

CITY OF FRISCO PERSONNEL POLICIES
SECTION: LEAVE

Section 8.10: Family and Medical Leave

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8.10.1 STATEMENT OF PURPOSE

The purpose of this policy is to outline and establish general procedures and guidelines for compliance with the Family and Medical Leave Act (FMLA).

In accordance with the FMLA, the City of Frisco will abide by the provisions and the regulations published by the U.S. Department of Labor to implement the Act. A copy of the U.S. Department of Labor poster "Employee Rights and Responsibilities under the Family and Medical Leave Act" is posted on departmental bulletin boards. Employees should contact Human Resources for specific information and questions regarding this policy.

8.10.2 PROCEDURES

Under the FMLA, eligible employees may take up to 12 work weeks of unpaid job-protected leave each year for specified family and medical reasons or 26 weeks of leave to care for an injured or ill service member.

FMLA Leave Runs Concurrently With Other Types of Leave: FMLA leave is typically unpaid unless the absence also qualifies for paid leave under another City policy, at which point FMLA leave and paid leave will run concurrently.

Sick Leave: If an employee has any available accrued sick leave, it must be used concurrently with any available FMLA leave, provided the employee's absence is covered by the City's sick leave policy and the employee satisfies that policy's procedural requirements.

Vacation, Comp Time, Personal Leave & Holiday: If an FMLA qualifying absence is not covered by the City's sick leave policy, the following leave time will be applied and will run concurrently with any remaining FMLA leave: accrued vacation, comp time, personal leave and then holiday leave.

Disability & Workers' Comp. Leave: If the employee is approved for workers' comp. or short-term or long-term disability, the employee's absence from work is automatically approved for FMLA, provided he/she has met the FMLA's eligibility requirements. This means that workers' comp. and short- and long-term disability

absences will run concurrently with FMLA leave. Employees being paid either workers' comp. wage benefits or short- or long-term disability benefits while on leave are not required to use accrued sick, personal, holiday, comp time or vacation leave while collecting workers' comp. or disability benefits.

In determining the amount of family medical leave available to an employee, the City will use a 'rolling calendar' by considering any family medical leave taken in the twelve (12) months prior to the date the requested leave is to begin and continuous with each additional day leave is taken.

8.10.3 ELIGIBILITY

Employees (full-time and/or part-time) must have been employed by the City of Frisco for at least 12 months (need not be consecutive) prior to the leave date and must have worked at least 1250 hours during the 12 months prior to the date the requested leave is to begin.

Eligible Reasons: The City will grant FMLA leave for any of the following circumstances:

1. birth of a child of the employee, in order to care for such child (eligibility for leave expires 12 months after the date of birth of the child);
2. placement of a child with the employee for adoption or foster care (eligibility for leave expires 12 months after the date of placement of the child);
3. to care for the spouse, child or parent of the employee with a serious health condition as defined by FMLA;
4. if the employee has a serious health condition which makes the employee unable to perform all of the essential functions of his/her position;
5. due to a non-medical activity ("qualifying exigency") that is directly related to a covered family member's (limited to a spouse, son/daughter, or parent of the employee) active duty or call to active duty in the Regular Armed Forces, National Guard or Reserves. (See definitions for the seven categories of activities that qualify as exigencies.);
6. for an eligible employee (limited to a spouse, son/daughter, parent or next of kin of a covered service member) to care for a covered service member who is a current member of the Regular Armed Forces, National Guard, or Reserves who has incurred an injury or illness in

the line of duty while on active duty, provided that such injury or illness renders the service member medically unfit to perform the duties of his/her office, grade, rank, or rating. (See definitions for covered service member qualifications.) This leave may be up to 26 work weeks of unpaid leave during a single 12-month period. *This is the only instance in which a leave of up to 26 work weeks may be taken.*

7. for an eligible employee (limited to a spouse, son/daughter, parent or next of kin of a covered veteran) to care for a covered veteran who was honorably discharged within the five-year period prior to the family member's need for leave to provide care during the recuperation, treatment for a condition that was caused or aggravated during the line of duty, or recovering from a serious illness or injury. This leave may be up to 26 work weeks of unpaid leave during a single 12-month period. *This is the only instance in which a leave of up to 26 work weeks may be taken.*

NOTE: During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 work weeks of unpaid leave, regardless of the various reasons for FMLA leave.

