

01/21/19

LEAVE -- FMLA

Consistent with the federal Family and Medical Leave Act of 1993 (FMLA) and its amendments, the City of Berlin recognizes that eligible employees have access to unpaid family and medical leave for up to twelve (12) workweeks within a twelve (12) month period. Eligible employees may take up to 12 workweeks of FMLA in a 12-month period for the following qualifying reasons:

- The birth of a child and to bond with the newborn child (leave must be taken within 12 months of the child's birth);
- The placement with the employee of a child for adoption or foster care and to bond with the newly placed child (leave must be taken within 12 months of placement);
- To care for the employee's family member (minor child, spouse, parent, or adult child incapable of self-care) who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- A serious health condition that makes the employee unable to perform the functions of the employee's job, including incapacity due to pregnancy and for prenatal medical care;

- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

Additionally, eligible employees may take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (referred to as military caregiver leave). An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period.

The method used by the City of Berlin to determine an employee's eligibility and amount of FMLA leave available is the 12-month period measured forward from the date an employee first uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the 12-months following the date of first FMLA leave use). FMLA will begin on the first day of leave requested by the employee, if prior notice has been provided, as noted on USDOL Form WH-381, or when the employee is unable to provide prior notice, on the date indicated by the City on the notice form (USDOL WH-381).

Eligibility: To be eligible for FMLA leave, an employee must have been employed by the City of Berlin for at least 12 months (which need not be consecutive); have performed at least 1,250 hours of work with the City within the previous consecutive 12-month period; and work at a worksite where 50 or more City employees are employed within a 75-mile radius as of the date

when the employee gives notice of the need for leave. With respect to the requirement of 1,250 hours of work with the City within the previous consecutive 12-months, the principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave shall not be counted in determining the 1,250 hours eligibility test for an employee under the FMLA.

Procedure for Requesting FMLA Leave: An employee needing leave under this policy should follow the procedures below for notifying the City of Berlin of the need for leave. In addition, the City reserves the right to designate qualifying time off as FMLA leave even if the employee does not request FMLA.

- If the need for leave is foreseeable, an eligible employee shall notify the City's Finance Director or Benefits Specialist at least 30 days in advance of the anticipated start date of the leave. Examples of foreseeable leave include an expected birth, placement for adoption or foster care, or planned medical treatment for the employee or an eligible family member.
- If the need for leave is not foreseeable, the employee must provide the City's Finance Director or Benefits Specialist with notice as soon as practicable under the circumstances.

- If the employee is not able to give notice of the need for leave personally due to his/her own serious medical condition, then the employee should have someone else notify the City's Finance Director or Benefits Specialist on his/her behalf.
- Failure to provide timely notice may be grounds for delaying the leave.

An employee needing leave must make a request to the City's Finance Director or Benefits Specialist and must explain the reason(s) leave is needed and the anticipated timing and duration of the leave. For employees needing FMLA leave, it is not enough to just call in "sick" as this does not provide enough information to identify that the absence may be FMLA qualifying.

If an employee is requesting FMLA for the first time, the employee must give enough information so that it is clear that the leave may be FMLA qualifying. Examples of information that would satisfy this requirement include that the employee is injured or ill and unable to perform job functions; the employee is pregnant; the employee has been hospitalized overnight; the employee or covered family member is under the continuing care of a health care provider; a covered military member is on active duty or called to active duty and leave is needed for a qualifying reason to prepare for the active duty service; if the leave is for a family member, identification of the family member's relationship to the employee and that the family member is unable to perform daily activities because of a health condition.

If it is unclear whether the employee is requesting leave for a reason that may be FMLA qualifying, the City's Finance Director or Benefits Specialist or its designee may contact the employee and request additional information. Employees are expected to supply the requested information as soon as possible within 15 days unless an extension is requested and approved.

Required Certifications to Document the Need for Leave: The type of certification depends on the reason for the FMLA leave. As applicable, the employee may be asked to provide a completed Certification of Health Care Provider for Employee's Serious Health Condition (USDOL Form WH-380-E or most recent), Certification of Health Care Provider for Family Member's Serious Health Care Condition (USDOL Form WH-380-F or most recent), Certification of Qualifying Exigency for Military Family Leave (USDOL Form WH-384 or most recent), or Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave (USDOL Form WH-385 or most recent). The employee may also be required to provide other supporting documentation.

