CITY OF RICHARDSON
INTERDEPARTMENTAL POLICY AND PROCEDURE

FAMILY AND MEDICAL LEAVE ACT

POLICY

It is the policy of the City of Richardson to abide by the provisions of the federal Family and Medical Leave Act (FMLA) 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" (available on the Intranet under H.R. Forms) shall be posted on the City's employee Intranet and on all departmental bulletin boards.

PROCEDURE

A. GENERAL

The Family and Medical Leave Act was first passed by the U.S. Congress in 1993. Its provisions are regulated by the U.S. Department of Labor, which issued initial regulations in January 1995; amended Final Regulation procedures issued in November 2008 are effective January 16, 2009.

Employees are required to: (a) respond to supervisor questions designed to determine whether an absence is potentially FMLA-qualifying; (b) consult with their supervisors in advance and make a reasonable effort to schedule foreseeable leave for planned medical treatment (whether continuous, intermittent, or reduced schedule) so as not to disrupt unduly the department's operations; and (c) discuss and resolve with their supervisors any dispute about whether leave qualifies as FMLA leave.

Departmental supervisors/managers are required to: (a) provide responsive answers to employee questions about employee rights and responsibilities under the FMLA; (b) discuss and resolve with employees any dispute about whether requested leave qualifies as FMLA leave; and (c) document any such discussions and retain such documentation for three (3) years pursuant to FMLA record retention rules.

B. EMPLOYEE LEAVE ENTITLEMENTS UNDER FMLA

Employees (full-time and/or part-time) who have been employed by the City for at least 12 months (need not be consecutive months, but must be within the seven (7) years prior to the leave date), and who have worked **at least 1250 hours during the 12 month period immediately before the beginning of a leave,** are entitled to a total of **12 work weeks of unpaid leave during a calendar year** for any of the following reasons:

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, IF that spouse, child, or parent of the employee has a serious health condition as defined by FMLA – see "Section C - Definitions" (includes providing physical and/or psychological care).

4. the employee has a serious health condition (as defined by FMLA – see "Section C - Definitions" 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

involving deployment to a foreign country (See Section C – 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 servicemember) to care for a covered servicemember 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 (or because active duty aggravated an existing or preexisting injury or illness), provided that such injury or illness renders the servicemember medically unfit to perform the duties of his/her office, grade, rank, or rating. This includes veterans who were members of the Armed Forces, National Guard, or Reserves at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. (See Section C – Definitions for covered servicemember 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.*

    - 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 eligible for leave due to the birth or placement of a child (under subparts B.1 and 2), or to care for a parent (under subpart B.3), 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 (under subpart B.5) of this section, 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 for reasons 1, 2, and to care for a sick parent only under reason 3. However, **if the leave is for self-care (reason 4) or care of a sick spouse or child, each employee is entitled to 12 work weeks of unpaid leave per calendar year under FMLA.**

Intermittent leave or a reduced work schedule (e.g. less than fully scheduled hours) shall not be taken by an employee unless:

- it has been determined to be medically necessary **(**due to the employee's serious health condition, OR
- to care for a spouse, parent, or child with a serious health condition, OR
- for planned medical treatment for the employee or a qualified family member) when the underlying cause qualifies for FMLA leave (see above), OR
- is due to a non-medical activity (qualifying exigency – see Definitions) that is directly related to a covered family member's active duty or call to active duty in the National Guard or Reserves.

Intermittent or reduced schedule leave may be taken after the birth of a **healthy** child or placement of a **healthy** child for adoption or foster care only if the employee's department agrees to it.

If foreseeable intermittent leave is deemed medically necessary for planned medical treatment for the employee, a family member, or a covered servicemember, the employee may be required by the City Manager (or designee) to transfer temporarily to an available alternative position for which the employee is qualified, with equivalent pay and benefits, to avoid disruption of City operations. (An employee on unforeseeable intermittent leave cannot be transferred to an alternative job.)

Intermittent leave due to a non-medical activity (qualifying exigency) that is directly related to a call to active duty is subject to the employee providing reasonable and practicable notice of the active duty status.

Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave.

FMLA leave, as with all other types of paid leave, may be taken in quarter hour segments.

Employees are required to substitute any applicable accrued paid leave (e.g. sick leave when appropriate, vacation when appropriate, compensatory time if they request it and/or the department requires it) for all or a portion of the 12 - or 26 when applicable - work weeks of unpaid FMLA leave before they can take unpaid FMLA leave. (See pages eight for examples.) Regardless of the paid and/or unpaid leave used, FMLA leave will run simultaneously with it, and the payroll will be double-coded accordingly (refer to Section E. III - Coding the Payroll).

