



ADMINISTRATIVE DIRECTIVE

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I. PURPOSE

To set forth the City’s policies and procedures governing Family and Medical Leave (FML), in accordance with the Family and Medical Leave Act (FMLA).

II. POLICY

A. The FMLA entitles eligible City employees to unpaid, job-protected leave to care for themselves or an Immediate Family Member for up to a total of 12 weeks in a single 12-month period regardless of the number of open approved FML cases an employee has. The City has adopted the calendar year as the FML Year. Utilization of FML runs concurrent with all other leaves (Administrative Directive (AD) 2.01-7, Employee Leaves).

B. FML can be used for the following reasons:

1. A Serious Health Condition rendering the employee unable to perform the essential functions of his or her job.
2. The birth of a child and to care for or bond with the child within one year of birth, or the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement .
3. To care for an employee’s Immediate Family Member who has a Serious Health Condition.

III. DEFINITIONS

A. Continuing Treatment – Incapacity involving a period of continuing treatment by a healthcare provider:

1. Of more than three (3) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves, treatment two (2) or more times within 30 days of the first day of incapacity, absent extenuating circumstances, by a health care provider (the first in-person visit must be within seven (7) days of incapacity); and/or treatment on at least one occasion which results in a regimen of continuing treatment;
2. Due to pregnancy or for prenatal care - any period of incapacity related to pregnancy or prenatal care;
3. Due to a chronic Serious Health Condition requiring periodic treatment by a health care provider (periodic means at least two (2) times a year) over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy);



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4. Permanent or long-term incapacity due to a Condition for which treatment may not be effective; or
 5. Any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or injury, or for a Condition such as cancer that would likely result in a period of incapacity of more than three (3) consecutive full calendar days without medical treatment, plus a regimen of continued treatment. First visit must occur within seven (7) days of incapacity. Treatment would not include routine physical examinations.
- B. FML Year** – The calendar year (January 1 – December 31).
- C. Human Resources** – For purposes of this AD, Human Resources (HR) refers to the City of Tucson Human Resources Department, not an individual department's HR section or division. City Court employees must submit all FML documents to City Court HR.
- D. Immediate Family Member** – A spouse, child, or parent. For purposes of FML, a child includes a son or daughter who is biological, adopted or foster child, a step child, a legal ward, or a child of a person standing in loco parentis who is either under eighteen (18) years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care.
- E. Intermittent Leave** – Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time and may include leave periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments (not including routine physical examinations), or leave taken several days at a time over a period of six (6) months, such as for chemotherapy.
- F. Medical Necessity for Leave** – A medical need for the leave is determined by the information provided on the Certification of Health Care Provider form. Except when the City requires a second or third opinion, employees are responsible for any fee their health care provider may charge for completing the Certification of Health Care Provider form and/or clarifying a previously submitted form.
- G. Reduced Schedule** – A schedule that reduces the normal number of hours per workweek or hours per workday.



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- H. **Serious Health Condition** (also referred to as “Condition” or “Medical Condition”) An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider, as defined above (Continuing Treatment).

IV. FML ELIGIBILITY AND COVERAGE

- A. To be eligible to take FML leave, employees, regardless of Civil Service status, must have been employed by the City for at least 12 months and worked at least 1,250 hours during the previous 12-month period preceding the commencement of the leave. The 12 months of service need not be consecutive. Employment before a break in service of seven (7) years or more will not be counted, unless the break in service was caused by the employee’s active duty with the National Guard or Reserve.
- B. Eligible employees may request FML because of the employee or Immediate Family Member’s Serious Health Condition on a continuous basis, intermittently, or a combination of both.

Employees are required to submit a Certification of Health Care Provider form for leaves taken because of the employee’s or Immediate Family Member’s Serious Health Condition for leave of more than the equivalent of one work week.

When an Employee requests leave for bonding following the birth of a child or for the placement of a child for adoption or foster care, Health Care Provider Certification is not required; however, proof of birth or placement will be required along with the employee’s request. Examples of acceptable proof are documentation from the health care provider confirming the pregnancy and due date of the child, or from an appropriate agency confirming the placement of a child for adoption or foster care.

- C. FML will provisionally commence the first day leave is taken, pending receipt of the Certification of Health Care Provider form and a determination by HR.
- D. FML entitlement is calculated on a pro-rated basis for part-time employees and those working variable hours. A weekly average of hours worked over the 12 weeks prior to the beginning of the leave will be used for calculating the employee’s normal workweek. For example: an employee working an average of 20 hours per week for at least 12 weeks prior to taking leave would be eligible for 20 hours of FML per week, for up to 12 weeks (provided that all other eligibility requirements are met).
- E. An employee whose Certification of Health Care Provider form states that there is a medical necessity for intermittent or reduced schedule leave may take leave accordingly due to the employee’s own Serious Health Condition, or to provide care or psychological comfort for an Immediate Family Member with a Serious Health Condition.



