with Federal Family and Medical Leave ("FFML") leaves. Wisconsin Family and Medical Leave ("WFML") leaves do not run concurrently with WC benefits.

This policy is not intended to provide any additional leave benefits not available under the WFML or FFML Acts. Should this policy conflict in any way with the applicable federal and state statutes or regulations, or should the policy inadvertently provide more extensive rights than available under those laws, then the statutes or regulations shall control. The Wisconsin and Federal FMLA laws differ in a number of areas.

I. DETERMINATION OF FML ELIGIBILITY/BENEFITS

- A. To be eligible for Family and Medical Leave, employees must have been employed by the City of Marshfield for at least 12 months and, in addition, in the 12 months immediately preceding the commencement of leave, must have worked at least:
 - 1,000 hours to qualify under WFML
 - 1,250 hours to qualify under FFML.
- B. Employees who work less than 40 hours per week but are otherwise eligible for FML are entitled to FML on a pro rata proportional basis.

- C. If an employee works in a casual or unscheduled capacity and is otherwise eligible for FML, the average weekly hours worked during the 12 months prior to the start of the FML will be used to calculate the employee's normal scheduled hours for this purpose.
- D. If a leave qualifies under both the state and federal FML laws, the leave counts against the employee's entitlement under both laws.

II. AMOUNT OF LEAVE AVAILABLE

- A. Generally, an eligible employee may take up to 12 weeks of FFML leave in a calendar year for reasons defined below or a combination of reasons as identified in this Policy:
 - 1. For the employee's own Serious Health Condition; which makes the employee unable to perform one or more of the essential functions of the employee's position.
 - 2. For the placement of a Child with the employee for adoption or foster care;
 - 3. To care for a Parent, Spouse or dependent Child under age 18 with a Serious Health Condition, or a Child over age 18 who has a Serious Health Condition and is incapable of self-care due to a disability;
 - 4. For the birth and care of a newborn Child of the employee;
 - 5. For qualifying exigency leave arising out of the fact that a spouse, or a son, daughter, or parent of the employee is on covered active duty or call to covered active duty status or has been notified of an impending call or order to covered active duty
 - 6. Eligible employees may be granted up to 26 weeks of leave during a 12-month period (reduced during that 12-month period by each week used for any of the above circumstances (1-5)) of FFML for Service Member Family Leave.
 - a. This leave is available to an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member to care for the service member who suffers a serious injury or illness while on active duty.
 - b. This leave is also available to care for veterans provided they were members of the regular Armed Forces, National Guard, or Reserves at some point during the five years preceding the need for care. The leave described in this paragraph shall only be available during a single 12-month period.
 - 7. The FFML identified above will run concurrently, when applicable, with WFML, specifically designated as follows:
 - a. Two weeks for an employee's own serious health condition
 - b. Six weeks for the birth or adoption of a child
 - c. Two weeks to care for an employee's parent, parent-in-law, spouse, domestic partner, parent of a domestic partner, or child who has a serious health condition.
 - 8. It is possible an employee may only qualify for WFML on the basis of hours paid, which covers shorter periods of FML leave. These situations will be discussed on a case-by-case basis with affected employees.
 - 9. Both Spouses Employed by the Organization: Spouses employed by the

Organization are jointly entitled to a combined total of 12 weeks of family leave for the birth or placement of a Child with the employee, or to care for a Parent who has a Serious Health Condition. Spouses working for the same employer also may be limited to a combined total of 26 work weeks of leave during a "single 12-month period" if leave is taken to care for a covered service member with a serious injury or illness.

10. Combination Leave: If the an employee's leave qualifies as a City provided leave plus Federal and/or Wisconsin FMLA leave as well, the leaves will run concurrently. For example, City disability or sick leave used for the birth of a child also qualifies as employee medical leave under Wisconsin and Federal FMLA laws and, as such, is also deducted from an employee's available leave entitlement under both Wisconsin and Federal laws.

III. METHOD OF CALCULATING LEAVE ENTITLEMENT

To determine the amount of FFML leave to which an employee is entitled, the City uses a rolling 12-month period, measured backward from the date an employee uses any 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.

Pursuant to Wisconsin law, entitlement to WFMLA leave will be calculated based on the calendar year.

Federal and Wisconsin Family Medical Leave run concurrently, not consecutively.

