



**REVISED JULY 1, 2024**

## **FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY**

References:

U.S. Department of Labor, Wage and Hour Division  
Health Insurance Portability and Accountability Act of 1996  
29 Code of Federal Regulations (CFR) §§ 825.100, et seq.  
U.S. Code, Title 29, Chapter 28 §§ 2601, et seq.  
City of Detroit Charter  
City of Detroit Civil Service Rules

### **PURPOSE:**

The Family and Medical Leave Act (FMLA) provides eligible City of Detroit employees the opportunity to take job-protected leave for specific reasons while maintaining group health benefits for the duration of the leave. The FMLA seeks to accomplish this in a manner that meets the City's operational needs while protecting the rights of employees to take leave for qualifying events.

### **SCOPE:**

This policy applies to all City of Detroit Departments or Agencies and their employees.

Independent Contractors and Volunteers are not covered by the provisions of the FMLA. Elected officials are expressly excluded from coverage under the FMLA.

Employees who are not eligible for FMLA should contact their Department's HR Office or HR Employee Services Consultant/Manager to determine if other leave options are available.

### **POLICY:**

#### **A. ELIGIBILITY REQUIREMENTS:**

Employee eligibility is determined by the provisions of the FMLA which require the employee to have a minimum of twelve (12) months of service and have worked at least 1,250 hours within the previous twelve (12) months prior to the employee's need for leave.

(FMLA) provides eligible employees up to 12 weeks of unpaid leave for certain family, military caregiver or exigency and for eligible medical reasons during a rolling 12-month period. FMLA leaves may be taken for any one or more of the following reasons:

- ***Employee's own serious health condition***
- ***For the birth and care of the newborn child of an employee***
- ***For placement with the employee of a child for adoption or foster care***
- ***Care of a spouse, child, parent with a serious health condition***



The FMLA also provides specific provisions for military-related leave:

- **Military Exigency Leave** – allows eligible employees who have a spouse, child, or parent in the National Guard or Reserves, to take FMLA leave due to a qualifying exigency resulting from the covered family member’s active military duty, or call to active-duty status
  
- **Military Caregiver Leave** – allows eligible employees to take FMLA to care for the service member when:
  - The employee is the spouse, child, parent, or next kin of a service member in the Regular Armed Forces, National Guard or Reserves and;
  - The service member has incurred a serious injury or illness in the line of duty while on active duty.

The maximum amount of Military Caregiver Leave is twenty-six (26) weeks in a rolling twelve (12) month period, per injury/illness basis measured forward from the first date of said leave.

## **B. FMLA CALENDAR and OTHER CONSIDERATIONS**

Effective July 1, 2024, the twelve (12) month FMLA period for all City employees in all departments and agencies will move from a fiscal year calendar to “rolling calendar”.

The Rolling Calendar shall be defined as the twelve (12) months preceding the first day of the current intended FMLA absence (i.e., the prior 12 months). This method, referred to as the “Rolling Year Method”, uses the 12-month period measured back from the date an employee takes any FMLA leave.

Employees are entitled to take FMLA leave on a continuous basis or on an intermittent (reduced) leave schedule. When intermittent leave is requested, it may be necessary to determine hourly equivalents. A “week” is equal to the number of straight time hours the employee is normally scheduled to work or be paid in a work week. The full allotment would be the number of hours, times the number of eligible weeks. For days or part of days off work for FMLA purposes, only the scheduled hours off work can be counted against the employee’s FMLA allotment.

Absences from work due to an exercise of an employee’s rights under the FMLA shall not be used against an employee. In addition, absences from work due to an intermittent leave schedule will not be considered in an employee’s attendance record for disciplinary, promotional or performance evaluation purposes.

A covered employee has the right to return to the same or equivalent position after the leave, except in the case of a Reduction in Force or position elimination that is unrelated to, and not based on the employee’s FMLA status.

NOTE: Highly Compensated employees designated as Key Employees may not, in all instances, have the right to be reinstated at the conclusion of their leave if the reinstatement would cause substantial and grievous injury to the City.



### **C. EMPLOYEE REQUIRED NOTICE TO EMPLOYER**

Employees shall provide 30 days advance notice of the need to take FMLA when the need is foreseeable. When a 30-day notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide notice of the need for leave as soon as practicable under the facts and circumstances of their situation.

Employees shall inform the City of Detroit if the requested leave is for a reason for which FMLA leave was previously taken or certified.

In certain cases, leave may be taken on an intermittent basis, or the employee may work a reduced schedule. Intermittent leave must be necessary and should be scheduled, where possible, to avoid disruption to department operations.

