



# Family and Medical Leave – Employee Packet

## ***City of Missoula – Notice to Employees***

The *City of Missoula* provides family and medical leave (FMLA) to eligible employees in accordance with the federal Family and Medical Leave Act. This notice summarizes your rights and obligations under the law.

The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 workweeks of unpaid, job-protected leave in a 12-month period, or up to 26 weeks of unpaid leave to care for wounded service members. In addition to the job protected leave, eligible employees also receive the same health insurance benefits that were in existence before taking leave.

Employees utilizing FMLA leave will be *encouraged* to use their accrued vacation and paid sick leave prior to being granted unpaid FMLA leave. The total of the paid and unpaid FMLA leave will count toward the 12 or 26 workweek FMLA leave period.

### **Purpose**

FMLA allows employees time away from work to take care of an employee's or family members serious medical conditions, or for a "qualifying exigency" for an employee who has a family member that is on or about to be on active military duty. The FMLA seeks to accomplish this purpose in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

### **Eligibility**

In order to be eligible for FMLA an employee must have been employed by the City of Missoula a cumulative total of at least 12 months prior to leave *and* have worked 1,250 hours (exclusive of vacation, sick leave, holidays) in the 12 months preceding the leave time. The 12 months of employment need not be consecutive months. The 1,250 hours include only those hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not included.

### **Entitlements**

Leave of up to a total of 12 workweeks in a 12-month period for one or more of the following reasons:

- For the birth of a child, and to care for that child;
- For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- To care for an immediate family member (spouse, partner, child, or parent) with a serious health condition;
- When the employee cannot perform the essential functions of his or her job because of a serious health condition;
- For an employee with a family member who is on, or about to be placed on active military duty with a "qualifying exigency"; and
- To care for a family member who has been injured in the line of military duty (An employee is entitled to 26 work weeks of paid or unpaid leave to care for a family member injured while on active military duty.
- **Spouses or partners employed by the same employer** are limited to a combined total of 12 workweeks of family leave for the following reasons:
  - Birth and care of a newborn child;
  - For the placement of a child for adoption or foster care, and to care for the newly placed child; and
  - To care for an employee's parent who has a serious health condition;
  - To care for a family member injured while on active duty (entitled to a combined 26 workweeks).

### **Advance Notice**

Thirty (30) days advance notice is required if your need for leave is foreseeable. When leave is not foreseeable notice "as soon as practicable" needs to be provided. "As soon as practicable" generally means verbal notice to the City typically within (2) business days of learning of the need to take FMLA leave.

Employees are required to give sufficient information to their Supervisor so that the Supervisor understands that the employee needs leave for an FMLA-qualifying reason (the employee need not mention FMLA when requesting leave to meet this requirement, but must explain why the leave is needed).

If employees do not make their Supervisor aware that they were absent for FMLA reasons and the employee wants the leave counted as FMLA leave, he or she must provide timely notice, generally within two (2) business days of returning to work, that leave was taken for an FMLA-qualifying reason.

### **Calculation of FMLA by the City of Missoula**

FMLA leave is calculated on a 12-month period beginning with the FMLA leave request date. At the time an employee requests FMLA leave, records for the previous twelve months will be reviewed to determine if FMLA leave has previously been used and the amount of leave remaining that an employee is eligible to receive.

### **Serious health condition**

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment thereof) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or

**Leave for multiple treatments by a health care provider for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.)**

### **Immediate family members**

An employee's spouse, partner, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of mental or physical disability that limits one or more of the "life activities", or the injury is the result of active military duty, as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act Amendments Act (ADAAA).

### **Intermittent Leave**

FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a serious ill family member, or because of the employee's own serious health condition.
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the City's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. However, due to the intermittent schedule, the 12 or 26-week entitlement will be calculated using 480 or 1040 hours for full-time employees who work forty hours a week. The amount of FMLA leave for part-time employees will be pro-rated.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the City to schedule the leave so as not to unduly disrupt the City's operation, subject to the approval of the employee's health care provider. In such cases, the City may transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave better than the employee's regular job (if available).

