

	<h1 style="color: blue;">City of Helena</h1> <h2 style="color: blue;">Personnel Policy</h2>	Policy number	3-7
		Original Adoption	02-09-1987
		Revision #	12
		Last revision date	July 2016
<b>Section Title</b>	<b>Employee Leave Administration</b>		
<b>Subject</b>	<b>Family and Medical Leave</b>		

The Family and Medical Leave Act (FMLA) provides specific benefits to employees. It is intended to balance the demands of the workplace with the needs of families and to promote family stability, economic security and national interest in preserving family integrity (29 CFR 825.101). Specifically, the FMLA:

- Entitles eligible employees to job protected leave;
- Maintains an employee’s health benefits during leave (employee/family out of pocket amount(s) will need to be paid by the employee);
- Restores an employee to a job at the conclusion of leave;
- Sets employer and employee requirements for notice of leave; and
- Assists managers and supervisors in managing leave requests.

**Eligibility**

In accordance with the FMLA, an employee qualifies if:

- The employee has been employed by the City of Helena a total of at least 12 months prior to leave (does not have to be consecutive);
- Has worked at least 1250 hours (exclusive of vacation, sick leave, and holidays) in the 12 months immediately preceding the commencement of leave ;and
- Needs or expects to need leave for a covered reason listed below.

Employees cannot waive their prospective rights under the FMLA.

**Loss of Eligibility**

The employee’s eligibility and protection under FMLA ends when:

- An employee gives unequivocal notice of the employee’s intent not to return to work;
- The employee exhausts all FMLA leave benefits for the covered period; or
- The employee exhausts all FMLA leave and is unable to return to work.

**Covered Reasons**

Eligible employees may take up to 12 workweeks (equivalent of 480 hours) of leave (paid/unpaid) in a rolling 12-month period beginning with the first day of qualified leave for one or more of the following reasons (part time employees’ maximum will be prorated accordingly):

- The birth of an employee’s child and to care for or bond with a newborn within one year of birth. This includes incapacity due to pregnancy, prenatal care, or for the expectant mother’s own serious health condition. The latter does not need to last three consecutive days.
- The placement of a child for adoption or foster care with the employee (including counseling, consultation, court appearances, etc.), prior to placement and to care for or bond with the newly placed child within one year of placement.
- To care for a spouse, son, daughter, or parent who has a serious health condition, as defined in the FMLA.
- For an employee’s own serious or chronic health condition that makes the employee unable to perform the essential functions of his or her job.
- For any qualifying exigency arising when the employee’s spouse, son, daughter, or parent is a military member on covered active duty or has been notified of or called to covered active duty status.

An eligible employee may also take up to 26 workweeks of leave during a “single 12-month period” to care for a covered service-member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service-member. The “single 12-month period” for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

- Leave to care for a covered service-member will only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period.
- The 12-month period begins on the first day the employee takes leave to care for a covered service-member, even if basic FMLA leave was taken within the 12-months prior.
- Eligible part-time employees will receive pro-rated leave based on the average weekly hours in a pay status. For example, a part-time employee who works 20 hours per week is entitled to 20 hours of military caregiver FMLA leave per work week for 26 weeks.

### **Workers Compensation**

Leaves of absence taken in connection with a qualifying workers’ compensation injury or illness will run concurrently with any FMLA leave entitlement.

### **Notice to the City**

When there is a foreseeable need for leave for any Covered Reasons as listed previously, the employee or employee’s supervisor must notify the Human Resource Office of such expected leave at least 30 days in advance. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances. The employee’s immediate supervisor or department head must notify Human Resources if an employee’s unforeseeable sick leave will extend past twenty-four (24) working hours or three (3) working days, whichever is less.