When both a husband and wife are employed by the City and are eligible for leave due to the birth or placement of a child for adoption or foster care, or to care for a parent, or due to an urgent need or requirement (qualifying exigency) arising out of a covered family member's active duty or call to active duty, they are entitled to a total of 12 work weeks together (NOT 12 work weeks each) of family and medical leave in a calendar year. However, if the leave is for self-care or care of a sick spouse or child, each employee is entitled to 12 work weeks of unpaid leave per calendar year under FMLA.

8.10.4 EMPLOYEE RESPONSIBILITY

Employees must give the City sufficient information so that it can make a determination as to whether the employee's absence is FMLA-qualifying. If an employee fails to explain the reasons, leave may be denied. Employees must also indicate on their time sheet/records when an absence or tardy is or may be covered by FMLA. The City may retroactively designate leave as FMLA-qualifying, upon notice to the employee. Any absence or illness that results in more than three days' absence must be reported to the City's Human Resources Department.

At Least 30 Days' Notice Required for Foreseeable Leave: Employees must provide their Department Director or the Human Resources Department with at least 30 days' advance notice when the need for FMLA leave is foreseeable.

Notice as Soon as Practicable for Unforeseeable or Emergency Leave: If the need for FMLA leave is not foreseeable, employees must provide their Department Director or the Human Resources Department with as much advance notice as practicable, in accordance with their Department's normal call-in procedures. The employee must also provide an explanation as to why he/she was unable to provide at least 30 days' advance notice of the need for leave.

Content of Notice: Employees must provide the City with at least verbal notice and explain the reasons for the needed leave sufficient to allow the City to determine if the absence is FMLA-qualifying, and the anticipated timing and duration of the leave, if known. If the employee has previously taken FMLA leave for the same reason, he/she must specifically reference the qualifying reason for leave or the need for FMLA leave. The City may seek additional information from the employee, and the employee is obligated to respond to the City's questions so the City can determine if an absence is potentially FMLA-qualifying. The employee must notify the City as soon as practicable if the dates of his/her scheduled leave change or are extended, or were initially unknown.

Compliance with City's Call-In Procedures: Employees must comply with their Department's normal call-in procedures for reporting absences, tardies and requesting leave, e.g., contacting a specific supervisor by a certain time. Notice may be given by the employee's spokesperson only if the employee is physically unable to do so personally. Where an employee does not comply with the City's and Department's normal call-in procedures and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

Consequences for Failing to Provide Required Notice: If the employee fails to timely explain the reasons for his/her need for leave, FMLA leave may be denied or delayed for up to 30 days. The employee may also be subject to disciplinary action in accordance with City policy. Likewise, if an employee fails to respond to the City's reasonable inquiries regarding a leave request, the employee may not be granted FMLA leave protection.

Scheduling Planned Medical Treatment: When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and to try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of the both the employee and the City.

Periodic Check-In While on FMLA: Employees must check in periodically with their supervisor and with the Human Resources Department regarding their status and intent to return to work. If the employee discovers that the amount of leave originally anticipated is no longer necessary, the employee must provide the City

with reasonable notice (*i.e.*, within two business days) of the changed circumstances, if foreseeable.

8.10.5 EMPLOYER RESPONSIBILITY

The Human Resources Department is responsible for the verification, approval and notification of FMLA leave. The Human Resources Department may designate leave as FMLA leave if it determines that a qualifying event has occurred.

Eligibility and Rights & Responsibilities Notice:

The Human Resources Department will notify an employee of his/her eligibility to take FMLA within five business days (absent extenuating circumstances) of its receipt of the employee's request for FMLA leave (or from when the City otherwise determines that an employee's absence may be FMLA-qualifying). Employee eligibility is determined at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. Notification may be oral or in writing but the City will normally use the FMLA form - Notice of Eligibility and Rights and Responsibilities. This FMLA form will also detail the City's specific expectations, the employee's obligations, and consequences to the employee of not meeting his/her obligations. If an employee's eligibility status changes or if any of the specific information in the Rights & Responsibilities Notice changes, the Human Resources Department will so notify the employee within five business days of the receipt of the changed information, absent extenuating circumstances.

