



# FAMILY AND MEDICAL LEAVE ACT (FMLA) AND SERVICE MEMBER FAMILY LEAVE POLICY

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## I. PURPOSE OF POLICY

To define the circumstances under which eligible City of Somerville employees may be granted a leave of absence under the Family and Medical Leave Act (FMLA).

## II. SCOPE

### A. DESCRIPTION

This policy applies to employees who have been employed for a minimum of 12 months, have worked a minimum of 1250 hours (excluding non-working hours such as holiday, sick, vacation, and personal) in the 12 months preceding a request and have not used all of the available FMLA covered leave during the current calendar year. If the employee reaches his/her one year anniversary of employment during the leave, he/she will be eligible to take Family and Medical leave effective the date of the one year anniversary forward but not retro actively and receive up to 12 weeks of unpaid leave per calendar year.

### B. FMLA ELIGIBILITY

An employee is eligible for up to 12 weeks of unpaid leave per calendar year because of:

1. the birth of the employee's child, to care for the child within 12 months after the birth,
2. the employee's adoption of a child or the initiation of foster care,
3. the need to care for the employee's spouse, child, or parent with a serious medical condition,
4. the serious health condition that makes the employee unable to perform the functions of the job,
5. a qualifying exigency arising out of the fact that the employee's family member is on covered active duty in a foreign country (or has been notified of an impending call or order to covered active duty in a foreign country by the regular Armed Forces Reserves or National Guard).
6. a qualifying parental care exigency to care for the parent of a military members, or someone who stood in loco parentis to the military member, when the parent is in capable or self-care and the need for the arises out of the military member's covered active duty or call to covered active duty status.

### C. SERVICE MEMBER FAMILY LEAVE

If the employee is an eligible family member or next of kin of a covered service member, the employee can have up to 26 workweeks of "Service Member Family Leave" during a single 12-month period to care for a covered service member deployed or is being deployed to a foreign country who is:

1. Undergoing medical treatment, recuperation, or therapy,
2. Otherwise in outpatient status or
3. On the temporary disability retired list, for a serious injury or illness or
4. To care for veteran who is undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.
5. Taking from five days up to a max of 15 days to spend time with a covered family member during rest and recuperation leave orders.

### D. IF YOU AND YOUR SPOUSE ARE EMPLOYED BY THE CITY

Spouses employed by the City of Somerville are jointly entitled to a **combined** total of 12 work-weeks of family leave outlined sections B. However, each spouse is eligible for a full 12 weeks of leave if each has a need to take care of a child or other family member with a serious health condition, to take care of each other if one has a serious health condition, or to take care of his or her own serious illness.

### III. HEALTH AND WELFARE BENEFITS (Medical, Dental and Life insurance)

The City of Somerville will continue the employee's health benefits coverage during leave. If the employee is in a paid status during all or part of the FMLA leave period, employee contributions for continued medical benefits at the regular employee rate will be deducted while the employee is in a paid status. The City of Somerville will maintain health care benefits for an employee on FMLA in an unpaid leave status on the same terms as if the employee continued to work provided that the employee pays the employee contribution portion of their benefit premium

#### A. CONTINUATION OF HEALTH AND WELFARE BENEFITS WHILE ON FMLA

Health and Welfare benefits cease if:

1. the employee informs the City of Somerville of an intent to not return to work at the end of FMLA leave; or
2. the employee fails to return after FMLA leave is exhausted; or
3. the employee falls behind in employee payments for health care benefits (after advance notification from the City that coverage will cease if payment is not received).

#### B. PAYMENTS WHILE ON FMLA

For any period of FMLA leave where the employee is in an unpaid status, the employee can continue medical insurance coverage by making timely payments at the employee contribution rate. Effective the first day of the pay period in which the employee is in a "no pay" status, the employee must pay the employee portion of the premium for that calendar month within 30 days of the date of the invoice. If payment is not received within 60 days, the employee may be declared ineligible to receive any further benefits and their insurance cancelled retrospectively to the last paid period.

### IV. HOLIDAY, VACATION, SICK TIME AND SENIORITY

The employee will continue to accrue holiday, vacation and sick leave credits during paid and unpaid Family and Medical leave. Holidays will be included in the accounting of the 12 weeks. ***An employee will not be eligible to access any time accrued while on said leave until their return to duty unless otherwise approved by the employee's department head and the Mayor.*** Seniority, however, will accrue during the term of the leave. An employee taking such leave is entitled to be restored to the same or an equivalent position as held by the employee when the leave commenced, the same status, pay, and length of service credit, and will be entitled to any other benefits the employee would have accrued had he/she not taken family leave.

An employee on FMLA leave (regardless of pay status) will be eligible to receive holiday pay for the recognized holidays observed by the City of Somerville. Holidays will be included in the accounting of FMLA time taken. "Snow Days", as declared by the Mayor, will have no impact as to an employee's paid or unpaid status.

#### A. HOW ACCRUED TIME MUST BE USED

Employees on FMLA will use their accrued time in the following order:

1. Sick leave, if any;
2. Personal leave, if any;
3. Vacation leave, if any.

Employees must exhaust all accrued paid time before entering an unpaid status.