### **D. 2-STEP CALL-IN PROCEDURE**

All City employees<sup>1</sup> must follow a 2-step process for reporting FMLA time taken on an intermittent basis. Employees must contact Absence Plus and follow their department call-in procedures.

Employees using FMLA Intermittent Leave must inform the City's Leave Management Vendor, AbsencePlus on the same day of the incident to ensure proper FMLA documentation.

**To Notify AbsencePlus**  
**Call 313-586-7020 or E-mail [detabsence@absenceplus.com](mailto:detabsence@absenceplus.com)**

This Policy does not exempt employees from following their department's well-established call-in procedures. Failure to notify AbsencePlus may result in the loss of FMLA job protection. Similarly, employees must notify their supervisor or risk potential disciplinary action for not adhering to their department's call-in procedure(s).

### **E. NOTICE TO EMPLOYEE**

The City of Detroit is required to inform employees requesting leave of their eligibility within 5 business days of the date of the employee's request for leave. Upon receipt and review of requested supporting documentation, the City's Human Resources Department will notify the employee in writing if their request is approved or denied via Designation Notice.

### **F. MEDICAL CERTIFICATION**

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<sup>1</sup> AbsencePlus administers leave for all City departments and agencies including the Detroit Police Communications Bureau (911). AbsencePlus does not support any other DPD personnel or bureau.



It is the employee's responsibility to provide a timely, complete and sufficient medical certification. Employees must provide medical certification within 15 calendar days after an FMLA has been requested. The City of Detroit will notify employees if the medical certification is incomplete or insufficient and will provide the employee with 7 calendar days to correct any deficiencies. The City may also require a second opinion, from an independent health care provider of its choice. If the two opinions conflict; the Employer may pay for a third and final binding medical opinion from a health care provider approved by both the Employer and Employee.

In accordance with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, Human Resources staff may contact an employee's health care provider for authentication or clarification of the medical certification.

If an employee chooses not to provide authorization to clarify or authenticate certifications with their health care provider, the FMLA leave may be denied.

#### **G. MEDICAL RE-CERTIFICATION**

Medical certifications may be requested once every 30 days if FMLA time was used within a thirty (30) day period. Employees will be given at least 15 calendar days to provide medical recertification.

If the medical certification indicates that the minimum duration of the condition is more than 30 days, the City will wait until that minimum duration expires before requesting a recertification, unless:

- (1) The employee requests an extension of leave;
- (2) Circumstances described by the previous certification have changed significantly; or
- (3) The City receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

Any recertification requested by the employing department must be approved by HR. Any cost associated with the employee's recertification will be at the employee's expense unless the City provides otherwise.

#### **H. CERTIFICATIONS SUPPORTING NEED FOR MILITARY FAMILY LEAVE**

Employees requesting leave due to a qualifying exigency arising out of active duty or call to active-duty status of a covered military member are required to provide the following:

- a. A copy of the covered military member's active-duty orders or other documentation issued by the military indicating that the covered member is on active-duty or call to active-duty status and the dates of the covered military member's active duty service;
- b. A certification setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of a new active-duty order or other documentation issued by the military for leaves due to qualifying exigencies



arising out of a different active duty or call to active-duty status of the same or a different covered military member.

#### **I. RETURN TO WORK/FITNESS FOR DUTY MEDICAL CERTIFICATIONS**

An employee returning to work from FMLA due to their own serious health condition shall provide a medical certification confirming they are able to return to work and the employee's ability to perform the essential functions of the returning position, with or without reasonable accommodations.<sup>2</sup>

#### **J. NOTICE OF ELIGIBILITY**

The City will provide written notification of FMLA eligibility within 5 business days of receiving the employee's FMLA request. The written notice shall specify the employee's rights and responsibilities; if the leave is designated as FMLA qualifying, conditional or non-qualifying; the amount of leave, if known, that will be counted against the employee's leave entitlement; and their rights and responsibilities in associated with the leave.

If an employee is deemed not eligible for FMLA, the City shall provide at least one reason for the denial.

#### **K. FMLA DESIGNATION BY THE CITY OF DETROIT**

FMLA designation arises whenever the employee requests time off from work for an FMLA qualifying leave. The employee does not have to specifically cite the FMLA to be entitled to their rights under the Act.

Whether or not the employee cites FMLA, the City can designate the time off as FMLA time and notify the employee in writing of this designation. The leave will be counted as FMLA.