### **FMLA Approval**

Once Human Resources receives the completed FMLA forms, the employee, supervisor (who signed the FMLA Request form) and payroll will be notified, in writing, if the request is approved, provisionally approved, or denied. The letter will be mailed to the employee's home address.

The final decision on the amount of approved leave time will be based on the medical certification from the treating physician.

### **Medical Certification**

The City requires that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a medical certification issued by a health care provider. However, no medical certification is required in the event of birth or placement of a child. The employee has at least 15 calendar days to obtain the medical certification and return it to the Human Resources department.

The City may require the employee to obtain a second or third opinion, if there are any doubts as to the validity of the medical certification. The City also may require recertification once every 30 days, at the employee's expense, during the FMLA leave. However, there are some exceptions to this time frame that would allow recertification prior to the end of the 30 day period. Exceptions may include, but not be limited to the following:

- The employee requests an extension of the leave.
- The original medical certification has changed
- There is some question as to the validity of the certification
- The employee is unable to return from leave at the specified time

A "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, or nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law.

### **Timekeeping while on leave**

It is the responsibility of the employee to make arrangements with his/her supervisor for use of accrued leave. The employee's accruals should be utilized in the following order and coded appropriately on his/her timecard:

1. FMLA – Sick
2. FMLA – Vacation
3. FMLA – Compensatory time (If used will not count toward the 12 weeks of leave.)
4. FMLA – Donated leave
5. FMLA – without pay

According to 29 C.F.R. Section 825.207 (i), Compensatory time cannot be charged against the employee's FMLA leave entitlement. However, the City prefers that all accruals be exhausted prior to going into an unpaid leave status. In some scenarios with Workers Compensation and collective bargaining units, FMLA will be coded differently. Please contact HR/Payroll with any questions.

### **Pay**

Prior to being granted FMLA leave without pay, an employee must exhaust all accrued, paid sick leave and vacation. The total of the paid and unpaid FMLA leave will count toward the 12 or 26-workweek FMLA leave entitlement. As provided in MCA 2-18-615, an absence due to an employee's own illness will not be charged against accrued, paid vacation leave unless approved by the employee.

### **Holiday pay**

Holiday hours do not count towards the FMLA entitlement. However, in order to be paid, the employee must be in a paid status either the day before, or the day after the holiday. (MCA 2-18-603) If the employee is on an unpaid FMLA leave, they may not be eligible for holiday pay.

### **While on Leave**

The City may not restrict an employee's activities. However, the City does have a conflict of Interest Policy that has to be adhered to. Refer to Personnel Policy Manual, chapter (7-01). The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

### **Health Benefits**

The City is required to maintain group health insurance coverage for an employee on FMLA leave on the same terms as if the employee were working. However, during an unpaid FMLA leave, employees are responsible for paying their insurance premiums (health, dental, flex) and the City will continue paying the City's portion. Any additional insurance deductions must also be paid by the employee during any such unpaid leave in order to continue coverage. If the employee fails to make a required payment, benefits may be discontinued. If the employee fails to return to work after taking FMLA leave, the employee may be liable for repayment of health insurance premiums paid by the City during the FMLA leave.

### **Communication while on FMLA**

An employee's department Supervisor and/or Human Resources can and may check in with the employee periodically throughout the FMLA leave to inquire and confirm that the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on the employee's status and intent to return to work.

### **Returning to Work Certification**

Under the law, an employee must be reinstated to the same position (s)he had prior to taking the leave, or to an equivalent position if (s)he returns to work immediately after FMLA.

*Return to Work Certification* reflecting, light/limited duty accommodations, will be required when an employee returns to work from FMLA used to treat the employee's own serious health condition. The employee must present the *Return to Work Certification* immediately upon his or her return to work.