Completed certification forms must be returned to the City's Finance Director or Benefits Specialist within fifteen (15) calendar days after the request for certification by the City. If an employee fails to provide the required completed form in a timely manner, the employee's leave may be delayed. If a complete and sufficient certification form is not provided at all, the City will not be able to determine the employee's eligibility for leave, and the leave may be denied.

Certification forms must have all applicable entries completed and must contain specific, not vague, ambiguous, or non-responsive statements. If a certification form provided by an employee is incomplete or insufficient, the City will provide the employee with written notice of what additional information is needed to make it complete and sufficient. An employee will have seven (7) calendar days from the date of the City's request to have the certification sufficiently completed and resubmit it to the City's Finance Director or Benefits Specialist. If the employee does not have the deficiencies in the certification form fixed within the 7-day period, FMLA leave may be denied.

If there is reason to doubt the validity of the health care provider's certification, the City, at its expense, may require an examination by a second health care provider designated by the City. If the second health care provider's opinion conflicts with the original medical certification, the City, at its option and expense, may require a third health care provider, agreed upon by the employee and the City, to conduct an examination and provide a final and binding opinion. The employee may request and receive copies of the second and/or third opinions.

The City of Berlin may also require subsequent re-certifications of the need for leave. Failure to provide re-certifications within fifteen (15) calendar days of the request from the City may result in delay or denial of further leave. In general, the City may request the employee to provide a re-certification no more often than every 30 days and only when the employee is actually absent or has requested to be absent. The City may request a re-certification in connection with an absence by the employee in less than 30 days only if:

- The employee requests an extension of leave;
- The circumstances described by the previous certification have changed significantly; or
- The City receives information that casts doubt on the employee's stated reason for the absence or the continuing validity of the existing medical certification.

During recertification an employer may provide the health care provider with a record of the employee's absence pattern, such as an attendance record of FMLA leave use, and ask the health care provider if the serious health condition and need for leave is consistent with the absence pattern provided. Additionally, for serious health conditions, the City may contact the employee's health care provider to authenticate or clarify re-certification, but will not require a second or third opinion for recertification.

Intermittent or Reduced Leave Schedules: Under certain conditions, an employee is entitled to take FMLA leave on an intermittent or reduced schedule basis. "Intermittent leave" is leave taken in separate blocks of time rather than in one continuous period of time. A "reduced leave schedule" is one that reduces the usual number of hours/days per workweek or hours per workday. Intermittent or reduced-schedule FMLA leave will be allowed when medically necessary for the employee's own serious health condition, to care for a spouse, parent, or child with a serious health condition, or to care for a covered servicemember with a serious injury or illness. An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies. FMLA leave taken on an intermittent or reduced schedule basis will be figured to the nearest quarter hour. Whenever possible, an employee granted intermittent or reduced schedule FMLA leave should try to schedule time out of work in such a manner so as not to unduly disrupt the City of Berlin's operations.

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149 During intermittent or reduced schedule FMLA leave, the City continues to reserve the right to
150 temporarily transfer the employee to an available alternative position with equivalent pay and
151 benefits. Employees taking intermittent or reduced schedule leave will be paid for the time they
152 work, and the leave time away from work will be unpaid unless the employee qualifies for
153 workers' compensation benefits, short-term disability, or other benefits as provided for in the
154 various collective bargaining agreements or City policies, as applicable. For salaried
155 employees, the City of Berlin will adjust your salary based on the amount of time actually
156 worked.

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158 Determining Paid or Unpaid Leave: Generally, FMLA leave is unpaid leave. However, per 29
159 C.F.R. 825.207, the FMLA permits the employer to require an eligible employee to substitute
160 accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave
161 provided by the employer, and accrued pursuant to the employer's established policies or
162 collective bargaining agreement as applicable, will run concurrently with the unpaid FMLA
163 leave. Accordingly, the employee receives pay pursuant to the City's applicable leave policy or
164 collective bargain agreement as applicable during the period of otherwise unpaid FMLA leave.

