



CITY OF HOUSTON

Administrative Procedure

Subject: **Family and Medical Leave**

A.P. No.

3-2 Revised

Effective Date:

Upon Approval

1. AUTHORITY

- 1.1 Article VI, Section 7a, of the City Charter of the City of Houston; the Family and Medical Leave Act (FMLA).

2. PURPOSE

- 2.1 To ensure each employee's federally mandated protections under the FMLA are respected.

3. OBJECTIVES

- 3.1 To establish procedures and forms for the City of Houston in compliance with the FMLA.

4. DEFINITIONS

Benefit Year - The 12-month period beginning September 1 and ending August 31.

Continuing Treatment - A period of incapacity of more than three consecutive full calendar days combined with at least two visits to a health-care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a condition that is chronic, permanent, long-term, or requiring multiple-treatments.

Covered Active Duty - The duty of a member of the regular or the reserve component of the Armed Forces of the United States (U.S. Armed Forces) during deployment to a foreign country or order to active duty.

Covered Servicemember - A current member of the U.S. Armed Forces, including a member of the National Guard or Reserves, who:

- (1) Incurs a serious injury or illness in the line of active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy for the serious injury or illness;
- (2) is in outpatient status;
- (3) is on the temporary disability-retired list;
- (4) is a veteran who was discharged within five years of the date on which the veteran undergoes the medical treatment recuperation or therapy.

Approved:

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Date Approved:

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Department – The City Department to which the employee is assigned.

Eligible Employee - Any employee who has worked for the City for at least one year and who has been physically at work at least 1,250 hours during the previous twelve months, to be determined as of the date the proposed leave is to begin.

FMLA Leave - Paid or unpaid leave for eligible employees that may be taken under certain conditions.

Health-Care Provider - A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, or any other person determined by the City to be capable of providing health-care services.

Covered Servicemember Leave – Leave made available to eligible employees who are the spouse, son, daughter, parent or next of kin of the service member, may take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

Military Family Leave – Leave made available to eligible employees with a spouse, son, daughter, or parent on active duty or call to active-duty status in the U.S. Armed Forces, National Guard or Reserves in support of a contingency operation may use the 12-week leave entitlement to address certain qualifying exigencies.

Parent - A biological parent of an eligible employee or an individual who stood in *loco parentis* (in the place of a parent) to an eligible employee when the eligible employee was a son or daughter.

Qualifying Exigencies - The attending of certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, or attending post-deployment reintegration briefings.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves an overnight stay in a medical care facility or continuing treatment by a health-care provider.

Serious Injury or Illness - An injury or illness:

- (1) that was incurred by a member of the U.S. Armed Forces, National Guard, or Reserves in the line of active duty in the U.S. Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in the line of active duty and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or
- (2) in the case of a veteran who was a member of the U.S. Armed Forces, the National Guard, or Reserves at any time in the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy for a qualifying injury or illness that was incurred by the member in the line of duty while on active duty in the U.S. Armed Forces, or existed before the beginning of the member's active duty and was aggravated by service in line of active duty in the U.S. Armed Forces, and that manifested itself before or after the member became a veteran.

Son or Daughter - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under eighteen years of age; or who is eighteen years of age or older and incapable of self-care because of a mental or physical disability.

Veteran - A person who served in the active U. S. military, naval, or air service, and who was discharged or released under conditions other than dishonorable.

5. SCOPE

- 5.1 This Administrative Procedure (also referred to as “the policy”) applies to all City of Houston employees and departments.

6. RESPONSIBILITIES

- 6.1 Eligible employees shall inform their supervisor or FMLA coordinator of the need to take FMLA leave for up to 12 weeks of job-protected leave for the following qualifying reasons:
- 6.1.1 Incapacity due to pregnancy, prenatal medical care or childbirth, limited to a single 12-month period.
 - 6.1.2 Because of the birth, or to care for the employee’s child after birth, or placement of a child with the employee for adoption or foster care, limited to a single 12-month period.
 - 6.1.3 Care for the employee’s spouse, child or parent, who has a serious health condition, during the benefit year.
 - 6.1.4 A serious health condition that makes the employee unable to perform the employee’s job, during the benefit year.
 - 6.1.5 Military family leave, limited to a single 12-month period.
- 6.2 Eligible employees shall inform their supervisor or FMLA coordinator of the need to take FMLA leave for up to 26 weeks of leave for the following reason:
- 6.2.1 Covered servicemember leave
The department shall make, keep, and preserve confidential records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act and the FMLA.
 - 6.2.2 The department shall not interfere with, restrain, or deny the exercise of any right provided under FMLA; nor discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
 - 6.2.3 Violations of this policy may be reported in writing to the Human Resources Director.

