



## **Administrative Regulations Office of the Mayor**

**Title:** FAMILY MEDICAL LEAVE ACT (FMLA)

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### **I. Purpose**

It is the intent of the City of Richmond to provide employees with the opportunity to balance the demands of the workplace and family matters by taking job protected leave under the terms of the Family Medical Leave Act (FMLA). The purpose of this policy is to set forth procedures and identify responsibilities as to ensure consistent and appropriate application of the FMLA.

### **II. Policy**

This policy defines the City's procedures for compliance with the FMLA, circumstances in which family medical leave may be taken, notice provisions, certifications requirements, recordkeeping, coordination with other types of leave, reinstatement, and other issues related to the FMLA. The City of Richmond uses the 12-month period measured forward method for determining the 12-month period in which the twelve (12) workweeks of leave entitlement occur; an eligible employee may also take up to twenty-six (26) workweeks of leave during a "single 12-month period" to care for a covered service-member. If this regulation or a portion thereof, is at variance with federal regulations, federal regulations shall prevail. See Section X. for a definition of terms used and Appendix A for forms referenced in this regulation.

### **III. Eligibility**

#### **A. To be eligible for FMLA leave, a City employee must:**

1. Be employed by the City for at least twelve (12) months. The twelve (12) months need not be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven (7) years or more, the time worked prior to the break will not count unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement outlining the employer's intention to rehire the employee after the break in service.
2. Have worked a minimum of 1,250 hours of service during the 12-month period immediately preceding the commencement of leave.

For the purpose of determining whether an employee meets the 1,250 hour requirement, the legal standards established under the Fair Labor Standards Act (FLSA) shall apply. Therefore, all hours which the City permits the employee to work are counted toward the total hours worked. Vacation, sick, holiday, or any other form of leave hours (paid or unpaid) will not count towards the total hours worked (with the exception of Military leave).

### **IV. Types and Duration of Leave**

#### **1. Basic FMLA Leave**

An employee meeting the eligibility requirements described in Section III. A, may take up to twelve (12) workweeks of FMLA leave for the following reasons:

- a. For the birth and care of a newborn child of the employee (to be taken within twelve (12) months after the birth). Leave for the birth of a newborn child must be taken as a continuous block of leave;



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- b. For the adoption or foster care placement of a child with the employee (to be taken within twelve (12) months after the date of placement). Bonding leave for adoption or foster care placement may be taken as a continuous block of leave or intermittent;
- c. To care for an immediate family member (as defined in Section X: Definitions) with a serious health condition; or
- d. To take medical leave when the employee is unable to work because of a serious health condition.

**2. Qualifying Exigency – Military Family Leave**

An employee meeting the eligibility requirements may take up to twelve (12) workweeks of FMLA leave arising out of the fact that the spouse, son, daughter or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. A non-exclusive list of reasons for such leave includes the following:

- a. Short-notice deployment;
- b. Military events and related activities;
- c. Childcare and school activities; or
- d. Financial and legal arrangements.

Qualifying exigency may be taken on an intermittent or reduced leave schedule basis. If an employee needs intermittent leave or a reduced leave schedule that is foreseeable based on the reasons set forth in this section, the City may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee’s regular position. Such decision shall be at the City’s discretion.

The first time an employee requests leave because of a qualifying exigency, the DHR FMLA Coordinator may require the employee to provide a copy of the covered military member’s covered active duty orders or other documentation issued by the military which indicates the covered military member is on covered active duty or call to covered active duty status and the dates of the covered military member’s service.

**3. Military Caregiver – Military Family Leave**

Military caregiver leave provides an eligible employee up to a total of twenty-six (26) workweeks of unpaid, job-protected leave during a “single 12-month period” to care for a covered service member with a serious injury or illness. The “single 12-month period” begins on the first day the eligible employee takes military caregiver leave and ends twelve (12) months after that date, regardless of the method used by the employer to determine the employee’s twelve (12) workweeks of leave entitlement for other FMLA-qualifying reasons. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member (Next of kin for a covered service member is: the nearest blood relative, other than the current service member’s spouse, parent, son or daughter, in the following order or priority: a blood relative who has been designated in writing by the service member as the next of kin for FMLA purposes; blood relative who has been granted legal custody of the service member; brothers and sisters; grandparents; aunts and uncles; first cousins).