Eligible employees exercising their federal right to take family and medical leave will not have it counted against them under City or departmental attendance policies, nor on their Efficiency Reports. They will, on return from such leave, be restored to the position held when the leave began OR to an equivalent position, with equivalent pay, benefits, and conditions of employment.

> **EXCEPTION**: Only full time salaried employees *who are among the highest paid 10 percent of the City's employees* may be denied restoration to their former (or an equivalent) position if denial is necessary to prevent substantial and grievous economic injury to the operations of the City, AND such employee is notified of the intent to deny restoration at the time the City determines such injury would occur. Such employees may not be denied the right to take the family and medical leave, but may be denied restoration to their former (or an equivalent) position.

The City has a right to require medical certification of a serious health condition to substantiate a request for family and medical leave for care of a spouse, child, parent, or self because of a serious health condition. DOL forms are provided to the employee for requesting this certification (different forms are used for the serious health condition of employee or for the employee's covered family members). See the list of Forms on the last page of this Procedure.

The City may also require second and third opinions, at the expense of the City, if there is reason to doubt the validity of the medical certification. The City will choose the second opinion provider; the third opinion provider will be agreed upon by the City and the employee.

When a workers' compensation injury is one that meets the criteria for a serious health condition as defined by FMLA (e.g., results in inpatient hospital care; or absence for more than three consecutive days and results in at least two healthcare provider visits; or treatment by a healthcare provider that results in a continuing regimen of continuing treatment under the healthcare provider's supervision), that workers' compensation absence will be double coded as an FMLA leave.

While an employee is on FMLA leave, there continues to be an employment relationship. Consequently, the department's employment policies continue to apply while an employee is on FMLA leave, in the same manner as they apply to employees who continue to work or who are absent on some other form of leave. This also applies to the department's policy regarding any outside employment while on a leave of absence from the City (including workers' compensation absences).

C. DEFINITIONS

Active duty – duty under a federal call or order to active duty in the Armed Forces, National Guard, or Reserves.

Child - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person acting in place of a parent (with all of the parental responsibilities), who is under 18 years of age, or who is age 18 or older and incapable of self-care because of a mental or physical disability.

Covered servicemember – a current member of the Armed Forces, National Guard, or Reserves who, for a serious injury or illness, is undergoing medical treatment (by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider), recuperation, or therapy, or is otherwise in outpatient status, or is on a temporary disability

retired list. This includes veterans who were members of the Armed Forces, National Guard, or Reserves at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Health care provider – includes licensed doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, physician assistants, nurse-midwives, clinical social workers, who are authorized to practice, and performing within the scope of their practice, under state law; also includes nurses or other providers (e.g., physical therapists) under direct supervision of, or under orders of, a health care provider.

Parent - a biological parent or a person who acted in place of a parent when the employee was a child.

Qualifying exigency – a non-medical activity 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 involving deployment to a foreign country. For an activity to qualify as an exigency, it must fall within one of seven categories, or must be mutually agreed to by the department and employee. The seven categories are:

- short-notice deployment;
- military events and related activities;
- temporary childcare arrangements and school activities (but not ongoing childcare);
- financial and legal arrangements;
- counseling by a non-medical counselor (such as a member of the clergy);
- rest and recuperation (leave permitted when the military member is on temporary rest and recuperation leave); and
- post-deployment military activities.

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

I. **inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical care facility,** including any period of incapacity (defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; **or**

II. **continuing treatment by a healthcare provider**, including one or more of the following:

(a) **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**:

(1) treatment two or more times by a health care provider within 30 days of the first day of incapacity (unless extenuating circumstances beyond the employee's control exists)*;* OR

(2) **treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment (e.g. a course of prescription medication or therapy for treatment of the serious health condition) under the supervision of the health care provider.**

The requirements in (a) (1) and (2) of this section for treatment by a health care provider means an in-person treatment by a health care provider. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity;

NOTE: See Item V "Exceptions"

(b) any **period of incapacity due to pregnancy, or for prenatal care** (including prenatal care visits to a doctor – includes prenatal visits by the pregnant employee's husband, but does not include a non-spouse father of the child).

