

# GENERAL ORDER

## PORT WASHINGTON POLICE DEPARTMENT

SUBJECT:	<b>Family and Medical Leave Act (FMLA) &amp; Leave Policies</b>	NUMBER:	2.4.3
		ISSUED:	1/27/2011
SCOPE:	All Police Personnel	EFFECTIVE:	1/27/2011
DISTRIBUTION:	General Orders Manual, and All Police Personnel	<input type="checkbox"/> RESCINDS	
		<input type="checkbox"/> AMENDS	
REFERENCE:		WILEAG STANDARDS 4 <sup>th</sup> EDITON: 2.4.2	

**INDEX AS:** Leave Policies  
 Other Leaves  
 Family and Medical Leave Acts (FMLA)

### Purpose

This policy outlines the provisions of the Federal and Wisconsin Family and Medical Leave Acts and the rights and obligations of employees and employers under both laws.

### Policy

The Family and Medical Leave Acts provide eligible employees with up to 12 work weeks of unpaid protected leave during a calendar year for specified family and medical reasons. The eligibility and entitlements are defined differently under federal and state law. Leave qualifying for both Wisconsin and Federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently, with the most beneficial entitlement to the employee (usually Wisconsin FMLA) applied first.

The City will require employees to substitute eligible paid leave for unpaid Federal FMLA leave.

## **Eligibility**

Employees are entitled to FMLA benefits if they:

1. Federal

Have been employed by the City of Port Washington for at least 12 months (not necessarily consecutive) and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave. Time spent on paid or unpaid leave does not count in determining the 1,250 hour eligibility.

2. Wisconsin

Have been employed by the City of Port Washington for at least 52 consecutive weeks and have worked for at least 1,000 hours during the 52 weeks prior to the start of the FMLA leave.

## **Qualifying Event and Amount of Leave**

1. Eligible employees may take up to a total of 12 work weeks of unpaid FMLA leave in a calendar year for the following qualifying events. Leave that qualifies for both Wisconsin and Federal FMLA will run concurrently and will generally be applied first under Wisconsin FMLA, then under Federal FMLA.

A. Wisconsin FMLA Leave:

- 1) Six weeks for the birth or adoption of the employee's child, providing the leave begins within sixteen weeks of the birth or placement of that child.
- 2) Two weeks for the care of an employee's spouse, child, parent, domestic partner, parent-in-law, or domestic partner's parent with a serious health condition. Care for a child does not include the children of the employee's domestic partner.
- 3) Two weeks for the employee's own serious health condition that renders the employee unable to perform their job.

B. Federal FMLA Leave

- 1) Twelve weeks for the birth or adoption of an employee's child, or for foster care. Federal law requires that the leave conclude within 12 months after the birth.

- 2) Twelve weeks for the care of an employee's spouse, child or parent with a serious health condition.
  - 3) Twelve weeks for the employee's own serious health condition that renders the employee unable to perform their job.
  - 4) Twelve weeks due to an employee's spouse, child or parent being deployed or called to active duty in a foreign country as a member of any branch of the military, including the National Guard or Reserves.
2. Eligible employees may take up to a total of 26 work weeks of unpaid Federal FMLA leave during a single 12 month period to care for a spouse, child, parent, or next of kin who is a member of the Armed forces who suffered an injury or illness while on active duty that renders the person unable to perform the duties of the member's office, grade, rank, or rating or to care for a veteran if he or she seeks medical treatment for a serious service related injury or illness, incurred while in the line of duty, within 5 years of serving in the military.

The leave period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date, regardless of the method used by the City to determine the employee's 12 work weeks of leave entitlement for other FMLA-qualifying reasons.

3. During the single 12 month period, an eligible employee shall be entitled to a combined total of 26 work weeks of leave under Federal law.
4. Leave qualifying for both Wisconsin and Federal FMLA leave will count against the employee's entitlement under both laws and will run concurrently. When the reason(s) for qualified leave differ, the leave may not run concurrently under federal and state law, and an employee may be entitled to more than 12 weeks of leave in a calendar year. This type of leave occurrence will be evaluated and reviewed with the employee at the time of the leave.

Under the Federal FMLA, spouses employed by the City are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

## **Non-Continuous or Intermittent Leave**

Employees are permitted to take leave on an intermittent (blocks of time) or reduced work schedule:

1. When it is medically necessary to care for a family member with a serious health condition or because of the employee's serious health condition.
2. When it is necessary to care for a family member or next of kin who suffered an injury or illness while on active duty.
3. To care for a newborn, adopted or foster child. Federal FMLA leave for the birth or placement of a child for adoption or foster care may not be taken in non-continuous increments unless approved by the City. Under the Wisconsin FMLA, the last increment of leave for the birth or placement of a child for adoption must begin within 16 weeks of that birth or placement.