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- F. Employees on FML are not permitted to volunteer or work for another employer or organization, or work special duty during such leave, unless authorized in writing by the HR Director/Designee.
- G. With approval from the HR Director/Designee and the employee's appointing authority, an employee may use leave intermittently or on a reduced schedule after the birth, adoption, or foster care placement of a child.

V. FML PROCESS

A. Request Period

1. Employee Responsibility – Planned Leave

- a. An employee is required to give notice of 30 calendar-days (or as soon as possible, under the circumstances of their appointment/treatment leave schedules) in the event of foreseeable leave. Employees should make their request via their department chain of command; the department will notify HR of the request. Employee requests may also be made directly to HR.
- b. The employee must ensure that the required Certification of Health Care Provider form is completed and signed by the employee's (or Immediate Family Member's) healthcare provider and returned to the Leaves section of the HR Department. Employees have 15 calendar days after the date HR sends notice of need to provide medical certification. Failure to submit a completed Certification of Health Care Provider form will result in the denial of FML, and the employee's department may designate the non-FML leave as Absent Without Leave (AWOL).

For alternative paperwork options required for bonding with a new child, see IV.B.

- c. When intermittent leave or a reduced schedule is required as a Medical Necessity, the Certification of Health Care Provider form must include the treatment regimen.

2. Employee Responsibility – Unplanned Leave

- a. In the event an employee's Medical Condition requires immediate attention and the need for leave is urgent or unforeseeable, the employee must give notice as soon as possible, under the circumstances.
- b. An employee must notify their direct supervisor within one (1) business day and provide sufficient information regarding the need for leave (i.e.



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when and for whom; not medical information) and to support a request for leave under FML. The department will notify HR of the request. Employees may also notify HR directly.

3. Employee Responsibility – All Requests

When submitting a request for leave the employee and their medical care provider must provide sufficient information as outlined on the required forms for HR to determine whether the leave will qualify as FML.

4. Department Responsibility

- a. Departments will **immediately** notify HR of any potentially qualifying medical leaves and/or requests for FML.
- b. After an employee requests FML and has been off work in excess of the equivalent of one work week, the department will notify HR and request an FML packet be sent to the employee.
- c. **If an employee has been off in excess of the equivalent of one work week and has not requested FML, the department will notify HR. HR will contact the employee and send an FML packet if appropriate.**

5. Human Resources Responsibility

- a. Upon receipt of the employee or department's request, and within five (5) business days (absent extenuating circumstances), HR will issue a Notice of Eligibility and Rights and Responsibilities, notifying the employee of their eligibility to take FML. If the employee is otherwise qualified for FML, the leave will be designated FML on a provisional basis, pending receipt of the completed Certification of Health Care Provider form. Failure to return the completed form within the required time will result in denial of the leave request.
- b. HR will provide the department a copy of the Notice of Eligibility and Rights and Responsibilities.

B. Review Period

1. Employee Responsibility

- a. Employees must comply with department "call-in" policies for absences.



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- b. If the employee has an open leave case, he or she must inform his or her supervisor/designee whether the absence is for a reason for which FML has been approved.
- c. If the employee is absent for an FML-related reason and does not have an open FML case, the employee must inform his/her supervisor within three (3) days after the absence that the leave was FML-related.
- d. If the employee has more than one open leave case, the employee must identify to his or her supervisor/designee the case to which the absence relates.

2. Department Responsibility

- a. When an employee calls in "sick" during this review period, departments may ask whether the leave is related to a pending FML request, or a different approved FML, if applicable.
- b. Departments will post the employee's leave as FML during the Review Period, following the employee's request.

3. Human Resources Responsibility

- a. Within five (5) business days, absent extenuating circumstances, following receipt of the Certification of Health Care Provider form, HR will issue a Designation Notice notifying the employee and the department of the determination and designation of leave as FML or non-FML, as well as leave expectations.
 - (1) If HR deems a Certification of Health Care Provider form insufficient or incomplete, HR will specify in writing what information is lacking and will give the employee seven (7) calendar days to correct the deficiency.
 - (2) If HR has reason, the employee may be required to obtain a second opinion (in some cases a third) at the employer's expense. Any such request will be coordinated and approved by the HR Director/Designee. HR will notify the employee's department of any change in the employee's leave status as a result of such examination.
- b. Eligible employees who have had a qualifying industrial injury will be notified that their leave will be designated as FML.
- c. If the certification does not establish the employee's entitlement to FML, the leave will not be designated FML, and will be considered for



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approval as Medical Leave and treated as paid or unpaid leave under AD 2.01-7, Employee Leaves and AD 2.01-7D Medical and Parental Leave.