### **Current position**

Employees who are unable to return to work and have exhausted their 12-weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

### **GINA**

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

**City of Missoula – FMLA contact numbers:** Phone number: 552-6130 Fax number: 327-2120



# FAMILY AND MEDICAL LEAVE (FMLA) - REQUEST FORM

Employees are entitled under the Family and Medical Leave Act (FMLA) for up to 12 weeks of paid or unpaid job protected leave. FMLA leave is granted for the following reasons: 1.) for the birth of a child and to care for the new born, 2.) with the placement of a child for adoption or foster care, and to care for the newly placed child, 3.) to care for an immediate family member (spouse, partner, daughter, son, parent) with a serious health condition, 4.) for an employee who is unable to complete the essential functions of his/her job due to a serious health condition, 5) for an employee and/or family member that has been called to active duty for "any qualifying exigency" and 6.) 26 weeks of leave to care for a family member that has been injured in the course of active duty. **Submit this request form to your supervisor.** Thirty days notice is required when the need for the leave is foreseeable. When advance notice is not practical, this leave request needs to be submitted as soon as is feasibly possible, usually within two working days. Requesting FMLA leave or being out sick for more than 3 days does not mean that FMLA is automatically granted.

## SECTION I - TO BE COMPLETED BY THE EMPLOYEE

Employee Name: \_\_\_\_\_ Department: \_\_\_\_\_

Job title: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

Type of leave:  Continuous  Workers' Compensation  Intermittent (Comment on schedule below)

**REASON FOR LEAVE:** (Mark all that apply. Do not provide any genetic or hereditary information.)

- Birth of child and to care for the child
- Care of a spouse/partner with a serious health condition
- Care for a child through adoption or foster care
- Care of a parent with a serious health condition
- Care for a child with a serious health condition
- Employee's serious health condition making an employee unable to work
- Inpatient hospitalization
- Continuous treatment by a healthcare provider
- "Any qualifying exigency" that may exist due to a call to active duty in the armed forces
- 26 weeks to care for a family member that has been injured while on active military duty.

Explanation of leave \_\_\_\_\_

Expected start date: \_\_\_\_\_ Expected date of return: \_\_\_\_\_

## ACKNOWLEDGEMENT BY EMPLOYEE

- **FMLA Medical Certification** from a health care provider is required to support a request for an employee's own serious health condition or that of an immediate family member.

- **FMLA Return to Work Certification** will be required from an employee when returning to work after the employee's own serious health condition.

- **City of Missoula** Employees should take leave in the order listed below. Other arrangements may be made with the approval of the employee's supervisor and the Human Resources department. Employees' should substitute paid leave for unpaid leave whenever possible:

1.) Sick      2.) Vacation      3.) Compensatory time      4.) Donated leave      5.) Unpaid leave

*I acknowledge the above FMLA request and paperwork, authorizes the use of paid leave instead of unpaid leave. I also acknowledge that the FMLA request is not valid until it has been certified and approved by the Human Resources Department. I also understand the requirement to communicate with my supervisor and Human Resources on an ongoing basis if there are any changes in my leave request or return to work date.*

Employee's Signature: \_\_\_\_\_ Date of request \_\_\_\_\_:

## SECTION II - TO BE COMPLETED BY EMPLOYEE'S SUPERVISOR

I acknowledge, pending appropriate medical certification, the above employee's request for FMLA

Supervisor -Print Name \_\_\_\_\_ Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

HR: FMLA approved and certification sent: \_\_\_\_\_  
FMLA denied for reason: \_\_\_\_\_



# City of Missoula FMLA Medical Certification

## SECTION I: EMPLOYEE: PLEASE FILL OUT THIS SECTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER.

Printed Employee Name:

Reason for leave:

Patient Name (if other than employee):

Relation to employee:

Treating Physicians Name:

## SECTION II: HEALTH CARE PROVIDER: PLEASE FILL OUT THIS SECTION AND RETURN AS STATED BELOW.

Does the patient have a "serious health condition"  Yes  No (See definitions on page: 3 of Medical Certification)

If yes, please check reason:

- 1. Hospital Stay
- 2. Incapacity plus Treatment -- condition that causes more than three (3) days of incapacity and
  - two or more treatments by a health care provider; or
  - one treatment plus a continuing regimen under supervision of a health care provider*Please request employee's job description if needed to determine "incapacity."*
- 3. Pregnancy -- any period of incapacity due to pregnancy or prenatal care.
- 4. Chronic Serious Health Condition
- 5. Permanent or Long-Term Conditions -- requiring medical supervision
- 6. Multiple Treatments for Non-Chronic Condition

If the leave is to care for an *immediate family member*, is the employee's presence necessary and/or beneficial to the patient's care?  Yes  No

How long will the employee's presence be necessary to assist the family member?

Describe the medical facts that support your certification for which the patient is being treated:

State the approximate date the condition commenced and the probable duration of the condition:

Prescribed treatment (i.e., number of visits, nature and duration of treatment, etc):

If any of these treatments will be provided by another provider of health services, please state the nature of the treatments:

Is intermittent leave or a reduced work schedule medically necessary?  Yes  No

If yes, describe:



# FMLA Medical Certification - Continued

**SECTION II Cont.**

Is the employee able to perform the essential functions of their position, at this time?  Yes  No  
 (We may provide and request your review of the employee's job description. Otherwise such information may be obtained from discussion with the employee)

Will the employee's work activities need to be modified upon return to work?  Yes  No

If so, tentative date employee may return to modified work?

Recommended modifications and duration?

Will any activities be limited permanently?  Yes  No                      If yes, explain:

When is the anticipated return to work date with No limitations?

Comments:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Physician's Signature:

Contact person:

Health Care Provider's Address:	Phone #: Fax #:	Date:
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**PLEASE RETURN THIS FORM TO CITY OF MISSOULA – HUMAN RESOURCES DEPARTMENT:**

FAX (preferred): 406-327-2151

Address: 435 Ryman St    ATTN: Human Resources    Missoula, MT 59802-4297



## FMLA Medical Certification - Continued

**A "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES ONE OF THE FOLLOWING:**

### 1. Hospital Care

**Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence Plus Treatment

(a) A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) **Treatment two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of the health care provider.

### 3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

### 4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

(1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and

(3) May cause **episodic** rather than a continuing period of incapacity e.g., asthma, diabetes, epilepsy, etc.).

### 5. Permanent/Long-term Conditions Requiring Supervision

A period of **incapacity** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

### 6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, 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 consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

#### Definitions:

"Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.



## FMLA Return to Work Certification

**SECTION I: EMPLOYEE:** PLEASE FILL OUT THE TOP PORTION, AND TAKE THIS FORM TO YOUR HEALTH CARE PROVIDER. THIS CERTIFICATION MUST BE PROVIDED TO YOUR **SUPERVISOR PRIOR** TO YOUR RETURN TO WORK.

Employee:

Employee's Department:

Employee's Job Title:

Department Supervisor:

Department FAX number:

**SECTION II: HEALTH CARE PROVIDER:** PLEASE COMPLETE THE FOLLOWING AND RETURN DIRECTLY TO THE DEPARTMENT LISTED ABOVE PRIOR TO THE RETURN TO WORK DATE.

Please review the job description. Is the employee able to perform all the functions of his or her job?

Yes       No       Yes, with restrictions.

Please list any restrictions or functional limitations which the department should consider:

Are the restrictions:       Permanent       Temporary, until (date):

Comments:

Employee is released to return to work effective (date):

Printed Name of Health Care Provider & Physician:

Specialty:

Address of Health Care Provider:

Signature of Health Care Provider:

Date:

**Attn. Supervisors: PLEASE SEND COMPLETED FORM TO HR for employees FMLA file**