Medical or family caretaking leave should be planned so as not to unduly disrupt the City's operations. Employees requesting non-continuous Federal FMLA leave that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits, but may be assigned different duties.

The City allows for intermittent leave to be taken in no less than one hour increments. The employee may not take, or be required to take, more leave than medically necessary to address the circumstances that caused the need for the leave.

## **Payments on FMLA Leave**

Both Wisconsin and Federal FMLA leaves are unpaid. The City will require employees to substitute paid leave for which they are eligible when using Federal FMLA leave. The employee may elect to substitute paid leave for which they are eligible when using Wisconsin FMLA leave. The City will require that any leave provided by a City collective bargaining agreement be substituted for Federal FMLA leave.

Substitution for unpaid leave will follow the following formula:

1. Wisconsin FMLA

The employee has the option of taking unpaid leave or substituting with eligible paid leave (sick leave, vacation days, personal days or compensatory time).

## 2. Federal FMLA

The City will require employees to substitute sick leave for unpaid leave. Once the employee's sick leave is exhausted, the employee may choose which type of leave (vacation days, personal days or compensatory time) they wish to substitute. Once all eligible paid leave is exhausted, any remaining time on FMLA leave will be unpaid.

### **How to Apply for FMLA Leave**

1. Employees must submit a State of Wisconsin FMLA Request form (ERD-10110 R. 01/2010) to the Administrative Secretary at City Hall at least 30 days, or as soon as practicable, in advance of taking leave. If circumstances do not permit an employee to give notice in advance of taking leave, the employee must notify their supervisor and submit the FMLA Request form as soon as possible, but no later than their next scheduled work day, absent unusual circumstances.

Employees must also submit a memo to their supervisor outlining the reasons for the FMLA leave, including the start date and anticipated duration of the leave. The memo, and a copy of the FMLA Request form, must be submitted in conjunction with submitting the FMLA Request form to the Administrative Secretary at City Hall. The employee will meet with their supervisor and the Administrative Secretary at City Hall to determine the payment formula while on FMLA leave.

Employees are strongly encouraged to discuss anticipated FMLA leave with their supervisor prior to applying for FMLA leave.

FMLA Request forms are available through the Administrative Secretary at City Hall.

Failure to give timely notice may result in the delay or denial of FMLA leave and may subject the employee to discipline under City or Department rules and policies.

2. If the leave is for a family member's or the employee's serious health condition, the employee must submit a medical certification from the employee's or the family member's health care provider within 15 days. If an employee does not provide the required certification by the designated deadline, or if the City determines that an employee's absence is not covered as FMLA leave, the leave may not be designated as Wisconsin and/or Federal FMLA leave, and the employee may be subject to discipline under City or Department attendance policies unless the employee uses accrued paid leave and/or is granted a non-FMLA leave of absence.

3. Second or third certifications at the City's expense and periodic re-certifications at the employee's expense may be required under certain circumstances. The City requires periodic reports during Federal FMLA leave regarding the employee's status and intent to return to work.

### **Health Insurance Benefits**

Group health insurance coverage will be maintained for employees while they are on FMLA leave, on the same terms as if the employee continued to work. The employee will be required to pay their regular portion of health insurance premium payments on a schedule established by the City. Other benefits, including cash payments chosen by the employee rather than group health insurance coverage, will not be maintained during periods of unpaid FMLA leave.

The City may recover its share of health insurance premiums paid during a period of unpaid FMLA leave from an employee if the employee fails to return to work (for a minimum of 30 calendar days) after the expiration of the leave. The City may not collect the premiums if the reason the employee does not return is due to continuation, recurrence or onset of a serious health condition that would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control.

The City may discontinue health insurance benefits if the employee fails to make a premium payment within 30 days of the due date after providing written notice to the employee of the cancellation of coverage for non-payment.

### **Other Benefits**

Benefits that accumulate based upon hours worked shall not accumulate during the period of FMLA leave. Qualified FMLA leave may be counted as an absence under the City's or Department's attendance policies. In addition, an employee may be disqualified from an attendance reward program, and/or any reward may be reduced for having taken unpaid FMLA leave.

Other City benefits (life insurance, long-term disability insurance, deferred compensation and union dues deductions) may be continued during periods of unpaid FMLA leave, and arrangements should be made for the employee's portion of the payments, if applicable, with the Administrative Secretary at City Hall.