Designation Notice: When the Human Resources Department has enough information to determine if an absence is FMLA-qualifying (*e.g.*, after receiving the employee's fully completed Certification), the Human Resources Department will notify the employee in writing (FMLA form – Designation Notice) as to whether the leave will or will not be designated as FMLA. This Designation Notice will be given to the employee within five business days, absent extenuating circumstances. If the information in the Designation Notice changes, the Human Resources Department will notify the employee within five business days of the City's receipt of the employee's first notice of need for leave subsequent to any change.

Certification Forms & Other Required Documentation: The Human Resources Department is responsible for determining the completeness and authenticity of certification forms, fitness-for-duty/return to work certifications, and for review and coordination of all other FMLA documentation required by this policy.

Supervisors & Department Directors: So that the Human Resources Department can meet the notice deadlines required by the FMLA, supervisors must immediately notify both their Department Director and the Human Resources Department if they have reason to believe an employee's absence is due to an FMLA-covered reason. Supervisors must make this report even if the employee is using paid time off to cover the absence, *e.g.*, sick leave, comp time, vacation,

holiday, workers' comp., short- or long-term disability. Supervisors and Department Directors must report to Human Resources any time an employee misses work for three or more days because of his/her own illness or injury or that of a spouse, child or parent. Supervisors and Department Directors may not contact health care providers when employees are sick. Only Human Resources personnel will make contact with health care providers if and when necessary. It is important to remember that under the FMLA, an employee requesting paid or unpaid leave for an absence covered by the FMLA is not required to expressly mention FMLA. If the employee states a reason that qualifies for FMLA leave, the employee will likely have met the FMLA's notice requirements. When an employee submits a leave/absence form indicating an FMLA absence, the form must be sent to the Human Resources Department immediately.

8.10.6 MEDICAL CERTIFICATION

In all instances in which the City requests a certification from an employee, it is the employee's responsibility to provide the Human Resources Department with medical certification; failure to do so may result in the denial or delay of FMLA leave.

Certification: An employee must provide the Human Resources Department with complete and sufficient medical certification supporting the need for FMLA leave due to a serious health condition affecting the employee (FMLA form – Certification of Health Care Provider for Employee's Serious Health Condition), his/her spouse, child or parent (Certification of Health Care Provider for Family Member's Serious Health condition), or due to the serious injury or illness of a covered service member (Certification for Serious Injury or Illness of covered Service Member for Military Family Leave). The required medical certification forms are available from the Human Resources Department. The certification must set forth the beginning and expected ending dates of the leave. In the case of intermittent leave, the certification must also provide the dates and duration of the treatments necessitating the intermittent leave. The employee is responsible for any expenses associated with providing the City with a required certification. The employee must turn in the required certification to the Human Resources Department within 15 days after it is requested, unless not practicable under the circumstances.

Second & Third Opinions: In some cases, the City may require a second or third medical opinion (at the City's expense). The City will not require second or third opinions in the case of leave to care for a covered service member.

Recertification: With the exception of injuries or illnesses under workers' comp. or disability benefits, employees may be asked to periodically recertify the need for FMLA. The City will not, however, require recertification in the case of leave to care for a covered service member. The recertification must be provided within 15

days or as soon as practicable under the particular facts and circumstances. The employee is responsible for any expenses associated with providing the City with any required recertification.

- a. **30-day rule**: The City will request recertification no more than every 30 days and only in connection with an absence by the employee unless paragraphs b or c below applies.
- b. **More than 30 days**: If the certification indicates that the minimum duration of the condition is more than 30 days, the City will wait until that minimum duration expires before requiring a recertification, unless paragraph c below applies. If the minimum duration of a serious health condition extends beyond six months, the City may nevertheless request a recertification every six months in connection with an employee's absence.
- c. **Less than 30 days**: The City may request recertification in less than 30 days if the employee requests an extension of leave, circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications, a pattern of unscheduled absences), or the City receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