7. PROCEDURE

- 7.1 Employer Notice
- 7.1.1 Each department shall post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor’s (DOL) Wage and Hour Division. The notice shall be posted prominently where it can be readily seen by employees and applicants for employment. (Attachment B; Form A)
 - 7.1.2 Each department shall also include the notice in employee handbooks or other

written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or distribute a copy of the general notice to each new employee upon hiring.

7.2 Employee Notice

7.2.1 When an employee provides notice of the need for FMLA leave, the employee shall state a qualifying reason for the leave and satisfy the requirements for notice of foreseeable or unforeseeable leave, below. The employee does not need to expressly mention FMLA. (Attachment C; Form B).

7.2.2 When an employee provides notice of the need for FMLA leave, the employee shall inform the department if the employee's spouse is also an employee of the City.

7.3 Foreseeable Leave

7.3.1 An employee shall provide at least 30 calendar days advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon:

7.3.1.1 an expected birth;

7.3.1.2 placement for adoption or foster care;

7.3.1.3 planned medical treatment of the employee, a family member; or

7.3.1.4 planned medical treatment of a covered servicemember.

7.3.2 When planning medical treatment, the employee shall consult with the department and make a reasonable effort to schedule the treatment so as not to unduly disrupt the department's operations, subject to the approval of the health-care provider.

7.4 Unforeseeable Leave

7.4.1 When the approximate timing of leave is not foreseeable, an employee shall provide notice to the department as soon as practicable under the facts and circumstances of the particular case, and within the time prescribed by the department's usual and customary notice requirements applicable to such leave.

7.4.2 For military family leave due to a qualifying exigency, the employee shall provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable.

7.5 Compliance with Department Requirements

7.5.1 The department shall require an employee to comply with its usual and customary notice and procedural requirements for requesting leave. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

7.6 Eligibility Notice

7.6.1 When an employee requests FMLA leave, or when the department acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the department shall notify the employee of the employee's eligibility for FMLA leave.

If the employee is not eligible for FMLA leave, the notice shall state at least one reason why the employee is not eligible. Absent extenuating circumstances, the department shall provide the eligibility notice within five business days in writing. (Attachment E; Form D)

7.7 Certification of Leave

7.7.1 The department shall require that an employee's FMLA leave be supported by certification. The department shall give notice of a requirement for certification each time certification is required. At the time the department requests certification, the department shall advise the employee of the consequences of failure to provide adequate certification.

7.8 Medical Certification of Serious Health Condition

7.8.1 When leave is taken for the serious health condition of an employee or of a family member, the department shall require the employee to obtain a medical certification from a health-care provider. (Attachment F, G, H; Forms E or F)

7.8.2 An employee may choose to comply with the certification requirement by providing the department with an authorization, release, or waiver allowing the department to communicate directly with the health-care provider. To make such contact, the department shall use a health-care provider, a human-resources professional, a leave administrator, or a management official. The employee's direct supervisor shall not contact the employee's health-care provider. (Attachment K; Form I)

7.9 Certification of Covered Servicemember Leave

7.9.1 When an employee takes covered servicemember leave, the department shall require the employee to obtain certification completed by an authorized health-care provider of the covered servicemember, and a confirmation of a covered family relationship to the seriously injured or ill covered servicemember. (Attachment P; Form M-SHC)

7.9.2 The department shall not require information beyond that specified in the regulations. The department shall accept as sufficient certification invitational travel orders or invitational travel authorizations issued to any family member to join an injured or ill servicemember at his or her bedside.

