



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	1 of 10
	EFFECTIVE DATE	
July 20, 2010		

I. PURPOSE

To set forth the City's policies and procedures governing Family and Medical Leave, in accordance with applicable federal law. Military Family Leave is set forth in Administrative Directive 2.01-7G.

Questions regarding this policy should be directed to the City's Human Resources –Leave Administrator.

II. FMLA POLICY

A. In accordance with the Family and Medical Leave Act (FMLA), City employees are entitled to Family and Medical Leave (FML) which provides eligible employees leave for up to twelve (12) weeks in a single twelve-month (12) period. Utilization of FML runs concurrent with all other leave (See: Administrative Directive 2.01-7D).

B. Family and Medical Leave can be used for the following reasons:

1. 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 (see Administrative Directive 2.01-7D, All Medical Leaves and Parental Leave). Leave for this reason must be taken within the twelve-month (12) period following the child's birth or placement with the employee.
2. In order to care for an immediate family member of the employee with a serious health condition (under federal law a domestic partner is not recognized as an immediate family member).
3. A serious health condition rendering the employee unable to perform his/her job.

III. DEFINITIONS

A. **12-Month Period** – means a twelve-month (12) period measured forward from the date the designated FML leave is taken and ends twelve (12) months after that date. Unused FML cannot be carried forward into a subsequent twelve-month (12) period.

B. **Child** – for the purposes of FML, 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 and



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	2 of 10
	EFFECTIVE DATE	
	July 20, 2010	

includes a biological, adopted, foster or step-child. This definition does not include "in-law".

C. **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: at least treatment two (2) or more times within thirty (30) days of the incapacity and 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);
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.

D. **Immediate Family Member** – includes spouse, child, or parent. Under federal law, a domestic partner is not recognized as an immediate family member.

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 of 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 spread over a period of six (6) months, such as for chemotherapy.

F. **Leave Administrator** – the Human Resources Director or Designee.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	3 of 10
	EFFECTIVE DATE	
July 20, 2010		

- G. **Medical Necessity for Leave** – a medical need for the leave (as distinguished from voluntary treatments and procedures) that can best be accommodated through an intermittent or reduced leave schedule. Medical need for leave is determined by the information provided on the certification of healthcare provider form.
- H. **Reduced Leave Schedule** – a leave schedule that reduces the usual number of hours per workweek or hours per workday.
- 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 C of this section.
- J. **Spouse** – an employee’s husband or wife – not to include a domestic partner.

IV. **FMLA COVERAGE AND ELIGIBILITY**

- A. Eligibility for FML requires that an employee, regardless of Civil Service status, must have worked for the City for at least twelve (12) months and at least 1,250 hours during the previous twelve-month (12) period preceding the leave request. The twelve (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. FML will provisionally commence the first day leave is taken pending receipt of the healthcare provider certification form and a determination by the Leave Administrator. Absent extenuating circumstances, the Leave Administrator will issue a Designation Notice within five (5) business days notifying the employee of the determination and designation of leave as FML or non-FML.
- C. For part-time employees and those who work variable hours, the FML entitlement is calculated on a pro-rata basis. A weekly average of hours worked over the twelve (12) weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek. For example: an employee working an average of twenty (20) hours per week for at least twelve (12) weeks prior to taking leave would be eligible for twenty (20) hours of FML per week, for up to twelve (12) weeks.
- D. Employees on FMLA leave are not permitted to work for another employer during such leave unless authorized in writing by the Director of Human Resources.

V. **APPLICATION OF ACCRUED PAID LEAVE**

- A. An employee is required to use applicable accrued paid leave benefits (vacation, compensatory and/or sick leave) when on FML and such leave shall run concurrent.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	4 of 10
	EFFECTIVE DATE	
July 20, 2010		

- B. Paid leave may not be combined with leave without pay solely to give the employee enough paid hours to accrue additional sick leave and vacation credits.

VI. INTERMITTENT AND REDUCED SCHEDULED LEAVE

- A. An employee whose healthcare provider certification form states that there is a medical necessity for intermittent or reduced schedule leave may take leave intermittently or on a reduced schedule to provide psychological comfort or care for an immediate family member with a serious health condition or due to the employee's own serious health condition.
- B. An employee may take leave intermittently or on a reduced schedule after the birth or adoption, or foster care placement, of a son or daughter only when approved by the Human Resources Director in consultation with the employee's department director.
- C. When intermittent leave or a reduced schedule is required as a medical necessity, the healthcare provider certification must include treatment regimen and the employee must make a reasonable effort to schedule their leave to avoid disrupting the department's operations and provide at least thirty (30) calendar days advance notice or as soon as possible under the circumstances of their appointment/treatment leave schedules.
- D. When medical necessity involves unanticipated medical treatment or leave and an employee's medical condition 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.
- E. Employees certified for intermittent or reduced scheduled leave may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave.

