



POLICY AND PROCEDURE

SUBJECT: FAMILY AND MEDICAL LEAVE ACT POLICY

DATE: APRIL 27, 2015

NUMBER: HR-15-001

POLICY STATEMENT

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Eligible employees will be granted up to twelve (12) weeks of unpaid family, medical, or exigency leave during a twelve (12)-month period in accordance with the Family and Medical Leave Act (FMLA). Eligible employees will be granted up to twenty-six (26) workweeks of unpaid leave to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is a family member or next of kin, during a single twelve (12)-month period in accordance with the FMLA as amended from time to time.

During this leave, an eligible employee is entitled to continued group health plan coverage as if the employee had continued to work, however the employee will not accrue vacation/sick time during unpaid family and medical leave (FML). At the conclusion of the leave, subject to some exceptions, an employee generally has a right to return to the same or an equivalent position.

PURPOSE OF THE POLICY

To ensure eligible employees are provided FML in accordance with applicable law.

DEFINITIONS

City means the City of Riviera Beach.

Covered Service Member means a member of the Armed Forces, including 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 an injury or illness incurred or aggravated in the line of duty on covered active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank or rating.

Covered Veteran means an individual who was discharged or released under conditions other than dishonorable at any time during the five (5)-year period prior to the first date the eligible employee takes FML to care for the covered veteran.

Family member means a spouse, parent, or child.

Spouse is anyone recognized as a spouse through a legal marital relationship. A spouse includes an individual married to an eligible employee in a legal same-sex



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marriage, including a common law marriage, where such marriage is recognized in the state or country where the marriage took place.

Parent means a biological parent or an individual who legally stands or stood in the place of the biological parent.

Child means an individual under eighteen (18) years of age who is the biological, adopted or foster child, a stepchild, a legal ward/guardian or child of a person standing in the place of the biological parent. Child may also include an adult child where the adult child is incapable of self-care because of a mental or physical disability at the time the leave is to commence where the child also has a serious health condition.

Exigency Leave is leave related to, or necessitated by, the covered active duty or call to covered active duty status of a covered military member. Covered active duty, in the case of a member of a regular component of the Armed Forces, means duty during the deployment of the member with the Armed Forces to a foreign country. With respect to a member of a reserve component of the Armed Forces, covered active duty means duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty.

Next of Kin means the nearest blood relative of the Covered Service Member (other than the spouse, parent, or child of the Covered Service Member) in the following order of priority: blood relative who has been granted legal custody of the covered service member by court decree or statute; brothers and sisters; grandparents; aunts and uncles; and first cousins; unless the Covered Service Member has specifically designated in writing another blood relative as the nearest blood relative for purposes of military caregiver leave under the FMLA.

Serious Health Condition means certain illnesses, injuries, impairments, or physical conditions as further defined in Section III, B, under "Types of Leave."

Service Member Leave means leave to care for the serious injury or illness of a family member or next of kin who is a Covered Service Member or Covered Veteran.

AUTHORITY

The City has authority to implement policies compliant with the Family Medical Leave Act pursuant to the Act and its implementing regulations.



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APPLICABILITY

This Policy and Procedure applies to all eligible employees as more fully described in the Eligibility Section of the Procedure.

PROCEDURE

I. NOTICE

Employees must provide the Human Resources Department with no less than thirty (30) days written notice of their intent to take FML when the leave is foreseeable. If such leave is unforeseeable, the employee shall provide notice to the Human Resources Department as soon as possible after the employee learns of the need for the leave. Employees on approved family leave, medical leave, exigency leave, or service member leave under this policy, with or without pay, must make at least monthly contact with the Human Resources Department during their absence. FML under this policy runs concurrently with all other paid or unpaid leaves of absence.

II. ELIGIBILITY

To be eligible for family leave, medical leave, exigency leave, or service member leave, an employee must have been employed by the City for at least twelve (12) months and must have actively worked for at least 1250 hours during the previous twelve (12)-month period. Employees must also work at a site with 50 or more City employees or where 50 or more City employees are located within 75 miles of the worksite.

In addition to the foregoing eligibility requirements, the employee must also show that the reason for the leave falls into one of the following categories:

- A. For the birth of a son or daughter, and to care for the newborn child;
- B. For the placement of a child with the employee for adoption or foster care, and to care for the newly placed child;
- C. To care for an immediate family member (spouse, child, or parent) with a serious health condition;
- D. When the employee is unable to work because of a serious health condition;
- E. To care for an injured or ill covered service member or covered veteran. The employee must be the family member or the next of kin of the covered service member or covered veteran.
- F. To address any qualifying exigency arising out of the fact that a spouse, child, or parent who is also a military member in the National Guard or Reserves or of a regular component of the Armed Forces when the military member is on covered active duty or called to covered active duty status and deployed to a foreign country.