IV. SUBSTITUTION OF PAY

An employee may elect to substitute accrued paid sick or other accrued leave for any **WFMLA** leave, but will not be required to substitute such paid leave. After the Wisconsin leave has expired, and during any remaining **FFMLA** leave, the employee may choose or the City may require that any accrued paid vacation, sick leave (only as applicable), personal holiday, or compensatory time leave be substituted for part or all of the remaining FMLA leave, provided the leave otherwise qualifies under the City's applicable paid leave policy. If paid leave is elected, the employee shall notify the City of what type of paid accrued leave the employee intends to substitute as provided under the law.

V. REQUESTING AND SCHEDULING LEAVE

- A. When an employee plans to take leave under this policy, the employee is to give his or her immediate leader at least 30 days' notice. The employee is to provide the City with a written application for family or medical leave prior to the requested commencement of the leave on the "FMLA Request Form," available on the City's webpage, from an employee's supervisor or from Human Resources. An application for leave must be completed for all leave requests taken under this Policy.
 1. If advance notification is not possible regarding planned leaves, an employee must inform his or her leader as soon as the employee learns of it and no later than the day after the employee learns of the need for leave. The City may delay the taking of a requested leave until at least 30 days after the date the employee provides notice when the employee fails to provide proper advance notice, unless the employee was unable to comply because of the need for emergency health care or other reasonable excuse.

2. If advance notification is not possible because of an emergency, an employee must inform his or her leader of the need for leave as soon as practicable. In cases of emergency, verbal notice of the need for leave should be given as soon as possible, in accordance with the City's call in policy for absences.
- B. While on leave, employees are expected to provide regular updates to their supervisor and Human Resources regarding their status, and their ability and intent to return to work.
 - C. As with all leaves of absence other than military leave, no employee may pursue or engage in employment, including self-employment, when on FML unless approved in advance by the City.
 - D. After the City approves the reason for an absence as FML, an employee must specifically reference either the qualifying reason for the leave or the need for FML leave when calling off work for the same reason in the future. When notifying Human Resources of the employee's FML absence, he or she **must** state the medical reason, date, and scheduled hours he or she is absent. Calling in sick, without providing additional information, is not sufficient notice of the need for federal FMLA leave.
 - E. The employee is to advise the supervisor at least two days in advance if his or her return date changes.

VI. INTERMITTENT OR PARTIAL LEAVE

- A. Under certain circumstances, an employee may be eligible to take FMLA leave Intermittently (e.g., for part of a day, or taking a day periodically when needed over the year), or on a reduced schedule basis, when medically necessary.

An employee must fulfill three (3) general requirements to be eligible for partial leave:

1. Taking the leave on the specific partial work schedule must be "medically necessary" (this is not required when the leave related to the birth or adoption of a child, or for foster care).
 2. The leave must be scheduled not to unduly disrupt and employer's operations and to allow an employer to schedule necessary replacements.
 3. The employee must give advance notice to the employer of the need for partial leave.
- B. If the employee is taking leave for his/her own serious health condition, the serious health condition of a family member, for a qualifying exigency, or the serious injury or illness of a covered service member, the employee should try to reach an agreement with the employer, subject to the approval of the treating health care provider, before taking intermittent leave or working a reduced schedule.
 - C. FFML taking after the birth, adoption, or placement of a healthy child may be taken intermittently or on a reduced schedule, **only** if the City agrees. An employee must request the leave and obtain written approval for such leave before the federal portion of FMLA leave begins. If the employee establishes that intermittent leave is medically necessary, the employee may take leave. The City requires certification of the medical necessity.
 - D. If an employee takes leave in less than full day increments, the employee will receive reduced compensation that is consistent with the hours the employee actually worked. See substitution of pay for options.

- E. Where foreseeable intermittent leave or reduced work schedules are requested, the City may temporarily transfer the employee to another job to better accommodate the employee's schedule of treatment or care while on foreseeable FFML.

VI. MEDICAL CERTIFICATION

A. Certification Supporting Request For Leave

1. Employees are required to provide a certification(s) supporting each leave request except leave to set up a foster placement or for adoption. The City will provide the employee with the required certification form(s) upon receipt of a request for FML. Employees with covered chronic health conditions will need to recertify every 6 months. For leave to care for a covered service member and leave related to placement of a child with the employee for adoption or foster care, the employee may be required to provide additional documentation acceptable to the City that confirms the reason for leave (i.e., domestic partner relationship, documenting the family relationship with the service member or court date of placement of the child).
2. When the leave is foreseeable and at least 30 days' notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the timeframe requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Failure to provide the medical certification may result in a denial of leave or a denial of continuation of leave.
3. If an employee takes time off for a medical reason that progresses into a serious health condition, the employer may designate all or some portion of related time taken as FML to the extent that the earlier time off meets the necessary qualifications.
4. The City may require second or third medical opinions of a serious health condition at the City's expense and periodic recertifications of a serious health condition at the employee's expense.
5. The City retains the right to ask and employee to obtain periodic recertification of the need for leave. This request will generally not be made unless there is a need to do so and will be in period of not less than 30 days. However, the recertification will be requested earlier than 30 days if:
 - a. The employee requests an extension of leave, and:
 - I. Circumstances described by the previous certification have changed significantly (e.g., the nature or duration of the illness, complications, etc.); or
 - II. The City receives information that cause it to question the employee's stated reason for a particular absence; or
 - III. The employee is unable to return to work after his/her originally requested leave period expired due to the continuation, recurrence or onset of either his/her own, or a family member's serious health condition.

