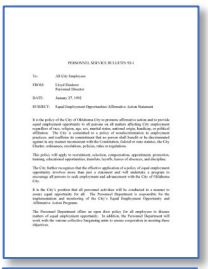
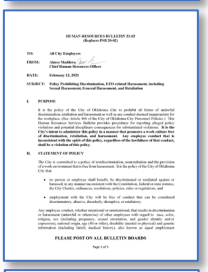
City of Oklahoma City Policies That Are Required to be Posted

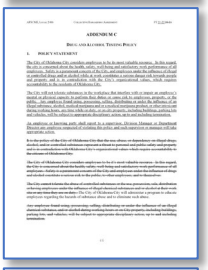
This binder must be posted at bulletin boards along with the Required Bulletin Board Postings poster. The following five City of Oklahoma City Policies are contained in this packet:



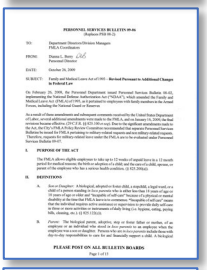
PSB 92-1
Equal Employment Opportunity / Affirmative Action Statement



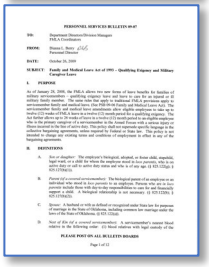
HRB 21-02
Policy Prohibiting Discrimination, EEO-Related Harassment, including Sexual Harassment, General Harassment and Retaliation



ADDENDUM C
Drug and Alcohol Testing Policy



PSB 09-06
Family and Medical Leave Act



PSB 09-07
Family and Medical Leave Act – Qualifying Exigency and Military Caregiver

Please direct any questions regarding these policies to the Employee and Labor Relations Division of the Human Resources Department at (405) 297-2410.

Packet Revision Date: July 18, 2022

PERSONNEL SERVICE BULLETIN 92-1

To: All City Employees

FROM: Lloyd Rinderer
Personnel Director

DATE: January 27, 1992

SUBJECT: Equal Employment Opportunities/Affirmative Action Statement

It is the policy of the City of Oklahoma City to promote affirmative action and to provide equal employment opportunity to all persons on all matters affecting City employment regardless of race, religion, age, sex, marital status, national origin, handicap, or political affiliation. The City is committed to a policy of nondiscrimination in employment practices, and reaffirms its commitment that no person shall benefit or be discriminated against in any manner inconsistent with the Constitution, federal or state statutes, the City Charter, ordinances, resolutions, policies, rules or regulations.

This policy will apply to recruitment, selection, compensation, appointment, promotion, training, educational opportunities, transfers, layoffs, leaves of absences, and discipline.

The City further recognizes that the effective application of a policy of equal employment opportunity involves more than just a statement and will undertake a program to encourage all persons to seek employment and advancement with the City of Oklahoma City.

It is the City's position that all personnel activities will be conducted in a manner to assure equal opportunity for all. The Personnel Department is responsible for the implementation and monitoring of the City's Equal Employment Opportunity and Affirmative Action Programs.

The Personnel Department offers an open door policy for all employees to discuss matters of equal employment opportunity. In addition, the Personnel Department will work with the various collective bargaining units to ensure cooperation in meeting these objectives.

HUMAN RESOURCES BULLETIN 21-02
(Replaces PSB 20-02)

TO: **All City Employees**

FROM: **Aimee Maddera**
Chief Human Resources Officer

DATE: **February 12, 2021**

SUBJECT: **Policy Prohibiting Discrimination, EEO-related Harassment, including Sexual Harassment, General Harassment, and Retaliation**

I. PURPOSE

It is the policy of the City of Oklahoma City to prohibit all forms of unlawful discrimination, retaliation and harassment as well as any conduct deemed inappropriate for the workplace. (See Article 400 of the City of Oklahoma City Personnel Policies.) This Human Resources Services Bulletin provides procedures for reporting alleged policy violations and potential disciplinary consequences for substantiated violations. **It is the City's intent to administer this policy in a manner that promotes a work culture free of discrimination, retaliation, and harassment. Any employee conduct that is inconsistent with the spirit of this policy, regardless of the lawfulness of that conduct, shall be a violation of this policy.**

II. STATEMENT OF POLICY

The City is committed to a policy of nondiscrimination, nonretaliation and the provision of a work environment that is free from harassment. It is the policy of the City of Oklahoma City that:

- no person or employee shall benefit, be discriminated or retaliated against or harassed, in any manner inconsistent with the Constitution, federal or state statutes, the City Charter, ordinances, resolutions, policies, rules or regulations, and

- employment with the City will be free of conduct that can be considered discriminatory, abusive, disorderly, disruptive, or retaliatory.

Any employee conduct, whether intentional or unintentional, that results in discrimination or harassment (unlawful or otherwise) of other employees with regard to race, color, religion, sex (including pregnancy, sexual orientation, and gender identity and/or expression), national origin, age (40 or older), disability (mental or physical) and genetic information (including family medical history), also known as equal employment

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opportunity (EEO) considerations ("EEO Considerations"), is strictly prohibited. (See Article 400 of the City of Oklahoma City Personnel Policies.)

III. DISCRIMINATION

Unlawful discrimination can occur where decisions regarding hiring, promotion, job assignment, discharge, layoff, discipline, training, compensation, or other terms or conditions of employment, are made based on EEO Considerations. Employment decisions shall be made on the basis of knowledge, skill, ability, qualifications, job performance, and needs of the City.

Unlawful discrimination may also be found where conduct toward an employee is based upon the employee's membership in a protected class, and is so severe and/or pervasive, that it interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

Unlawful harassment, a form of employment discrimination, is unwelcome conduct that is based on EEO Considerations. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that could reasonably be considered intimidating, hostile, or abusive.

Sexual harassment is a form of unlawful discrimination. There are two legal definitions of unlawful sexual harassment:

1. Quid pro quo harassment occurs when offers of tangible employment actions (such as hiring, promotion, job assignment, training or compensation) are made, either explicitly or implicitly, and conditioned on the submission to unwelcome sexual advances and/or requests for sexual favors; or a tangible employment action (such as discharge, discipline, job assignment) is taken against an employee who refuses unwelcome sexual conduct because of the employee's refusal.

2. Hostile environment harassment occurs when unwelcome verbal or physical conduct of a sexual nature is so severe or pervasive that it unreasonably interferes with a term or condition of employment or creates an intimidating, hostile, or offensive working environment.

   Sexual harassment can occur between a supervisor and employee, between employees, and between employees and non-employees (e.g., residents, contract laborers, vendors, etc.).

   Sexual harassment can occur between individuals of the same or different sexual orientation, gender, gender identity and/or expression.

   Employees in a "romantic," sexual or domestic relationship are prohibited from being in a position where one would have the authority to supervise, appoint,

remove, discipline, evaluate the performance, or otherwise influence the employment of the other. Such relationships are expressly prohibited between supervisors and employees they supervise or who are otherwise in their chain of command. Any employee involved in such a relationship with another employee is required to immediately report such relationship to the department's Equal Employment Opportunity Officer (EEO Officer), division head, department director, or the Labor Relations Division of the Human Resources Department. Management reserves the right to terminate the work relationship between the employees in any manner, including dismissal of one or both of the employees.

Unlawful discrimination and related harassment are strictly prohibited.

Any employee conduct of a discriminatory and/or harassing nature based on EEO Considerations is strictly prohibited, regardless of unlawfulness.

General harassment unrelated to EEO Considerations is also strictly prohibited. (See Article 400, Section 402 of the City of Oklahoma City Personnel Policies.) Such harassment is unwarranted, unwanted verbal or non-verbal conduct, which is abusive, obscene, threatening, insulting to another person, or otherwise inappropriate for the workplace, where such conduct has the purpose or effect of creating an offensive, intimidating, degrading or hostile environment, or interferes with or adversely affects an employee's performance.

IV. RETALIATION

Retaliation is a materially adverse action taken against an employee for bringing a complaint of, or participating in an investigation related to, discrimination, EEO-related harassment, sexual harassment, or harassment in general. A materially adverse action is anything that might well deter an employee from engaging in protected activity. All employees are prohibited from engaging in retaliatory conduct, and any such conduct will be grounds for disciplinary action, up to and including termination.

V. COMPLAINT PROCEDURES

1. All Department Directors must designate a primary person(s) to receive and investigate complaints, issue fact-finding reports and act as liaison with the Human Resources Department on all EEO matters. All Departments shall insure that employees are informed of the designated EEO officer and the procedure for filing a complaint of any form of discrimination, retaliation or harassment.

2. Any employee who believes they have been subjected to any form of discrimination, retaliation or harassment must immediately report such activity to any of the following: their department or division EEO officer; non-involved supervisor; division head; Department Director; or directly to the Labor Relations Division of the Human Resources Department.

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3. Any supervisor or employee desiring to file a discrimination, retaliation or harassment complaint directly with the Labor Relations Division may do so by calling (405) 297-2567 twenty-four (24) hours a day, seven (7) days a week. Complaints may be made anonymously, if so desired.