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The caregiver entitlement is applicable on a per-covered service-member, per-injury basis, such that an eligible employee is entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered service members, or to care for the same service member with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any single 12-month period. Up to twelve (12) of the twenty-six (26) weeks may be for an FMLA-qualifying reason other than military caregiver leave (e.g., for own serious FMLA health condition).

When leave is taken to care for a covered service-member (i.e., caregiver leave), the DHR FMLA Coordinator may require the employee to obtain a certification completed by an authorized health care provider of the covered service-member, including (i) a United States Department of Defense (“DOD”) health care provider; (ii) a United States Department of Veterans Affairs health care provider; (iii) a DOD TRICARE network authorized private health care provider; or (iv) a DOD non-network TRICARE authorized private health care provider.

Recertification does not apply to leave taken for a qualifying exigency or to care for a covered military service member.

#### **4. Military Caregiver leave for a Veteran**

This FMLA leave provides an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered veteran with a serious injury or illness to take up to twenty-six (26) workweeks of unpaid leave during a “single 12-month period” to provide care for the veteran. The “single 12-month period” begins on the first day the eligible employee takes military caregiver leave and ends twelve (12) months after that date, regardless of the method used by the employer to determine the employee’s twelve (12) workweeks of leave entitlement for other FMLA-qualifying reasons. This provision allows qualified family members leave to care for a veteran up to five (5) years after ending active duty. A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a covered veteran if he/she: was a member of the Armed Forces (including a member of the National Guard or Reserves), was discharged within the five-year period before the eligible employees first takes FMLA military caregiver leave to care for him/her. Up to twelve (12) of the twenty-six (26) weeks may be for an FMLA-qualifying reason other than military caregiver leave (e.g., for own serious FMLA health condition).

When leave is taken to care for a covered service-member (i.e., caregiver leave), the DHR FMLA Coordinator may require the employee to obtain a certification completed by an authorized health care provider of the covered service-member, including (i) a United States Department of Defense (“DOD”) health care provider; (ii) a United States Department of Veterans Affairs health care provider; (iii) a DOD TRICARE network authorized private health care provider; or (iv) a DOD non-network TRICARE authorized private health care provider.

### **V. Use of Protected Leave**

#### **A. Continuous Leave/Intermittent Leave/Reduced Schedule**

FMLA leave provides for continuous, intermittent or reduced schedule leave. Intermittent leave is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time.

The employee is expected to make a reasonable effort to schedule treatment so as not to unduly disrupt the department’s operations, subject to the approval of the healthcare provider. When intermittent leave is used for reduced work schedule for a medical necessity due to a serious health condition or military exigency, the employee



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must notify his/her supervisor, upon request, of the reasons why the intermittent/reduced work schedule is necessary and of the schedule for treatment, if applicable. Additionally, absent unusual circumstances, calling in "sick" without providing more information will not be considered sufficient notice for the supervisor to make a determination if absence should be considered FMLA eligible. Employees are reminded of Personnel Rules Section VI – Working Conditions and Benefits, which governs the use of sick leave and the department's procedures established for the use thereof.

For the purpose of FMLA leave, a reduced schedule leave is a leave that reduces an employee's number of scheduled working hours per day, or per week.

**B. Limitations/Restrictions**

**1. Same Employer**

Where two City employees eligible for leave under FMLA are married to each other, the two (2) together are eligible for:

- a. A combined total of up to twelve (12) workweeks of leave for basic FMLA leave for the following FMLA-qualifying reasons:
  1. The birth of a son or daughter and bonding with the newborn child;
  2. The placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child; and
  3. The care of a parent with a serious health condition
- b. When one spouse uses a portion of the entitlement, the other spouse is entitled to the remainder of the entitlement.
- c. The limitation on the amount of leave for spouses working for the same employer does not apply to FMLA leave taken for some qualifying reasons. Eligible spouses who work for the same employer are each entitled to take up to twelve (12) workweeks of FMLA leave in a 12-month period, without regard to the amount of leave of their spouses use, for the following FMLA-qualifying leave reasons:
  1. The care of a spouse or son or daughter with a serious health condition;
  2. A serious health condition that makes the employee unable to perform the essential functions of his/her job; or
  3. Any qualifying exigency arising out of the facts that the employee's spouse, son or daughter, or parent is a military member on "covered active duty."

