CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE

Policy Memorandum No. 108 (R) **September 18, 2023**

TO: All Departments, Boards, Agencies, and Commissions

FROM: Gilbert A. Montaño, Chief Administrative Officer

SUBJECT: **FAMILY AND MEDICAL LEAVE POLICY AND PROCEDURES**

I. PURPOSE

The Chief Administrative Officer (CAO) is publishing this policy for the City of New Orleans (City) to reestablish procedures and guidelines related to the Family and Medical Leave Act of 1993 (FMLA). This memorandum is revised to update procedures and forms related to employee use of FMLA leave and to include the family leave entitlements enacted under the National Defense Authorization Act of 2008 (NDAA) and the 2010 amendments to that law as it relates to the expansion of military family leave. This revision also incorporates changes made to the Civil Service Rules regarding the use of paid sick leave to care for immediate family members (*see* City Council Motion No. M-23-371; Civil Service Rule I, § 1; Civil Service Rule VIII, § 2.5).

The policy applies to all classified and unclassified employees. In the event of any conflict between this policy and the FMLA, the FMLA shall be controlling, and employees will be afforded all rights required by law.

II. DEFINITIONS

Health Care Provider. The FMLA defines the term "Health Care Provider" to mean:

- a doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices,
- a podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (with limitations) authorized to practice in the state and performing within the scope of his or her practice;
- a nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state and performing within the scope of his or her practice;
- any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

Key Employee. The term "key employee" means a salaried, FMLA-eligible employee who is among the highest paid ten percent of all employees working for the employer within 75 miles of the employee's worksite.

Parent. The term "parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in *loco parentis* to the employee when the employee was

a son or daughter as defined below. The term "parent" does not include parents 'in law." 29 C.F.R. § 825.102.

Serious Health Condition. The term "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that requires:

1. Inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility or a subsequent treatment in connection with such inpatient care; or

2. Continuing treatment by a health care provider, which is established by one or more of the following scenarios:

    a. Incapacity Plus Treatment. A period of incapacity (i.e., inability to work, attend school or perform regular daily activities) of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

        i. Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or

        ii. At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.

    b. Pregnancy. Any period of incapacity due to pregnancy or for prenatal care.

    c. Chronic Conditions. Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.

    d. Permanent or Long-term Conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of a disease.

    e. Conditions Requiring Multiple Treatments. Any period of absence to receive multiple treatments (including a period of recovery) by a health care provider either for restorative surgery after an accident or other injury or for a condition which, if untreated, would likely result in a period of incapacity of more than three consecutive, full calendar days (e.g., chemotherapy, dialysis, physical therapy).

3. A serious health condition does not include cosmetic treatments or cosmetic surgery unless hospitalization is required. Common colds, flu, headaches,

earaches, routine dental treatments, and similar conditions are not serious health conditions for the purposes of the FMLA. Treatments such as use of over-the-counter medications or bed rest which can be initiated without visiting a physician, are generally not serious health conditions.

Son or daughter. The terms "son" or "daughter" mean 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" at the time that FMLA leave is to commence. 29 C.F.R. § 825.102.

Spouse. The term "spouse" means a husband or wife as defined or recognized in the state where the individual was married, including common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state. For the purpose of this policy, the City recognizes domestic partners as a "spouse," provided they are registered with the Clerk of Council pursuant to Chapter 87, § 887-5 of the City Code and they qualify for benefits coverage under the City's benefits program.

Loco Parentis. An individual stands in *loco parentis* to a child if he or she has day-to-day responsibilities to care for or financially support the child. The person standing in *loco parentis* is not required to have a biological or legal relationship with the child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in *loco parentis* to a child under the FMLA where all other requirements are met. The in *loco parentis* relationship exists when an individual intends to take on the role of a parent. Similarly, an individual may have stood in *loco parentis* to an employee when the employee was a child even if the individual has no legal or biological relationship to the employee.

III. GOVERNING AUTHORITY

A. The Family and Medical Leave Act (29 U.S.C. §§ 2601 et seq.) and regulations issued pursuant to that statute (29 C.F.R. Part 825) establish the legal requirements for employers and employees with regard to family and medical leave.