#### **L. PAID/UNPAID LEAVE**

The City of Detroit may designate time off for a qualifying condition as FMLA leave. Additionally, the City requires that all employees<sup>3</sup> with an approved or designated FMLA use their accrued time-off banks during the leave period.

- a. FMLA Personal - Employees who are approved for either a continuous or intermittent FMLA Personal leave are required to use and completely exhaust all sick

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<sup>2</sup> Employees who are subject to legally mandated testing or examination (CDL, FTA, etc.) shall follow related return to work procedures.

<sup>33</sup> Excludes All Sworn/Uniform Police



banks, accrued vacation and other comparable time-off banks prior to placement on an unpaid leave of absence. A cascading order will be utilized when pulling from the employee's available time off banks. (See Appendix A)

- b. FMLA Family - Employees who are approved for either continuous or intermittent FMLA Family leave are required to use three (3) sick days and exhaust all vacation and other comparable time-off banks prior to placement on an unpaid leave of absence. A cascading order is utilized when pulling from the employee's available time off banks. (See Appendix A)

#### **M. FMLA AND OTHER CITY LEAVES**

Civil Service Rule 14 provides information on existing leaves of absence policies and procedures. City policies and practices remain in effect with modifications necessitated by the FMLA to ensure continued compliance with the law.

Employees who are on a paid FMLA leave, though still considered "Active", will be reflected as being on a Leave of Absence in the City's HR Information Systems (HRIS).

All FMLA leaves will run concurrent with the City's Medical Leave of Absence and PPL. An employee requesting time off for an FMLA-qualifying purpose cannot "waive" their right to a FMLA-designated leave and apply instead for a health, parenting or personal leave.

Paid Parental Leave (PPL) runs concurrently with FMLA.

#### **N. HEALTH CARE BENEFITS AND PREMIUM SHARING**

Pursuant to the provisions of the FMLA, an eligible employee who currently has health care benefits and is off work on paid or unpaid leave authorized under the FMLA, is entitled to have their health care benefits maintained during the period of absence in the same manner as if they were actively employed. This includes hospital, medical, dental, vision, and prescription drug programs. The employee must continue to make any premium sharing payments if their FMLA leave is unpaid. Failure to make such payments will result in a discontinuance of health insurance.

Employees may elect not to have their care benefits continued while on unpaid leave for FMLA purposes. Such an election must be in writing and signed by the employee. For employees on Workers' Compensation, the City of Detroit will provide health care coverage during any period the employee is supplementing from his/her sick banks. For employees who are unable to supplement from their sick banks the City provides health care benefits in accordance with applicable law and contractual agreement(s).

#### **O. WORKER'S COMPENSATION, LTD, SICKNESS AND ACCIDENT (S&A)**



If an employee is on an approved Worker's Compensation leave due to an on-the-job injury or illness, which also qualifies as a serious health condition under the FMLA, the Worker's Compensation absence and FMLA leave shall run concurrently. The FMLA designation will not affect the employee's ability to receive Worker's Compensation benefits.

Similarly, any employee on S&A or Long-term Disability which qualifies as a serious health condition under the law will run FMLA leave concurrently.

The time will be designated as FMLA and will count against an employee's FMLA allotment with the notice of action to the employee.

#### **P. NO OUTSIDE EMPLOYMENT WHILE ON LEAVE**

While on FMLA or during any other authorized leave of absence, an employee is strictly prohibited from working for another employer or engaging in undisclosed business activities without proper disclosure to the City of Detroit Board of Ethics, and without approval from their Department Director or designee. Such actions may constitute a violation of the Ethics Ordinance and/or result in discipline; up to and including termination.

#### **CONCLUSION**

The City of Detroit is committed to complying with all federal regulations pertaining to the Family and Medical Leave Act (FMLA). For information related to other leaves or for any questions about this FMLA policy or if an employee believes their rights have been violated, please contact the Human Resources Department.

*Appendix A: Time-off Banks Order of Cascade for Paid FMLA*

*Appendix B: Summary of Policy Changes for Rev. 7-1-24*

*Appendix C: Link to U.S. DOL, FMLA Employee Guide <https://www.dol.gov/whd/fmla/employeeguide.htm>*

Policy Enacted: 1997

Rev. 1- 4/1998, Rev. 2- 2/2007, Rev. 3- 9/2010, Rev. 4- 7/2013, Rev. 5- 10/2013, Rev. 6- 10/2018, Rev. 7- 07/01/24



## FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

### (APPENDIX A)

#### CASCADING ORDER FOR TIME-OFF BANKS

#### FMLA PERSONAL - (CONTINUOUS & INTERMITTENT)

When a City of Detroit employee<sup>4</sup> elects to receive payment for an approved **FMLA - Personal leave (Continuous and Intermittent)**, paid time will be deducted from the employee's bank in the following cascading order. Once the highest bank is depleted, the hours from the next bank will be used.