- d. Failure to submit a completed Certification of Health Care Provider form will result in the denial of FML and the employee’s department may designate the non-FML leave as AWOL.
- e. All documentation related to the employee or Immediate Family Member's Medical Condition will be maintained by HR as part of the employee’s confidential medical file.

C. Leave Period

1. Employee Responsibility

- a. An employee is required to use all paid leave benefits. Leave must be used in the following order: Sick Leave, Vacation Leave, Compensatory Time, and Floating/Birthday Holiday. All paid leave benefits run concurrently with FML (continuous or intermittent), and must be exhausted before Leave Without Pay (LWOP) can be approved.
- b. Employees must comply with department “call-in” policies in accordance with section V.B.1 of this policy.
- c. The employee must comply with the leave defined on the Designation Notice. In addition, the employee must notify HR if the dates of the leave change, are extended, or were initially unknown, and report whether he/she is able and intends to return to work. Notice must be given as soon as possible.

2. Department Responsibility

- When an employee calls in “sick” during the leave period, departments may ask whether the leave is related to FML and to which leave event it relates if the employee has been approved for multiple leave events.
- The employee’s department must appropriately post FML hours taken for the date(s) used, and track the number of hours used to ensure the employee does not exceed their entitled hours (i.e. 480, for most employees).
- When an employee’s FML usage reaches 380 hours (i.e. 100 hours remaining of FML), the department must notify HR of the employee’s usage status.



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- Employees certified for intermittent or reduced schedule leave may be required to transfer temporarily to an alternative position for which the employee is qualified with equivalent pay and benefits that better accommodates recurring periods of leave.

3. **Human Resources Responsibility**

- a. HR will maintain all documentation related to the employee's or Immediate Family Member's Medical Condition as part of the employee's confidential medical file.
- b. After notification from a department that an employee's FML usage has reached 380 hours, HR will notify the employee that his/her FML entitlement is near exhaustion and provide the employee with available options.

D. **Return to Work**

1. **Employee Responsibility**

- a. If an employee is off for the employee's Serious Health Condition and will return to work prior to the end of the period of time approved on the Designation Notice, the employee must provide a Work Status Verification form, completed by their healthcare provider, to the Employee Leaves section of Human Resources, prior to returning to work.
- b. If off work continuously for more than 30 consecutive calendar days, the employee must:
 - (1) Call the HR Leaves section prior to their anticipated return to work date;
 - (2) Submit a Work Status Verification form, completed by their healthcare provider;
 - (3) See the City Physician **prior to** returning to work for clearance to return. The employee must present to the City Physician the completed Work Status Verification form completed by their treating medical provider, along with a copy of their job description;
 - (4) Provide all return to work clearances to their direct supervisor and/or the department HR liaison, who must immediately forward to Employee Leave in HR;



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(5) Exceptions to the requirement of a medical release to return to work are as follows:

- The employee is returning to work following an uncomplicated childbirth,
 - The employee is returning to work following the placement of a child for adoption or foster care.
 - The employee is returning to work following leave for a family member.
- c. Employees who have sustained a back (neck, mid-back, lower-back) or eye injury/illness/Condition, on or off the job, and who have lost one (1) or more full workdays as a result, will be required to be examined by a City Physician prior to returning to work.
- d. Employees placed on restricted or limited duty by their own healthcare provider may be required to be examined by a City Physician prior to returning to work.
- e. If the employee fails to provide the required return to work documentation, or submit to a return to work examination or medical recertification, the employee will **not** be allowed to return to work.

2. **Department Responsibility**

- a. Departments will obtain all required return to work documents from the employee **before** the employee is allowed to return to work, and must promptly notify HR before an employee who has been on continuous FML and/or Medical Leave is scheduled to return to work. Return to work documents must be forwarded to HR immediately.
- b. The department may designate intermittent leave as FML after the employee has returned to work, in accordance with the Designation Notice and only if the employee has not exhausted their FML entitlement.

3. **Human Resources Responsibility**

HR will re-enforce the return to work requirements with the employee and may work with the City Physician on return to work evaluations.