7.9.3 The department may seek authentication or clarification of the certification under the procedures described above. The department may not seek a second opinion, third opinion, or recertification.

7.10 Timing of Certification Requests

7.10.1 Absent extenuating circumstances, the department shall request certification at the time the employee gives notice of the need for leave or within five business days thereafter, or in the case of unforeseen leave, within five business days after the leave commences. The department may request certification at a later date if the department has reason to question the appropriateness of the leave or its duration. The employee shall provide the requested certification to the department

within 15 calendar days after the department's request, unless it is not practicable to do so despite the employee's diligent, good faith efforts.

7.11 Certification of Qualifying Exigency for Military Family Leave

7.11.1 The first time an employee requests military family leave because of a qualifying exigency, the department shall require the employee to provide certification by providing a copy of the military member's covered active-duty orders or other

documentation issued by the military. This certification or other document must indicate that the military member is on covered active duty or call to active-duty status in support of a contingency operation, and the dates of the military member's cover active-duty service. (Attachment O; Form M-QE)

7.12 Failure to Provide Certification

7.12.1 If the employee fails to provide the department with a complete and sufficient certification or fails upon request to provide necessary information to make the certification complete and sufficient, the department may deny FMLA leave.

7.13 Rights and Responsibilities Notice

7.13.1 Each time the department provides an eligibility notice to an employee, the department shall also provide a written rights and responsibilities notice. (Attachment B, D; Forms A, C)

7.14 Designation Notice

7.14.1 When the department has sufficient information to determine whether leave is being taken for a FMLA-qualifying reason, the department shall notify the employee whether the leave will be designated as FMLA leave. If the department determines that the leave will not be designated as FMLA-qualifying, the department shall notify the employee of that determination. Absent extenuating circumstances, the department shall provide the designation notice within five business days in writing. (Attachment I; Form G)

7.15 Retroactive Designation

7.15.1 The department may retroactively designate leave as FMLA leave with appropriate notice to the employee if the department's failure to timely designate leave does not cause harm or injury to the employee. In addition, the department and an employee may agree that leave will be retroactively designated as FMLA leave.

7.16 Incomplete or Insufficient Certification

7.16.1 The department shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing the additional information necessary to make the certification complete and sufficient. The department shall provide the employee 15 calendar days to submit the additional information.

7.17 Authentication and Clarification

7.17.1 If an employee submits a complete and sufficient certification signed by the

health-care provider, the department shall not request additional information from the health-care provider. However, the department may contact the health-care provider for purposes of clarification and authentication of the certification after the department has given the employee an opportunity to provide additional information as set forth above. To make such contact, the department shall use a health-care provider, a human-resources professional, a leave administrator, or management official. The employee's direct supervisor shall not contact the employee's health-care provider.

7.18 Recertification

7.18.1 The department shall not request recertification less than every 30 calendar days

unless the employee's condition changes. The employee must be allowed 15 calendar days to provide recertification.

7.18.2 As part of the recertification for leave taken because of a serious health condition, the department may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

7.19 Intent to Return to Work

7.19.1 The department shall require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The department's policy regarding such reports shall not be discriminatory and shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

7.20 Fitness for Duty Certification

7.20.1 As a condition of restoring an employee who took FMLA leave, which was not on an intermittent or reduced schedule and was due to the employee's own serious health condition, the department shall require certification from the employee's health-care provider confirming that the employee is able to resume work, including the employee's ability to perform essential job functions. (Attachment L; Form J)

7.21 Length and Duration of Leave

7.21.1 Except in the case of covered servicemember leave, an eligible employee's FMLA leave is limited to a total of 12 workweeks during a benefit year for any one or more of the qualifying reasons.

7.21.1.1 Spouses who are employed by the City shall be limited to a combined total of 12 weeks of FMLA leave during the 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

7.22 Intermittent or Reduced Leave Schedule

7.22.1 FMLA leave may be taken intermittently or on a reduced leave schedule under

certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

7.22.2 For intermittent or reduced schedule leave taken because of the employee's own serious health condition, or to care for a parent, son, or daughter with a serious health condition, or covered servicemember leave, there must be a medical need for leave that can be best accommodated through an intermittent or reduced leave schedule. Military family leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

7.22.3 When leave is taken after the birth of a healthy son or daughter or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule for bonding purposes, provided the leave is taken

in one (1) week increments for each instance of leave. When need for this leave is taken after the birth of a healthy son or daughter or placement of a healthy child for adoption or foster care, the employee shall consult with the department and make a reasonable effort to schedule the leave so as not to unduly disrupt the department's operations.

