



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

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CHAPTER: Employee Benefits

SUBJECT: Family and Medical Leave

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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

Child rearing, family illness, and employee medical leave are available to employees as specified below or as may be provided under other existing policies or agreements. The intent of this policy is to comply with both the Wisconsin and Federal Family and Medical Leave Acts. This policy is not intended to provide any additional leave benefits not available under the Wisconsin or Federal Family or Medical Leave 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. The City will comply with the more generous provision as required by law.

Policy

I. General Requirements

A. Eligibility

Unpaid leave is available for one or any combination of the following circumstances:

<u>TYPE</u>	<u>ELIGIBILITY</u>	<u>MAXIMUM DURATION FOR STATE LEAVE</u>	<u>MAXIMUM DURATION FOR FEDERAL LEAVE</u>
Personal serious health condition; inpatient hospitalization, chronic condition or continuing care by a physician	Unable to work because of serious health condition	Up to two (2) weeks per calendar year	Up to twelve (12) weeks per rolling 12-month period
Birth, adoption, foster care	Birth of a child, placement of child for adoption or as pre-condition to adoption, or foster care placement	Up to six (6) weeks per calendar year provided the leave begins within 16 weeks of the birth of the child	Up to twelve (12) weeks per rolling 12-month period to be concluded within twelve months of birth or placement of the child
Family serious health condition, inpatient hospitalization, chronic or continuing care by a physician	Necessary to care for spouse, child or parent with serious health condition	Up to two (2) weeks per calendar year  Also covers care for qualifying domestic partners	Up to twelve (12) weeks per rolling 12-month period
Leave to care for a seriously ill or injured military service member or covered veteran who is a spouse, son or daughter, parent, or next of kin.	Spouse, son, daughter, parent, or next of kin service member or covered veteran who has been injured on active duty to a foreign country or aggravated an existing injury by service in the line of active duty and service member 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.	None	Up to twenty-six (26) weeks per rolling 12-month period, per service member, per injury.
Qualifying exigency leave due to employee's spouse, son, daughter or parent being on or called up for covered active duty in the Armed Services, National Guard and Reserves.	Short-notice deployment to a foreign country, military events and related activities, childcare and school activities, parental care for the service member's parent who is incapable of self-care, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities where the employer and employee agree to the leave.	None	Up to twelve (12) weeks per rolling 12-month period which includes-  Up to a maximum of fifteen (15) calendar days for rest and recuperation.

- a. Married Employees: A husband and wife who both work for the City and who are both eligible for Federal FMLA leave are limited to a combined total of 12 weeks of leave in a calendar year for the following reasons:

- 1) The birth of the employee's son or daughter or to care for the child after birth;
- 2) The placement of a son or daughter with the employee for adoption or foster care, or to care for a child after placement; and
- 3) To care for the employee's parent with a serious health condition.

Leave taken for qualifying reasons other than those listed above will not count toward the combined limitation. However, both a husband and wife working for the City are also limited individually to 12 weeks of FMLA leave for all qualifying reasons.

A husband and wife may use up to a combined total of twenty-six (26) weeks to care for a seriously ill or injured military service member.

3. 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.

C. Definitions:

1. "Child"

- a. A child includes not only your biological, adopted, or foster child, but also a step child, legal ward, or 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.
- b. 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).

2. "Spouse" is limited to your husband or wife and does not include an unmarried domestic partner.

3. "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.

4. "Parent"

- a. A parent includes your biological parents or another individual who provided day-to-day care and financial support during your own childhood.
- b. 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.

5. "Covered Veteran" is a person who was discharged or released for reasons that weren't "dishonorable" at any time during the five-year period prior to when the request for leave was taken.
6. "Serious health condition"
  - a. For the purposes of Wisconsin FMLA leave, a "serious health condition" is a disabling physical or mental illness, injury, impairment or condition involving either:
    1. Inpatient care in a hospital, nursing home, or hospice; or
    2. Outpatient care that requires continuing treatment or supervision by a health care provider.
  - b. 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:
    1. "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
    2. "Continuing treatment by a health care provider" which includes any of the following:
      - (a) 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:
 

Treatment two or more times within 30 days of the first day of incapacity, by a health care provider or by another health care professional under orders of, or on referral by, a health care provider; or

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.
      - (b) Pregnancy: Any period of incapacity due to pregnancy, or for prenatal care.
      - (c) 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.)

- (d) 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.
    - (e) 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).
  - c. "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.
- 7. "To care for" a child, spouse, domestic partner (under Wisconsin FMLA only) or parent 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.
- 8. "Week" of Leave
  - a. When leave is taken as a continuous block, one "week" of leave means seven consecutive calendar days of leave.
  - b. For the purposes of Wisconsin FMLA, when leave is taken intermittently or partially, one "week" of leave is five calendar days of leave which would otherwise be workdays for the requesting employee.
  - c. For the purposes of Federal FMLA, when leave is taken intermittently or partially, the actual amount of leave taken is translated to a fraction of the average number of hours worked per week for the previous 12 months. For example, if an employee works a variable schedule, but 35 hours per week on average, and takes five hours of leave, the employee has taken 1/7 of one workweek of Federal FMLA leave.
- II. Method of Calculating Leave Entitlement: To determine the amount of Federal FMLA 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 (or 26 weeks for military caregiver leave) which has not been used during the immediately preceding 12 months.
 

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

Federal and State Family Medical Leave run concurrently, not consecutively.
- III. Substitution: An employee may elect to substitute accrued paid sick or other accrued leave for any Wisconsin FMLA leave, but will not be required to substitute such paid leave. After the Wisconsin leave has expired, and during any remaining Federal FMLA leave, the employee may choose or the City may require that any accrued paid vacation, sick, 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.