4. Any EEO officer, supervisor, division head, or Department Director or above having knowledge of, or information regarding discriminatory, retaliatory or harassing conduct, is required to immediately notify the Labor Relations Division of the Human Resources Department regardless of how the information was obtained (e.g. verbal or written complaint, direct observation, overhearing conversations, information from noninvolved persons, etc.).

5. The Labor Relations Division will immediately initiate a **confidential** investigation. The complainant, any relevant witnesses and the respondent (accused party) will normally be interviewed during the course of the investigation. The investigators will then prepare and submit a report containing findings of facts and recommendations for action to the respondent's and/or complainant's Department Director as appropriate and/or the City Manager. This report is considered to be a Human Resources Investigation and is **not** subject to the Oklahoma Open Records Act.

   Investigators will attempt to protect the privacy of individuals involved and maintain confidentiality. Employees interviewed during the course of an investigation are required to maintain the confidentiality of the investigation and failure to do so will be considered a violation of this policy.

6. The results of the investigation will be communicated to both the complainant and the respondent (person accused) of discrimination, retaliation or harassment by a representative of the Labor Relations Division.

NOTE: Employees have the right to make a complaint of discrimination, retaliation, EEO-related harassment or sexual harassment with the State Office of Civil Rights Enforcement, the Equal Employment Opportunity Commission, or with a court of law. This policy does not restrict the rights of employees secured by the laws of the State of Oklahoma or the United States.

VI. TRAINING

The City of Oklahoma City's Human Resources Department offers classroom nondiscrimination and anti-harassment training on a quarterly basis. All employees are required to complete the online or in-person version of this training within the first thirty days of employment. Employees may enroll in the course on the City intranet site or by contacting the Labor Relations Division of the Human Resources Department at 297-2410. All personnel are required to complete the training on an annual basis. Additional on-site training is available at the request of the department or division head. Each department is

responsible for maintaining employee training records of nondiscrimination and anti-harassment training.

VII. DISCIPLINARY ACTION

Any employee found in violation of this policy, or who provides false information in the complaint or investigation procedures, is subject to corrective action, including disciplinary action. Disciplinary action may include any range of discipline, up to and including termination.

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ADDENDUM C

DRUG AND ALCOHOL TESTING POLICY

1. POLICY STATEMENT

The City of Oklahoma City considers employees to be its most valuable resource. In this regard, the city is concerned about the health, safety, well-being and satisfactory work performance of all employees. Safety is a paramount concern of the City, and employees under the influence of illegal or controlled drugs and/or alcohol while at work constitutes a serious danger risk towards people and property and is in contradiction with the City's organizational values, which requires accountability to the residents of Oklahoma City.

The City will not tolerate substances in the workplace that interfere with or impair an employee's mental or physical capacity to perform their duties or cause risk to employees, property, or the public. Any employee found using, possessing, selling, distributing or under the influence of an illegal substance, alcohol, medical marijuana and/or a medical marijuana product, or other intoxicant during working hours, any time while on duty, or on city property, including buildings, parking lots and vehicles, will be subject to appropriate disciplinary action, up to and including termination.

An employee or knowing party shall report to a supervisor, Division Manager or Department Director any employee suspected of violating this policy and such supervisor or manager will take appropriate action.

~~It is the policy of the City of Oklahoma City that the use, abuse, or dependency on illegal drugs, alcohol, and/or controlled substances represent a threat to personal and public safety and property and is in contradiction with Oklahoma City's organizational values which require accountability to the citizens of Oklahoma City.~~

~~The City of Oklahoma City considers employees to be it's most valuable resource. In this regard, the City is concerned about the health, safety, well-being and satisfactory work performance of all employees. Safety is a paramount concern of the City and employees under the influence of drugs and alcohol constitute a serious risk to the public, to other employees, and to themselves.~~

~~The City cannot tolerate the abuse of controlled substances or the use, possession, sale, distribution or having employees under the influence of illegal chemical substances and/or alcohol at their work site or any time they are on duty.~~ The City of Oklahoma City will administer a program to educate employees regarding the hazards of substance abuse and to eliminate such abuse.

~~Any employee found using, possessing, selling, distributing or under the influence of an illegal chemical substance, and/or alcohol during working hours or on City property, including buildings, parking lots, and vehicles, will be subject to appropriate disciplinary action, up to and including termination.~~

2. EFFECTIVE DATE

This addendum ~~policy~~ shall become effective ten (10) ~~thirty (30)~~ days following the date of this document.

3. AUTHORITY

This addendum ~~policy~~ is in accordance with OKLA. STAT. tit. 40, §551, et.seq.: The Oklahoma Standards for Workplace Drug and Alcohol Testing Act, OKLA. STAT. tit. 63, § 427.1, et. seq.: The Oklahoma Medical Marijuana and Patient Protection Act, 49 U.S.C. Sections 2717 and 1434 of the Federal Statutes and the Department of Transportation (D.O.T.) rules and regulations found at 49~~0~~ CFR Part 40~~121~~ and 49~~0~~ CFR Parts 382, 391, and 392 and any amendments thereto. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act.

4. SCOPE OF APPLICATION

This addendum ~~policy~~ shall apply to all ~~regular full-time~~ employees covered by this collective bargaining agreement~~, except those exempted by a collective bargaining agreement, as well as part-time and temporary employees of the City of Oklahoma City, and applicants who have received a conditional offer of employment with the City of Oklahoma City~~. Certain provisions of this addendum ~~policy~~ will apply specifically to employees who are under the Department of Transportation's commercial motor vehicle driver regulations and are directed at those employees who are ***required*** to possess an Oklahoma Commercial Driver's License type A, B, or C.

5. POSTING REQUIREMENTS

In addition to its inclusion in the collective bargaining agreement, e~~E~~ach department/division shall post a copy of this addendum ~~policy~~ in a prominent place, accessible to all employees and applicants. Each employee and applicant, upon receiving a conditional offer of employment, shall be provided a copy of this addendum~~policy~~.

6. EDUCATION

Employees have the right to know the dangers of substance abuse in the workplace, including the City's policy regarding substance abuse and available assistance concerning such abuse.

The City of Oklahoma City has an Employee Assistance Program available to its employees. Through the Employee Assistance Program (EAP), the City will institute an educational program for all employees concerning the dangers of substance abuse in the workplace. This education program will include the distribution of the Citywide policy regarding substance abuse, the danger of substance abuse in the workplace, and the penalties that will be imposed for substance abuse violations occurring while on duty and/or on City premises.

The City will also provide supervisory training to assist in identifying and addressing substance abuse in the workplace.

Employees who voluntarily participate in the EAP, or are required to participate as a condition of continued employment, will be referred on a ***confidential basis***. Participation in an assistance program may be covered by the employee's health insurance plan. However, any costs associated with the employee's participation in an assistance/rehabilitation program which are not covered by the employee's insurance plan will be borne by the employee. Accrued leave may be used during the time an employee is participating in an in-patient treatment program. Leave without pay may be granted for those employees who have insufficient accumulated leave to complete the program.

7. DEFINITIONS

Alcohol - shall be defined as any beverage as defined by Oklahoma State Law, Title 37; including non-intoxicating beverages (i.e., 3.2 beer) as well as intoxicating beverages.

Alcohol Testing - shall mean the testing of the blood alcohol content by a breathalyzer instrument device or drawing or collecting a blood or serum sample and providing the laboratory analysis thereon.

Controlled Substances - shall be defined as those substances whose dissemination is controlled by regulation or statute (Oklahoma State Law, Title 63 and/or Section 202, Schedules I through V of the Federal Controlled Substance Act), including but not limited to, narcotics, depressants, stimulants, hallucinogens, and cannabis.

Drug - shall be defined as any substance which impairs an employee's ability to perform his/her job or poses a threat to the safety of others. This definition includes over-the-counter drugs and/or drugs which require a prescription or other written approval from a licensed practitioner/physician or dentist for their use.

Drug Testing - shall normally be defined as the collection of a urine specimen by medical personnel and a laboratory analysis of that specimen. The initial drug screen will be a form of immunoassay identification with confirmation testing of any positive results with Gas Chromatography/Mass Spectrometry (GC/MS) or other reliable confirmation testing.

Employee Assistance Program - shall be defined as a professional counseling program designed to offer rehabilitative assistance to employees who need help in resolving their alcohol abuse or drug dependency problems. It shall be generally voluntary for the employee with inquiries limited to those persons who have a need to know as identified on the pre-enrollment waiver of confidentiality form.

Medical Marijuana Product – shall be defined as a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient including, but not limited to, oils, tinctures, edibles, pills, topical forms, gels, creams, vapors, patches, liquids, and forms administered by a nebulizer, excluding live plant forms which are considered medical marijuana.