**2. Non-Qualified Conditions**

- a. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are



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examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths is serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

- b. Substance abuse may be applicable under the FMLA provided the provisions of a serious health condition and continuing treatment are met. However, FMLA leave may only be taken for treatment for substance abuse by a healthcare provider or by a provider of health care services on referral by a healthcare provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

Note: Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his/her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, which provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

### C. Tracking and Monitoring Family Medical Leave

If the request is FMLA-qualifying, the employee is required to submit a paper Application for Leave form/Rapids Absence Management Request for approval through his/her supervisor, indicating the appropriate FMLA leave category (FMLA Paid Maternity, FMLA Paid Bonding, FMLA Adoption/Foster Care Placement, FMLA Paid Sick Parent, FMLA Sick, FMLA vacation, FMLA compensatory time, or FMLA leave without pay). *The agency's Timekeeper, in conjunction with the HR Liaison, will track and monitor employee's FMLA leave. For Fire, Police and the Department of Emergency Communication, the employee's supervisor, in conjunction with the HR Liaison, and Timekeeper, will track and monitor employee's FMLA leave.*

## VI. Procedures

### A. Notification

1. **Supervisor's Responsibility:** Supervisors must notify the agency's HR Liaison if his/her employee is:
  - a. Out for more than 3 consecutive workdays;
  - b. The employees indicates he/she is going to be out due to their own serious health condition;
  - c. When the supervisor has knowledge that leave may be covered by the FMLA;
  - d. There is a Serious Health Condition of an "immediate family member" as defined in the FMLA Administrative Regulation's Definitions section;
  - e. There is a Qualifying Exigency related to active duty service members, National Guard or Reserve active duty service; or
  - f. Caregiver Leave is needed for serious injury of spouse, son, daughter, parent, or next-of-kin in military service; has been expanded to include care for veterans who are undergoing medical treatment, recuperation,



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or therapy for serious injury/illness that occurred any time during the five (5) years preceding the date of treatment.

2. **Employee's Responsibility:** Employees must first notify his/her immediate supervisor of the need for FMLA leave. Notification only to the agency's HR Liaison is not acceptable.
  - a. Employees should provide thirty (30) day advance notice if the need to take FMLA leave is anticipated. The notice may be verbal initially, followed by notice in writing on the Certification of Healthcare form submitted by the employee from his/her physician. If thirty (30) days is not practicable because of the employee's circumstances, including a medical emergency, notice must be given as soon as practicable.

For foreseeable leave due to qualifying military exigency, notice and supporting documentation must be provided as soon as practicable.
  - b. If leave is unforeseeable, including when it is impossible to predict accurately when the leave will be needed, the employee must provide notice as soon as practicable. "As soon as practicable," for purposes of this paragraph only, means within the time prescribed by the City's usual and customary notice requirements applicable to such leave.
  - c. When an employee seeks additional FMLA leave within the applicable twelve (12) month period for the same FMLA-qualifying reason for which the City already provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave.
  - d. Whether FMLA leave is continuous, intermittent, or on a temporary reduced schedule basis, written notice need only be given one time via the completed Certification of Healthcare form (if form is required) the employee submitted for approval. However, the employee must advise his/her immediate supervisor as soon as practicable of the dates of a scheduled leave, a change in his/her condition, or if the leave is extended or reduced.
3. **HR Liaison's/Timekeeper/Supervisor (if applicable) Responsibility:** The agency's HR Liaison, in conjunction with the Timekeeper, will determine if the employee meets the minimum service requirements and available FMLA balance. The HR Liaison must:
  - a) Provide the employee with a completed U.S. Department of Labor (DOL) – Notice of Eligibility and Rights and Responsibilities form (WH-381), U.S. Department of Labor (DOL) Fact Sheet #28, within five (5) business days of the leave request. He/she must advise the employee how to access the FMLA Administrative Regulation, 4.3.
  - b) Provide the employee with a copy of the job description and the appropriate Certification of Health Care Provider form (if form is required) or Certification for Qualifying Exigency form and instruct him/her to have the form completed and returned to the DHR FMLA Coordinator within 15 calendar days. No FMLA certification form is required for leave to bond with a healthy newborn child or a child placed for adoption or foster care. However, reasonable documentation of the qualifying family relationship will be required. **Note: Providing the job description is mandatory for the FMLA leave if there is a return-to-duty certification requirement upon the employee's return (not necessary for bonding reasons).**
  - c) Advise the employee of the anticipated consequences for failure to provide adequate certification/documentation, such as denial of FMLA leave request and the employee being on an unprotected leave.