IV. Requesting and Scheduling Leave:

- A. Except in situations where the employee is unable to provide a written request because of the need for emergency health care, 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 the Human Resources Manager.
- B. In cases where the need for the leave is foreseeable, the request is to be made at least 30 days prior to the anticipated leave. If the employee gives less than 30 days notice of the need for leave, the City may require the employee to explain why it was not practicable to give the 30 days notice. In cases where the need for the leave does not become known more than 30 days in advance, the request shall also indicate the date that the employee is expected to return to work.

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.

In cases of emergency, verbal notice of the need for leave should be given as soon as possible, but in all cases in accordance with the City's call in policy for absences. Calling in sick, without providing additional information, is not sufficient notice of the need for federal FMLA leave.

- C. The City requests that the employee notify it if and what type of paid accrued leave the employee intends to substitute as provided under the law.
- D. The employee is to advise the supervisor if his or her return date changes. The employee who does not return from FMLA leave at the designated time will be considered to have voluntarily terminated unless the employee was unable, due to a health care emergency, to notify the employer.
- E. If an employee has been out for three or more days in a row, or if the City has information that the employee is out for an FMLA-qualifying reason but has not requested FMLA leave, the City may require the employee to complete an FMLA Request Form and Medical Certification so the leave may be properly designated. The City may also retroactively designate FMLA leave when it later learns that certain leave was FMLA –qualifying.

V. Intermittent or Partial Leave

- A. When medically necessary, an employee may take leave to care for a parent, spouse, domestic partner (under Wisconsin FMLA only) or dependent child with a serious health condition or their own illness or for certain military-related leaves as an intermittent or as a partial absence from employment in increments of no less than one (1) hour.
- B. If the leave is for planned medical treatment, the employee is expected to schedule the intermittent or partial absence so it does not unduly disrupt the City's operations. To comply with this requirement, an employee must provide the City, in writing, with the employee's proposed schedule of partial absences with reasonable promptness after the employee learns of the probable necessity of such leave.
- C. During Wisconsin FMLA leave, an employee may take child rearing leave as an intermittent or as a partial absence from employment in increments of no less than one (1) hour. An employee who does so shall schedule the intermittent or partial absence so it does not unduly disrupt the City's

operations. To comply with this requirement, an employee is to provide the City, in writing, with the employee's proposed schedule of intermittent or partial absences no less than 30 days before the schedule of absences is to commence. The schedule must be of a sufficient definiteness that the City is able to schedule replacement employees, if necessary, to cover the absences. Partial or intermittent leave must commence within sixteen (16) weeks following the birth, adoption, or foster placement of a child. Federal FMLA leave for the birth or adoption of a child must be taken in a single block.

- D. Where intermittent leave or reduced work schedules are requested, that is foreseeable, the City may temporarily transfer the employee to an available equivalent position if the employee is qualified and the position better accommodates recurring leave.

VI. Medical Certification

- A. If an employee requests a family illness leave or employee medical leave under this policy, the employee must obtain a Medical Certification Form from the Human Resources Manager. This form must be completed by the employee plus the health care provider treating the family member or employee. This certification should be returned to the City within at most 15 days. In the case of unforeseen leave, the certification should be furnished as soon as practical. When an employee fails to provide certification within 15 days of the City's request, the City may delay the start of FMLA leave, or, in the case of unforeseeable leave, if the employee fails to provide certification, the City may delay the continuation of the employee's leave. This means the absence may then be counted against the employee for purposes of discipline for attendance.
- B. If an employee never produces the required certification, the leave is not FMLA leave. This means that if an employee fails to produce certification, no FMLA job protection applies to that employee.
- C. The City may request a second health care provider opinion at the City's expense.

VII. Insurance and Benefits

- A. While an employee is on a FMLA leave:
  - 1. The City will maintain group health and dental insurance coverage under the conditions that applied before the leave began. If, prior to the leave, the employees were required to participate in the premium payments, an employee on leave is required to continue with his/her share of the premiums. The City's obligation to maintain health and dental 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 used up, or if the employee fails to make any required payments while on leave.
  - 2. 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. The City must mail a written notice at least 15 days in advance of the date coverage is to cease, advising that coverage will be dropped on a specified date.
  - 3. 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. An employee must return to work for at least 30 calendar days in order to be considered to have "returned" to work. 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.

4. The employee will continue to earn accrued benefits during the period that City paid leave is substituted.

#### VIII. Return from Leave

- A) An employee returning from employee medical leave may be required to obtain medical certification from the health care provider that she/he is able to resume work.
- B) An employee returning from leave as provided under this policy can return to his or her old position if vacant at the time the employee returns to work. If the position is no longer vacant, the employee shall be offered an equivalent position with virtually identical pay, benefits, and working conditions, and the same or substantially similar duties and responsibilities unless the employee would have been terminated during the statutory leave for a legitimate business reason.
- C) Upon reasonable notice to the City, an employee may return to work prior to the scheduled end of his or her leave. An employee shall be returned to his or her old position or an equivalent position within a reasonable time after the request to return to work early is made.
- 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 the other laws or policies.

#### VIII. Other Employee Rights

- A) Executive, Administrative & Professional Employees: All employees are covered under this policy regardless of exempt/non-exempt status.
- B) Interference with Rights: An employer may not discriminate in employment against a person exercising rights under the statute.
- C) Posting Requirements: The employer must post notice of pertinent information of the Act, as approved by the state or federal government.
- D) 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.
- E) Worker's Compensation: Absences due to work-related injuries are subject to the FMLA if the FMLA requirements are met, even if state workers' compensation laws also apply. In other words, FMLA and worker's compensation leave will run concurrently.
- F) 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 but 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.

- G) 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.

IX. 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 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.