Reasonable Belief ~~Suspicion~~ - shall be defined as the quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable belief ~~suspicion~~ must be based on specific, objective facts and any rationally derived inference from those facts about the conduct of an individual that would lead the reasonable person to suspect that an individual is or has been using drugs or coming to work under the influence. The types of objective facts may include, but are not limited to:

(1.) Observable and articulable phenomena, such as physical symptoms or manifestations of being under the influence/impaired by drugs or alcohol while on duty or on City property (appearance, glassy or bloodshot eyes, slurred speech, odor of alcohol or marijuana, unsteady gait, poor coordination or reflexes, etc.), or the direct observation of such use while on duty or on City property;

(2.) Reports of drug or alcohol use from reliable and credible sources which are independently corroborated;

(3.) An accident in which there appeared to be negligence or carelessness;

(4.) A flagrant violation of safety procedures;

(5.) Two (2) consecutive days of AWOL (employee not reporting to work or calling in to the required authority to report his/her absence).

(6.) Evidence that an individual has tampered with a drug or alcohol test.

Reliable Informant - shall be defined as one who has firsthand knowledge of an employee's alcohol, drug, or controlled substance problem, and who discloses this to the supervisor/manager.

Safety Sensitive – shall be defined as any job that includes tasks or duties that the City reasonably believes could affect the safety and health of the employee performing the task or others. Jobs within the City meeting the safety sensitive designation are noted as such in the official job description maintained by the Human Resources Department. Employees who hold a position defined as safety sensitive shall sign an acknowledgment that they are in such a position in which they can be subject to disciplinary action up to and including termination if they test positive for marijuana components or metabolites, even if they possess a valid medical marijuana license. Employees in safety sensitive positions who test positive for marijuana components or metabolites and have a valid medical marijuana license but have not signed an acknowledgment will not be subject to disciplinary action, but will be removed from any safety sensitive duties until completion of a mandatory referral to the EAP; such employees will be subject to random or periodic drug post-rehabilitation testing for two (2) years from completion of the EAP. City shall furnish AFSCME with a list of all job classifications in each Department that it has classified as safety sensitive.

Under the Influence or Impaired - shall be defined as behavior which may limit an employee's ability to safely and efficiently perform his/her job duties, or poses a threat to his/her safety or the safety of others.

8. DRUG/ALCOHOL TESTING

The City of Oklahoma City will administer testing in the following situations:

8.1. Pre-Placement Testing

All external applicants for regular full-time or part-time/temporary positions and employees who promote into positions that are involved in safety sensitive occupations, required to operate City equipment or vehicles and/or required to have a Class A, B, or C, commercial driver's license, shall undergo drug and/or alcohol testing prior to assignment. ***Such notice shall be placed in each applicable job bulletin***.

a. Job applicants shall only be tested after a conditional offer of employment is made.

b. Refusal to undergo a test, or a confirmed positive test, shall result in a withdrawal of a conditional offer of employment.

8.2 For Cause ~~Reasonable Suspicion~~ Testing

a. *"For Cause~~Reasonable Suspicion~~"* testing shall be initiated after the circumstances are properly reviewed and agreed upon by at least two (2) management level personnel. However, only one manager/supervisor is necessary to require an employee to submit to drug/alcohol testing if the supervisor observes the employee ingest, smoke, or use what is reasonably believed to be a controlled dangerous substance or alcohol. Managers/supervisors are prohibited from demanding or encouraging drug or alcohol testing without reasonable belief~~suspicion~~.

b. The employee must be prohibited from working or continuing to work.

c. Written documentation of the manager/supervisor's observations leading to a drug and/or alcohol test shall be created within 24 hours after the observation and forwarded to the City's Human Resources ~~Personnel~~ Department. Additionally, whenever possible, the manager/supervisor should communicate the basis for the reasonable belief ~~suspicion~~ to an Assistant Municipal Counselor or the Chief Human Resources Officer~~Personnel Director~~/designee, prior to requiring such test. The employee shall have the right to notify their ~~his/her~~ Union representative and have representation present at the testing facility.

d. The employee shall be transported immediately to the designated testing facility by a manager/supervisor. Prior to testing, the employee will be required to sign a drug/alcohol testing consent form at the sample collection site. Failure or refusal to sign the consent form and to submit to testing will be cause for a conclusion of an adverse inference relative to the employee being under the influence, as well as a charge of insubordination, and the appropriate disciplinary action, up to and including termination, will be administered.

The employee shall not be permitted to return to work prior to receiving the results of the drug/alcohol test. The manager/supervisor shall make arrangements for safe transportation to the

employee's residence or a place selected by a relative or friend of the employee.

e. The Occupational Health Manager, located at the City's designated medical facility, shall receive and retain all drug and alcohol testing related information, and provide the results to the appropriate division within the Human Resources ~~Personnel~~ Department. Drug/alcohol test results will only be disclosed to those persons who have a *"need to know".*

Willful disclosure of test results to persons not involved in the disciplinary procedure or who do not have a need to know, may result in appropriate disciplinary action, up to and including termination.

f. If the results of the drug/alcohol test prove to be negative, any time off work without pay shall be returned to the employee. If the drug/alcohol test prove to be positive, any unpaid time off work will be assessed in the final disposition of discipline.

8.3 Random and Scheduled Period Testing

Certain classifications of employees, as delineated in Section 8.3 (b) below shall be required to undergo drug and/or alcohol testing on a random selection basis or on a scheduled periodic basis.

a. The City may not waive the selection of any employee who has been selected on a random selection basis or who is scheduled for periodic testing.

b. Random and/or scheduled periodic testing shall include those employees who:

1. Are employed in safety-sensitive positions as designated on an approved job description. ~~These employees shall include but are not limited to heavy equipment operators and employees in classifications requiring a Commercial Driver's License (CDL) A, B, or C class license.~~

2. Are required to participate in and complete ~~a~~an mandatory EAP referral as a condition of continued employment.

c. Those employees subject to drug and alcohol testing as a commercial motor vehicle driver under Department of Transportation (D.O.T.) regulations shall be tested per those regulations:

1. the initial minimum yearly percentage rate for random alcohol testing shall be twenty-five percent (25%) of all drivers;

2. the initial minimum yearly percentage rate for random controlled substances testing shall be fifty percent (50%) of the average number of drivers;

3. yearly percentage standards shall be subject to change based on current D.O.T. regulations.

d. Other City employees shall be tested at a frequency rate determined appropriate by the City in consideration of State law, other legal requirements, or administrative regulations.

e. Each employee selected for random drug or alcohol testing shall proceed to or be transported

to the testing facility immediately upon notification to the manager/supervisor, unless the employee is engaged in a safety sensitive function, as determined by management, at the time of notification, which will not reasonably allow their ~~his/her~~ replacement. In such cases, the manager/supervisor shall ensure the employee proceeds to the testing facility as soon as reasonably possible.

8.4 Post-Accident Testing

Post-accident drug or alcohol testing shall be conducted on City employees only in situations where there has been damage to ~~City~~ property, an actual (work-related) injury to an employee or third party, or ~~and~~ there exists reasonable belief ~~suspicion~~ (as defined in Section 7 above) that the accident, injury or damage was a direct result of the employee's use of drugs or alcohol (except as noted in subsections 8.4 (a) and (b)).

a. Employees subject to D.O.T. commercial motor vehicle driver regulations who suffer a vehicle accident during operation of a commercial motor vehicle, shall be tested for alcohol and controlled substances as soon as possible after an accident if:

1. the accident involved the loss of human life; and/or
2. ~~if~~ the driver receives a citation within 8 hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
   a) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
   b) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

b. If such testing cannot be administered within two hours of an accident, the manager/supervisor shall prepare and maintain a written record of the reasons. After eight (8) hours, such efforts to administer testing shall cease and a copy of the written record shall be forwarded to the City's Occupational Health Manager.

8.5 Post Rehabilitation Testing

The City of Oklahoma City may require an employee to undergo drug or alcohol testing without prior notice for a period of two (2) years after the employee's return to work following a confirmed positive test, or following participation in a drug or alcohol dependency treatment program ~~under a City benefit plan or~~ attended on a mandatory basis~~,~~ as a condition of continued employment.

a. Post-rehabilitation testing shall be conducted in addition to any other testing the employee is subject to under this policy.

9. CHALLENGING TEST RESULTS

Employees wishing to challenge the results of the City's test must:

a. Do so at their own expense;

b. Do so in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Act.

10. SUBSTANCES FOR WHICH TESTS MAY BE GIVEN (INCLUDES THE RELATED METABOLITES)

a. Ethyl Alcohol or Ethanol (beer, liquor, etc.)

b. Cannabinoids or Marijuana

c. Cocaine (including crack)

d. Amphetamines, Methamphetamines (including speed and MDMA)

e. Opioids~~ates~~ (including morphine, codeine, heroin, hydrocodone, hydromorphone, oxycodone, oxymorphone, dilaudid, percodan)

f. Phencyclidine (PCP)

Threshold reporting levels shall be those established and maintained by the Federal Department of Transportation and as utilized by the National Institute for Drug Abuse (NIDA) or Oklahoma law. Any positive levels below those established reporting levels shall not be reported to the Medical Review Officer by the testing laboratory.