### **Medical Certification**

A medical certification is required for leave due to family or employee medical illness except in the event of birth or placement of a child. The medical certification must be returned to HR within 15 calendar days after request is made and must be sufficient to support the need for leave. A fitness-for-duty or medical release will be required before an employee may return to work except in cases of birth or the adoption of a child. The medical certification must contain all required information as listed in 29 CFR 825.306(a).

Recertification may be required periodically by the City or if the employee’s medical circumstances change during the FMLA period (such as additional complications or faster recovery). Certification may be requested at a later date if there are questions regarding the appropriateness of the leave or its duration.

### **Consequences**

If there was a foreseeable need for leave and the employee failed to provide at least a 30 day notice (or as soon as known if less than 30 days), the City may consider the explanation for not giving notice. If the explanation is not reasonable, FMLA coverage may be denied up to 30 days after the date employee gave notice (29 CFR 825.304).

If the employee fails to provide the City with a complete and sufficient certification (or recertification), or fails to provide any certification, the City may deny the taking of FMLA leave and employee will not have the job protection and/or insurance protection that FMLA covers. The City will also have the ability to deny the employee from taking any type of leave in this case.

Non-adherence to any responsibilities of the employee as defined in the FMLA (such as inadequate medical documentation, non-return of medical certification, failure to sufficiently notify **the City**, etc.) may disqualify employee’s use of sick leave during part or all of the absence. In accordance with City Policy 3-2, Sick Leave, the Human Resource Office is responsible for approval or denial of sick leave usage when related to FMLA. The Human Resource Office will adjust the employee’s time coding from sick leave to another leave type if deemed unqualified by HR.

### **Scheduling of Planned Medical Treatment and Intermittent Leave or Reduced Leave Schedules**

- Employees must consult with their supervisor and make a reasonable effort to schedule medical treatment so it does not unduly disrupt the City's operations. The employee's health care provider must approve treatment schedules.
- Employees seeking intermittent or reduced-schedule leave for reasons unrelated to planned medical treatment must advise Human Resources of the reason for the leave. In such cases, the City and employee will develop a leave schedule meeting the employee's needs without unduly disrupting the City's operations.
- Intermittent or reduced schedule FMLA leave for childbirth or placement of a child for adoption or foster care is subject to supervisor approval.
- Employees must provide reasonable and practical notice if requiring intermittent or reduced scheduled leave.

### **Job Restoration and Health Benefits**

Prior to being granted leave without pay under this section, an employee must exhaust all paid sick and compensatory leave (unless approved by payroll to distribute paid time throughout FMLA approved absence). In the event of the birth or adoption of a child the employee need not exhaust all paid sick leave (See Policy 3-2).

Health insurance benefits provided by the City for all eligible employees will be continued, at no cost to the employee, as though the employee had continued working during the term of any leave under this section. Any additional medical insurance coverage not normally covered by the City, such as dependent coverage, must be paid by the employee during any such leave in order to continue coverage.

Failure to return at the end of an approved FMLA will be treated as abandonment of position and employee may be responsible for reimbursement of employee health care costs paid by the City while they were on FMLA designated leave. However, consideration will be given if the reason for not returning was (1) the continuation, recurrence, or onset of a serious health condition or (2) other circumstances beyond the employee's control.

The City Manager will be notified of any FMLA leave involving Leave Without Pay (LWOP).

Every effort will be made to allow for the employee's return to the same position held prior to the leave. If that position is filled because of business necessity, the employee will be placed in a comparable position. The only exception would be if the City experienced a staff reduction during the leave period.

### **Additional Information:**

Changes to the Family and Medical Leave Act at a federal level that offer greater benefit than that of City policy will take precedence over policy. This policy only highlights aspects of the FMLA and in no way takes precedence over any rights and responsibilities of the employee or the City (employer).

The full Family and Medical Leave Act of 1993 can be found at

<https://www.law.cornell.edu/cfr/text/29/part-825> . Guidance, Fact Sheets and opinion letters can be accessed at: <https://www.dol.gov/whd/fmla/index.htm> .