B. Section 4-302(5) of Home Rule Charter of the City of New Orleans (Home Rule Charter) authorizes the CAO to "prescribe accepted standards of administrative practice to be followed by all offices, departments, and boards."

C. Civil Service Rule VIII § 10, FAMILY MEDICAL LEAVE, provides rules and regulations related to the City's implementation of the requirements established by the FMLA.

IV. ELIGIBILITY FOR FMLA LEAVE

A. **Eligibility Requirements.** This policy applies to all classified and unclassified employees who are eligible to receive family and medical leave under the provisions of the FMLA. Pursuant to the FMLA, to be eligible for family and medical leave under the FMLA, an employee must:

1. Have completed at least 12 months of service for the City as of the date the FMLA leave is to start; and

2. Have worked at least 1,250 hours for the City during the 12-month period immediately before the date the FMLA leave is to start.

3. Work at a location where the City employs at least 50 employees within 75 miles of that worksite as of the date when the employee gives notice of the need for leave.

B. **12-month Service Requirement.** The 12 months of employment do not have to be consecutive. Part-time, temporary, or seasonal work generally counts towards the 12 months of service. If there is a break in service that has lasted more than seven years, an employee cannot count the period of employment prior to the seven-year break in service.

C. **1,250-hour Requirement**. Only the time actually worked counts towards the 1,250-hour requirement. For example, annual leave, sick leave, holidays, other forms of paid leave, and unpaid leave do not count towards the 1,250 hours of service.

1. Military Service. An employee returning from fulfilling a USERRA-covered military service obligation is credited with the hours of service that would have been performed but for the period of military service.

V. LEAVE ENTITLEMENT

A. **FMLA Leave.** The FMLA requires covered employers, such as the City, to provide eligible employees with unpaid, job protected leave for specified family and medical reasons.

Eligible employees (see Section IV of this policy for eligibility requirements) may take up to 12 workweeks of leave in a 12-month period for a qualifying reason. This 12-month period shall be measured forward from the date the employee first takes FMLA leave.

B. **Intermittent or Reduced Schedule Leave.** The FMLA entitles employees to take FMLA leave on an intermittent or reduced schedule basis when there is a medical need for such leave for an employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness. An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies.

An employee is not entitled to take intermittent leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care unless the employer agrees to the arrangement. Please see CAO Policy Memorandum No. 33(R) for additional information regarding requests for intermittent leave related to the birth or placement of a child.

C. **Qualifying Circumstances for FMLA Leave.** Eligible employees (see Section IV of this policy for eligibility requirements) may take up to 12 workweeks of FMLA leave in a 12-month period for the following qualifying reasons:

1. The birth of a child and to bond with the newborn child within one year of birth;
2. The placement with the employee of a child for adoption or foster care and to bond with the newly-placed child within one year of placement;
3. A serious health condition that makes the employee unable to perform the functions of his or her job, including incapacity due to pregnancy and for prenatal medical care;
4. To care for the employee's spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

D. **Additional Available Leave to Care for a Servicemember.** In addition, eligible employees may take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (referred to as a military caregiver leave). An eligible employee is limited to a *combined* total of 26 workweeks of leave for **any** FMLA-qualifying reasons during the single 12-month period. Please see Section VI of this memorandum for further information on military caregiver leave.

E. **Leave for Bonding with Newborn or Newly Placed Child.**

1. Gender Equity. Please note that the right to FMLA leave applies equally to all employees regardless of gender. For example, fathers are equally entitled to take up to 12 workweeks of FMLA leave for the birth or placement for adoption or foster care of a child and to bond with the child within 12-months from the date of birth or placement.
2. Paid Parental Leave. The City will provide up to 12 weeks of paid parental leave in substitution of unpaid FMLA leave to eligible employees following the birth of an employee's child or the placement of a child with an employee in connection with adoption or foster care. An employee must be eligible for and elect to take FMLA leave in connection with the birth or placement of a child. Once eligibility for FMLA leave is established, the employee may receive paid leave for the FMLA leave taken in lieu of unpaid FMLA leave. Please see CAO Policy Memorandum No. 33(R), for additional information regarding the City's parental leave policy.

VI. MILITARY FAMILY LEAVE PROVISIONS

The FMLA provides that eligible employees are entitled to two types of FMLA leave related to a qualifying family member's military service. These types of FMLA leave are referred to as Military Family Leave.