(c) **any period of incapacity or treatment for such incapacity due to a chronic serious health condition,** which:

(1) requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse 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.)

(d) 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 Disease, a severe stroke, or terminal stages of a disease.

(e) **any period of absence to receive multiple treatments (including recovery therefrom)** by a health care provider, someone operating under orders of or referral from a healthcare provider**, for restorative surgery after an accident or other injury; or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical treatment,** such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Mental illness, allergies, restorative dental or plastic surgery after an injury, and removal of cancerous growths may be serious health conditions, but only if all the conditions of this section are met.

III. **Treatment, for purposes of FMLA, includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition.** It does not include routine physical, eye, or dental examinations. Under paragraph (II) (a) (2) on Page 4, **a *regimen of continuing treatment* includes a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition**. It does not include taking over-the-counter medications or other activities that can be initiated without a visit to a healthcare provider.

IV. Conditions for which cosmetic treatments are administered are not "serious health conditions" unless inpatient hospital care is required or complications develop.

V. **EXCEPTIONS:** Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems or periodontal disease, etc., do not meet the definition of "serious health condition" **and do not qualify for FMLA** leave.

VI. Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for substance abuse treatment by a health care provider or someone operating under referral of a healthcare provider.

Absence due to abuse of a substance, rather than for treatment, does not qualify for FMLA leave.

Serious injury or illness – as pertains to Servicemember FMLA, an injury or illness incurred by a current member of the Regular Armed Forces, National Guard, or Reserves in the line of duty while on active duty (or because active duty aggravated an existing or preexisting injury) that renders the servicemember medically unfit to perform the duties of his/her office, grade, rank, or rating. This includes serious injury or illness of veterans

who were members of the Armed Forces, National Guard, or Reserves at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

D. EMPLOYEE RESPONSIBILITIES

I. REQUESTING LEAVE *THAT QUALIFIES AS* FMLA

In any case in which the need for a leave of absence that qualifies as family and medical leave is foreseeable, the employee shall provide a **verbal or written** request to his/her supervisor with not less than 30 days' notice before the leave is to begin. If the need for leave does not allow 30 days notice, the employee shall provide it as soon as possible. *(Note: This includes requests for vacation, sick leave, or sick leave for family, IF the underlying reason for the leave meets the criteria for FMLA leave.)*

NOTE: The employee does **not** have to use the term "FMLA leave" when making the request, but calling in "sick" is not enough, by itself, to trigger FMLA requirements. The employee must provide sufficient information for the supervisor to reasonably determine whether the FMLA applies to the leave request (i.e., state a qualifying reason for the leave or explain the reason for it, provide the anticipated timing and duration of the leave if it is foreseeable, etc.) **When a supervisor is made aware that the reason for requested leave is a reason that qualifies for FMLA leave, the supervisor must notify the employee that the leave qualifies for and will be designated as FMLA leave. This provides notice to the employee that he/she has federal law rights under FMLA.** (See Section E. II, Responding to the Request.)

The employee shall make a reasonable effort not to disrupt the operations of the City and his/her Department and work group.

Leave that qualifies for FMLA will always be double-coded on the payroll. Any applicable accrued paid leave (e.g., vacation, sick leave, etc.) must be substituted for unpaid leave for some portion (or all, if the employee has sufficient accrued leave of the appropriate type) of the FMLA-qualifying leave, before the employee can take unpaid FMLA leave.

EXAMPLE: Timesheet codes FM and FS would be used for the first 80 hours of sick leave used to care for a qualified family member with a serious health condition (until the employee's 80 hours of Family Sick Leave has been exhausted for the calendar year). If the need extends beyond the employee's allowable Family Sick Leave for the calendar year, and the employee has accrued vacation leave, FM and VA would be used until accrued vacation is exhausted. Any remaining leave time for caring for the family member would be unpaid leave (FM and AO).

Federal rights and obligations under FMLA apply if the reason for requested leave is a reason that qualifies for FMLA leave, regardless of what pay code is used.

The protection of FMLA will not apply if:

- the reason for leave no longer exists; and/or
- the employee does not provide required notices or certifications; and/ or
- the employee misrepresents the reason for leave.

II. MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION

The employee shall provide required medical certification of a serious health condition (for him/herself or that of a covered family member) within 15 days when requested to do so. See Section F. – MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION.