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III. TYPES OF LEAVE

A. Leave due to Birth or Placement of a Child Through Adoption or Foster Care.

An eligible employee can take up to twelve (12) weeks of leave during a twelve (12)-month period measured backward from the first date FML is used. This applies equally to mothers and fathers. However, if both the mother and father are employed by the City, the aggregate number of workweeks of leave that both can receive is limited to twelve (12) work weeks during any twelve (12)-month period.

The entitlement to leave expires at the end of the twelve (12)-month period beginning on the date of the birth, or placement of the child.

Employees meeting the requirements of the City's sick leave policy are required to use their applicable sick leave and then the accrued vacation leave and any good cause days concurrently with FML before the leave becomes unpaid. Employees not meeting the requirements of the City's sick leave policy must use vacation leave concurrently with FML leave before the leave becomes unpaid or sick leave is used. After any accrued vacation leave is exhausted, employees may request to use their remaining accrued sick leave if they did not meet the requirements for using leave under the City's sick leave policy, or only met the requirements for a portion of the absence, before the leave becomes unpaid leave. To request to use the accrued sick leave, employees must submit the form "Employee Request to Apply Sick Leave to Unpaid FML Based upon Birth or Placement of a Child" to the Human Resources Department. All paid leaves of absence shall run concurrently with the FML.

This type of leave shall not be taken intermittently or on a reduced work schedule.

B. Leave due to the serious health condition of the employee or to care for a family member having a serious health condition.

An eligible employee can take up to twelve (12) weeks of leave during a twelve (12)-month period measured backward from the first date leave is used.

Serious health condition is defined as an illness, injury, impairment, or physical condition that involves:

1. Any period of incapacity or subsequent treatment connected with inpatient (overnight) care in a hospital, hospice, or residential medical care facility;
2. A period of incapacity requiring an absence of more than three (3) consecutive, full calendar days from work, school, or other regular daily activities and any



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subsequent treatment or period of incapacity relating to the same condition that also involves:

- a. Treatment two (2) or more times within thirty (30) days of incapacity, unless extenuating circumstances exist, by (or under supervision of) a health care provider; or
 - b. Treatment by a health care provider on at least one (1) occasion that results in a regimen of continuing treatment under supervision of a health care provider.
 - c. The first, or only, treatment visit under Subsections (a) or (b) must take place in person within seven (7) days of the first day of incapacity.
3. Any period of incapacity due to pregnancy, or for prenatal care;
 4. Any period of incapacity (or treatment therefore) due to a chronic serious health condition, which is defined as:
 - a. A condition that requires visits at least two (2) times per year for treatment by (or under the supervision of) a health care provider;
 - b. Continues over an extended period of time, including episodes of a single underlying condition; and
 - c. May cause episodic rather than a continuing period of incapacity such as asthma, diabetes and epilepsy.
 5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective such as Alzheimer's, stroke, or terminal diseases; or
 6. Any absences for restorative surgery after an accident or injury or to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated, such as chemotherapy, physical therapy, or dialysis.

Employees using FML for a serious health condition are required to exhaust their sick leave then their accrued vacation leave balance, as well as any good cause days, before FML becomes unpaid. All paid leaves of absence shall run concurrently with the FML.

Leave for the employee's own or a family member's serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary. The employee must try to schedule the intermittent leave to avoid undue disruption of the City's operations. The City may elect to transfer the employee to an alternative position



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for which the employee is qualified that has equivalent pay and benefits, which better accommodates the intermittent leave schedule.

C. Leave due to care for the serious injury or illness of a family member or next of kin who is a covered service member or covered veteran.

An eligible employee can take up to twenty-six (26) weeks of intermittent or consecutive leave during a single twelve (12)-month period, measured forward from the first date an employee uses FML, to care for a covered service member or covered veteran, who is:

- undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for an injury or illness incurred in the line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty) that may render the service member medically unfit to perform the duties of the service member's office, grade, rank or rating. Outpatient status means the service member is presently assigned to a military treatment facility as an outpatient or is assigned to a unit established for the purpose of providing command and control of service members receiving medical care as outpatients.
1. During the single twelve (12)-month period, eligible employees are entitled to a combined total of twenty-six (26) workweeks of leave for all types of FML;
 2. If both a husband and wife are employed by the City, the aggregate number of workweeks of leave that both can receive is limited to twenty-six (26) workweeks during the single twelve (12)-month period for service member leave or a combination of service member leave and the other types of FML available;
 3. If an eligible employee does not take all of the twenty-six (26) workweeks of leave entitlement under this section during the single twelve (12)-month period, the remaining part of the twenty-six (26) workweeks of leave entitlement is forfeited. However, the leave entitlement is applied on a per-covered-service member/veteran, per-injury basis such that an eligible employee may be entitled to take more than one (1) period of twenty-six (26) workweeks of leave if the leave is to care for a different covered service member/veteran or to care for the same service member/veteran with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any single twelve (12)-month period. When the eligible employee takes leave to care for more than one (1) covered service member/veteran or for a subsequent serious injury or illness of the same covered service member/veteran, and the single twelve (12)-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than twenty-six (26) workweeks of leave in each single twelve (12)-month period;



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4. Where leave qualifies as both leave to care for a covered service member/veteran and leave to care for a family member with a serious health condition during the single twelve (12)-month period, the City must designate such leave as leave to care for a covered service member/veteran in the first instance. This leave must not be designated and counted as both leave to care for a covered service member/veteran and leave to care for a family member with a serious health condition.
 5. Service member leave may be taken intermittently or on a reduced leave schedule when medically necessary. The employee must try to schedule the intermittent leave to avoid undue disruption of the City's operations. The City may elect to transfer the employee to an alternative position for which the employee is qualified that has equivalent pay and benefits which better accommodates the intermittent leave schedule.
 6. Employees using FML for service member leave are required to exhaust their sick leave then their accrued vacation leave balance, as well as any good cause days, before FML becomes unpaid. All paid leaves of absence shall run concurrently with the FML.
- D. Leave due to a qualifying exigency arising out of the fact that a spouse, child or parent, who is also a National Guard or Reserve or a service member of a regular component of the Armed Forces, is on covered active duty or called to covered active duty status***

An eligible employee can take up to twelve (12) weeks of leave during a twelve (12)-month period measured backward from the first date leave is used.

The exigency must include one of the following:

1. Short-notice deployment;
 - a. Leave for this purpose may be used for seven (7) calendar days beginning on the date the covered military member is notified of an impending call or order to covered active duty.
 - b. Leave for this purpose is used to address issues that may arise from the fact that a covered military member is notified of an impending call or order to covered active duty seven (7) or less calendar days prior to the date of deployment.
2. Military events and related activities;
 - a. To attend any official ceremony, program, or event sponsored by the military; and



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- b. To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross.
3. Childcare and school activities;
 - a. To arrange for alternative childcare when the active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child of a covered military member at the time FML is to commence;
 - b. To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis);
 - c. To enroll in or transfer to a new school or day care facility a child of the covered military member when enrollment or transfer is necessitated by the active duty or call to covered active duty status of a covered military member.
 - d. To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the covered military member.
4. Financial and legal arrangements;
 - a. To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust.
 - b. To act as the covered military member's representative before a federal, state, or local agency for purposes of arranging or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of ninety (90) days following the termination of the covered military member's covered active duty status.
5. Counseling;
 - a. To attend counseling provided by someone other than a healthcare provider for:
 - i. The employee;
 - ii. The covered military member; or
 - iii. The child of the covered military member.
 - iv.



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6. Rest and recuperation;
 - a. Leave may be taken for up to fifteen (15) days for each instance of rest and recuperation.
 - b. To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.
7. Post-deployment activities;
 - a. To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the covered military member's covered active duty status; and
 - b. To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.
8. Additional activities.
 - a. To address other events provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Leave taken due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis. The employee must try to schedule the intermittent leave to avoid undue disruption of the City's operations. The City may elect to transfer the employee to an alternative position for which the employee is qualified that has equivalent pay and benefits which better accommodates the intermittent leave schedule.

Employees meeting the requirements of the City's sick leave policy are required to use their applicable sick leave and then the accrued vacation leave, as well as any good cause days, concurrently with FML before the leave becomes unpaid. If sick leave is not applicable and the employee has exhausted any accrued vacation leave, employees may request to use their remaining accrued sick leave if they did not meet the requirements of the City's sick leave policy, or only met the requirements for a portion of the absence, before the leave becomes unpaid leave. All paid leaves of absence shall run concurrently with the FML.

IV. MEDICAL CERTIFICATIONS

The employee shall provide the Risk Management Division of the Human Resources Department with complete and sufficient certification of the need for leave from the health care provider of the employee, family member, or covered service or military member within fifteen (15) days of notification of the need for leave.



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The Human Resources Department shall provide the appropriate certification form to be used for all employees requesting FML.