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The HR Liaison and/or Supervisor (if applicable) must provide all of the above-mentioned items within five (5) business days after the employee's request, or in the case of unforeseen leave, within five (5) business days after the leave commences.

#### **B. Required Certification**

Employees are required to provide medical certification when requesting FML for their own serious health condition or to care for an immediate family member due to their serious health condition. Also an employee's leave due to a qualifying exigency or to care for a covered military service member with a serious health condition must be supported by a medical certification and/or supporting documentation.

No FMLA certification form is required for leave to bond with a healthy newborn or a child placed for adoption or foster care. Reasonable documentation of the qualifying family relationship will be requested.

**Employee Responsibility:** Employees must submit a complete and sufficient certification form to the DHR FMLA Coordinator within fifteen (15) calendar days or provide a reasonable explanation for the delay. This applies in any case where the City requests a certification permitted under the FMLA, whether it is the initial certification, a re-certification, a second or third opinion, or a return-to-duty certification.

If the employee fails to provide complete and sufficient certification, or fails to provide any certification, the DHR FMLA Coordinator may deny the taking of FMLA leave.

#### **DHR FMLA Coordinator Responsibility:**

##### **1. Initial Review of Certification/Documentation**

The DHR FMLA Coordinator will evaluate the FMLA certification form to ensure that it is complete and the information on the form is sufficient. In the event the certification is incomplete or insufficient, the employee shall be given seven (7) calendar days, unless not practicable, to cure any such deficiency. If the certification is not provided when requested, or if the employee fails to provide a complete and sufficient certification after being given seven (7) days to cure any deficiencies, the FMLA Coordinator may deny the taking of FMLA leave. A certification is considered incomplete if one or more of the applicable entries has not been completed. A certification is considered insufficient if the information provided is vague, ambiguous or non-responsive.

For FMLA bonding leave or FMLA leave for foster care or adoption placement, reasonable documentation of the qualifying family relationship will be required.

If the DHR FMLA Coordinator has reason to doubt the authenticity of the certification (if certification is required) or requires clarification of information contained in the certification, he/she may contact the employee's healthcare provider for purposes of clarification and authentication. This will be done after notifying the employee using a Designation Notice form (Form W-H 382) and allowing the employee seven (7) calendar days to cure any deficiencies. The DHR FMLA Coordinator, on behalf of the employee, may send the certification back to the employee's healthcare provider indicating the areas in need of clarification or completion.

The DHR FMLA Coordinator may require the employee to obtain a second opinion (at the City's own expense) from a healthcare provider selected or approved by the City, if there is reason to doubt the validity or the medical certification, unless access to healthcare providers is extremely limited. If the second opinion differs from that in the employee's certification, a third opinion (at the City's expense) may be obtained from a healthcare provider selected or approved jointly by the City and the employee. The third opinion will be final and binding.



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If the employee fails to provide complete and sufficient certification, despite the opportunity to cure the deficiency as noted above, or fails to provide any certification, the DHR FMLA Coordinator may deny the taking of FMLA leave. Note: Employers may not use a request for confirmation of a family relationship in a manner which interferes with an employee's exercise or attempt to exercise his/her FMLA rights.