VII. EMPLOYEE RESPONSIBILITY AND NOTICE REQUIREMENT

- A. An employee is required to give thirty (30) calendar days notice in the event of foreseeable leave. The employee must contact the Leave Administrator to request a medical leave packet. The employee must submit a complete medical leave packet and ensure that the required healthcare provider certification form is completed and signed by the employee's (or family member's) healthcare provider and returned to the Human Resources Department – Attention: Leave Administrator. Failure to submit a complete medical leave packet and/or a completed healthcare provider certification may result in the denial of FML and the department may designate the non-FML leave as AWOL.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	5 of 10
	EFFECTIVE DATE	
July 20, 2010		

- B.** In the event an employee's medical condition requires immediate attention and is such that advance notice is impossible, the employee must give notice as soon as possible under the circumstances. In general, an employee should call his or her direct supervisor within one (1) business day to provide sufficient information regarding the employee's need for leave and to support a request for leave under FML.
- C.** When submitting a request for leave, the employee must provide sufficient information for the Leave Administrator to determine if the leave might qualify as FML, including:
- Employee's name and ID number;
 - Identify whether leave is for employee's own health condition or a family member;
 - If leave is for the employee's own health condition, identify if condition is work-related, non-work related, or parental leave;
 - If leave is for family member, identify if leave is for parent, spouse or child under age 18;
 - Start date of leave (or expected start date); and,
 - Whether leave is expected to be continuous or intermittent.

Employees must comply with department "call-in" policies. Also note, calling in "sick" is not sufficient to determine the leave requested is FML. Sufficient information the employee must provide may include information that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for family medical leave.

- D.** Employees must inform the supervisor, payroll clerk or designee if the requested leave is for a reason for which FML was previously taken or certified. The supervisor, payroll clerk or designee must notify the Leave Administrator of the requested FML. Employees will be required to provide a healthcare provider certification and periodic recertification supporting the need for leave to the Leave Administrator.
- E.** If an employee takes leave because of the employee's own serious health condition or to care for an immediate family member, the employee must contact the Leave Administrator before the expiration of the approved FML and report whether the employee is able and intends to return to work. The Leave Administrator may establish intervals for continued reporting, as long as it is not unduly burdensome on the employee or enforced unequally. In addition, the employee must notify the Leave Administrator if the dates of the leave change, are extended, or were initially unknown. Notice must be given within two (2) business days if feasible, or as soon as possible.
- F.** An employee on FML due to the employee's own serious health condition is required to present a return to work or fitness-for-duty certification from his or her healthcare provider to the Leave Administrator in accordance with Administrative Directive 2.01-7,



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	6 of 10
	EFFECTIVE DATE	
July 20, 2010		

Medical Authorization to Return to Work Form. If the employee fails to promptly provide the “completed” fitness-for-duty certification or a new medical certification, the FML request will be denied and the leave will be designated as non-FML.

- G. If the employee fails to notify the Leave Administrator within two (2) business days of returning to work that the absence was for an FML reason and provide the healthcare provider medical certification, the employee cannot claim that the absence was for an FML reason.

VIII. HUMAN RESOURCES AND DEPARTMENT RESPONSIBILITIES

A. Department Responsibilities

1. Department shall ensure that the FMLA notice is prominently posted where it can be readily seen by employees. The poster and text must be large enough to be easily read and contain fully legible text.
2. Departments will immediately notify the Leave Administrator of any potentially qualifying medical leaves and/or requests for FML.
3. Departments will promptly notify the Leave Administrator when an employee who has been on continuous FML and/or medical leave returns to work.

B. Leave Administrator Responsibilities

The Leave Administrator shall ensure that required FML notices are issued in accordance with this administrative directive and applicable federal law, including:

1. Notice of Eligibility and Rights and Responsibilities

Upon an employee's request or immediately upon acquiring knowledge that an employee's leave may be for an FML-qualifying reason, the employee's supervisor must notify the Leave Administrator. Within five (5) business days, absent extenuating circumstances, the Leave Administrator must issue a “Notice of Eligibility and Rights and Responsibilities” notifying the employee of the employee's 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 healthcare provider form. Failure to return the completed form in a timely manner may result in denial of leave request.

2. Designation Notice

Within five (5) business days of making a determination that the leave qualifies for FML, absent extenuating circumstances, the Leave Administrator will issue



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	7 of 10
	EFFECTIVE DATE	
July 20, 2010		

a Designation Notice notifying the employee of the determination and designation of leave as FML or non-FML. In addition, a Designation Notice must be provided at the commencement of the first instance of leave for each FML-qualifying reason in the applicable twelve-month (12) period. All FML absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable twelve-month (12) period, as defined in Section III of this Administrative Directive.

3. Return to Work Certification

If the employee is on FML due to the employee's own serious health condition, the employee will be required to present a return to work or fitness-for-duty certification from his or her healthcare provider to the Leave Administrator before they will be cleared to return to work ().