HR will maintain all return to work documentation in the employee's confidential medical file.



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E. Recertification and Renewal

1. HR may request a medical recertification after the minimum duration of the certification period has passed and no more frequently than every 30 calendar days. Employees will be given at least 15 calendar days to provide the recertification.

HR may require recertification at any time when any of the following apply:

- Circumstances described by the Certification of Health Care Provider form have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications); or
 - HR receives information or documentation that is inconsistent or creates a discrepancy with previous information or documentation received; or
 - Every six (6) months in connection with intermittent FML.
2. If the recertification does not establish the employee's entitlement to FML, leave will not be designated as FML and will be treated as paid or unpaid leave (which may include AWOL, at the appointing authority's discretion) under AD 2.01-7, Employee Leaves.
 3. All re-certifications will be coordinated and approved by HR. Recertification is at the employee's expense; second or third opinions are at the employer's expense. HR will notify the employee's department of any change in the employee's leave status.
 4. Employees and/or departments may request re-certification if the need for leave changes, or if leave is being taken outside of the expectations defined in the Designation Notice.
 5. If additional leave time is needed, employees should make all reasonable effort to recertify **prior to** the expiration of the current approved leave. **It is the employee's responsibility to request renewal of their leave.** All renewals may be subject to a second or third opinion, at the employer's expense.

VI. MILITARY FAMILY LEAVE (MFL) UNDER FMLA

In accordance with the FMLA, as amended by the National Defense Authorization Acts, MFL provides eligible employees leave for up to 26 weeks in a single 12-month period. Utilization of MFL runs concurrently with all other leaves. MFL due to Qualifying Exigencies may be taken on an intermittent basis.



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A. MFL can be used for the following reasons:

1. **Qualifying Exigency** - An eligible employee may be entitled to take up to 12 weeks of leave to address certain qualifying exigencies, as defined in AD 2.01-7G, Military Leave, arising out of a covered service member's active duty or call to active duty in support of contingency operations.
2. **Military Caregiver** - An eligible employee who is the spouse, child, parent, or next of kin of a covered service member recovering from a serious illness or injury sustained in the line of duty or at any time during the five (5) years preceding the date of treatment, recuperation or therapy from a serious illness or injury sustained in the line of duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

B. HR may require that an employee's request for MFL be supported by an appropriate certification in accordance with 29 CFR § 825.309 and 825.310.

C. HR will not request recertification and/or second opinions for certification of a covered service member's serious injury or illness or of a qualifying exigency. Any questions regarding recertification must be directed to HR.

D. MFL will be administered consistent with the applicable provisions of this AD.

VII. EFFECT ON BENEFITS

A. Employees on unpaid leave for more than one-half (1/2) of a pay period are not entitled to leave benefit accruals.

B. Unpaid leave while on FML will not affect an employee's anniversary date.

C. For the first 12 months of leave, the City will continue to pay the employer portion of insurance premiums. The employee is responsible for the payment of the employee's portion of the premiums for themselves and their covered dependents. If the employee has exhausted paid leave accruals and is in a LWOP status, the employee must contact Employee Benefits to make arrangements to pay the employee portion of the premiums. If an employee fails to make the required premium payments as agreed upon with Employee Benefits, the employee's insurance coverage may be terminated.

D. See AD 2.01-7, Employee Leaves, for **complete information** regarding the use of Medical/Parental Leave, Family Medical Leave, and Military Leave, and their effects on employee benefits.



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VIII. JOB PROTECTION

- A. If the employee returns to work within the 12 weeks allowed for FML, the employee will be reinstated to his or her former position or an equivalent position with equivalent pay, benefits, status, and authority.
- B. The employee's reinstatement rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

IX. RETALIATION PROHIBITED

Supervisors and other management staff are prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA. As an employer, the City of Tucson is also prohibited from discriminating against employees or prospective employees who have used FML.

Forms: All forms may be obtained through the Human Resources Department.

References (for a complete list of all references for the entire AD Leaves series, please see AD 2.01-7)

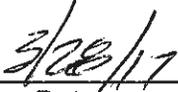
- 29 Code of Federal Regulations Part 825
- 2.01-7 Employee Leaves
- 2.01-7A Vacation Leave
- 2.01-7B Sick Leave
- 2.01-7D All Medical Leaves and Parental Leave
- 2.01-7F Leaves Without Pay
- 2.01-7G Military Leave
- 2.06-1 Employee Insurance Benefit Plans

Review Responsibility and Frequency: The Human Resources Director will review this directive annually. Last review date: February 1, 2016.

Authorized



 City Manager



 Date