Fitness-for-Duty/Return to Work Certification: Employees must submit a fitness-for-duty certification before they can return to work if FMLA leave is a result of the employee's own serious health condition. The certification must specifically address the employee's ability to perform his/her essential job functions but is limited to the particular health condition that caused the employee's need for FMLA leave. The employee is responsible for any expenses associated with providing the City with the required certification and is not entitled to be paid for the time or travel costs spent in acquiring the certification. The Human Resources Department may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty/return to work certification. The City will not require second or third opinions of fitness-for-duty certifications. However, this does not preclude the City's ability to refer an employee for a medical exam upon his/her return to duty and determination that such an exam is necessary in accordance with City policy. An employee who fails to timely provide the City with this certification will not be allowed to return to work. An employee who exhausts all available leave and does not provide the required fitness-for-duty certification or request additional FMLA leave is no longer entitled to job reinstatement and may be subject to disciplinary action.

While the City will not require a fitness-for-duty certification to return to duty for

each absence taken on intermittent or reduced leave schedule, it will require such a certification up to once every 30 days if reasonable safety concerns (*i.e.*, a reasonable belief of significant risk of harm to the employee or others) exist as to the employee's ability to perform his/her duties, based on the serious health condition for which the employee took leave.

Failure to Provide Certifications & Deficient Certifications: If an employee fails to provide a required certification within 15 days after the date of the City's written request, the City may deny leave until the certification is provided. If the employee never produces the certification or recertification, the employee is not eligible for FMLA protection. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what additional information is required. The City will provide the employee with seven additional days from the date the Human Resources Department sends written notice to cure any deficiency. If the deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave. The Human Resources Department may contact the health care provider for purposes of clarification and authentication after giving the employee the opportunity to cure any deficiencies.

Physical Ability Tests: Employees in positions requiring a post job offer physical ability test may be required to complete and pass the fit-for-duty physical ability test prior to returning to work from FMLA leave if the leave was due to the employee's serious medical condition.

Documenting Family Relationships: If an employee elects to take FMLA leave in order to care for a qualifying family member or to care for a covered service member, the employee may be required to provide reasonable documentation confirming the family relationship.

8.10.7 CERTIFICATIONS FOR QUALIFIED EXIGENCY LEAVE

Active Duty Orders: The first time an employee requests leave because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member (see section 8.10.17 - definitions), the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service.

Certification Form: The employee must complete and submit to the Human Resources Department the appropriate certification form (FMLA Form – Certification of Qualifying Exigency for Military Family Leave) in support of his/her need for leave. This form must be turned in within 15 days after the City requests it in writing.

Verification: If the qualifying exigency involves meeting with a third party, the Human Resources Department may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment and the nature of the meeting. The City may also contact an appropriate unit of the Department of Defense to request verification of active duty or call to active duty status.

Denial or Delay of Leave: Exigency leave may be delayed or denied if the employee fails to turn in the required certification within 15 days from the date written notification is sent by the City. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee in writing and advise the employee what additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If the deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave.

8.10.8 INTERMITTENT LEAVE

An eligible employee may take FMLA leave on an intermittent or reduced schedule basis for his/her own serious health condition, or to care for a seriously ill spouse, child, parent or covered service member with a serious injury or illness. The employee must provide certification from the health care provider caring for the employee and /or family member, documenting the need for the intermittent or reduced leave.

Birth or Placement of Child:

Intermittent leave or reduced schedule leave may be taken to bond with or care for a healthy child due to birth, adoption, or foster care placement. The bonding leave must be taken within one year of the birth or placement of the child and can be taken in blocks of time of no less than one-week increments or two (2) consecutive 24-hour shifts for a shift firefighter.

Scheduling Planned Medical Treatment: When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is expected to consult with his/her supervisor and try to schedule the treatment so as not to unduly disrupt the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employee and the City.

Temporary Transfer: The City may temporarily transfer the employee to an alternative position (with equivalent pay and benefits, but not necessarily equivalent duties) in order to better accommodate an employee's intermittent or reduced leave schedule. Temporary transfers must be pre-approved by Human

Resources.

Minimum Increments: Intermittent leave will be counted in increments no greater than the shortest period of time used by the City to account for use of other types of leave.

Exempt Employees: Exempt employees using unpaid intermittent or reduced schedule FMLA leave may be docked for absences of less than a day without jeopardizing their exempt status under the Fair Labor Standards Act (FLSA).