- B. Failure to produce the required certification may result in the inability to designate the leave as FMLA leave resulting in loss of job.

VII. INSURANCE AND BENEFITS

- A. While an employee is on FMLA leave:
1. The employee's health insurance benefits in effect at the time FMLA leave begins will continue unless the employee elects to terminate the coverage. Unless an employee opts to discontinue health insurance coverage during FMLA leave, the employee continues to be responsible for the employee's portion of the premium cost.
 2. If paid leave is substituted for unpaid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. If not receiving a paycheck, the employee is responsible for making arrangements with the Finance Department for premium payment.
 3. Other health benefits, such as dental care, group health plan, will also be maintained during the FMLA leave. The City's obligation to maintain benefits will stop if and when an employee informs the City of an intent not to return to work at the end of the leave period, if the employee fails to return to work when leave entitlement is exhausted, or if the employee fails to make any required payments while on leave.

Employees have a 30-day period for payment of the employee's share of any premium to maintain group health coverage during FMLA leave. If the employee fails to pay, coverage will be dropped.
 4. The City generally has the right to collect from an employee the health and dental insurance premiums the City paid during a period of unpaid leave if the employee does not return to work after the leave entitlement has been exhausted or expired. The employee's liability to repay health insurance premiums does not apply if failure to return to work is due to a serious health condition or specific circumstances beyond the control of the employee, as defined in the Federal FMLA.
 5. The employee will continue to earn accrued benefits during the period that City paid leave is substituted.

VIII. RETURN FROM LEAVE

- A. If the FMLA leave was due to a serious health condition of the employee, a Fitness for Duty Certificate must be provided to Human Resources before the employee returns to work. If a complete and sufficient Fitness for Duty Certification form is not received, the employee's reinstatement may be delayed.
- B. An employee returning from leave under this policy will usually be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms upon conclusion of the FMLA leave unless the employee would have been terminated during the statutory leave for a legitimate business reason.
- C. Upon reasonable notice to the City (at least 2 days prior to the desired return to work date), an employee may return to work prior to the scheduled end of his or her leave. The City requests that the employee contact Human Resources during business hours to confirm the return to work date during the course of the leave. The employee will be returned to their former position, if it is available. If the original position is not available because of the employee's early return, the employee may be placed into a temporary position until the end of the originally requested leave period.
- D. Unable to Return to Work: If following the expiration of an employee's FMLA leave entitlement, the employee remains unable to perform an essential function of the position,

the employee has no right under the FMLA to restoration to the original position or another position and the person's FMLA rights end with the expiration of the FMLA leave period. The employee should contact the City to discuss the availability of any further leave to be determined on a case-by-case basis based on the employee's medical condition and any rights under other laws or policies.

- E. Failure to Return to Work: If an employee fails to return from an FMLA leave, and the employee was able to do so, the City may attempt to recover the amount of premiums it paid for the employee's group health insurance coverage including any employee portion premium paid by the City for the payments missed by the employee while on leave.

IX. OTHER EMPLOYEE RIGHTS

- A. Executive, Administrative & Professional Employees: All employees are covered under this policy regardless of exempt/non-exempt status.
- B. Reduction in Work Force: If an event occurs that would have terminated the employee's employment had he or she been at work, the City may terminate the leave, including benefits, as of the time at which similarly situated employees not on leave are terminated.
- C. Worker's Compensation: Absences due to work-related injuries are subject to the federal FMLA if the FMLA requirements are met, even if state workers' compensation laws also apply. In other words, federal FMLA and worker's compensation leave will run concurrently.
- D. Retirement Plans: If a retirement plan requires an employee to be employed on a specific date to be credited with service for participation, vesting, or contributions, an employee on unpaid FMLA leave must be deemed to be employed on that date. Any period of unpaid FMLA leave cannot be counted toward a break in service and does not have to be counted as service for purposes of eligibility, vesting, or benefit accrual. Any early retirement window under a retirement plan must be available to any participants on FMLA leave who meet the window's other requirements.
- E. Holiday Pay: For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. If an employee is using intermittent FMLA leave, the holiday will count as FMLA leave only if the employee was otherwise scheduled to work on the holiday.