## 2. Designation Notice

- a. After review of the employee's completed certification form or reasonable documentation of the qualifying family relationship for bonding, or adoption and foster care placement, the DHR FMLA Coordinator will send the employee a cover letter (with copies sent to the agency's HR Liaison and Timekeeper, and to the employee's supervisor) and an FMLA Designation Notice within five (5) business days of receipt of the employee's first notice of the need for FMLA leave. The FMLA Designation Notice will state one of the following:
  1. *That the employee's request for leave has been approved.* If approved, the FMLA Designation Notice must specify:
    - a. The amount of leave that is designated and counted against the employee's FMLA entitlement;
    - b. The type of FMLA leave needed by the employee (continuous or intermittent) and the beginning and end dates of intermittent leave;
    - c. The need for unscheduled leave (if applicable);
    - d. That paid leave will be used if the employee has available accruals during FMLA leave (sick, vacation, compensatory time and paid parental); and
    - e. That the employee is required to present a return-to-duty certificate to be restored to employment (only applicable if the employee is out for a serious injury or illness of their own or if the job requires it).
  2. *That the employee's request for leave has been denied.*
  3. *That additional information is needed.* If the Designation of Notice requires additional information, the employee must provide the requested additional information within seven (7) calendar days.
- b. **Retroactive Designation** - The DHR FMLA Coordinator may retroactively designate leave as FMLA leave with the appropriate written notice to the employee provided the failure to timely designate the leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, the DHR FMLA Coordinator and the employee can mutually agree that leave be retroactively designated as FMLA leave. The DHR FMLA Coordinator may also designate leave as FMLA leave after he or she acquires the requisite knowledge to make a determination that the leave qualifies as FMLA leave and such designation may be retroactive to the beginning of the leave to the extent permitted by the FMLA leave.
- c. **Employee's Responsibility:** If the Designation Notice indicates the leave as FMLA-approved, the employee is expected to follow ALL items checked/indicated on the Designation Notice form. Additionally, the employee is required to complete the Application for Leave form/submit a Rapids Absence Management Request for approval through his/her supervisor, indicating the FMLA leave category (Paid Maternity, Paid Bonding, FMA Adoption/Foster Care Placement, Paid Sick Parent, FMLA sick, FMLA vacation, compensatory time, or leave without pay), so that the leave can be tracked and monitored.





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### **Re-certification**

An employer may, under certain circumstances, request that an employee “recertify” his or her serious health condition or the serious health condition of his/her family member within the same leave year. In general, an employer may request the employee provide a recertification no more often than every 30 days and only when the employee is actually absent or has requested to be absent.

In some instances, an employer must wait longer than 30 days to request recertification. If the initial certification indicates that the minimum duration of the serious health condition will be more than 30 days, an employer must generally wait until that minimum duration expires before requesting recertification. In all cases, an employer may request recertification every six months in connection with an absence. If the initial medical certification indicates that the employee will need intermittent or reduced schedule leave for longer than six months, including cases where the serious health condition has no anticipated end, the employer may request a recertification every six months, but only in connection with an absence by the employee.

**HR Liaison/Supervisor (if applicable) Responsibility:** If a recertification of an employee’s FMLA leave is requested, the HR Liaison must provide the employee with the necessary paperwork as they did during the initial request for FMLA leave (U.S. Department of Labor (DOL) – Notice of Eligibility and Rights and Responsibilities form (WH-381), U.S. Department of Labor (DOL) Fact Sheet #28, and a copy of the job description).

**Employee’s Responsibility:** The employee must provide the recertification no later than fifteen (15) calendar days after the request, unless it is not practicable to do so despite the employee's diligent efforts. If the DHR FMLA Coordinator has reason to doubt the authenticity of the certification or requires clarification or verification of information contained in the certification, he/she may contact the health care provider for purposes of clarification and authentication after notifying the employee using a Designation Notice Form WH-382 and allowing employee seven (7) calendar days to cure any deficiencies.

**DHR FMLA Coordinator Responsibility:** The DHR FMLA Coordinator may require the employee to obtain a second opinion (at the City’s expense) from a healthcare provider selected or approved by the City, if there is reason to doubt the validity or the medical certification, unless access to healthcare providers is extremely limited. If the second opinion differs from that in the employee’s certification, a third opinion (at the City’s expense) may be obtained from a healthcare provider selected or approved jointly by the City and the employee. The third opinion will be final and binding.