All City of Detroit departments and agencies will use this cascade. Therefore, only the time-off banks associated with the employee's job, bargaining unit and department will apply. For example: An HR employee must exhaust all Sick banks prior to using Vacation time. Likewise, an employee at DDOT who does not accrue Sick or Vacation time will be paid from their CLD bank until exhausted before the cascade will flow to their CLT bank.

- FMLA - Prior Sick
- FMLA - Reserve Sick
- FMLA - Sick
- FMLA - Swing Holiday
- FMLA - Floating Holiday
- FMLA - Must Use Vacation
- FMLA - Bonus Vacation
- FMLA - Bonus Furlough
- FMLA - Extra Furlough
- FMLA - Prior Furlough
- FMLA - Furlough
- FMLA - Vacation
- FMLA - Must Use Comp time
- FMLA - Comp Time
- FMLA - CLD
- FMLA - CLT
- FMLA - Unpaid

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<sup>4</sup> This Cascade does not apply to DPD Sworn/Uniform Personnel



## **FMLA FAMILY - (CONTINUOUS & INTERMITTENT)**

When a City of Detroit employee<sup>5</sup> elects to receive payment for an approved **FMLA - Family leave (Continuous and Intermittent)**, paid time will be deducted from the employee's bank in the following cascading order. Once the highest bank is depleted, the hours from the next bank will be used.

All City of Detroit departments and agencies will use this cascade. Therefore, only the time-off banks associated with the employee's job, bargaining unit and department will apply. For example: A general City employee must exhaust all Sick banks prior to using Vacation time. Likewise, an employee at DDOT who does not accrue Sick or Vacation time will be paid from their CLD bank until exhausted before cascading to their CLT bank.

- FMLA - Family Sick Prior
- FMLA - Family Sick Reserve
- FMLA - Family Sick *Note: An employee on FMLA Continuous Family will only be allowed 3 days of sick leave*
- FMLA - Swing Holiday
- FMLA - Floating Holiday
- FMLA - Must Use Vacation
- FMLA - Bonus Vacation
- FMLA - Bonus Furlough
- FMLA - Extra Furlough
- FMLA - Prior Furlough
- FMLA - Furlough
- FMLA - Vacation
- FMLA - Must Use Comp time
- FMLA - Comp Time
- FMLA - CLD
- FMLA - CLT
- FMLA - Unpaid

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<sup>5</sup> This Cascade does not apply to DPD Sworn/Uniform Personnel



## FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

### (APPENDIX B)

#### SUMMARY OF POLICY CHANGES & POLICY HIGHLIGHTS Rev. 7 - 07.01.2024

**Appendix B is intended to identify revisions made to the FMLA Policy.  
This is not intended to substitute, amend, or otherwise alter the  
approved Rev. 7 of the FMLA Policy.**

#### **A. SCOPE**

This policy applies to all City of Detroit Departments or Agencies and their employees.

This policy applies to highly compensated, decision-making employees in “key” positions throughout the City. A "key employee" is a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the City.

Independent Contractors and Volunteers are not covered by the provisions of the FMLA. Elected officials are expressly excluded from coverage under the FMLA.

#### **B. FMLA CALENDAR and OTHER CONSIDERATIONS**

Effective July 1, 2024, the twelve (12) month FMLA period for all City employees in all departments and agencies shall be defined as the twelve (12) months preceding the first day of the current intended FMLA absence (i.e., the prior 12 months). This method, referred to as the Rolling Year Method, uses the 12-month period measured backward from the date an employee takes any FMLA leave.

#### **D. DUAL REPORTING REQUIREMENTS**

All City employees shall follow a 2-step process for reporting FMLA time taken on an intermittent basis. (1) Contact AbsencePlus at 313-586-7020 or email [detabsence@absenceplus.com](mailto:detabsence@absenceplus.com), and (2) Contact immediate supervisor or follow department call-in procedure.

#### **P. NO UNAUTHORIZED OUTSIDE EMPLOYMENT WHILE ON LEAVE**

While on FMLA or during any other authorized leave of absence, an employee is prohibited from working for another employer or engaging in undisclosed business activities without formal approval from their department leader. Such actions may result in discipline, up to and including termination.