### V. DEFINITIONS

#### A. Serious Health Condition

FMLA defines a serious health condition as one that requires either inpatient care or, "continuing treatment by a health care provider." The definition is not meant to cover short-term conditions where treatment and recovery are brief. Rather, it includes conditions that require absences on a recurring basis or for more than a few days off for treatment or recovery. Examples of serious conditions include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, severe nervous disorders, pregnancy, childbirth, and recovery from childbirth.

A serious health condition also is defined as one that makes an individual unable to attend work or perform other daily activities for more than three days, and requires continuing treatment by a health care provider. Also, qualifying under FMLA would be treatment for a serious, chronic health condition that if left untreated, would likely result in an absence from work of

more than three days. For example, absences to receive treatment for early stage cancer, to receive physical therapy after a hospital stay, for severe arthritis, or for prenatal care are covered under FMLA. Not included in the definition are voluntary or cosmetic treatments that are not medically necessary unless inpatient hospital care is required. Prenatal care is included, but routine physical examinations are not.

#### **B. Eligible Family Member**

An eligible family member includes a spouse, parents, and natural, adopted, or foster children.

#### **C. Child**

Child is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who has day-to-day responsibilities to care for and financially support that child. The child must be either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

#### **D. Spouse**

Spouse is a husband or wife as defined or recognized under Federal or State law for purposes of marriage.

#### **E. Parent**

Parent is a biological parent or an individual who had day-to-day responsibilities to care for and financially support the employee when the employee was a child. This term does not include parents "in-law".

#### **F. Covered Veteran**

Is a member of the Armed Forces or National Guard who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

### **VI. FMLA MEDICAL LEAVE OF ABSENCE**

#### **A. HOW TO APPLY FOR FMLA MEDICAL LEAVE OF ABSENCE**

An eligible employee with a qualifying condition who provides certification of that condition from a health care provider will be granted a medical leave under the FMLA for up to 12 weeks (in a 12 month period beginning with the first day of the calendar year). An employee must utilize any accrued paid personal, sick, and vacation time as part of an FMLA medical leave. An employee must exhaust all accrued paid time before entering an unpaid status. Medical certification must accompany the request (see form *Certification of Health Care Provider*). The City of Somerville must allow the employee at least **15 calendar days** for the employee to obtain the medical certification.

#### **B. MEDICAL OPINION**

The City of Somerville may require, at its expense that the employee obtain the opinion of a second health care provider selected by the City:

1) In any case in which the second opinion differs from the opinion in the original certification, the City of Somerville may require, at its expense, that the employee obtain the opinion of a third health care provider designated by City of Somerville.

2) The opinion of the third health care provider shall be considered to be final and shall be binding on the City of Somerville and the employee.

#### **C. EMPLOYEE NOTICE TO CITY**

An employee who requests an FMLA medical leave must provide 30 days advance notice to Personnel where the need for the leave is foreseeable. In the event it is not possible to provide 30 days notice, an employee should provide notice within two business days before the leave is to begin. Requests for medical leaves must be in writing on the *Request for Leave* form and should contain the reason for the leave, the anticipated length of the leave and the anticipated start date of the leave. If an employee fails to give 30 days' notice of a foreseeable leave with no reasonable excuse for the delay acceptable to the City of Somerville, the City of Somerville may deny the taking of a leave until 30 days after the notice is provided.

## D. INTERMITTENT LEAVE

An employee requiring leave because of a serious health condition (their own or that of a parent or child), may, if medically necessary, take leave intermittently or on a reduced leave schedule that reduces the employee's usual number of hours per workweek or per workday only under certain circumstances. If an employee requests leave on such a basis, the employee's Department Head may require the employee to transfer temporarily to an alternative position which better accommodates recurring period of leave than the employee's regular position, provided that the position has equivalent pay and benefits. To request an Intermittent Medical leave, the employee must submit a *Request for Leave* form to his or her manager/supervisor. The Department Head will review the request and forward the form to Personnel for their approval to ensure fair and consistent practices. An employee taking leave to care for a newborn child or a child who has been placed with the employee for adoption or foster care may take leave intermittently or on a reduced leave schedule only with the approval of the Personnel Department.

## E. RETURN TO DUTY

The employee will be restored to the same or a substantially equivalent position at the end of an FMLA leave, as required by the FMLA, provided such a position is still available, provided the employee is still qualified for the job as determined by City of Somerville and provided the employee returns to work at the end of the approved leave. The steps the employee must follow are:

1. An employee who is returning from a medical leave of absence must notify Personnel of the intent to return no later than seven calendar days prior to the anticipated date of return.
2. For an FMLA medical leave of more than 30 days, the employee must provide Personnel with a *Return to Work* form completed by the Attending Physician indicating the return date if the leave was taken due to a serious health condition that made the employee unable to perform the functions of their job.
3. If the release indicates any limitations on the employee's ability to perform normal duties, return to active employment will be at City of Somerville's discretion consistent with applicable state and federal laws. An employee who has notified Personnel and his/her Manager of his/her intent to return from FMLA leave will be reinstated to the same or an equivalent position upon her return to employment, with the same status, pay, length of service credit and seniority as the position the employee held prior to the leave. If an employee's job was changed temporarily prior to leave (e.g., hours were reduced or duties were changed as an accommodation), they will be restored to the same or similar position held prior to such temporary change, as possible. If an employee fails to report to work promptly at the end of the leave, the City will assume that the employee has voluntarily resigned and all benefits will be terminated.