Recertification does not apply to leave taken for birth or bonding of a newborn child, a qualifying exigency, or to care for a covered military service member.

### **C. Return-to-Duty**

#### **1. Rights on Returning to Duty**

After the end of an approved FMLA leave and the provision of any required return-to-duty certifications, the employee will be returned to the position he/she held immediately before the leave or to an equivalent position, with equivalent benefits, pay and other terms and conditions of employment.

Notwithstanding the above, the employee shall have no greater right to job restoration or to other benefits and conditions of employment than if the employee had been continuously at work and not taken FMLA (e.g., if the employee would have been laid off during the leave) or if the employee was hired for a specific term or only to work on a specific project and the term or project has ended.



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The City can deny an employee's return-to-duty after FMLA leave in the following instances:

- a. When an employee fails to timely provide the required notifications and certification;
- b. If an employee gives unequivocal notice of intent not to return to work, the City's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee to employment are no longer required; or
- c. If the employee is unable to perform the essential job functions of the position because of a physical or mental condition, including the continuation of a serious health condition. However, the employee may have rights for reasonable accommodation in accordance with the ADA/AADAA. The DHR ADA Coordinator will provide guidance to the employee and the department in determining the most appropriate course of action for the employee's return to duty. The DHR ADA Coordinator will be guided in its determination by the City's ADA Policy (Administrative Regulation 4.1) and Disability Procedures (Administrative Regulation 4.2).

#### **2. Notification of Return-to-Duty**

**Employee's Responsibility:** An employee must provide the City two days' notice of his/her anticipated return to work date and any change in circumstances impacting the employee's return to work date, where feasible. If possible, the employee should provide as much notice as possible. If the employee has been out on continuous FMLA leave due to his/her own serious health condition, he/she must provide a release to return to duty to his/her supervisor who will forward copies to their agency's HR Liaison and to the DHR FMLA Coordinator.

#### **3. Return-to-Duty (Fitness-for-Duty) Certification**

When an employee was on FMLA leave due to his/her own serious health condition, the employee is required to provide a return-to-duty certification from his/her healthcare provider. Such certification should address only the health condition that caused the need for FMLA leave and should state whether the employee is able to perform all of the essential functions of his/her job. If any restrictions are stated on the return-to-duty notification, the department must determine if any temporary accommodations can be made to the employee's position for the stated period of time until the employee is released to full and active duty. The cost of the return-to-duty certification shall be paid by the employee.

The DHR FMLA Coordinator may contact the employee's healthcare provider for purposes of clarifying and authenticating the return-to-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The City of Richmond may not delay the employee's return to duty while contact with the employee's healthcare provider is being made. Fitness-for-duty examinations must be job-related and consistent with business necessity.

#### **D. Exhaustion of Family Medical Leave – Extended Leave Approval**

1. The employee will be provided with written notice when his/her continuous leave is exhausted or is about to exhaust from the DHR FMLA Coordinator. For intermittent leave, the departmental Timekeeper, or Supervisor (if applicable) is responsible for informing the DHR FMLA Coordinator if intermittent leave is exhausted or is about to be exhausted. If, after completing the twelve (12) workweeks of FMLA leave, or the twenty-six (26) workweeks of military caregiver FMLA leave, an employee still has an accrued balance of sick or vacation leave, or compensatory time, the Appointing Authority shall continue to approve leave provided certification documentation is furnished by the employee or the employee's representative.



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2. Once an employee has exhausted all of his/her paid or unpaid FMLA sick or vacation leave, or compensatory time (if applicable), and all other available paid leave, it is at the discretion of the employee's Appointing Authority to approve leave without pay, in accordance with Personnel Rule 6.10 – Leave without Pay. The employee will need to submit a letter with supporting documentation to the Appointing Authority indicating the length of time still needed. In accordance with Personnel Rule - Section I - General Provisions – an employee in leave without pay status will not accrue vacation or sick leave during that period. When an employee returns from approved extended leave, he/she will start to accrue leave again.
3. Employees who fail to return to duty after exhausting all FMLA entitlement and/or who are medically released to return to work shall be subject to separation from City service.