E. DEPARTMENTAL MANAGEMENT RESPONSIBILITIES

I. RECEIVING THE REQUEST FOR LEAVE

When an eligible employee **communicates the need to be off the job for a period of time, in order to** care for:

- a newborn, newly adopted child, or newly placed foster child;
- a child, spouse, or parent with a serious health condition (refer to "Definitions"); or
- him/herself **due to a serious health condition** (refer to "Definitions"), or
- for servicemember family medical leave due to active duty or injury/illness,

then the request **qualifies as a reason for *and must be designated as* FMLA leave**. (See Attachment I for an FMLA Flow Chart that may be helpful guidance.) The employee may or may not use the term "family and medical leave" (it is not necessary to do so in order to be FMLA-qualifying).

The notice from the employee may be either verbal **or** written. The employee must provide:

- the FMLA-qualifying reason for the leave, and
- the date it is needed to begin, and
- the estimated date of return to work.

II. RESPONDING TO THE REQUEST

FMLA is both an employer obligation and an employee right. Regardless of how a supervisor becomes aware of it, when a supervisor is made aware that the reason for an employee's requested leave is a reason that qualifies for FMLA leave, **the supervisor must notify the employee that the leave qualifies for *and will be designated as* FMLA leave.** This provides notice to the employee that he/she has federal law rights under FMLA. *(Federal rights under FMLA apply if the reason for requested leave is a reason that qualifies for FMLA leave, **regardless of what pay code is used.)***

Use DOL **Form WH-381, Notice of Eligibility and Rights & Responsibilities** (available on the City Intranet, under H.R. Forms), to respond to an employee request for leave that qualifies as FMLA-protected leave. Use DOL Form **WH-382, Designation Notice**, to designate the requested leave as FMLA-protected and to advise the employee of the requirement to substitute paid leave during the FMLA leave. (Forms are available on the City's Intranet, under H.R. Forms.) **These two Forms will be used together.**

Use Form **WH 380-E to request medical certification for the employee's serious health condition**; use Form **WH-380-F to request this certification for the serious health condition of the employee's family member**. (Forms are available on the City's Intranet, under H.R. Forms.)

For military-related leaves, use **WH-384, Certification of Qualifying Exigency for Military Family Leave** and **WH-385, Certification for Serious Injury or Illness of Covered Servicemember** (also available on the City's Intranet, under H.R. Forms).

The **supervisor's response** to the employee's request **must** be provided **in writing within five business days (**absent extenuating circumstances) after the first time in each calendar year that an employee requests FMLA leave for a particular qualifying reason**.**

Retroactive designation of FMLA leave is allowed, with appropriate notice to the employee, provided that it does not cause harm or injury to the employee. In all cases where leave would

qualify for FMLA protections, the City and the employee can mutually agree that leave will be retroactively designated as FMLA leave.

When the supervisor receives the request, he/she will first check for any appropriate accrued paid leave; if available, the employee must substitute appropriate accrued paid leave for all (or a portion) of the **before** taking **unpaid** FMLA leave. If/When appropriate paid leaves are exhausted, the balance of the 12 work weeks for the calendar year will be unpaid FMLA leave (double coded as "FM" and "AO").

EXAMPLES:

(a) It would be appropriate to require an employee to substitute vacation leave (for unpaid leave) to care for a newly acquired child (by birth, adoption, or foster placement), or a parent who does not live in the immediate household. (It is appropriate for sick leave to be substituted [for unpaid leave] by a female employee who has given birth.)
(b) To care for a family member (defined as an employee's: husband, wife, child, step-child, son/daughter-in-law, parent, step-parent, current mother/father-in-law, grandparent/ grandparent-in-law, grandchild, brother, sister, step-brother/sister, or brother/sister-in-law), it would be appropriate first to substitute any available Family Sick ["SF"] leave (up to a maximum of 80 hours per calendar year) for unpaid leave, then begin to substitute vacation until accruals are exhausted, then any remaining leave for this purpose would be unpaid (AO).
(c) If the employee him/herself is the one with a serious health condition, it would be appropriate first to substitute paid sick leave for unpaid leave, then to use any available vacation leave.
(d) For Active Duty Family Leave, it would be appropriate to require an employee to substitute vacation leave.
(e) For Injured Servicemember Family Leave, it would be appropriate first to substitute any available Family Sick ["SF"] leave (up to a maximum of 80 hours per calendar year) for unpaid leave, then begin to substitute vacation until accruals are exhausted, then any remaining leave for this purpose would be unpaid (AO).