## F. EXTENDED MEDICAL LEAVE

Employees who require medical leave beyond the 12 week FMLA period may apply for a 90 day Non-FMLA Medical Leave Extension and may continue to apply for 90 day Non-Medical Leave Extensions. Approved Non-FMLA Medical Leaves do not guarantee the protection of restoration to a same or like position. Employees on a Non-FMLA Medical Leave may be terminated upon exhaustion on their accrued time.

***Nothing in this policy shall be construed to conflict with either the federal Family and Medical Leave Act or the Massachusetts Maternity Leave Act (MGL, c149, §105D). Leaves due to childbirth, adoption, or foster care must be completed within 12 months of the date of birth or date of placement.***

## VII. FMLA LEAVE OF ABSENCE FOR CARE OF A FAMILY MEMBER

### A. HOW TO REQUEST LEAVE TO CARE FOR A FAMILY MEMBER.

A request for a family leave of absence must be on the *Request for Leave* form and must be approved in writing. The form must contain the reason for the leave, the anticipated length of the leave and the anticipated start date of the leave. An employee who requests a family leave must provide 30 days advance notice to Personnel, where the need for the leave is foreseeable. In the event it is not possible to provide 30 days notice, an employee should provide notice within one or two business days before the leave is to begin. If an employee fails to give 30 days' notice of a foreseeable leave with no reasonable excuse for the delay, the City of Somerville may deny the taking of a leave until 30 days after notice is provided.

## B. RESTORATION TO SAME OR EQUIVALENT POSITION

An employee will be restored to the same or a substantially equivalent position at the end of an FMLA family leave as required by the FMLA provided such a position is still available, provided the employee is still qualified for the job as determined by City of Somerville and provided the employee return to work at the end of the approved leave. City of Somerville reserves the right to deny reinstatement if there is a reduction in workforce and the employee's position would otherwise have been eliminated had they not been on leave.

## C. BENEFITS PLAN SERVICE AND COVERAGE

Benefit plan service and coverage will be determined according to the provisions of the appropriate plans provided appropriate employee contributions are made. An employee will receive detailed information from Personnel on continuing benefit plan coverage. Benefits will continue provided that the employee's contributions are received on a monthly basis.

## D. RETURN FROM LEAVE

An employee who is returning from a leave of absence must notify Personnel of the intent to return to work no later than seven calendar days prior to the anticipated date of return.

## VIII. FMLA Military Leave

Eligible employees who are absent from work while serving in the United States uniformed services are granted a military leave of absence in accordance with the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

## IX. REQUIREMENT TO TAKE PAID LEAVE

The City of Somerville requires that employees use all of their available vacation, sick and personal days as part of their 12 week leave under the FMLA. The remainder of the 12 week period, after the exhaustion of vacation, sick and personal days, will be considered unpaid leave. Thus, an employee with a two week vacation entitlement who needs to take a 12 week family leave will be required to take the 2 weeks' paid vacation and is limited to 10 weeks of unpaid family leave.

## X. KEY EMPLOYEES

Under very limited circumstances, an employee who qualifies as a "key employee" may be denied restoration of employment at the end of an approved FMLA. A key employee is an employee who is among the highest paid 10 percent of the employees employed within 75 miles of his or her worksite. To determine who are the highest paid 10 percent, year-to-date earnings as of the date leave is requested are considered. The City of Somerville may deny restoration of employment to a "key employee" only if necessary to prevent substantial and grievous economic injury to its operations.

## XI. HOW TO REQUEST AN FMLA FAMILY OR MEDICAL LEAVE

To request a leave, the employee must complete a *Request for Leave* form and provide a copy to his/her manager/supervisor and a copy to the City's Benefits Manager. If the request is for a serious health condition affecting the employee or an immediate family member, he/she will also need to complete a *Certification of Health Care Provider*. This form must provide the date on which the serious health condition began, the probable duration of the condition, appropriate medical facts about the condition, and, if applicable, a statement that the employee is needed to care for a relative. After the forms have been submitted to Personnel, you will be notified of the outcome of the request on the *Employer Response to Employee Request for Family or Medical Leave*.

In the case of a foreseeable leave due to childbirth, adoption, foster care, or planned medical treatment, employees are required to provide at least 30 days' advance notice. When it is not practicable to provide such advance notice, and employee is required to provide notice as soon as is feasible. Leaves due to childbirth, adoption, or foster care must be completed within 12 months of the date of birth or date of placement.

## XII. FORMS

Personnel will provide all applicable FMLA documents and forms to potentially eligible employees.