The military family leave provisions of the FMLA entitle eligible employees of covered employers to take FMLA leave for (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Armed Forces, or (2) to care for a covered servicemember with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin (known as "Military Caregiver Leave").

A. **Qualifying Exigency Leave**. The military family leave provisions of the FMLA entitle eligible employees of covered employers to take up to 12 workweeks of FMLA for a "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the Armed Forces during a twelve-month period.

An eligible employee may take qualifying exigency leave when the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty.

To take qualifying exigency leave, the military member must be the employee's spouse, parent, or son or daughter. Unlike non-military FMLA leave, for purposes of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a son or daughter *of any age*.

1. Covered Active Duty. In order for the employee to take qualifying exigency leave, the military member must be on covered active duty, under a call to covered active duty status, or have been notified of an impending call or order to covered active duty.

   This may include members of the regular armed forces or the reserve components of the armed forces (i.e., members of the National Guard and Reserves).

   For members of the regular armed forces, covered active duty is duty during the deployment of the member with the armed forces to a foreign county (i.e., deployment to areas outside the United States or any territory or possession of the United States or deployment to international waters).

   For members of the reserve components (i.e., members of the National Guard and Reserves), covered active duty is duty during the deployment of the member with the armed forces to a foreign country (i.e., deployment to areas outside the United States or any territory or possession of the United States or deployment to international waters) under a call or order to active duty in support of a contingency operations.

2. Qualifying Exigency Categories. An eligible employee with a family member on covered active duty may take FMLA leave for any one or more of the following qualifying exigencies:

   a. *Short-Notice Deployment.* To attend to issues arising from a notification of an impending call or order to active duty seven or less calendar days prior to date of deployment.

   b. *Military Events and Related Activities.* Attending any official ceremonies, programs, sponsored events, or any family informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross that is related to the active duty or call to active duty status of a military member.

   c. *Child Care and School Activities.* Arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child to a new school or day care facility, and attending meetings at a school or childcare facility if necessary due to circumstances arising from the active duty or call to active duty of the covered military member.

   d. *Financial and Legal Arrangements.* Making or updating financial and legal arrangements to address a covered military member's absence.

   e. *Counseling.* Attending counseling provided by someone other than a health care provider for the employee, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member.

   f. *Rest and Recuperation.* Taking up to 15 calendar days of leave to spend time with a covered military member who is on short-term rest and recuperation leave during deployment.

   g. *Post-Deployment Activities.* Attending certain activities including arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following termination of the covered military member's active duty status or to attend to issues arising from the death of a covered military member while on active duty.

   h. *Parental Care.* Attending to parental care activities for the military member's parent who is incapable of self-care.

   i. *Other Events Agreed Upon.* Any other event that the employee and the City agree constitutes a qualifying exigency.

3. Notice, Certification, and Documentation. For qualified exigency leave for a military family member, the employee must provide notice of the need for qualifying exigency leave as soon as possible and practicable, regardless of how far in advance the leave is needed.

Employees should use the WH-384 form attached to this policy memorandum entitled Certification of Qualifying Exigency for Military Family Leave. The employee must provide:

a. A copy of the military member's active duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active duty status. This documentation only needs to be provided *once* per deployment.

b. A statement or description of the appropriate facts regarding the qualifying exigency.

c. The approximate date on which the leave began (or will begin), how long and/or how often the leave will be needed, and whether intermittent leave is necessary; and

d. Any contact information for any meeting with a third party and a brief description of the purpose of the meeting.

   i. Please note that the employee's Appointing Authority, or the Appointing Authority's designee, may contact the third party to confirm the nature of the third-party meeting without seeking permission from the employee to make such contact. However, the Appointing Authority or designee shall not request any additional information from the third party.

B. **Military Caregiver Leave.** Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to provide care for the servicemember.