11. DRUG OR ALCOHOL TESTING METHODS AND DOCUMENTATION

Collections, storage, transportation, and testing procedures shall be conducted in accordance with rules established by the Oklahoma State Board of Health and applicable Federal Statutes and regulations including the following:

a. Employees must present a picture I.D. (Oklahoma Driver's License or City identification card, etc.) or be accompanied by an exempt supervisor/manager who can provide identification as the employer representative to the Medical testing personnel representative prior to testing, as required by NIDA regulations.

b. Testing facilities shall meet the qualifications and standards of and be licensed by the State Department of Health.

c. Samples shall be collected only by those persons *"deemed qualified"* by the State Board of Health and appropriate labeling of samples shall occur so as to reasonably preclude the probability of erroneous identification of test results.

d. Body component samples that are appropriate for drug and alcohol testing shall be collected with due regard to the privacy of the individual being tested. In no case shall the City's representative directly observe the collection of a urine sample.

e. A written record of the chain of custody of the sample shall be maintained until the sample is no longer required.

f. An applicant or employee shall be given the opportunity to provide notification of any information which they ~~he/she~~ consider~~s~~ relevant to the test, including currently or recently used drugs or other relevant information, at the time the sample is taken.

g. Reporting levels utilized for identification of positive substance abuse results shall be those levels established by the Federal Department of Transportation.

An employee who is found to have a positive drug test may designate an appropriate testing facility to which the split sample shall be sent for repeat testing. Such testing facility must also meet the standards of this section.

12. COSTS ASSOCIATED WITH TESTING

The City of Oklahoma City is responsible for costs associated with drug or alcohol testing. However:

a. If an employee requests a retest to challenge the findings of a confirmed positive test, the employee is responsible for the cost of the test, unless that test reverses the findings of the previous positive test, in which case the City of Oklahoma City is responsible for the cost.

b. Any test of a current employee must be performed during or immediately after the employee's scheduled work period and is deemed as compensable work time as applicable under the Fair Labor Standards Act (FLSA).

13. REFUSAL TO UNDERGO TESTING/TAMPERING WITH SAMPLE

Employees refusing to undergo testing according to the terms of this policy shall be subject to disciplinary action, up to and including termination. Employees found supplying or attempting to supply an altered sample or a substitute sample, not their own, by alternative means, shall be subject to disciplinary action, up to and including termination.

14. MEDICAL REVIEW OFFICER

The City of Oklahoma City shall engage the services of a State Board of Health qualified Medical Review Officer.

a. The Medical Review Officer shall receive test results from the testing facility and evaluate those results in conjunction with the subject employee and/or applicant.

b. Upon receiving a confirmed positive test result the Medical Review Officer shall contact the applicant or employee prior to notification of City officials. The applicant or employee shall be given the opportunity to explain the test results such as possession of a medical marijuana license or drug prescription.

15. CONFIDENTIALITY

The City of Oklahoma City shall comply with all provisions of the Workplace Drug and Alcohol Testing Act, including confidentiality and shall treat all tests and all information related to such tests, including interviews, memoranda, reports, and statements as confidential.

a. All records relating to drug/alcohol testing shall be kept separated from personnel records.

b. Such records may not be used in any criminal proceeding or civil or administrative action, except in actions taken by the City of Oklahoma City or otherwise involving the subject employee and the City, unless there is a valid court order authorizing the release of such records.

c. Records shall be the property of the City of Oklahoma City and will be made available to the affected applicant or employee for inspection and copying upon request.

d. Records may not be released to any person other than the applicant or employee without the applicant or employee's expressed written permission, or if otherwise required by law.

e. Employees within supervisory or management positions shall be responsible for compliance with this policy. They shall also ensure that employees seeking treatment or within rehabilitation processes are treated fairly and appropriately as concerns their job rights and job security. Additionally, supervisors/managers shall ensure that all reasonable efforts are made to allow for confidential handling of diagnosis and treatment of employees with substance abuse problems.

16. DISCIPLINARY ACTION

The City of Oklahoma City shall not take disciplinary action against an employee who tests positive for drugs or alcohol unless the test results are confirmed by a second test performed on the same sample, using one of the methods prescribed by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

a. A non-probationary employee with a previously satisfactory work record may be given only one opportunity to continue employment after an initial occurrence of a positive drug or alcohol test, where such testing was required by the City of Oklahoma City.

b. Continued employment, if offered, shall be contingent upon the employee agreeing, in writing, to undergo random or periodic drug and/or alcohol post-rehabilitation testing for two (2) years and satisfactorily participating and completing the Employee Assistance Program. If in-patient rehabilitation treatment is required, the employee may be permitted to use leave permitted under the Family and Medical Leave Act (FMLA), which includes accrued vacation leave, sick leave, and compensatory time.

c. If an employee tests positive for drugs or alcohol, said employee may be subject to suspension, demotion, or termination following a pre-determination hearing. In addition to the alleged offenses, the appropriate course of action shall be determined based on the employee's total work record, including but not limited to, any prior drug or alcohol problems.

17. PROHIBITIONS

a. No employee shall report for duty within four (4) hours after using alcohol or remain on duty while having a~~n~~ blood alcohol concentration of 0.02~~04~~ or greater, and no supervisor/manager shall knowingly permit any employee to perform any work duties if the supervisor/manager is aware the employee has an alcohol concentration of 0.02~~04~~ or greater. No employee shall be on duty or operate a City vehicle or perform job duties while under the influence of alcohol nor shall the employee be in possession of alcohol during such duty time or while on City premises.

b. No employee shall report for duty, drive a City owned vehicle or equipment, or remain on duty when the employee has used any drug or controlled substance, except when the use is pursuant to the instructions of a licensed practitioner/physician or dentist, and the licensed practitioner/physician or dentist has advised the employee that the substance will not adversely affect his/her ability to perform his/her job duties. It is the employee's responsibility to notify his/her supervisor that he/she is taking a drug or controlled substance which may impact his/her ability to operate a vehicle or other City equipment. No manager/supervisor possessing such knowledge shall permit an employee to drive/operate any City equipment or vehicle.

c. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

PERSONNEL SERVICES BULLETIN 09-06
(Replaces PSB 08-2)

TO: Department Directors/Division Managers
FMLA Coordinators

FROM: Dianna L. Berry DLB
Personnel Director

DATE: October 26, 2009

SUBJECT: Family and Medical Leave Act of 1993 – **Revised Pursuant to Additional Changes in Federal Law**

On February 26, 2008, the Personnel Department issued Personnel Services Bulletin 08-02, implementing the National Defense Authorization Act ("NDAA"), which amended the Family and Medical Leave Act (FMLA) of 1993, as it pertained to employees with family members in the Armed Forces, including the National Guard or Reserves

As a result of these amendments and subsequent comments received by the United States Department of Labor, several additional amendments were made to the FMLA, and on January 16, 2009, the final revisions became effective. (29 C.F.R. §§ 825.100 *et seq*). Due to the significant amendments made to the Act, the City's FMLA Policy Review Committee recommended that separate Personnel Services Bulletins be issued for FMLA pertaining to military-related requests and non military-related requests. Therefore, requests for military-related leave under the FMLA are to be evaluated under Personnel Services Bulletin 09-07.

I. PURPOSE OF THE ACT

The FMLA allows eligible employees to take up to 12 weeks of unpaid leave in a 12 month period for medical reasons; the birth or adoption of a child; and the care of a child, spouse, or parent of the employee who has a serious health condition. (§ 825.200(a)).

II. DEFINITIONS

A. *Son or Daughter:* A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either less than 18 years of age or 18 years of age or older and "incapable of self-care" because of a physical or mental disability at the time that FMLA leave is to commence. "Incapable of self care" means that the individual requires active assistance or supervision to provide daily self-care in three or more activities or instruments of daily living (i.e. hygiene, eating, paying bills, cleaning, etc.). (§ 825.122(c)).

B. *Parent:* The biological parent, adoptive, step or foster father or mother, of an employee or an individual who stood *in loco parentis* to an employee when the employee was a son or daughter. Persons who are *in loco parentis* include those with day-to-day responsibilities to care for and financially support a child. A biological

relationship is not necessary. (§ 825.122(b)).

C. *Spouse:* A husband or wife as defined or recognized under State law for purposes of marriage in the State of Oklahoma, including common law marriage under the laws of the State of Oklahoma. (§ 825.122(a)).

D. *Health Care Provider:* A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services (i.e., podiatrist, dentists, clinical psychologists, optometrists, chiropractor, nurse practitioner and nurse-midwife, physician assistants, clinical social workers, and certain Christian Science practitioners). (§ 825.125(b)).

E. *Serious Health Condition:* An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, continuing treatment by a health care provider or a chronic condition. (§ 825.113).

F. *Intermittent Leave:* Leave taken in separate blocks of time due to a single qualifying reason. (§ 825.202(a)).

G. *Reduced Leave*: A leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. A change in the employee's schedule for a period of time, normally from full time to part time. (§ 825.202(a)).

H. *FMLA 12-Month Period:* The 12-month period is measured forward from the date an employee's first FMLA leave begins. Example: If an employee's FMLA 12-month period begins on June 9 it will run until the following June 8. (§ 825.200(b)(4)).