The certification form must be completed in its entirety and shall state:

1. Health care provider contact information;
2. The date on which the qualifying condition began;
3. The probable duration of the condition;
4. The appropriate medical or other facts of the condition;
5. If the patient is the employee, information sufficient to establish the employee cannot perform the essential functions of the job, any other work restrictions, and the duration of the inability;
6. For family leave or service member leave, a statement that the employee is needed to care for the family member and an estimate of the amount of time that such care is needed;
7. The medical necessity of any intermittent leave request and estimate of the frequency and duration of episodes of incapacity; and
8. Any additional information requested on the certification form.

When the certification is returned incomplete or insufficient, the Human Resources Department will notify the employee in writing what additional information is necessary. A certification is not sufficient if it is complete, but the information provided is vague, ambiguous, or non-responsive. The Human Resources Department will give the employee seven (7) calendar days to correct an incomplete or insufficient certification.

The certification shall be signed by the health care provider responsible for providing such services and not by a staff member employed by the health care provider.

The employee will be required to submit a recertification if any of the following occurs:

1. Every thirty (30) days in connection with the employee's absence, but if the minimum duration of the condition is more than thirty (30) days, the City will not request a recertification until after the initial duration of the condition expires or when one (1) of the situations below occurs, whichever occurs first.
2. The City may require recertification within thirty (30) days if:
 - a. The employee's own, their immediate family member's, or covered service member's medical condition or duration or frequency of absences changes significantly;



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- b. The City receives information that casts doubt upon the stated reason for the absence or the continuing validity of the certification; or
 - c. The employee's need for leave extends beyond the time their own, their immediate family member's or covered service member's health care provider indicates on the most recent medical certification.
3. After six (6) months of the date the most recent medical certification that was completed by the attending physician, in connection with an absence by the employee (regardless of the duration of the condition);
 4. A qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or different covered military member; or,
 5. The employee's need for leave due to the employee's own serious health condition, or the serious health condition of a covered family member, lasts beyond a single leave year.

Employees bear the entire cost of obtaining certifications required by the City.

The City may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the City, however, the health care provider cannot be employed on a regular basis by the City.

Employees failing to provide complete and sufficient certifications as required, and after any opportunity to correct, may be denied the taking of FML. Failure to provide any certification may result in denial of leave under this policy. Employees who fail to provide requested documentation of the reason for an absence from work may be subject to disciplinary action up to, and including, termination.

V. INTERMITTENT OR REDUCED WORK WEEK LEAVE

Leave can be taken intermittently or on a reduced work schedule when medically necessary for a serious health condition or as a result of a qualifying exigency. The taking of the leave intermittently or on a reduced work schedule shall not reduce the total amount of leave to which the employee is entitled. However, the employee must provide a certification from the health care provider stating that the employee's reduced work schedule is medically necessary and the expected duration and schedule of the intermittent leave or reduced work schedule when intermittent leave is medically necessary. Such certification must also include the information listed under the foregoing "Medical Certification" section and shall also be signed by the health care provider responsible for providing such services and not by a staff member employed by the health care provider.



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This section is not applicable to the birth or placement of a child.

If an employee requests intermittent leave or leave on a reduced work schedule that is foreseeable based on a planned medical treatment, the employee:

1. May be required to transfer temporarily to an available alternative position (for which he or she is qualified) which has an equivalent pay and benefits and which better accommodates recurring periods of leave than the regular position of the employee.
2. Must make reasonable efforts to schedule the treatment so as not to unduly disrupt operations.

If an employee was absent from work due to a FML reason that was unforeseeable, the employee is required to follow the City's sick leave policy's unforeseeable use of sick leave procedures to notify the City of the need for leave, and explicitly state that the need for leave is related to the previously approved FML condition. Upon returning to work, the employee must complete and submit to the Human Resources Department an Intermittent Leave of Absence Under FML Request Form within five (5) business days of the employee's return to work for the time to be designated as FML. In the absence of such timely notification by the employee, the employee may not subsequently assert FML protections for the absence.

VI. HEALTH INSURANCE DURING FML

During approved FML, the City is required to maintain group health, dental and life insurance benefits (hereafter "group insurance"). Maintenance of such group insurance requires that the employee continue to contribute the normal portion of the insurance premiums to the City at the same time payroll deductions would normally be made in order to maintain insurance coverage. If the employee's payment is more than thirty (30) days late, the City may discontinue health insurance coverage upon notice to the employee. To the extent an employee's FML is paid through available accrued leave balances, the employee's portion of premiums will be collected through payroll deductions. For details on continuation of group insurance benefits or supplemental coverage, contact the Human Resources Department.