8.10.9 CONTINUATION OF BENEFITS

Group Health Insurance: During any period of FMLA leave, the City will continue to pay its portion, if any, of any group health insurance coverage for the employee on the same terms as if the employee had continued to work. Where applicable, the employee must timely pay his or her share of health insurance premiums while on FMLA leave. The City will advise the employee of the terms and conditions for making such payments. Failure to pay premiums in a timely manner will result in suspension of group health coverage until the employee makes the payments or returns to work. The City may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave, unless the employee is unable to return due to a serious health condition, the serious injury or illness of a covered service member, or another reason beyond the employee's control. Medical certification is required under such circumstances.

Other Benefits: The employee's use of FMLA leave will not result in the loss of any employment benefits that accrued prior to the start of the employee's leave, and seniority will not be affected while on FMLA leave. However, benefit accruals such as vacation and sick leave will be suspended during any unpaid leave.

Holidays: When an employee takes a full work week of FMLA leave and a holiday occurs within that week, the week is counted as a full week of FMLA leave. If, however, an employee uses FMLA in increments of less than a week, the intervening holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work on the holiday. In accordance with the Holiday Policy, employees on paid FMLA leave are paid for holidays if the holiday occurs during the approved FMLA leave period.

TMRS: Contributions to TMRS will cease when an employee on unpaid leave stops getting a paycheck from the City and will resume after the employee returns to a paid status.

8.10.10 JOB RESTORATION AFTER FMLA LEAVE

Upon return from FMLA leave, an employee will normally be restored to his/her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions. An employee, however, has no greater right to reinstatement than if he/she had been continuously employed during the period of FMLA leave. Further, the City may delay restoration to original jobs for employees who fail to timely provide a fitness-for-duty certification to return to work.

8.10.11 KEY EMPLOYEES

Under certain circumstances the City is not required to reinstate key employees. Certain highly compensated key employees may be denied reinstatement when necessary to prevent “substantial and grievous economic injury” to the City’s operations. A “key” employee is a salaried, eligible employee who is among the highest paid 10 percent of employees within 75 miles of the worksite. An employee will be notified of his/her status as a “key” employee, when applicable, after requesting FMLA leave.

8.10.12 OTHER EMPLOYMENT DURING FMLA PROHIBITED

Under no circumstances may an employee on FMLA leave, sick leave, disability leave, or workers’ compensation leave engage in outside employment unless expressly authorized in writing in advance by the Department Director, Human Resources Director and the City Manager.

8.10.13 FRAUD

An employee who fraudulently obtains FMLA leave is not protected by the FMLA’s job restoration or maintenance of health benefits provisions. Further, an employee who commits fraud will be subject to disciplinary action up to and including termination from City employment.

8.10.14 FMLA STATUTE AND DOL REGULATIONS

More detailed provisions and definitions of some of the terms used in this policy are set out in the Act and in the DOL’s regulations. This policy is intended to explain benefits available to eligible employees under the FMLA. It is not intended to create any rights to leave beyond those created by the FMLA. If additional information is needed on the FMLA, please contact the Human Resources Department. The City will refer to the Act and the applicable DOL regulations in carrying out this policy, as well as any relevant court interpretations and decisions. This policy does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement, that provides greater family or medical leave rights. When an employee gives notice of the need for FMLA leave, the employee will be given additional information as to his or her

rights and responsibilities under the FMLA. In addition, employees may contact the nearest office of the U.S. Department of Labor's Wage & Hour Division or the Department of Labor's website for more information.

8.10.15 ILLEGAL PRACTICES

Absences for FMLA-eligible reasons are employee entitlements under the federal FMLA law, if all required conditions are met. As such, legitimate FMLA absences must not be counted against employees under attendance policies unless the employee fails to submit required medical certification when requested to do so and only upon consultation with Human Resources. The taking of approved FMLA leave may not be used as a negative factor in disciplinary actions, performance evaluations or promotions.