III. ELIGIBILITY REQUIREMENTS

A. To be eligible for leave under the FMLA, an employee must have been employed by The City for at least 12 months within the past seven years *and* worked at least 1,250 hours during the previous 12 month period preceding the request for leave. (§ 825.110).

1. The 12 months do not need to be consecutive months. (§ 825.110(b)). For example, if an employee worked for The City five (5) years before the current period of employment, the previous service could be counted toward the employee's 12-month eligibility requirement.

2. If the break in service is to fulfill National Guard or Reserve military service obligations, there is no limit in the gap between periods of employment. (§ 825.110(b)).

B. If The City grants non-FMLA leave to an employee before the employee is eligible for FMLA leave and the employee becomes eligible for FMLA leave while on non-FMLA

leave, the leave period after the date the employee becomes eligible is FMLA leave and the leave period before such leave is non-FMLA leave. (§ 825.110).

C. An eligible employee shall be entitled to a total of 12 workweeks of leave during the FMLA 12 month period for one or more of the following *FMLA qualifying events*:

Birth or Adoption:

1. The birth of a son or daughter of the employee or placement of a son or daughter with the employee for adoption or foster care. (§ 825.112).

   a. Both the mother and father are entitled to FMLA leave to be with the healthy newborn child (i.e. bonding time) during the 12-month period beginning on the date of birth. (§ 825.120).

   b. The mother is entitled to FMLA leave for incapacity due to pregnancy (i.e. morning sickness), for prenatal care, or for her own serious health condition following the birth of the child. (§ 825.120).

   c. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated, if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a serious health condition. (§ 825.120).

   d. Employees may take FMLA leave *before* the actual placement or adoption of a child if an absence from work is required for placement for adoption or foster care to proceed (i.e. appear in court, counseling, or travel to another country, etc.). (§ 825.121).

   e. If both parents work for The City, the combined leave to which they are entitled is 12 weeks. However, time may be split in any manner chosen by the parents. For example, if each parent took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition. If one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of leave. (§ 825.120(a)).

Employee's Serious Health Condition:

2. A serious health condition that renders the employee "unable to perform the functions of the position" because of an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. (§ 825.112).

   a. An employee is "unable to perform the functions of the position"

where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. (§ 825.123).

b. An on-the-job injury that qualifies as a serious health condition under FMLA will be charged to the employee's FMLA entitlement. The workers' compensation absence and FMLA leave shall run concurrently subject to proper notice and designation by the department.

Family Member's Serious Health Condition:

3. An employee may be eligible for FMLA when "needed to care for" the employee's spouse, son, daughter, or parent of the employee with a "*serious health condition.*" Care for parents-in-law is not covered by the FMLA. (§ 825.112; § 825.201).

   a. "Needed to care for" means an employee may take leave to care for a family member if needed to provide physical and/or psychological care (i.e. basic medical needs, hygiene, transportation to the doctor, or emotional support). (§ 825.124).

   b. The employee does not need to be the only individual or family member available to provide the care nor is the employee required to provide actual care. (§ 825.124).

   c. If both spouses work for The City, each is entitled to 12 weeks to care for a sick son or daughter. If one spouse is ill and must be cared for by the other, each spouse is entitled to 12 weeks.

Servicemember leave – See PSB 09-07

IV. NOTICE AND DESIGNATION OF FMLA

A. Eligibility notice. When an employee requests FMLA leave, or when the department/division acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the FMLA Coordinator must notify the employee of the employee's eligibility within five business days, absent extenuating circumstances. If it is determined that the employee is not eligible, the notice must state at least one reason why the employee is not eligible. *See* DOL Notice of Eligibility of Rights and Responsibilities form. (§ 825.300).

B. Employee notice requirements. An employee must provide at least verbal notice to the department/division at least 30 days before FMLA leave is to begin if the need for

the leave is foreseeable based on an expected birth, placement for adoption or foster care, or a planned medical treatment for a serious health condition of the employee or a family member. If 30 days notice is not practicable, notice must be given as soon as practicable. The notice should make the department/division aware that the employee needs FMLA leave and the anticipated timing and duration of the leave. (§ 825.302).

C. Designation notice. It is The City's responsibility through the FMLA Coordinator to designate leave as FMLA qualifying, and to give notice of the designation of FMLA leave to the employee. When the FMLA Coordinator has enough information to determine whether the leave is being taken for a FMLA qualifying reason (e.g. after receiving the certification), the Coordinator must notify the employee within five (5) business days. *See* DOL Designation Notice form. (§ 825.300(d)).

1. If the department/division will require the employee to present a fitness-for-duty certification to be restored to employment, it must provide notice of such requirement with the designation notice. If the fitness-for-duty is to address the employee's ability to perform the essential functions of the employee's position, it must so indicate in the designation notice, and must include a list of essential functions of the employee's position. (§ 825.300(d)).

2. If the information provided by the employer to the employee in the designation notice changes (e.g. the employee exhausts the FMLA entitlement), the employer shall provide, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change. (§ 825.300(d)(5)).

D. Sufficient information to designate leave. The decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson (i.e. if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the department/division of the need for leave). (§ 825.301(b)).

1. In any circumstance where there is insufficient information about the reason for an employee's use of leave, the department/division can inquire further of the employee or the employee's spokesperson to ascertain whether the leave is potentially FMLA qualifying. (§ 825.301(b)).

2. If the employee or their spokesperson fails to explain the reasons for the use of leave, the FMLA leave may be denied. (§ 825.301(b)).

E. Requesting use of approved FMLA leave. When an employee seeks leave due to an approved FMLA event, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. (§ 825.303).

1. Calling in "sick" without providing more information will not be

considered sufficient notice to trigger obligations under the FMLA. (§ 825.303).

2. An employee has an obligation to respond to questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable inquiries regarding the leave request may result in denial of FMLA protection if unable to determine whether the leave is FMLA qualifying. (§ 825.303).

F. Retroactive designation. FMLA leave may be retroactively designated with appropriate notice to the employee provided that the failure to timely designate leave does not cause harm or injury to the employee. (§ 825.301).

G. Denial of FMLA Leave. Denial of FMLA leave requires consultation with the Personnel Department.

V. CERTIFICATION

A. Certification requirement. The department/division may require an eligible employee to provide certification from a health care provider supporting the need for family and/or medical leave no later than 15 days from the date leave is requested. (§ 825.305(b)).

B. Costs. Any and all costs associated with obtaining medical certification for purposes of FMLA are the sole responsibility of the employee.

C. Complete and sufficient certification. In all instances in which certification is requested, it is the employee's responsibility to provide a complete and sufficient certification and failure to do so may result in denial of FMLA leave. (§ 825.305; § 825.306).

1. The FMLA Coordinator shall advise an employee whenever the certification is incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. The employee has seven (7) calendar days to resubmit the certification. If the deficiencies are not cured in the resubmitted certification FMLA leave may be denied. (§ 825.305; § 825.306).

2. A medical certification is considered incomplete if one or more of the applicable entries have not been completed. A medical certification is considered insufficient if the information is vague, ambiguous, or non-responsive. (§ 825.305; § 825.306).

3. A certification that is not returned is not considered incomplete or insufficient, but constitutes a failure to provide certification. (§ 825.305).

D. Certification for each event. A separate request for leave must be submitted for each FMLA purpose. Approved leave shall only apply to that single purpose.

E. Statement of essential functions. The department/division has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. The essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier. (§ 825.123).

F. Certification forms. When leave is taken because of an employee's own serious health condition or the serious health condition of a family member, the employee may be required to obtain a medical certification from the health care provider. For use in obtaining medical certification, employees can either submit the current Department of Labor form WH-380E or WH-380F or some other form of documentation that sets forth the following information: (§ 825.306)

1. The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

2. The approximate date on which the serious health condition commenced, and its probable duration;

3. A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;

4. If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (see § 825.123(b) and (c));

5. If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is *in need of care*, and an estimate of the frequency and duration of the leave required to care for the family member;

6. If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such

treatments and any periods of recovery;

7. If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

8. If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

G. HIPAA privacy rules. The City has a statutory right to require sufficient medical information to support an employee's request for FMLA leave for a serious health condition. Generally, HIPAA privacy rules only apply in a physician/patient relationship and not to the employee/employer relationship. The HIPAA privacy rule does not apply in situations where an employee is providing medical certification to the employer for purposes of qualifying for FMLA leave. If an employee fails to provide the requested medical information, the employee will not qualify for FMLA.

H. Contact with health care providers. The FMLA specifically allows Human Resource professionals to contact an employee's health care provider for the sole purpose of authenticating or clarifying a medical certification but only after the employee has been given the opportunity to cure any deficiencies. The FMLA specifically prohibits direct supervisors from contacting the employee's health care provider. (§ 825.307).

I. Recertification. If a minimum duration for the *period of incapacity* is specified, recertification may not be requested until that time period has expired. For example, if the certification states the employee will be unable to perform essential functions of job for two weeks, then the department/division cannot request recertification until that two weeks has expired. (§ 825.308).

