



Family Medical Leave Policy

1. Purpose of FMLA

Family and Medical Leave is a legal right for employees and involves rights and responsibilities for both the employee and the employer. The Federal government and State of Maine both have Family and Medical Leave Acts, with different benefits and requirements. Leave covered by the Family and Medical Leave Acts are commonly referred to as “FML” or “FMLA.” It provides eligible employees with job protection if they must take extended or recurring leave for eligible events. During qualified leave, employers must continue medical insurance and allow the employee to return to their same or equivalent position. The employee and employer are required to communicate relevant information throughout the leave.

2. Benefits of FMLA

Federal FMLA provides up to 12 weeks of unpaid, job-protected leave in a 12-month period. Maine FMLA (up to 10 weeks of leave in a 24-month period) provides additional protections for employees that are not covered by Federal FMLA. The City runs Federal and Maine FMLA leave concurrently, meaning that if an employee qualifies for both, they will receive both at the same time. Employees do not need to use leave in one block and can request intermittent or a reduced leave schedule.

3. Eligibility

The City is a public employer, and therefore required to provide FMLA leave. Eligible employees have worked for the City for the length of time described by law and have a qualifying reason for leave. For Federal FMLA, an employee must have worked for the City for at least 12 months, and it does not have to be consecutive months. They must have worked at least 1,250 hours during the 12 months before the leave begins. This averages about 24 hours/week over 52 weeks. For Maine FMLA, an employee must have worked for the City for at least consecutive 12 months.

4. Qualified Leave

Qualified leave under FMLA is extended or recurring leave to take care of their own serious illness or injury, care for their family members during an illness or injury, bond with a new child, or care for a family member in the military with a serious injury or illness.

4.1 Bonding after birth of a child or placement of a child for adoption or foster care.

Parents are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time). Employees may take FMLA leave before the actual birth, placement of a child with the employee for adoption or foster care and to bond with their child within the first 12 months beginning on the date of the birth or placement.

4.2 Caring for a spouse, child, or parent with a serious health condition.

Maine and Federal FMLA cover:

- Spouse: A husband or wife as defined under state law, including common law marriage where recognized.
- Child: a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability. *The FMLA regulations define "in loco parentis" as including those with day-to-day responsibilities to care for and financially support a child.*
- Parent: A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.

Maine FMLA also covers:

- Domestic partners: Maine law criteria requires that each domestic partner is a competent adult; they have been legally domiciled together in Maine for at least 12 months prior to the filing; neither individual is married or in a registered domestic partnership with another individual; and they each intend to be the sole domestic partner of the other individual and intend to remain so.
- Siblings: if the employee and sibling have joint living or financial arrangements.
- Donation of an organ for a human transplant

4.3 An employee's own serious health condition makes them unable to perform their job. "Serious Health Condition" is defined as an illness, injury, impairment or physical or mental condition involving inpatient care such as an overnight stay in a hospital, hospice, or residential medical facility; incapacity of more than three consecutive, full calendar days that involves treatment by a health care provider; and/or continuing treatment by a health care provider.

4.4 Military Family Leave

An eligible employee who is a covered service member's spouse, child, parent, or next of kin may also take up to 26 weeks of leave in a single 12-month period to care for the service member with a serious injury or illness that arose out of foreign deployment or active duty.

4.5 Workers' Compensation

In addition to the qualified leave above, work-related injuries that result in three or more days away from work will be considered qualified leave for the duration of the absence, until they return to work with or without restrictions.

5. Reporting and Certification

Employees must report potential FMLA as soon as possible and expected leave with 30 days advance notice. Supervisors must report the leave request to Department Heads and HR as soon as they become aware of it. HR sends certification paperwork within 5 days. Employees must complete certification requirements within 15 days. HR will determine if the employee and leave are eligible under Federal or State FMLA and communicate eligibility to the employee and Department Head. Communication by both parties is essential before and during the leave. The attached flow charts describe the process for administration of qualified leave.

The approved amount and schedule of qualified leave is based on your request, the certification paperwork, and your amount of available FMLA available. If the nature or schedule of the leave changes, the employee must communicate that to HR. HR may require re-certification of the leave.

Medical information shared by the employee is confidential and covered by the Health Information Portability and Accountability Act. Information about leave approval and denial, schedule of leave, payroll information, and affected benefits will be shared with involved staff, such as direct Department Heads and Finance.

6. Benefit Utilization

The City requires the use of paid time off during the absence. Available time depends on the reason for leave and other circumstances. With a firm return date, an employee may request to spread their paid time off throughout the absence. During unpaid leave, the employee must pay for their benefits weekly to keep them active. In either scenario, the employee is using their accrued leave during this absence. If unpaid leave is necessary, they must submit a completed unpaid leave form.

Leave time affects your benefits. During qualified leave, the City is only required to continue your medical insurance. If you are on unpaid leave and do not pay your benefits, they will be cancelled. Maine Public Employee Retirement System (MainePERS) limits “earnable compensation.” If you are using paid leave, you are paying into MainePERS, and your time is considered earnable compensation. If you are on unpaid leave, and are not paying into MainePERS, then you are not accruing earnable compensation. This could affect how MainePERS calculates your total service years.

7. What if the FMLA requirements are not met?

If an employee does not fulfill their responsibilities, such as providing required paperwork or not communicating with the employer representative, HR may deny all or part of the leave. If FMLA is denied, that leave does not qualify for the associated protections. The employee should talk to HR and their Department Head about other leave options. The employee may be able to request a leave of absence (see below).

If the City does not fulfill its responsibilities, such as sending proper notices or not returning an employee to the same or equivalent job, it is not following the law. Every effort should be made to allow both parties to fulfill their responsibilities, while recognizing that medical needs and personal circumstances may impact that ability.

If the employee takes unexcused leave, ceases to communicate despite the employer's efforts, or does not return when expected, they may be subject to discipline, including termination.

8. Extended Leave or Leave of Absence

When an employee's 12 weeks of leave under FMLA has been exhausted, (or 10 weeks for Maine FMLA) they can request an extension of leave or a leave of absence. An extension of leave or leave of absence does not have the same protections as under Federal and/or Maine FMLA. Extended leave or leave of absence requests must be made to the Department Head, with notice to HR. The City Manager will approve or deny the request based upon the City's needs and the circumstances of the situation. The City Manager may set restrictions and parameters on the leave. If the employee is a Union member, refer to their Collective Bargaining Agreement for additional information.

9. Returning to Work

When returning from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions. The employee must provide a note to HR from their Health Care Provider stating that they can return to work on a certain date, either at full capacity or clearly listing the job restrictions or reasonable accommodations the employee needs. The note must be provided before their return to work. HR will discuss job-related restriction accommodations with the Department Head. The employee and Department Head must communicate about the return date and any other circumstances that may affect the schedule, requirements, or essential duties of the employee's job.

9.1 Modified Duty for Temporary Restrictions

The City strives to find appropriate modified duty for employees with temporary restrictions. Restrictions will be reviewed after three months and those that continue may initiate the Americans with Disabilities Act and Act Amendments (ADA) interactive process.

9.2 Americans with Disabilities Act Accommodations

The ADA covers employees with an impairment or restriction that limits "major life activities." Reasonable accommodations can be requested by the employee to mitigate impairments so the employee can complete the essential functions of their job.