165 An eligible employee taking FMLA leave due to his/her own serious health condition may be
166 entitled to receive short-term disability benefits or workers' compensation benefits while out on
167 FMLA leave. In that event, the receipt of short-term disability or workers' compensation
168 benefits run concurrently with the FMLA leave. When an employee is receiving short-term
169 disability benefits or workers' compensation benefits these benefits will supercede the

requirement for substitution of the employee's accrued paid leave. The difference between short-term disability benefits or workers' compensation benefits and normal wages will be supplemented with any accrued paid leave available. If an employee continues to have accrued paid leave on the books after the 12 week FMLA period, this paid leave shall remain available to the employee until it is exhausted per the City's policy and/or applicable collective bargaining agreement. Access to FMLA does not add to or delete from an employee's accrued paid leave.

If an employee is not receiving short-term disability, workers' compensation or other benefits payments, the employee must apply his/her sick time to the FMLA leave if the FMLA leave is due to the employee's own serious health condition. If paid sick leave is exhausted or not applicable, then the employee must apply any accrued vacation time. The receipt of sick pay and/or vacation pay runs concurrently with the FMLA leave and does not extend the 12 FMLA workweeks. As noted in the last paragraph; if an employee continues to have accrued paid leave on the books after the 12 week FMLA period, this paid leave shall remain available to the employee until it is exhausted per the City's policy and/or applicable collective bargaining agreement. Access to FMLA does not add to or delete from an employee's accrued paid leave.

Employees on FMLA leave shall be considered on leave status. All earned City benefits will cease to accrue upon commencement of FMLA leave and while on leave status, with the exception that City benefits may continue to accrue per the terms and conditions of an

applicable collective bargaining agreement during FMLA leave (ex. when the employee is taking accrued paid leave, sick or vacation, concurrently with the FMLA leave). Employees taking FMLA leave on an intermittent or reduced schedule will have said benefits restored on a prorated basis.

Employees on FMLA leave who participate in the City's health insurance benefit are entitled to have their health benefits maintained while on FMLA leave under the same terms and conditions applicable to employees not on leave. If an employee is receiving paid time off benefits from the City for any portion of the leave (i.e. sick pay, vacation pay) then the City will continue to deduct the employee's share of the health insurance premiums from his/her paycheck as usual. If the FMLA leave is unpaid or paid through a benefit not provided through the City's payroll system, the employee must pay his/her portion of the premium by making arrangements with the City. An employee's health insurance benefit may be cancelled if the employee's premium payment is more than thirty (30) days late. The City will provide written notice to an employee whose premium payment is more than thirty (30) days late that payment have not been received and that his/her health insurance coverage will end at a specified date after the date of the written notice unless payment is received by the specified date. This written notice will be mailed to the employee at least 15 days before coverage is to cease.

Reinstatement Following FMLA Leave: Employees returning from FMLA leave who are able to perform their job functions will normally be reinstated to their prior positions or equivalent

positions. Circumstances under which employees on FMLA leave might not be reinstated include the following:

- They cannot perform the essential functions of the job, with or without a reasonable accommodation(s);
- They would not otherwise have been employed at the time they request reinstatement (for example, intervening lay-offs, position eliminations, reduction in force, etc.);
- They are denied reinstatement under the “key employee” provisions of the FMLA.

Returning From FMLA Leave: If an employee takes FMLA leave for his/her own serious health condition, the City will require with a fitness for duty certification with regard to the particular health condition(s) that was the cause of the leave. It is the employee’s responsibility to obtain the fitness for duty certificate, and failure to do so will result in the delay or denial of your reinstatement.

Communication During Leave: It is the employee’s responsibility to contact the City’s Finance Director or Benefits Specialist during FMLA leave regarding any changes in status and his/her intention to return to work.

234 No Other Work While On FMLA Leave: Working at another job (including self-employment)
235 while on FMLA leave or any other authorized leave may lead to disciplinary action, up to and
236 including termination of employment.

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238 Reference to the FMLA and its Implementing Regulations: The FMLA and FMLA regulations
239 issued by the U.S. Department of Labor contain many definitions, limitations, and qualifications
240 that are not stated in this policy. The City of Berlin reserves the right to apply the terms of the
241 FMLA and the FMLA federal regulations.

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