ALL of these leaves would also be double-coded with FM. If/When all appropriate paid leave is exhausted, remaining FMLA leave would be unpaid (coded "AO" with "FM").

In the event an eligible family relationship is questionable, consult with Human Resources for guidance. Some form of documentation from the employee may be requested to confirm family relationships for FMLA reasons (e.g. leave for birth, placement of a child for adoption or foster care, or for care for a parent), if necessary.

III. CODING THE PAYROLL

NOTE: Employees are entitled to a maximum of 12 (or 26, when applicable) work weeks of FMLA in a calendar year. **As stated below, double code with "FM" for up to 12 (or 26, when applicable) work weeks in a calendar year, then stop double coding for that calendar year** (eligibility renews the next calendar year).

Employees are required to substitute any applicable accrued paid leave first (e.g. sick leave when appropriate, vacation when appropriate) for all or a portion of the 12 (or 26, when applicable) work weeks of FMLA unpaid leave before they can take unpaid FMLA leave. (See examples on page 9.)

Leave that qualifies for FMLA will always be double-coded on the payroll. Any applicable accrued paid leave **(e.g., vacation, sick leave, etc.) must be substituted for unpaid leave** for some portion (or all, if the employee has sufficient accrued leave of the

appropriate type) of the FMLA-qualifying leave, **before the employee can take unpaid FMLA leave**.

EXAMPLES:

(a) If an **employee's** family member (defined as an employee's: husband, wife, child, step-child, son/daughter-in-law, parent, step-parent, current mother/father-in-law, grandparent/ grandparent-in-law, grandchild, brother, sister, step-brother/sister, or brother/sister-in-law) is the one with the serious health condition, a maximum of 80 hours per calendar year of the employee's accrued paid sick leave may be used and double coded as "Family Sick Leave" (SF) and "FMLA" (FM). If the need for such leave extends beyond 80 hours per calendar year, and the employee has accrued vacation leave, FM and VA would be used until accrued vacation is exhausted. Any remaining leave time for caring for the family member would be unpaid leave (FM and AO).

(b) If an employee has accrued paid vacation available, **and the FMLA request is appropriate for using vacation leave**, double code the absence for both "Vacation" (VA) and "FMLA" (FM). If /When accrued vacation leave is exhausted, double code the remainder of the absence as "Absence Without Pay" (AO) and "FMLA" (FM).

(c) If the **employee is the one with a serious health condition**, double code the payroll as Sick Leave (SK) or Workers' Compensation leave (either WC or IJ, whichever is appropriate). If/when the paid sick/workers' compensation leave is exhausted (or accrued sick leave is not available when applicable), double code the remainder of the leave as "Family Medical" (FM) and "Absent Without Pay" (AO).

As family and medical leave is a right granted by federal law, all absences of **more than three consecutive, full calendar days** that also **meet the conditions for a serious health condition** (see Definitions) must be **double coded as both Family and Medical leave, and any appropriate accrued paid leave** or "Absent Without Pay" (up to the maximum of 12 (or 26, when applicable) work weeks of "FM" in a calendar year).

Exception: If required medical certification of a serious health condition is not provided by the employee when requested, the absence will not be coded as "FM" nor protected by FMLA.

Contact the Director or Assistant Director of Human Resources for additional guidance as soon as it becomes apparent that an FMLA leave will extend beyond 12 (or 26, when applicable) work weeks in a calendar year.

F. MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION

Ordinarily, when leave is foreseeable and at least 30 days notice has been provided, and the department requests medical certification of a serious health condition (for him/herself or that of a covered family member), the employee should be required to provide the medical certification BEFORE the leave begins. If the need for leave does not allow this, the employee should be required to provide medical certification within 15 days when requested to do so. *(If the employee has made a diligent, good faith effort to obtain this certification, but has been unable to get it for reasons beyond the employee's control, the certification may be returned later than 15 days. The employee must coordinate this with his/her supervisor.)* Incomplete or insufficient certification must be corrected within seven (7) days after the supervisor notifies the employee of the deficiency.

Consult with Human Resources to determine the need for and obtain any second and third opinions for medical certification. The City may choose the second opinion provider; the City and the employee must mutually agree on a third one, if a "tie breaker" is needed. The City pays for both the second and third opinions, and will reimburse an employee or family member for any reasonable "out-of-pocket" travel expenses incurred in obtaining required

second/third opinions. When any second and third medical opinions are required by the City, the employee shall cooperate in obtaining those from treatment providers to substantiate the certification of a serious health condition.