1. Recertification may be requested in less than 30 days if the employee requests an extension of leave, circumstances have changed significantly from the original certification, or there are doubts about the stated reason for the employee's absence. (§ 825.308).

2. In all circumstances, recertification is permitted every six (6) months. (§ 825.308).

3. The employee is responsible for the costs of recertification. (§ 825.308).

4. If the recertification is not provided in 15 days, the department/division may deny continuation of FMLA leave until recertification is provided. (§ 825.308).

VI. INTERMITTENT AND REDUCED LEAVE SCHEDULE

A. Birth or placement of a child. When leave is taken after the birth of a *healthy* child or placement of a *healthy* child for adoption or foster care, intermittent or reduced leave may be taken only with the agreement of the supervisor. An agreement is not required for leave during which the mother has a serious health condition with the birth of her child or if the newborn child has a serious health condition. (§ 825.202(c)).

B. Medical need for intermittent leave. Intermittent or a reduced leave schedule taken because of one's own serious health condition or to care for a parent, son or daughter with a serious health condition requires a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. (§825.202(b)).

C. Scheduling treatment. When planning medical treatment, the employee must consult his/her supervisor and make a reasonable effort to schedule the treatment so as not to unduly disrupt operations, subject to the approval of the health care provider. (§ 825.302).

D. Temporary transfer. An employee on intermittent leave or on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or family member may be temporarily transferred from their regular position to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave. (§ 825.204).

1. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave. (§ 825.204(b)).

2. When the employee no longer needs to continue the intermittent leave or reduced leave schedule the employee must be placed in the same or equivalent job as he/she left when the leave commenced. (§ 825.204(e)).

3. Transfers may require compliance with applicable collective bargaining agreements. (§ 825.204(b)).

E. Time keeping. Intermittent and reduced leave schedule will reduce the 12-week FMLA entitlement minute for minute. (§ 825.205).

VII. EFFECT ON PAY, ACCRUED LEAVE, BENEFITS AND POLICIES

A. Substitution of paid leave. Generally, FMLA leave is unpaid leave. However, The City allows an employee requesting FMLA leave to substitute accrued sick leave, vacation leave, compensatory time (CTO) and donated sick leave prior to being placed in an unpaid leave status. The department/division is not required to provide sick leave benefits in any situation in which a health care professional has not certified the leave as medically necessary, or has released the employee/family member from medical care. (§ 825.207).

B. Exempt employees. If an employee is otherwise exempt from minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA) as a salaried employee, providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. (§ 825.206).

C. Vacation and sick leave accruals. Vacation and sick leave shall not continue to accrue during any family and/or medical leave, which exceeds two (2) consecutive payroll periods. (§ 825.209(h)).

D. Retirement and longevity. Unpaid family and/or medical leave will result in an adjustment to the employee's retirement and longevity eligibility (see applicable state statute with respect to eligibility for members of the Police and Fire pension systems). Salary review and eligibility dates will be adjusted one day for each day of absence in excess of 30 continuous calendar days. (§ 825.209(h)).

E. Health and welfare benefits. An employee on FMLA leave will have health and welfare benefits maintained while on leave as if the employee had continued to work instead of taking the leave.

1. Premiums. The employee will continue to pay his/her share of the premiums during the leave period. Failure to pay the required premium may result in cancellation of the employee's coverage.(§ 825.209; § 825.210; § 825.212).

2. COBRA. Once all leave, including FMLA, has been exhausted and the employee has been in an unpaid status exceeding two (2) consecutive payroll periods, the employee will be offered allowable continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). Should the employee elect COBRA continuation coverage, he/she will be responsible for all premiums associated to continue health insurance coverage. Failure to pay the required premiums may result in cancellation of insurance benefits. (§ 825.209(f)).

F. Overtime. If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. Voluntary overtime hours that

an employee does not work due to a serious health condition may not be counted against the employee's FMLA leave entitlement. (§ 825.205).

G. Holiday. Holidays are counted as FMLA leave if the employee is on FMLA leave the entire week in which the holiday falls. If the employee takes FMLA for less than a full workweek in which the holiday falls, the holiday does not count as FMLA leave unless the employee was otherwise scheduled and expected to work during the holiday. (§ 825.200).

H. Periodic reporting. The department/division may require an employee on FMLA leave to report *periodically* on the employee's status and intent to return to work. The relevant facts and circumstances related to the individual employee's leave situation must be taken into account before determining how often the employee should be required to report the status and intent of their return to work. (§ 825.311).

I. Division reporting requirements. The department/division may require an employee to comply with the usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. (§ 825.302).

J. Bonuses. If a bonus, award, or other payment is based on the achievement of a specified goal (e.g., hours worked, production output, perfect attendance, safety, etc.) and the employee has not met the goal due to FMLA leave, then the bonus or payment can be denied (and does not need to be pro-rated) as long as other employees on an equivalent leave status (e.g., vacation, sick days, paid time off, etc.) for a reason that does not qualify as FMLA leave are treated the same. (§ 825.215).

K. Secondary employment. An employee is prohibited from engaging in any secondary employment that occurs when the employee is off work from City employment on FMLA leave.

L. Recordkeeping. Each department/division will be responsible for establishing procedures for entering and tracking FMLA leave in the payroll system for benefit purposes, as well as, maintaining records and documents related to health care certifications in a separate confidential medical file. (§ 825.500).

VIII. RETURN FROM FAMILY/MEDICAL LEAVE

A. Restoration to position. An employee returning from FMLA leave within the 12 week FMLA period shall be restored to the position held prior to the leave commencing; or if the previously held position is unavailable, shall be restored to an equivalent position with equivalent pay and benefits, within his/her current department or division. (§ 825.214).

1. Necessary leave. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. (§ 825.311(c)).

2. Light duty. If an employee accepts a light duty assignment while still eligible for FMLA leave, he/she has reinstatement rights to his/her original or an equivalent job, but only until the end of the FMLA 12-month period. (§ 825.220(d)).

3. Qualifications expired. If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc. as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return. (§ 825.215(b)).

B. Medical release to return to work. Prior to an employee's return to work, the employee may be required to provide The City with a medical release, indicating that he/she is able to resume work. (§ 825.312(a))

C. Fitness for duty. The department/division is entitled to a fitness-for-duty certification up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his/her duties, based on the serious health condition for which the employee took such leave. In order to require a fitness-for-duty, the department/division must provide an employee with a list of the essential job functions no later than with the designation notice and it must be indicated in the designation notice that the fitness-for-duty must address the employee's ability to perform those essential functions. (§ 825.312(a)).

1. The cost of the fitness-for-duty shall be borne by the employee. (§ 825.312(c)).

2. A department/division may delay restoration to employment until an employee submits a required fitness-for-duty. (§ 825.312(e)).

3. An employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. (§ 825.312(e)).

D. Second opinion. The City reserves the right to obtain a second opinion, and if necessary a third opinion, at The City's expense. If the second or third opinion supports the original release, the employee shall be compensated, from the date of the original release. However, if *both* the second and third opinion do not support the original release, the employee shall not be compensated for time lost. (§ 825.307(b)).

IX. FAILURE TO RETURN FROM FAMILY/MEDICAL LEAVE

A. Failure to Return. An employee who fails to return from FMLA leave after the 12 weeks of FMLA leave has expired and has not been approved for leave of absence or after being medically certified to do so, may be subject to disciplinary action, up to and including termination.

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B. Personal leave of absence. An employee who is medically unable to return to work after the 12-week FMLA period has expired, and is unable to perform the essential functions of his/her position with or without restrictions, may apply for a leave of absence through his/her department director. (See Personal Leave of Absence Section of the Personnel Policies).

1. If the leave of absence is approved, the employee will be permitted to use accrued vacation/sick leave/comp time. If the employee does not have any accrued vacation, sick leave, or comp time, he/she will be placed in an unpaid status.

2. If after the leave of absence expires the employee remains unable to perform the essential functions of the position he/she held at the time FMLA was granted (with or without restrictions), the employee may be subject to termination.

3. Medical documentation from the employee's health care provider indicating that the employee is unable to work because of the continuation, recurrence, or onset of the serious health condition, must be provided at the time the leave of absence is requested. The City reserves the right to investigate an employee's continued absence. ***Note:*** Continued absences due to job injuries are covered under applicable job injury policies.

C. Restoration after expiration of FMLA. The employee does not have the right to restoration to his/her position after the 12-week FMLA entitlement has expired, except where the employee's job injury leave exceeds the FMLA period. In that instance, the employee will be restored according to applicable injury leave policies. An employee whose medical leave exceeds 12 weeks will be returned to the same or similar position, only if available. If the same or similar position is not available, the employee may be terminated.

X. ADMINISTRATION

A. Each City department shall have an assigned FMLA Coordinator who is responsible for administration of the FMLA policy as it pertains to that department's employees. If an employee has questions or concerns about the interpretation or administration of the FMLA policy they are to consult their FMLA Coordinator.

