



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. In accordance with the FMLA, City employees are entitled to FML, which provides eligible employees unpaid, 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 their job.
2. The birth of a child and in order to care for such child or for a child placed with the employee for adoption or foster care (AD 2.01-7D, Medical Leaves and Parental Leave). Leave for this reason must be taken within the 12-month period following the child's birth or placement with the employee.
3. In order for the employee to care for an 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 calendar days and any subsequent treatment that also involves, absent extenuating circumstances: treatment of at least two (2) or more times within 30 days of the incapacity (the first 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 (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 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. Domestic Partnership** – An unmarried couple who share a relationship of caring and commitment, who are not related by blood closer than would bar marriage in the State of Arizona; are not married to another person in a marriage expressly recognized by the State of Arizona or in any domestic partnership and/or civil union with another person; are both 18 years or older; are both competent to enter into a contract; both declare that they are each other’s sole domestic partner; and both currently share a primary residence, are in a relationship of mutual support, and declare that they intend to remain in such for the indefinite future.
- C. FML Year** – The calendar year (January 1 – December 31).
- D. 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 sections or divisions. City Court employees must submit all FML documents to City Court HR.
- E. Immediate Family Member** – A spouse or domestic partner, 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 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.
- F. Intermittent Leave** – Leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Intermittent leave periods may be used in conjunction with a continuous leave, and may include periods of up 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.
- G. Medical Necessity for Leave** – A medical need for the leave, as distinguished from voluntary treatments and procedures. Medical need for leave is determined by the information provided on the Certification of Health Care Provider form.
- H. Reduced Schedule** – A schedule that reduces the normal number of hours per workweek or hours per workday.



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- I. **Serious Health Condition** – An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider, as defined in paragraph A of this section (Continuing Treatment).

IV. **FML ELIGIBILITY AND COVERAGE**

- A. Employees, regardless of Civil Service status, must have worked for the City for at least 12 months and at least 1,250 hours during the previous 12-month period preceding the effective date 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. Employees may request FML for leave taken 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 two consecutive work weeks.

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 which confirms 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.

For part-time employees and those who work variable hours, the FML entitlement is calculated on a pro-rated basis. 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).

- D. 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 psychological comfort or care for an immediate family member with a serious health condition.



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- D. 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.
- F. An employee may use leave intermittently or on a reduced schedule after the birth, adoption, or foster care placement of a child, when requested and approved by the employee's appointing authority, with approval from the HR Director/Designee.

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 HR Department. Employees will be given 15 days 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).

In lieu of a Certification of Health Care Provider form, the employee is required to provide documented proof of birth or placement along with a signed request form when the employee is requesting leave to bond with a new child following the birth of a child or for the placement of a child for adoption or foster care. Examples of acceptable proof are documentation from the health care provider which confirms 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. 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.



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2. Employee Responsibility – Unplanned Leave

- a. In the event an employee's medical condition requires immediate attention and is such that advance notice of 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 to provide sufficient information regarding the need for leave (i.e. when and for whom; not medical information) and to support a request for leave under FML; the department will notify HR of the request.

3. Employee Responsibility – All Requests

When submitting a request for leave, or multiple leaves in the same leave period, the employee must provide sufficient information for HR to determine whether the leave will qualify as FML, including:

- Employee's name and ID number;
- If the leave is a renewal of a previous request;
- Identify whether leave is for employee's own health condition, Parental Leave, or immediate family member's condition;
- If Parental Leave, indicate whether for spouse or domestic partner, self, or other;
- If leave is for the employee's own health condition, identify whether or not condition is work-related;
- If leave is for family member, identify if leave is for a parent or domestic partner, spouse or qualified child;
- Start date of leave(s) (or expected start date); and,
- Whether leave is expected to be continuous or intermittent (or both).

4. Department Responsibility

- a. Departments will **immediately** notify HR of any potentially qualifying medical leaves and/or requests for FML.
- b. After an employee has been off work in excess of the equivalent of two consecutive work weeks, and has not requested FML, the department will notify HR and request an FML packet be sent to the employee.



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Departments should email the request for medical leave criteria to HR (format provided by HR).

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. Also note, when calling in "sick," if the employee does not identify the leave as FML, it might not be designated or posted as such.
- b. Employees must inform their supervisor/designee if the requested leave is for a reason for which FML has been requested or is currently approved within three (3) days of the absence.

2. Department Responsibility

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

3. Human Resources Responsibility

- a. Following receipt of the Certification of Health Care Provider form, and absent extenuating circumstances, 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, within five (5) business days.



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- b. Eligible employees who have had a qualifying industrial injury will be notified that their leave will be designated as FML. Employees who are released to work on Light Duty will not have light duty hours worked counted toward FML hours.
- c. If HR deems a Certification of Health Care Provider form insufficient or incomplete, HR will specify in writing what information is lacking, and give the employee seven (7) calendar days to correct the deficiency.
- d. 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.
- e. If the certification does not establish the employee's entitlement to FML, the leave will not be designated FML and it will be treated as paid or unpaid leave under AD 2.01-7, Employee Leaves. 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.
- f. 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, including, but not limited to: Sick and Vacation Leave, Compensatory Time, and Floating/Birthday Holiday when on FML (continuous or intermittent), and such leave will run concurrently, before LWOP can be taken or posted.
- b. Employees must comply with department "call-in" policies. Also note, when calling in "sick," if the employee does not identify the leave as FML within three (3) days of the absence, it might not be designated or posted as such.
- c. The employee must comply with the leave expectations 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 intend to return to work. Notice must be given as soon as possible.



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2. Department Responsibility

- a. 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 if the employee has been approved for multiple leave events.
- b. **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).**
- c. 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

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.

D. Return to Work

1. Employee Responsibility

- a. If an employee is off for their own serious health condition, the employee must provide documentation in order to return to work. In all cases, employees are expected to return to work on the date their physician released them, therefore, City Physician clearance (if required) must be obtained prior to the return to work date.
 - (1) If off work for more than the equivalent of one workweek, the employee must submit a Healthcare Provider Note, completed by their healthcare provider;
 - (2) If off work continuously for more than the equivalent of two consecutive workweeks, the employee must submit a Work Status Verification form, completed by their healthcare provider;
 - (3) If off work continuously for more than 30 calendar days, the employee must:
 - (a) Call the HR Medical Leave Specialist assigned to their case prior to their anticipated return to work date,



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- (b) Have their physician complete the Work Status Verification form,
 - (c) See the City Physician for clearance to return to work. The employee must present to the City Physician the completed Work Status Verification form completed by their physician, along with their job description,
 - (d) Provide all return to work clearances to their Supervisor and/or the department HR liaison.
 - (e) 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.
- b. 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 and may be subject to disciplinary action, up to and including discharge.

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.



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

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 previous 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 it 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 the HR Department. Recertification will be at the employee's expense and second or third opinions may be required, 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 needed, **it is the employee's responsibility to request renewal of their leave within 30 calendar days of the expiration of their current designated leave.** All renewals may be subject to a second or third opinion, at the employer's expense.

VI. MILITARY FAMILY LEAVE 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



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MFL runs concurrently with all other leaves. MFL due to Qualifying Exigencies may be taken on an intermittent basis.

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, Section III, 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 or domestic partner, 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 Leave Without Pay 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 their former position or an equivalent position with equivalent pay, benefits, status, and authority.
- B.** The employee's reinstatement rights are the same as the employee 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: October 1, 2014.

Authorized



City Manager
2/16/16
Date