Failure to provide requested medical certification of a serious health condition may result in delay of leave approval and will void the protection of FMLA for the employee.

A medical certification for a serious health condition is effective as to a particular condition for the stated duration of the leave, or for the remainder of the calendar year, whichever is less. An employee may be required to provide a new certification in each subsequent calendar year when appropriate, e.g., ongoing chronic conditions.

Recertification can be required from the employee every six (6) months for an absence that has recurred for the same medical condition. Recertification can also be required when an extension of a leave is requested, or circumstances described in the last certification have changed (e.g., a pattern of absences has developed around scheduled days off, etc.), or the department receives information casting doubt on an employee's stated reason for an absence or the validity of his/her last certification (e.g., observation of the employee engaging in activities that are inconsistent with the need for time off due to the certified condition).

Any direct contact with the employee's health care provider regarding the employee's health condition must be handled by Human Resources. Departmental supervisors and managers may NOT call an employee's health care provider **except** to request or provide administrative information, e.g., fax numbers; they specifically cannot discuss the employee's health condition with the health care provider.

A return to work fitness for duty certification by a health care provider will be required in some cases. The department must be consistent in such requests, and uniformly apply this fitness for duty certification for all similarly situated employees (e.g., in same job titles, or all sworn employees, etc.) returning from FMLA, sick, and/or workers' compensation leaves of absence.

It will sometimes be appropriate to provide a copy of the employee's job description to the employee and require that his/her health care provider assess whether that employee can perform the essential functions of the job. The employee must be advised in advance that such an assessment will be required. Use DOL Form WH-381, Notice of Eligibility and Rights & Responsibilities, to respond to an employee request for leave that qualifies as FMLA-protected leave. Use DOL Form WH-382, Designation Notice, to designate the requested leave as FMLA-protected and to advise the employee of the requirement to substitute paid leave during the FMLA leave. (Both Forms are available on the City's Intranet, under H.R. Forms).

A fitness for duty certification may be required for each continuous leave, upon the employee's return to work. In the case of intermittent or reduced schedule leave, fitness for duty certification may be required every 30 days if reasonable safety concerns exist (defined as a significant risk of harm to self or others).

If an employee fails to submit required medical certification of a serious health condition when requested by the department, the absence is not protected by the FMLA (meaning that the absence may then be counted against the employee for disciplinary and/or evaluation purposes).

All information on FMLA forms are to be kept confidential, released only to those with a bona fide need to know in the City, and to the employee. Information other than that on the certification forms may NOT be required; this is necessary to avoid violations of the

Americans with Disabilities Act. FMLA does not modify or affect any law prohibiting discrimination on the basis of disability, such as the ADA.

V. UNLAWFUL ACTS

Absences for FMLA-eligible reasons of up to 12 (or 26, when applicable) work weeks in a calendar year 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). Nor can the taking of FMLA leave be used as a negative factor in disciplinary actions or promotions.**

When paid leave (vacation, sick leave, workers compensation) is substituted for (used with) unpaid FMLA leave, the department may not impose stricter request/usage requirements for such leave than in normal circumstances. The City may require substitution (use) of FLSA compensatory and/or an employee may request to use his/her compensatory time (instead of accrued paid leave) may be granted.

VI. INCAPACITY TO WORK HEARINGS

After twelve months of continuous absence and/or inability to perform the essential functions of his/her job, if a full-time employee is still not returned to work due to his/her own mental/physical health condition, the employee will be called before the Civil Service Board in an Incapacity to Work show cause hearing. (This maintains consistency with established precedent and Civil Service Rules.) Consult with the Director or Assistant Director of Human Resources several months before twelve months of absence and/or inability to perform the essential functions of the job have elapsed.

Original Signed by Bill Keffler — 6-6-95 (revised 11-09)
Bill Keffler — Date
City Manager

Attachment - FMLA Flow Chart

FMLA Forms available on the City Intranet, under H.R. Forms:

- WHD Publication 1420 - U.S. Department of Labor FMLA Poster
- WH 380-E, Employee's Serious Health Condition
- WH-380-F, Family Member's Serious Health Condition
- WH-381, Notice of Eligibility and Rights & Responsibilities
- WH-382, Designation Notice
- WH-384, Certification of Qualifying Exigency for Military Family Leave
- WH-385, Certification for Serious Injury or Illness of Covered Servicemember