B. The Personnel Department shall be responsible for general oversight and interpretation of the FMLA; provide advice and guidance to all FMLA Coordinators regarding applications of the Act; and, the coordination of all FMLA dispute resolution activities between The City and the United States Department of Labor, Wage and Hour Division.

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PERSONNEL SERVICES BULLETIN 09-07

TO: Department Directors/Division Managers
FMLA Coordinators

FROM: Dianna L. Berry
Personnel Director

DATE: October 26, 2009

SUBJECT: **Family and Medical Leave Act of 1993 – Qualifying Exigency and Military Caregiver Leave**

I. PURPOSE

As of January 28, 2008, the FMLA allows two new forms of leave benefits for families of military servicemembers – qualifying exigency leave and leave to care for an injured or ill military family member. The same rules that apply to traditional FMLA provisions apply to servicemember family and medical leave. (See PSB 09-06 Family and Medical Leave Act). The servicemember family and medical leave amendments allow eligible employees to take up to twelve (12) weeks of FMLA leave in a twelve (12) month period for a qualifying exigency. The Act further allows up to 26 weeks of leave in a twelve (12) month period to an eligible employee who is the primary caregiver of a servicemember in the Armed Forces with a serious injury or illness incurred in the line of active duty. This policy shall not supersede specific language in the collective bargaining agreements, unless required by Federal or State law. This policy is not intended to change any existing terms and conditions of employment in effect in any of the bargaining agreements.

II. DEFINITIONS

A. *Son or daughter:* The employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in *loco parentis*, who is on active duty or call to active duty status and who is of any age. (§ 825.122(g); § 825.127(b)(1)).

B. *Parent (of a covered servicemember):* The biological parent of an employee or an individual who stood in *loco parentis* to an employee. Persons who are *in loco parentis* include those with day-to-day responsibilities to care for and financially support a child. A biological relationship is not necessary. (§ 825.122(b); § 825.127(b)(2)).

C. *Spouse:* A husband or wife as defined or recognized under State law for purposes of marriage in the State of Oklahoma, including common law marriage under the laws of the State of Oklahoma. (§ 825.122(a)).

D. *Next of Kin (of a covered servicemember)*: A servicemember's nearest blood relative in the following order: (1) blood relatives with legal custody of the

servicemember (2) siblings (3) grandparents (4) aunts and uncles (5) first cousins. The highest priority is given to a blood relative whom the servicemember has designated as the next of kin. Once this designation is made, that relative is deemed the only next of kin eligible to take military caregiver leave. If the servicemember does not designate a next of kin, multiple family members with the same level of relationship may take leave, either consecutively or simultaneously. (§ 825.122(d); § 825.127(b)(3)).

E. *Health Care Provider:* For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such certification: (1) United States Department of Defense ("DOD") health care provider (2) a United States Department of Veterans Affairs ("VA") health care provider; (3) a DOD Tricare network authorized private health care provider; or (4) a DOD non-network Tricare authorized private health care provider. (§ 825.310(a).

F. *Intermittent Leave:* Leave taken in separate blocks of time due to a single qualifying reason. (§ 825.202(a)).

G. *Reduced Leave*: Leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. A change in the employee's schedule for a period of time, normally from full time to part time. (§ 825.202(a)).

H. *FMLA 12- Month Period:* The 12-month period measured forward from the date an employee's first FMLA leave begins. Example: If an employee's FMLA 12-month period begins on June 9 it will run until the following June 8. (§ 825.200 (b) (4)).

J. *Active Duty*: Military duty that results in the call or order to, or retention on, active duty of members of the uniformed services under Title 10 §§ 688, 12301(a), 12302, 12304, 12305 or 12406, chapter 15 of Title 10 or any other provision of law during a war or during a national emergency declared by the President or Congress. (10 U.S.C. § 101(a)(13)(B)).

K. *Contingency Operation*: A military operation:

1. designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

2. resulting in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or

during a national emergency declared by the President or Congress. See also (§ 825.126(b)(3); § 825.800).

L. *Covered Servicemember*: A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. (§ 825.800; § 825.127(a)).

M. *Outpatient Status*: The status of a member of the Armed Forces assigned to (1) a military medical treatment facility as an outpatient or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (§ 825.127(a)(2).

O. *Serious Injury or Illness*: An injury or illness incurred by the servicemember in line of duty on active duty that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. (§ 825.127(a)(1).

P. *Qualifying Exigency*: A qualifying exigency includes: (1) short notice deployment of seven or fewer calendar days; (2) military events and related activities; (3) childcare and school activities for a child under 18 (or older if incapable of self support); (4) financial and legal arrangements; (5) counseling for employee, military member or child under 18 (or older if incapable of self support); (6) rest and recuperation of up to 5 days per break *while on deployment*; (7) post-deployment activities and issues related to death of military member on active duty for 90 days; or (8) additional activities per agreement of employer and employee. (§ 825.126(a).

III. QUALIFYING EXIGENCY: An eligible employee can receive up to 12 weeks of leave in a twelve-month period for a qualifying exigency arising from Federal active duty/call-up of the employee's spouse, child (of any age) or parent. Exigency leave applies only to a federal call to duty or a state call under order of the President. Qualifying exigency leave only applies to families of National Guard and Reserve and certain retired members of the Armed Forces and not to families of regular armed servicemembers on active duty. (§ 825.126).

A. ELIGIBILITY: To be eligible for leave under the FMLA for a qualifying exigency, an employee must:

1. have been employed by The City for at least twelve (12) months; and
2. worked at least 1,250 hours during the previous twelve (12) month period preceding the request for leave; and
3. be the spouse, son/daughter or parent to a servicemember in the National Guard, Reserve and certain retired members of the Armed Forces; and provide certification of a qualifying exigency as defined above.

B. **CERTIFICATION:** The FMLA permits an employer to require that employees submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. See the attached Department of Labor Form WH-384 – Certification of Qualifying Exigency for Military Family Leave. The employee must either complete this form or provide:

1. a statement signed by the employee with appropriate facts regarding the qualifying exigency; and
2. approximate date on which the qualifying exigency will commence; and
3. the beginning and ending dates of leave; and
4. an estimate of frequency and duration if on intermittent leave or reduced leave schedule; and
5. if the qualifying exigency involves meeting with a third party, appropriate contact information for the individual with whom the employee is meeting and a brief description of the purpose of the meeting. (§ 825.309(b)).

IV. **MILITARY CAREGIVER LEAVE:** An employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave in a 12-month period to care for a servicemember with a serious injury or illness incurred in the line of active duty. This leave benefit is covered on a per-covered-servicemember, per-injury basis. An eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness. (§ 825.127(c)).

A. **ELIGIBILITY**: To be eligible for leave under the FMLA, an employee must:

1. have been employed by The City for at least twelve (12) months; and
2. worked at least 1,250 hours during the previous twelve (12) month period preceding the request for leave. (29 U.S.C. § 2611 (2) (A) (i) (ii); and
3. be the spouse, son/daughter or next of kin to a member of the Armed Forces, National Guard, Reserves and servicemembers on the temporary disability retired list; and
4. provide certification that the covered servicemember incurred a serious illness or injury in the line of duty on active duty for which he/she is undergoing: (1) medical treatment; (2) therapy; (3) recuperation; (4) outpatient treatment; or (5) on the temporary disability list.

B. **CERTIFICATION:** The FMLA provides that an employer may require an employee seeking leave due to a serious injury or illness of a covered servicemember to submit a certification, from a health care provider as defined above, providing sufficient facts to support the request for leave. To determine whether an employee is eligible to receive FMLA leave, the employee must complete the attached Department of Labor Form WH-385 – Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave or provide:

1. the name, address, and appropriate contact information of the health care provider, the type of practice, the medical specialty and whether the health care provider is a DOD health care provider, a VA health care provider, a DOD Tricare network authorized private health care provider, a DOD non-network Tricare authorized private health care provider; and
2. whether the serious injury or illness was incurred in the line of duty; and
3. the approximate date on which the serious injury or illness commenced and probable duration; and
4. a statement of appropriate medical facts regarding the covered servicemember's health condition; and
5. information sufficient to establish that the covered servicemember is *in need of care* and the estimated beginning and ending dates for treatment and recovery; and
6. whether there is a medical necessity for the covered servicemember to have intermittent leave or a reduce leave schedule and an estimate of the treatment schedule. (§ 825.310(a) & (b)).

In lieu of the Department of Labor Form WH-385 or an employee's own certification form, it is sufficient to accept either "invitational travel orders" (ITOs) or "invitational travel authorizations" (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. (§ 825.310(e)).

V. NOTICE AND DESIGNATION OF FMLA

A. *Eligibility notice.* When an employee requests FMLA leave, or when the department/division acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the FMLA Coordinator must notify the employee of the employee's eligibility within five business days, absent extenuating circumstances. If it is determined that the employee is not eligible, the notice must state at least one reason why the employee is not eligible. *See* DOL Notice of Eligibility of Rights and Responsibilities form. (§ 825.300).