### **E. Termination of Family Medical Leave**

1. FMLA leave and all of the employee's rights during or following FMLA leave under this policy will automatically terminate, if and as of the date, the employee notifies the immediate supervisor, agency HR Liaison or the DHR FMLA Coordinator of the employee's intent not to return to work.
2. If an employee fails to comply with the requirements of this policy (e.g., fails to provide any necessary medical certifications), the DHR FMLA Coordinator may delay, deny or terminate the employee's FMLA leave. In such cases, all of the employee's rights during or following FMLA leave under this policy will automatically terminate. The employee's position will no longer qualify as protected under FMLA and the employee may be subject to separation from the City.
3. If an employee on FMLA leave takes any actions which would entitle the City to terminate the employee's employment if he/she were an active employee (e.g. reduction-in-force), the City may terminate the employee's FMLA leave and employment. In such cases, all of the employee's rights during or following FMLA leave under this policy will automatically terminate. The employee's position will no longer qualify as protected under FMLA and the employee may be subject to separation from the City.

## **VII. Benefits and Pay During Family Medical Leave**

The taking of leave under this Regulation shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced, except paid leave taken under this regulation.

### **A. Health, Life, Dental and Retirement Benefits**

The employee's rights to benefits other than group health benefits during a period of FMLA leave is to be determined in accordance with the City's policy for providing such benefits when employees are on other forms of leave (i.e., vacation leave).

The employee is responsible for paying his/her share of premium costs for health insurance coverage and Defined Benefit Retirement Plan contributions while the employee is on a leave without pay (LWOP) status. If the employee's insurance coverage includes dependent family members, that coverage will remain in effect provided the employee maintains its share of the required premiums. Payment arrangements must be made with DHR. The employee's failure to pay his/her portion of the premiums while he or she is on FMLA leave may result in the cancellation of coverage.

The City will pay its share of the eligible employee's existing health insurance coverage, based upon its standard formula for paying any employee's health premiums, during the period of FMLA leave. The action is conditioned



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upon the employee returning to work for the City at the end of the leave period. The City will pay its share of retirement contributions (Defined Contribution) only if the employee is in a 'paid' status.

The City's obligations to maintain health insurance coverage ceases under FMLA leave if the employee's premium payment is more than thirty (30) days late, provided that the City will first mail written notice to the employee notifying the employee that the payment has not been received. Such notice shall be mailed to the employee at least fifteen (15) days before coverage is to cease.

If an employee does not return to work for the City for at least thirty (30) calendar days after completion of his/her FMLA leave, the City may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee. No repayment will be required, however, if the failure to return to work was due to: the continuation, reoccurrence or onset of either a serious health condition of the employee or the employee's qualified family member; or a serious injury or illness of a covered service member; or other circumstances beyond the employee's control. Other circumstances beyond the employee's control mean that the employee is unable to work, he/she is disabled by a serious health condition, he/she is needed to care for a seriously ill qualified family member, or because the employee's circumstances suddenly and unexpectedly changed during the leave.

If an employee gives notice of his or her intent not to return to work, the City's obligations under the FMLA to maintain health benefits (subject to COBRA requirements) cease.

#### **B. Pay Status during Family Medical Leave**

##### **1. Use of Sick and Vacation Leave Accruals and Compensatory Time**

FMLA leave may be paid or unpaid. If sick or vacation accruals are available, the employee is required to use sick and vacation leave in conjunction with the FMLA leave. If compensatory time is available, the compensatory time is to be applied first. If the employee's sick and vacation accruals are exhausted, the FMLA leave shall be unpaid. City policy requires that employee's must use existing compensatory leave and/or shared leave donations before being placed in a LWOP status in Rapids.

Once an illness/injury has been designated as FMLA-qualifying, all leave taken for the treatment or recuperation for that condition must be recorded and deducted from the FMLA entitlement.