7.23 Transfers to Alternative Position

7.23.1 If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the department may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave.

7.24 Calculating Leave Use

7.24.1 When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken shall be counted toward the employee's FMLA leave.

7.25 Paid Leave Requirement

7.25.1 The City requires the employee to use accrued or available paid leaves for FMLA leave before using unpaid leave. The employee may choose the order in which type of paid accrued or available leave, consistent with the terms and conditions of the department's normal leave policy. However, if the employee chooses to use sick leave, it may only be used for the employees own serious health condition or for the care of the employee's spouse, son or daughter or parent, who has a serious health condition of if the employee chooses to use paid parental leave, it may only be used to bond and care for a child after the birth, adoption or foster to adopt placement and in compliance with AP 3-16, Prenatal, Parental and Infant Wellness Leaves.

7.25.2 Wellness, accrued holiday, or floating holiday leave shall not be used for FMLA leave.

7.25.3 If a Council-declared holiday occurs during an employee's paid FMLA leave, the holiday is considered observed and that day's absence shall not be charged against the paid leave. If a Council-declared holiday occurs during an employee's

unpaid FMLA leave, the holiday shall be without pay. However, for purposes of determining the amount of FMLA used by an employee when the day preceding and the day following the holiday are FMLA, the holiday is counted as a FMLA holiday in the week of FMLA leave.

7.26 FMLA and Worker's Compensation

7.26.1 An absence covered by workers' compensation for an injury that also qualifies as a serious health condition for an eligible employee, shall also be counted as an FMLA absence.

7.26.2 Compensation for the absences covered by both workers' compensation and FMLA will be paid by workers' compensation benefits until such benefits are exhausted. Thereafter, the employee shall use accrued paid leave and then unpaid leave for the remaining period.

7.26.3 If the department offers a light duty job to the employee whose absence is covered by both workers' compensation and FMLA, and the employee refuses

the offer, the employee may be denied further workers' compensation payments and salary continuation benefits; however, the employee remains on FMLA leave until the employee's FMLA leave is exhausted.

7.27 Maintenance of Health Benefits

7.27.1 During any FMLA leave, the City shall maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

7.28 Recovery of Benefit Cost

7.28.1 If an employee fails to return to work after FMLA leave has been exhausted or expires, the City may recover from the employee the City's share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of these reasons identified in FMLA regulations.

7.29 Right to Reinstatement

7.29.1 On return from FMLA leave, an employee shall be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

7.30 Pay Increases and Incentives

7.30.1 An employee shall receive unconditional pay increases that may have occurred during the FMLA leave period, such as across-the-board increases.

7.30.2 An employee on FMLA leave shall receive the same consideration for pay increases based on seniority or length of service according to the department's policy or practice with respect to other employees on an equivalent leave status

for a reason that does not qualify as FMLA leave.

7.30.3 If the department provides incentives, (including preferential-shift schedules, personal leave days, awards, or other payments based on the achievement of a specified goal, such as hours worked or perfect attendance), and the employee does not meet the specified goal, the incentive shall be denied. If an employee does not meet the specified goal due to non-FMLA leave and is denied the incentive, then an employee on FMLA leave (for an equivalent reason as the non-FMLA employee) who does not meet the specified goal shall also be denied the incentive.

7.31 Key Employee

7.31.1 The department may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic harm to the operations of the department.

8. CONFLICT AND REPEAL

8.1 This Administrative Procedure supersedes Executive Order No. 1-34, which shall be of no further force or effect.

9. LEGAL REFERENCE

9.1 The Family and Medical Leave Act of 1993, and its implementing regulations.

9.2 This policy does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

9.3 The FMLA and corresponding regulations shall be referenced for questions regarding a definition or any perceived ambiguity.