X. PROCEDURES AND FORMS

- A. When an employee requests leave under the Wisconsin or Federal Laws, the employee will be provided with the following (1) employee written request form; (2) an eligibility and notification of rights form setting forth the employee's obligations and the City's expectations while the employee is on leave; and, if applicable, (3) a physician's certification form and definition of serious health condition.
- B. Upon gaining sufficient information to determine if the leave in question qualifies as FMLA leave, the City will furnish the Employee with a Designation Notice indicating whether the time off can be designated as FMLA leave and specifying the amount of leave designated as FMLA leave.
- C. Employees who have any questions in regard to this policy or their rights under the Wisconsin and Federal Family and Medical Leave Law should contact the Human Resources Manager.

XI. DEFINITIONS

- A. Child:
1. The employee's son or daughter under the age of 18 meaning biological, adopted, or foster child, a step child, legal ward, or the child of a person standing in "loco parentis" which is a child for whom you have day-to-day responsibilities to provide care and financial support. If older than age 18, the child must be incapable of self-care at the time leave is to commence because of a "physical or mental disability." A "physical or mental disability" is a physical or mental impairment that substantially limits one or more of an individual's major life activities.
 2. For purposes of the Wisconsin FMLA, however, a child over 18 must be incapable of self-care because of a serious health condition (defined below).
- B. Spouse: is a husband or wife as defined or recognized in the state where the individual was married ("place in celebration") and specifically includes individuals in same-sex and common law marriages. This includes a husband or wife in a marriage that was validly entered into outside of the United States if it could have been entered into in at least one state.
- C. Domestic Partner: under the Wisconsin FMLA, means either: (1) a same-sex partner registered with the Register of Deeds in your county of residence or (2) a same-sex or opposite-sex partner who is not registered but the following criteria are met: (a) both partners are at least 18 years old and able to consent to a domestic partnership, (b) neither individual in the domestic partnership is married to or in a domestic partnership with another individual, (c) the partners share a residence, (d) the partners are not related by blood in any way that would prohibit marriage under Wisconsin law, (e) the partners consider themselves members of each other's immediate family, and (f) the partners agree to be responsible for each other's basic living requirements.
- D. Parent:
1. A parent includes your biological parents or another individual who provided day-to-day care and financial support during your own childhood.
 2. Your parent-in-law or parent of your domestic partner is not considered a parent for purposes of the federal FMLA but is considered a parent for purposes of the Wisconsin FMLA.
- E. Serious Health Condition:
1. For the purposes of Wisconsin FMLA leave, a "serious health condition" is a disabling physical or mental illness, injury, impairment or condition involving either:
 - a. Inpatient care in a hospital, nursing home, or hospice; or
 - b. Outpatient care that requires continuing treatment or supervision by a health care provider
 2. For the purposes of the Federal FMLA leave, a "serious health condition" is considered to be an illness, injury, impairment, or physical or mental condition involving either:
 - a. "Inpatient care" which is an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care; or
 - b. "Continuing treatment by a health care provider" which includes any of the following:

- i. Incapacity and Treatment: A period of incapacity – inability to work, attend school, or perform other regular daily activities due to a serious health condition – of more than three full consecutive calendar days, that also involves:
- ii. Treatment two or more times within 30 days of the first day of incapacity, by a health care provider or by another health care provider under orders of, or on referral by, a health care provider; or
- iii. 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: “Treatment” must be an in-person visit to a health care provider for examination, evaluation or specific treatment. Whether additional treatment or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

- F. Pregnancy: Any period of incapacity due to pregnancy, or for prenatal care.
- G. Chronic Conditions Requiring Treatment: Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition);
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
- H. Permanent/Long-Term Conditions Requiring Supervision: 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. Examples include Alzheimer's, severe strokes, or the terminal stages of a disease.
- I. Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive multiple treatments (including any period of recovery) 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), severe arthritis (physical therapy), kidney disease (dialysis).
- J. Health Care Provider: includes a physician, dentist, clinical psychologist, podiatrist, chiropractor, a nurse practitioner, physician assistant, a nurse mid-wife, a clinical social worker, and certain other health care professionals.
- K. To Care For: a child, spouse, domestic partner (under WFMLA only) or parent (parent in law (under WFML only) with a serious health condition is defined as caring for a family member's physical and psychological needs, which may encompass basic medical, hygienic, nutritional needs, or safety.