##### **2. Paid Parental**

Paid Parental leave will be used in conjunction with FMLA leave and shall be applied prior to using FMLA sick and FMLA vacation leave, FMLA compensatory time, or FMLA LWOP categories. Please see Administrative Regulation 4.3-A for information about the paid parental leave.

#### **VIII. Recordkeeping**

All requests for leave (approved and denied) must be documented within the City's timekeeping process and/or the City's Employee Self-Service System Rapids. In accordance with the law, medical certifications and any pertinent medical documentation must be kept in a separate confidential file and treated as confidential medical records. Because of the confidential nature of certification documents, these documents must be maintained in a confidential medical record by the DHR FMLA Coordinator.



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#### IX. Miscellaneous

- A. This policy shall provide no rights and imposes no obligations other than those required by the FMLA or its corresponding regulations. To the extent that any provision of this policy conflicts with the FMLA or its regulations, the FMLA and its regulations shall govern.
- B. The City has the authority to interpret and apply this policy.
- C. This policy may be modified or amended by the City at any time.
- D. If an employee exhausts all available FMLA leave without returning to work, the City reserves the right to terminate the employee's employment.

#### X. Definitions

**12-month period measured forward** – Under this policy, FMLA leave will be measured using a 12-month period measured forward method, starting from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period.

**Covered Service-Member** - A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**Employment Benefits** - All benefits provided or made available to employees by the City of Richmond, including group health insurance for the employee and his/her family, life insurance, dental insurance, sick leave, vacation leave, educational benefits, and retirement. Employees will not accrue leave or creditable service towards retirement during any period of leave without pay.

**Healthcare Provider** - The FMLA defines health care provider as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Secretary to be capable of providing health care services; Others capable of providing health care services include only: (i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; (ii) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and



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(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law: (i) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

### **Immediate Family Member –**

(1) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides.

(2) Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section. This term does not include parents “in law.” For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.

**In loco parentis** - Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

**Incapable of Self-Care** - Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

**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 would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

**Needed to care for an Immediate Family Member** - Encompasses both physical and psychological care. Includes providing basic medical, hygienic, or nutritional needs, safety, transportation to medical treatment, filling in for others who are caring for the family member, as well as making arrangements for changes in care, such as transfer to a nursing home. This includes situations where the employee is needed intermittently when care responsibilities are shared with another family member or a third party.

**Serious Health Condition** – an illness, injury, impairment, or physical or mental condition that involves: 1) an inpatient care in a hospital, hospice, or residential medical care facility; or 2) continuing treatment by a healthcare provider. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths is serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions as defined by the FMLA are met.

### **Serious injury or illness –**

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered service-member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty





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in the Armed Forces and that may render the service-member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is: (i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service-member unable to perform the duties of the service-member's office, grade, rank, or rating; or (ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, rank, or rating; or (ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or (iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers; or (iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

**XI. Regulation Update**

The Department of Human Resources shall be responsible for modifications and interpretation of this Policy.

RECOMMEND APPROVAL:

*Selenskyff* 6/24/19  
CHIEF ADMINISTRATIVE OFFICER

APPROVED:

*JMA*  
MAYOR



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#### *APPENDIX A*

##### *Forms*

1. Certification of Health Care Provider for Employee's Serious Health Condition – Form WH – 380E  
<http://www.dol.gov/whd/forms/WH-380-E.pdf>
2. Certification of Health Care Provider for Family Member's Serious Health Condition – Form WH – 380E  
<http://www.dol.gov/whd/forms/WH-380-F.pdf>
3. Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave – Form WH – 385-V  
<http://www.dol.gov/whd/forms/wh385V.pdf>
4. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave – Form WH – 385  
<http://www.dol.gov/whd/forms/WH-385.pdf>
5. Certification of Qualifying Exigency for Military Family Leave – Form WH – 384  
<http://www.dol.gov/whd/forms/WH-384.pdf>
6. Designation Notice to Employees of FMLA Leave – Form WH – 382  
<http://www.dol.gov/whd/forms/WH-382.pdf>
7. Family Medical Leave Act (FMLA) Fact Sheet  
<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>
8. Notice of Eligibility and Rights & Responsibilities – Form WH – 381  
<http://www.dol.gov/whd/forms/WH-381.pdf>