- C. The Leave Administrator will promptly notify the employee's department of the employee's leave status and any subsequent changes, re-certifications and/or pending return to work.
- D. The department may not designate leave as FML after an employee has returned to work unless the department has confirmed with the Leave Administrator that the leave qualifies as FML and is designated as FML in accordance with the Administrative Directive.
- E. Eligible employees who have had an industrial injury will be notified that their leave time will be designated as FML leave. However, employees who are released to work on light duty will not have light duty hours counted toward FML leave hours.

IX. MEDICAL CERTIFICATION

- A. The employee must submit a healthcare provider certification form, completed in accordance with the instructions on the form to the Leave Administrator, for leaves taken because of the employee's or immediate family member's serious health condition or for leaves of more than five (5) consecutive work days. Employees shall be given at least fifteen (15) days to provide medical certification. If the employee is requesting intermittent use of leave, the certification must indicate the medical necessity for such request (see Section VII (A) of this Administrative Directive).
- B. If the Leave Administrator deems a healthcare provider certification form insufficient or incomplete, the Leave Administrator shall specify in writing what information is lacking, and give the employee seven (7) calendar days to correct the deficiency. The Leave Administrator may also request that the City physician obtain the information directly from the employee's physician with the employee's written permission.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	8 of 10
	EFFECTIVE DATE	
July 20, 2010		

- C. A new medical certification will be required on an annual basis from employees who are subject to conditions lasting longer than a single year, and such new certifications will be subject to second or third opinions.
- D. If the department director and/or Leave Administrator have reason, the employee may be required to obtain a second opinion (in some cases a third) at the employer's expense. Any such request shall be coordinated and approved by the Human Resources Director. The Leave Administrator 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 ultimately establish the employee's entitlement to FML, the leave shall not be designated FML and it will be treated as paid or unpaid leave under the Employee Leaves Administrative Directive 2.01-7.
- F. All documentation related to the employee's or immediate family member's medical condition will be maintained at Human Resources Department as part of the employee's confidential medical record.
- G. When the leave is designated as FML-qualifying, the employee will be notified that a Medical Authorization to Return to Work form must be completed by the employee's treating physician or a fitness-for-duty examination may be required. If the employee fails to provide the requested Medical Authorization to Return to Work, submit to a fitness-for-duty examination or a medical recertification, the employee may be subject to termination.

X. RECERTIFICATIONS

- A. Normally, medical recertification will be requested, but not until the minimum duration of the certification period has passed, and no more frequently than every thirty (30) days. Employees shall be given at least fifteen (15) days to provide the recertification.
 - 1. The City may require recertification at any time when any the following apply:
 - Circumstances described by the previous certification such as the severity of the condition or the duration or frequency of absences have changed significantly; or
 - The City 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 leave.
 - 2. If the recertification does not ultimately establish the employee's entitlement to FML, leave shall not be designated FML and it will be treated as paid or unpaid leave under the Employee Leaves Administrative Directives 2.01-7.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	9 of 10
	EFFECTIVE DATE	
	July 20, 2010	

3. All recertifications will be coordinated and approved by the Human Resources Department. Recertifications shall be at the employee's expense and no second or third opinion may be required. Human Resources will notify the employee's department of any change in the employee's leave status.
4. A new certification will be required on an annual basis for conditions lasting longer than a single year, and such new certifications will be subject to second or third opinions (See Section IX (C), above).

XI. EFFECT ON BENEFITS

- A. An employee granted FML under this policy will continue to be covered under the employee's chosen group health insurance plan, dental insurance plan, life insurance plan, and the long-term disability plan under the same conditions as coverage would have been provided if they had been continuously employed during the leave period in accordance with and subject to city contracts and administrative directives and applicable laws. The City's portion of medical, life, dental and long-term disability insurance premiums for the employee and dependents will be paid.
- B. Employee contributions will be required either through payroll deduction or by direct payment to Human Resources - Employee Benefits. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's contribution is more than thirty (30) days late, Employee Benefits may terminate the employee's insurance coverage.
- D. An employee on unpaid leave is not entitled to leave accrual after ten (10) days of unpaid leave. However, any leave that would have otherwise accrued during an unpaid period of FML, maximum of twelve (12) weeks, will be added to the employee's leave balance(s) upon the employee's return to work.
- E. Unpaid FML will not affect an employee's anniversary date.
- F. Employees on FML may cancel their voluntary benefits, including flexible spending accounts, for the rest of the coverage period by revoking an existing election. They may also have the coverage reinstated with the same terms as applied before the FML.

XII. JOB PROTECTION

- A. If the employee returns to work within the twelve (12) weeks allowed for FML, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status, and authority.



ADMINISTRATIVE DIRECTIVE

FAMILY AND MEDICAL LEAVE (FML)	NUMBER	PAGE
	2.01-7C	10 of 10
	EFFECTIVE DATE	
July 20, 2010		

B. The employee's restoration 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.

XIII. 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: FML Packet

All forms may be obtained through the Human Resources Leave Administrator

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
- 2.01-7E Donated 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 Director of Human Resources will review this directive annually, based on date of publication.

Authorized



 City Manager

8-17-10

 Date