## **Return to Work**

Any employee returning from FMLA leave for their own serious health condition must provide a Fitness for Duty release signed by their treating physician. Upon return from FMLA leave, an employee shall be restored to their original position or, if the position is not vacant, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

An employee will not be restored to their original or equivalent position if they are unable to perform the functions of their job because of a mental or physical condition. The City may require that the certification specifically address the employee's ability to perform the essential functions of the job. The City must provide an employee with a list of the essential functions with the "designation notice" and indicate that the certification address the employee's ability to perform those essential functions. Before an employee who is unable to perform the functions of their job upon expiration of FMLA leave is terminated, the City must consider whether other provisions of City policy or a collective bargaining agreement are applicable or whether the ADA or other provision of the Wisconsin Fair Employment Law are applicable.

## **Definitions**

### **1. Child**

Biological, adopted, or foster child, stepchild, legal ward or, under Federal FMLA, the child of a person having day-to-day care of the child, or a child of a person standing "in loco parentis," who is under 18 years of age or 18 years of age and older and incapable of self-care because of a serious health condition.

### **2. Covered Service Member (Federal FMLA)**

Active members of the Armed Forces (including National Guard and Reserves) and veterans who were members of the Armed Forces (including National Guard and Reserves) at any point in time within 5 years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

### **3. Domestic Partner (Wisconsin FMLA)**

Same-sex couples who register in their county of residence and same-sex and opposite-sex couples who are not required to register.

A. To qualify as registered domestic partners, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, not more closely related than second cousins (whether of the

whole or half blood or by adoption), they must share a common residence, and be members of the same sex.

- B. To qualify as domestic partners without registration, two individuals must meet the following criteria: at least 18 years of age and capable of consenting to the relationship, not married to, or in a domestic partnership with another individual, they must share a common residence, they must not be related by blood in a way that would prohibit marriage under Wis. Stat. 763.03, they must consider themselves to be members of each other's immediate family; and they must agree to be responsible for each other's basic living expenses.

4. Incapable of Self-Care

The individual requires active assistance or supervision to provide daily self-care in three or more of the *activities of daily living* (i.e. grooming, hygiene, bathing, dressing, eating) or *instrumental activities of daily living* (i.e. cooking, cleaning, shopping, utilizing public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office).

5. Next of Kin (Federal FMLA)

The nearest blood relative other than the service member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

6. Parent

Biological parent, foster parent, adoptive parent, step-parent or legal guardian of an employee, or under Wisconsin FMLA, parent-in-law or domestic partner's parents. Under Federal FMLA, "parent" includes an individual who provided day-to-day care to the employee when the employee was a child.



## 7. Serious Health Condition

An illness, injury, impairment or physical or mental condition that involves:

- A. Inpatient care in a hospital, hospice or residential medical care facility; or
- B. Under Wisconsin FMLA, outpatient care that requires continuing treatment or supervision by a health care provider (generally defined as requiring two direct, continuous and first hand contacts by a health care provider); or
- C. Under Federal FMLA:

- 1) A period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (i.e. physical therapist) under orders of, or on referral by, a health care provider; or

Treatment by a health care provider on at least one occasion, that results in a regimen of continuing treatment under the supervision of a health care provider. The first or only in person treatment visit must take place within seven days of the first day of incapacity. Whether additional visits or a regimen of continuing treatment is necessary within the 30 day period shall be determined by the health care provider.

- 2) Any period of incapacity due to pregnancy or for prenatal care.
- 3) Chronic conditions requiring periodic treatment (defined as at least twice a year) by or under the supervision of a health care provider that continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy, etc).

- 4) Permanent / long term conditions requiring supervision for which treatment may not be effective (i.e. Alzheimer's, a severe stroke, or the terminal stages of a disease).
- 5) Multiple treatments by or under the supervision of a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatment, such as cancer (Chemotherapy), severe arthritis (physical therapy), or kidney disease (dialysis).

8. Work Week

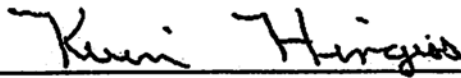
The employee's regularly scheduled work week which normally consists of approximately 40 hours.

**Other Leaves**

1. All personnel have access to complete and current information regarding all available paid and unpaid leave, including but not limited to, administrative, holiday, sick and vacation leave, funeral, military leave, and jury duty. Specific leave information is contained in the employee labor contracts and the Policy and Procedure Manual for Non-Represented Employees.

**APPROVED:**

**DATE:**



7/14/16

Chief Kevin Hingiss

Revised 7/14/16