1. Definitions. For the purposes of Military Caregiver Leave, the following terms are defined as:

   a. *Covered Servicemember.* The term "covered servicemember" means either (1) 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; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous five years before the employee takes military caregiver leave to care for the veteran.

   b. *Serious Injury or Illness.* The term "serious injury or illness" means (1) for a current servicemember, an injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating; or (2) for a veteran, an injury or illness that was incurred in the line of duty when the veteran was on active duty in the armed forces, including any injury or illness that resulted from the aggravation

of a preexisting condition in the line of duty on active duty. For a veteran, the injury or illness may manifest itself during active duty or may develop after the servicemember becomes a veteran.

c. *Single 12-Month Period.* The term "single 12-month period" for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later.

2. Amount of Available Military Caregiver Leave. Please note that an eligible employee is limited to a *combined* total of 26 workweeks of leave for *any* FMLA-qualifying reason during the single 12-month period. Up to 12 of the 26 total workweeks may be for an FMLA-qualifying reason other than military caregiver leave.

3. Certification for Military Caregiver Leave. The City requires employees to use form WH-385, Certification for Serious Injury or Illness of a Covered Servicemember – Military Family Leave and form WH-385-V, Certification for a Serious Illness or Injury of a Veteran for Military Caregiver Leave, for certifications for military caregiver leave.

   The required certification may be completed by the Department of Defense, the Department of Veterans Affairs, TRICARE health care provider, or by a private health care provider. If the certification is completed by the a DOD, VA, or TRICARE health care provider, the City is not permitted to seek a second opinion. However, if the certification is completed by a private health care provider, the City may seek a second (and third) opinion per the procedures established in Section VII of this memorandum.

   The employee will not be held liable for any administrative delays in the issuance of military documents, if the employee exercises diligent, good-faith efforts to obtain such documents.

VII. PROCEDURES

A. **Employee Requests for FMLA Leave.** Employees should follow these procedures related to FMLA leave requests.

1. Employee Must Provide Notice of Need to Take FMLA Leave. Employees must provide a written request to their Appointing Authority 30 days in advance of the FMLA leave when the need is foreseeable. Employees should use the attached Request for FMLA Application.

   If the need for FMLA leave is not foreseeable, the employee must give notice to the Appointing Authority as soon as possible and practical under the circumstances after learning of the need to take FMLA leave.

   If an employee does not provide at least 30 days advance notice, and it was possible and practical to do so, the employer may delay the FMLA leave until 30 days after the date that the employee provides the notice.

2. Employee Must Indicate Whether They Are Requesting Paid Leave or Leave Without Pay. Within the written request, the employee must indicate whether they are requesting to use paid leave (sick, annual, or parental leave) or unpaid leave (leave without pay).

   Annual leave or leave without pay may be used in all instances of FMLA. Paid sick leave may only be used if the reason for the leave is eligible for paid sick leave pursuant to the City's rules governing sick leave (see Civil Service Rule I, Section 1 and Civil Service Rule VIII, Section 2.5. Parental leave may only be used in compliance with CAO Policy Memorandum No. 33(R).

3. Employee Must Provide Health Care Provider Certification. The FMLA provides that an employer may require certification when an employee requests FMLA leave for certain reasons. The certification allows the City (1) to obtain information related to the FMLA leave request, including the likely periods of absences; and (2) to verify that an employee, or the employee's ill family member, has a serious health condition.

   The requesting employee must provide a medical certification when the employee is requesting FMLA leave for:

   a. The employee's own serious health condition;

   b. The serious health condition of the employee's parent, spouse, son, or daughter; or

   c. Military family leave.

   Health Care Provider Certification Forms for the above scenarios are attached to this policy. Employees should use the appropriate form for the type of FMLA leave requested (e.g., for an employee's own serious health condition, for a family member's serious health condition, for qualified exigency, or for military caregiver leave).

   The employee has the responsibility to provide the initial certification. This includes the responsibility, when applicable, to find a health care provider to complete the certification and to pay for the cost of the initial certification. If the employee does not provide the certification, the City may deny the employee's request for FMLA leave.

   A Medical Certification is not required when the requested FMLA leave is for bonding with a newly born or newly placed child. The FMLA prohibits employers from requesting certification for leave to bond with a healthy newborn child or a child placed for adoption or foster care. An Appointing Authority shall not request medical certification to approve FMLA leave related to bonding with a newborn or newly placed child in adoption or foster care. However, the Appointing Authority may request documentation to confirm the family relationship.