8.10.16 MANDATORY REPORTING OF IMPROPER HANDLING OF FMLA

Employees must immediately report, in writing, to their Department Director or the Director of Human Resources, the following so that the City can investigate and respond appropriately:

- Any interference with, restraint or denial of the employee's right to take FMLA or any rights protected by the FMLA or this policy.
- Any discrimination or perceived acts of discrimination against the employee for any right protected by the FMLA or this policy.
- Any refusal by a supervisor to authorize FMLA leave or attempt to discourage an employee from taking FMLA leave.
- Any attempt to avoid the City's FMLA responsibilities.
- Discrimination or retaliation against an employee for exercising or attempting to exercise FMLA rights.
- Discrimination or retaliation against an employee for opposing or complaining about any unlawful practice under the Act or this policy

8.10.17 DEFINITIONS

More detailed definitions of some of the terms used in this policy are set out in the Act and in the Department of Labor regulations.

a. Son or Daughter – FMLA regulations define a “son or daughter” as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in the place of a parent) who is either under 18 years of age or is 18 years of age or older and “incapable of self-care because of a mental or physical disability” at the time FMLA leave is to commence.

b. 12-Month Period for Covered Service Members - The 12-month leave period

for calculating leave to care for a covered service member with a serious injury or illness is the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered service member begins. During this 12-month period, the maximum FMLA leave an employee may take for any qualifying reason is limited to a combined total of 26 weeks.

c. Covered Military Member – the employee's spouse, son, daughter, or parent on active duty or called to active duty status.

d. Covered Service Member – a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy.

e. Covered Veteran - a veteran who was honorably discharged within the five-year period prior to the family member's need for leave to and who is receiving treatment for a condition that was caused or aggravated during the line of duty, or recovering from a serious illness or injury.

f. Next of Kin of a Covered Service Member –the nearest blood relative other than the covered service member's spouse, parent, or child in the priority established by the DOL.

g. 12-Month Period for All Other FMLA Leave - To determine eligibility for all other leave, the City uses a rolling 12-month period measured backward from the date of any FMLA leave. This means that each time FMLA leave is requested and/or designated by the employee/supervisor, Human Resources will determine how much FMLA leave has been taken 12 months prior to the first date of the most recent FMLA leave request received. Based on the findings, the amount of leave taken in the prior twelve months will determine the amount of leave remaining to be used.

h. Health Care Provider (HCP) – 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 any other person determined by the Secretary of Labor to be capable of providing health care services.

i. Incapacity – the inability to work, attend school or perform other regular daily activities.

j. Serious Health Condition - For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

i. **Inpatient care** – an overnight stay in a hospital, hospice, or residential

- medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care;
- ii. **Continuing treatment by a health care provider (HCP)** - includes one or more of the following:
1. **Incapacity & Treatment** - a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment: (i) two or more times (within 30 days of the first day of incapacity, unless extenuating circumstances exist), by a HCP or under direct supervision of, under orders of, or on referral by, a HCP, or (ii) by a HCP on at least one occasion which results in a regimen of continuing treatment under supervision of the HCP. The first (or only) in-person treatment visit must take place within 7 days of the first day of incapacity.
 2. **Pregnancy & Prenatal care** - any period of incapacity due to pregnancy or for prenatal care;
 3. **Chronic Conditions** - any period of incapacity or treatment for such incapacity due to a chronic serious health condition which (i) requires periodic visits (at least twice a year) for treatment by, or under the direct supervision of a HCP, or (ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and (iii) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
 4. **Permanent or Long-Term Conditions** - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease);
 5. **Conditions Requiring Multiple Treatments** - any period of absence to receive multiple treatments (including any period of recovery) by, or under the supervision of, under orders of, or on referral by, a HCP 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 consecutive, full calendar days in the absence of medical intervention or treatment (e.g., chemo or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. In addition, routine physicals, eye examinations, and dental examinations are not considered treatment.

k. Qualifying Exigency – eligible employees may take FMLA leave for one or more of the following qualifying reasons:

- short-notice deployment; leave for this purpose can be used for a period of seven or less calendar days from the date the member is notified;
- military events and related activities such as official ceremonies and programs sponsored by the military and to attend family support or assistance programs and informational briefings;
- childcare and school activities;
- financial and legal arrangements in preparation of deployment e.g. preparing or updating a will or living trust etc.
- **counseling;**
- rest and recuperation;
- **post-deployment activities;**
- additional activities arising out of the call to active duty status provided that the employee and the City agree that such leave qualifies as an exigency, and agree to both the timing and duration of the leave.