

Family Medical Leave

Family medical leave is governed by the requirements of Maine's Family Medical Leave law and the federal Family Medical Leave Act, as they may apply. (Use of the term FMLA herein shall mean the federal Family Medical Leave Act.) If the requirements, benefits, definitions and/or scope of either the federal or state laws related to family medical leave change from the date of this revised Policy, such changes are automatically incorporated into this Section.

The City of South Portland qualifies as an employer under both Maine law and the federal FMLA. Where there are conflicting provisions between the state and federal laws, the more generous provision may be applied, provided that the employee is otherwise covered under that law. However, the provisions of state and federal laws may not be combined. Family medical leave taken under one law will run concurrently with and be counted against eligible leave under the other law.

1. Basic Leave Entitlement

Federal FMLA provides up to twelve (12) weeks of unpaid, job-protected leave per 12 month period to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, registered domestic partner, child, parent, or child or parent of registered domestic partner who has a serious health condition, or
- For a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

Maine's family medical leave law provides up to 10 weeks of unpaid leave in a 2-year period to eligible employees for the reasons listed above as well as the following reasons:

- To care for the employee's domestic partner, domestic partner's child, or sibling with joint living or financial arrangements who has a serious health condition;
- For incapacity due to the employee's donation of an organ for transplant.

2. Military Family Leave Entitlements

The federal FMLA provides that eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12) week leave entitlement to address certain qualifying exigencies. Employees whose parent, spouse, son or daughter is a military member may also take leave to care for the parent of that military member who is incapable of self-care. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment re-integration briefings.

Federal FMLA also includes a special leave entitlement that permits eligible employees to take up to twenty-six (26) weeks of leave to care for a parent, child or spouse who is a covered service member or covered veteran during a single twelve (12) month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who incurred or aggravated a serious injury or illness in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Maine's family medical leave law entitles employees to take up to 10 weeks of leave for a spouse, domestic partner, child, parent, or sibling with shared living and financial arrangements who died or incurred a serious health condition while serving in active military duty, including as a member of the National Guard or Reserves.

3. Leave for Victims of Violence

Pursuant to Maine law (26 M.R.S.A. 850), the City grants reasonable and necessary leave from work to an employee who is a victim or whose child, parent or spouse is a victim of violence, assault, sexual assault, stalking or any act that would warrant an order for protection under Maine law. Such leave will be granted without pay, however the employee is entitled to use accrued paid leave. The leave must be communicated to the City within a reasonable time under the circumstances. If the leave is deemed in the City's sole discretion based on the information available impractical, unreasonable or unnecessary, or would create an undue hardship on the City, such leave may be denied. Leave may be granted under this section for the following purposes:

- a. To prepare for and attend court proceedings;

- b. to receive medical treatment or attend medical treatment for a victim who is the employee's daughter, son, parent or spouse, or;
- c. To obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

4. Benefits and Protections

During federal FMLA leave, the City will maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. During family medical leave covered under Maine law, the City is not required to pay the cost of the employee's health insurance premium, but will maintain coverage if the employee agrees to pay the full cost of any premiums while on leave.

Upon return from family medical leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of family medical leave will not result in the loss of any employment benefits that accrued prior to the start of an employee's leave.

5. Eligibility Requirements

Employees are eligible for federal FMLA coverage if they have worked for the City for at least 12 months total, which do not need to be consecutive, and for at least 1,250 hours over the 12 months prior to leave. Employees are eligible for Maine family medical leave coverage if they have worked for the City for at least 12 consecutive months.

The twelve (12) month period during which federal FMLA entitlement may occur is a rolling twelve (12) month period measured backward from the date an employee last used any FMLA leave.

6. Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employer's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a

regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

7. Intermittent Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary as demonstrated by a health care provider's certification that includes the anticipated dates and duration of leave. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the City's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

8. Substitution of Paid Leave for Unpaid Leave

The City requires use of accrued paid benefit leave, including sick leave, vacation leave, personal leave and compensatory leave to the extent that it is available prior to unpaid leave while on covered family medical leave. Employees must comply with the City's normal paid leave policies. The City Manager may make a written exception to this requirement in certain circumstances, such as when the amount of time for leave needed is expected to exceed the available paid leave.

9. Employee Responsibilities

Employees must provide 30 days advance notice to the Human Resources Director of the need to take family medical leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the City's normal call-in procedures.

Employees must provide sufficient information for the City to determine if the leave may qualify for family medical leave protection under the federal or state laws and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform the essential functions of his/her job, the employee's covered family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees must inform the City if the requested leave is for a reason for which family medical leave was previously taken or certified. Employees may be required to provide medical certification from a physician and periodic re-certification supporting the need for leave.

Employees who are temporarily out of work on a family medical leave, disability leave, or other such qualifying leave, are responsible for making

payment for their portion of weekly benefits premiums, including, but not limited to: health insurance, dental insurance, retirement, vision care, etc. after accrued benefit time such as vacation and sick leave being used to pay for said premiums has been exhausted. Failure of the employee to keep current with weekly benefits premiums as applicable may result in termination of benefits/coverage. Employees on an approved leave of absence shall inform the Human Resources Department as to how they wish to pay for their portion of benefits premiums.

10. Return to service.

Upon the end of the family medical leave, an employee will be restored to the position he/she occupied immediately prior to the commencement of the leave or to an equivalent position with the same employee benefits and pay as existed immediately prior to commencing the leave, except in the event of financial, budgetary or other conditions unrelated to the employee's taking of a leave which prevent the restoration to the same or equivalent position.

An employee shall return to work from a family medical leave no later than the first working day following the expiration of the leave. Failure on the part of the employee to return to work after the expiration of an approved leave is deemed a resignation from City service.