4. Requests for Intermittent or Reduced Work Schedule Leave. An employee taking FMLA leave for his or her own serious health condition or to care for a seriously ill spouse, child, or parent is entitled to take leave on an intermittent basis, or by reducing his or her scheduled work hours. The employee must provide certification from the health care provider caring for the employee and/or family member that leave must be taken in this manner.

   Intermittent leave will be taken in increments of half hours for non-exempt employees. Monitoring of non-exempt and exempt employee schedules will be coordinated with their supervisors.

5. Planned Medical Treatments. If the requested FMLA leave is for the planned medical treatment of an employee or a family member, or requires intermittent or reduced work schedule leave, the employee must consult with his or her supervisor to try to schedule the treatment at a time that minimizes the disruption to City operations. The employee should consult with the employee's supervisor prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and the City. Any schedule of treatment is subject to the approval of the treating health care provider.

6. Return to Work Fitness-for-Duty Certification. Employees must submit to their Appointing Authority or designated representative a fitness-for-duty certification from their physician when returning to work after FMLA leave taken due to the employee's own serious health condition. Please use the attached Family and Medical Leave Act (FMLA) Fitness for Duty Certification. The City may delay restoration of the employee until the certification is submitted. The employee is responsible for the cost associated with completing the fitness-for-duty certification.

B. **Appointing Authority Review and Authorization of Leave.**

1. Review Request and Provide Eligibility Notice. Appointing Authorities or their designated representatives must review employee requests and medical documentation to determine eligibility and notify the employee *in writing* as to whether the request is approved. By law, the notice shall be provided to the employee within five business days after receiving the employee's request for FMLA leave. If the Appointing Authority, or the designated representative, determines that the employee is not eligible for FMLA leave, he or she must state at least one reason why the employee is not eligible. Such eligibility notice should be provided to the employee using the U.S. Department of Labor's Form WH-381 – Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act, a copy of which is attached to this policy.

2. Identify Requests for FMLA Leave. In some cases, the employee may ask for leave without specifying whether the leave request qualifies as FMLA leave. Pursuant to the FMLA, it is up to the Appointing Authority or the designated representative to determine whether the leave requested by the employee is FMLA qualifying. In

most cases, the Appointing Authority cannot count leave as FMLA leave retroactively, so it is important to make an evaluation as soon as possible and to notify the employee in writing of the decision.

3. Health Care Provider Certifications. The Appointing Authority or designated representative may require a second opinion from an independent medical provider selected by the Appointing Authority with the expenses paid by the department where the employee works. If the opinions of the employee's and the department's health care provider differ, then the department can require a third opinion at the department's expense which can be issued by a mutually agreed upon health care provider. The opinion of the third provider is final.

4. Provide Designation Notice. Once the Appointing Authority or designated representative has enough information to determine that the employee's requested leave qualifies as FMLA leave, he or she must provide the employee with a written Designation Notice (Form WH-382, Designation Notice) within no more than five business days, absent extenuating circumstances.

   If the leave does not qualify as FMLA leave, the notice must state, in writing, that the requested leave is not FMLA-protected.

   If the leave qualifies as FMLA leave, the notice must also include (1) the amount of leave that will count against the employee's FMLA leave entitlement, if known; (2) that the employee is not required to substitute paid leave for unpaid leave, but may choose to do so; and (3) whether the employee will be required to submit a fitness-for-duty certification to return to work.

5. Record Employee Use of FMLA Leave. All FMLA leave must be recorded by the Appointing Authority or designated representative in the employee's personnel file. The FMLA application and/or subsequent FMLA related information must be maintained with the employee's medical file which is separate from the employee's personnel file.

6. Enter Leave in ADP Payroll System. All forms of leave require an entry in the ADP Payroll system to place the employee on leave. Separate actions are available to indicate whether the leave will be paid or unpaid leave. (Please contact ADP Service Center or the City's Payroll Department).

7. Monitor FMLA Time Used. Appointing Authorities must monitor the time used for FMLA to ensure that employees do not exceed the twelve weeks allowed under the law, especially when a request is made for intermittent leave. Appointing Authorities may choose to authorize additional sick, annual or leave without pay once FMLA leave is exhausted.