VII. RETURN FROM FML

- A. Employees returning from FML are required to submit a fitness for duty certification from their healthcare provider prior to returning to work demonstrating the employee can perform the essential functions of the job. Failure to provide that certification may delay the employee's reinstatement.



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Employees returning from leave will be restored to the same position held prior to the leave or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

After the beginning of the leave an employee may discover that circumstances have changed and the amount of leave time originally anticipated is either reduced or needs to be extended. In foreseeable circumstances where it is necessary to change leave time the employee is required to give the City notice within two (2) business days.

- B. An employee who fails to return to work on the next regularly scheduled work day following the expiration of FML, or who does not accept a position offered by the City when returning from leave, may be recommended for disciplinary action up to and including termination from their employment.
- C. Employees are prohibited from performing any work, whether full-time or part-time, during FML, for the City or any other entity or individual, and may be recommended for disciplinary action up to and including termination immediately upon discovery of same. Similarly, an employee who accepts other full-time employment during FML may be recommended for disciplinary action up to and including termination immediately upon discovery of same.
- D. Employees who give notice to the City that they do not intend to return to work upon the expiration of FML will be considered to have voluntarily resigned.

VIII. SUBSTITUTION OF PAID LEAVE

When the City requires, or the employee requests, to substitute accrued paid leave under the City's vacation or sick leave policies, the payments under such paid leave policies running concurrently with the FML are subject to the employee satisfying any and all procedural requirements of such policies. Failure of the employee to follow the policy of the applicable paid leave may result in the FML becoming unpaid, even though the employee has an accrued balance of leave remaining.

Questions on Family and Medical Leave can be directed to the Human Resources Department. Forms relating to the Family and Medical Leave can be obtained from the Human Resources Department.



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EMPLOYEE RESPONSIBILITIES

1. Notify the Risk Management of the Human Resources Department in writing that the employee needs leave for a condition the employee believes qualifies for FML.
2. Notification must occur thirty (30) days prior to the need for leave in foreseeable circumstances and as soon as possible under unforeseen circumstances.
3. Timely return all certification and recertification, or other paperwork, to the Risk Management Division of the Human Resources Department.
4. Abide by all procedural requirements of the City's vacation, good cause, and sick leave policies when such leave is used concurrently with FML. Failure to do so may result in FML being unpaid.
5. When utilizing intermittent leave, make reasonable efforts to schedule absences so as not to unduly disrupt operations.
6. Submit Intermittent Leave of Absence Request Form to the Risk Management Division of the Human Resources Department within five (5) business days of employee's return to work from an intermittent absence. Failure to advise the Risk Management Division of the Human Resources Department that the absence was for a previously approved FML condition within five (5) business days may result in denial of FML for the absence.
7. Submit Employee Request to Apply Sick Leave to Unpaid FML Based on Birth or Placement of a Child, when applicable and desired.
8. Make timely medical insurance premium payments to the Risk Management Division of the Human Resources Department to avoid any lapse in coverage.

DEPARTMENT RESPONSIBILITIES

1. Allow employees reasonable time to meet or speak with Human Resources to obtain information, explanation and guidance on the FMLA policy, as needed.
2. Notify Human Resources within twenty-four (24) hours if an employee makes you aware, whether verbally or in writing, of any condition or situation that may qualify for FML.
3. Notify Human Resources within twenty-four (24) hours if you become aware of any employee who is absent due to their own or a family member's illness or injury for more than three (3) days, or if you become aware of an employee or their family member being hospitalized overnight.



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4. Do not make any comments or determinations about whether an employee's request for FML is valid or will qualify. This determination is made by Human Resources only after the appropriate certifications are received and reviewed.
5. Timely prepare and submit a PAR for the employee's absence and return to work to the Human Resources Department.
6. Direct employees to Human Resources for any and all questions related to FML.

HUMAN RESOURCES DEPARTMENT RESPONSIBILITIES

1. Assist employees and supervisors in understanding their responsibilities under the FMLA policy.
2. Provide all necessary forms to the employee within five (5) business days of supervisor or Human Resources learning of an employee's need for leave that may qualify for FML.
3. Upon receipt of complete and sufficient certifications, advise employee in writing of the determination as to whether the leave qualifies as FML.
4. Communicate with employee's department regarding dates and times of employee's expected FML, if approved, without disclosing medical facts or conditions, unless necessary to ensure safety or discuss restrictions upon the employee's return to work.

Departmental Sponsor: Human Resources Department

Policy Review Date: APRIL 2018

References: 29 U.S.C. §2601, *et seq.*

Departments Affected: All Departments

Approved By:


Ruth C. Jones, City Manager