8. Keep Records Confidential. All information relating to requests for FMLA leave must be kept confidential. This information will only be disclosed to those with a need to know and will be used only to make decisions regarding the provisions of this policy.

VIII. RETURN TO WORK

Upon return from FMLA leave, employees must be restored to their original or an equivalent position with equivalent pay, benefits, and other employment terms.

Please note that an employee on FMLA leave is not protected from actions that would have affected the employee if he or she was not on FMLA leave (e.g., if overtime has been decreased across a department or shifts have been eliminated, the employee does not have a right to return to that specific shift or the typical overtime hours previously enjoyed). Further, pursuant to the FMLA, under certain circumstances, restoration may be denied to "key employees" in order to prevent substantial and grievous economic injury to City operations.

An employee must provide a fitness-for-duty certificate from his or her physician prior to returning to work when the employee has taken FMLA leave related to the employee's own serious health condition. A delay in restoring an employee to his or her position may occur if a fitness-for-duty certificate is not submitted prior to returning to work.

IX. BENEFITS DURING FMLA LEAVE

A. **Health Plan.** Pursuant to FMLA requirements, during any FMLA leave the City must maintain the employee's coverage under any group health plan on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period (e.g., if the employee holds a family plan under the City's health plan, the family plan coverage must be maintained during the FMLA leave).

   However, the employee must continue to make employee contributions to the health plan and these contributions remain the employee's responsibility. During periods where the employee is using paid leave concurrently with FMLA leave, employee contributions will be made through deduction from the employee's paycheck in the usual manner. During periods of unpaid leave, the employee must ensure that employee contributions to the health plan are made to the City. At the employee's option, payment may be made either in advance, in a lump sum, or monthy, during the leave. Any questions regarding health care coverage should be directed to the Chief Administrative Office, Benefits Administration Division at (504) 658-8615.

B. **Retirement Plan.** During periods where the employee is using paid leave concurrently with FMLA leave, contributions for the pension plan will continue to be made through the usual method. However, such payments will not be made during periods of unpaid leave. Employees should contact their respective Retirement system to make arrangements to pay missed contributions. Any questions regarding pension contributions should be directed to the Municipal Employees Retirement System at (504) 658-1850; Fire Pension System at (504) 821-4671; or Police Pension System at 1-800-443-4248 or (225) 929-7411.

C. In accordance with Civil Service Rule VIII, Section 1.1(e), "no annual leave shall accrue to an employee during any bi-weekly period, or part thereof, in which an employee is on leave without pay."

D. The City's Policies and Civil Service Rules allow Appointing Authorities to run FMLA concurrently with other types of leave where appropriate such as parental leave, leave with/without pay, workers compensation and/or sick leave with/without pay.

X. CITY TO PROVIDE GENERAL NOTICE TO ALL EMPLOYEES

Pursuant to the FMLA, covered employers must provide a general notice to employees regarding the FMLA. Federal law requires the City to (1) display a poster that provides information regarding the FMLA and (2) to provide a written general notice to all employees upon hire.

Poster. Appointing Authorities shall make sure that a poster providing information regarding employees' rights under the FMLA is displayed in plain view where all employees and applicants can readily see it. At a minimum, the poster should provide the information contained in the U.S. Department of Labor's publicly available FMLA poster available here: http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

A. **Written Notice.** Appointing Authorities shall make sure that all new employees receive a copy of this policy upon hire.

XI. ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division (1-866-4-USWAGE, or www.dol.gov/whd) or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

XII. GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. "Genetic Information" as defined by GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

XIII. INQUIRIES

Questions regarding this memorandum in relation to classified employees should be directed to the Classification and Compensation Division of the Department of Civil Service at (504) 658-3511.

Questions regarding this memorandum in relation to unclassified employees should be directed to the Chief Administrative Office at (504) 658-8600.

Attachments:

- WH-380 E FMLA (Employee) Form
- WH-380 F FMLA (Family) Form
- WH-381 Notice of Eligibility & Rights and Responsibilities
- WH-382 Designation Notice
- WH-384 Certification of Qualifying Exigency for Military Leave
- WH-385 Certification for Serious Injury or Illness of a Covered Service member for Military Family Leave
- Family and Medical Leave Act (FMLA) Fitness for Duty Certification Form