B. *Employee notice requirements.* An employee must provide at least verbal notice to the department/division at least 30 days before FMLA leave is to begin if the need for the leave is foreseeable. If 30 days notice is not practicable, notice must be given as soon as practicable. The notice should make the department/division aware that the employee needs FMLA leave and the anticipated timing and duration of the leave. (§ 825.302).

C. *Designation notice.* It is The City's responsibility through the FMLA Coordinator to designate leave as FMLA qualifying, and to give notice of the designation of FMLA leave to the employee. When the FMLA Coordinator has enough information to determine whether the leave is being taken for a FMLA qualifying reason (e.g. after receiving the certification), the Coordinator must notify the employee within five (5) business days. *See* DOL Designation Notice form. (§ 825.300(d) § 825.127(c)(4)).

1. If the information provided by the employer to the employee in the designation notice changes (e.g. the employee exhausts the FMLA entitlement), the employer shall provide, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change. (§ 825.300(d)(5)).

D. *Sufficient information to designate leave.* The decision to designate leave as FMLA-qualifying must be based only on information received from the employee.

1. In any circumstance where there is insufficient information about the reason for an employee's use of leave, the department/division can inquire further of the employee or the employee's spokesperson to ascertain whether the leave is potentially FMLA qualifying. (§ 825.301(b).

2. If the employee or their spokesperson fails to explain the reasons for the use of leave, the FMLA leave may be denied. (§ 825.301(b).

E. *Requesting use of approved FMLA leave.* When an employee seeks leave due to an approved FMLA event, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. (§ 825.303).

1. Calling in without providing information about the reason for the FMLA leave will not be considered sufficient notice to trigger obligations under the FMLA. (§ 825.303).

2. An employee has an obligation to respond to questions designed to determine whether an absence is potentially FMLA qualifying. Failure to respond to reasonable inquiries regarding the leave request may result in denial of FMLA protection if unable to determine whether the leave is FMLA qualifying. (§ 825.303).

F. *Retroactive designation.* FMLA leave may be retroactively designated with appropriate notice to the employee provided that the failure to timely designate leave does not cause harm or injury to the employee. (§ 825.301).

G. *Denial of FMLA Leave.* Denial of FMLA leave requires consultation with the Personnel Department.

VI. CERTIFICATION

A. *Certification requirement.* The department/division may require an eligible employee to provide certification supporting a qualifying exigency or certification from a health care provider supporting the need for FMLA leave no later than 15 days from the date leave is requested. (§ 825.305(b).

B. *Costs.* Any and all costs associated with obtaining medical certification for purposes of FMLA are the sole responsibility of the employee.

C. *Complete and sufficient certification.* In all instances in which certification is requested, it is the employee's responsibility to provide a complete and sufficient certification and failure to do so may result in denial of FMLA leave. (§ 825.305; § 825.306; § 825.310(f)).

1. The FMLA Coordinator shall advise an employee whenever the certification is incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. The employee has seven (7) calendar days to resubmit the certification. If the deficiencies are not cured in the resubmitted certification FMLA leave may be denied. (§ 825.305; § 825.306).

2. A medical certification is considered incomplete if one or more of the applicable entries have not been completed. A medical certification is considered insufficient if the information is vague, ambiguous, or non-responsive. (§ 825.305; § 825.306).

3. A certification that is not returned is not considered incomplete or insufficient, but constitutes a failure to provide certification. (§ 825.305).

D. *Certification for each event.* A separate request for leave must be submitted for each FMLA purpose. Approved leave shall only apply to that single purpose.

G. *HIPAA privacy rules.* The City has a statutory right to require sufficient medical information to support an employee's request for FMLA leave. Generally, HIPAA privacy rules only apply in a physician/patient relationship and not to the employee/employer relationship. The HIPAA privacy rule does not apply in situations where an employee is providing medical certification to the employer for purposes of qualifying for FMLA leave. If an employee fails to provide the requested medical information, the employee will not qualify for FMLA.

H. *Contact with health care providers.* The FMLA specifically allows Human Resource professionals to contact an employee's health care provider for the sole purpose of authenticating or clarifying a medical certification but only after the employee has been given the opportunity to cure any deficiencies. The FMLA specifically prohibits direct supervisors from contacting the employee's health care provider. (§ 825.307).

I. *Recertification and second opinions.* The City may not utilize the second and third opinion process or the recertification process during the period of time in which leave is supported by an ITO or ITA. (§ 825.310(e)(2).

J. *Confirmation of relationship.* The City may require an employee to provide confirmation of a covered family member relationship to the seriously ill or injured servicemember when an employee supports his or her request for FMLA leave with an ITO or an ITA. (§ 825.310(e)(3).

K. *Qualifying exigency verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, The City may not request additional information from the employee. (§ 825.309(d).

1. *Qualifying exigency meeting with third party.* If the qualifying exigency involves meeting with a third party, a representative from the Personnel Department may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting. The employee's permission is not required but no additional information can be requested by The City. (§ 825.309(d).

2. *Verification of active duty.* A representative from the Personnel Department may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status. No additional information may be requested. (§ 825.309(d).

VII. INTERMITTENT AND REDUCED LEAVE SCHEDULE

A. *Qualifying exigency or to care for a covered servicemember.* Intermittent or reduced leave schedule may be taken for qualifying exigencies or where the employee is caring for a covered servicemember. (§ 825.202(b)(2)).

B. *Medical need for intermittent leave.* Intermittent or a reduced leave schedule taken to care for a covered servicemember requires a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. (§825.202(b)).

C. *Scheduling treatment.* When planning medical treatment or leave for a qualifying exigency, the employee must consult his/her supervisor and make a reasonable effort to schedule the treatment and/or appointment so as not to unduly disrupt operations. (§ 825.302).

D. *Temporary transfer.* An employee on intermittent leave or on a reduced leave schedule that is foreseeable based on planned medical treatment for a covered servicemember or appointments arising out of a qualifying exigency may be temporarily transferred from their regular position to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave. (§ 825.204).

1. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave. (§ 825.204(b)).

2. When the employee no longer needs to continue the intermittent leave or reduced leave schedule the employee must be placed in the same or equivalent job as he/she left when the leave commenced. (§ 825.204(e)).

3. Transfers may require compliance with applicable collective bargaining agreements. (§ 825.204(b)).

E. *Time keeping.* Intermittent and reduced leave schedule will reduce the 12-week (or 26-week) FMLA entitlement minute for minute. (§ 825.205).

VIII. EFFECT ON PAY, ACCRUED LEAVE, BENEFITS AND POLICIES

A. *Substitution of paid leave.* Generally, FMLA leave is unpaid leave. However, The City allows an employee requesting FMLA leave to substitute accrued sick leave, vacation leave, compensatory time (CTO) and donated sick leave prior to being placed in an unpaid leave status. The department/division is not required to provide sick leave benefits in any situation in which the covered servicemember's health care provider has not certified the leave as medically necessary, or has released the covered servicemember from medical care. (§ 825.207).

B. *Exempt employees.* If an employee is otherwise exempt from minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA) as a salaried employee, providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. (§ 825.206).

C. *Vacation and sick leave accruals.* Vacation and sick leave shall not continue to accrue during any FMLA leave, which exceeds two (2) consecutive payroll periods. (§ 825.209(h)).

D. *Retirement and longevity.* Unpaid FMLA leave will result in an adjustment to the employee's retirement and longevity eligibility (see applicable state statute with respect to eligibility for members of the Police and Fire pension systems). Salary review and eligibility dates will be adjusted one day for each day of absence in excess of 30 continuous calendar days. (§ 825.209(h)).

E. *Health and welfare benefits.* An employee on FMLA leave will have health and welfare benefits maintained while on leave as if the employee had continued to work instead of taking the leave.

1. *Premiums.* The employee will continue to pay his/her share of the premiums during the leave period. Failure to pay the required premium may result in cancellation of the employee's coverage.(§ 825.209; § 825.210; § 825.212).

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2. *COBRA.* Once all leave, including FMLA, has been exhausted and the employee has been in an unpaid status exceeding two (2) consecutive payroll periods, the employee will be offered allowable continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). Should the employee elect COBRA continuation coverage, he/she will be responsible for all premiums associated to continue health insurance coverage. Failure to pay the required premiums may result in cancellation of insurance benefits. (§ 825.209(f)).

F. *Overtime.* If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. Voluntary overtime hours that an employee does not work due to a serious health condition may not be counted against the employee's FMLA leave entitlement. (§ 825.205(c)).

G. *Holiday.* Holidays are counted as FMLA leave if the employee is on FMLA leave the entire week in which the holiday falls. If the employee takes FMLA for less than a full workweek in which the holiday falls, the holiday does not count as FMLA leave unless the employee was otherwise scheduled and expected to work during the holiday. (§ 825.200).

H. *Periodic reporting.* The department/division may require an employee on FMLA leave to report *periodically* on the employee's status and intent to return to work. The relevant facts and circumstances related to the individual employee's leave situation must be taken into account before determining how often the employee should be required to report the status and intent of their return to work. (§ 825.311).

I. *Division reporting requirements.* The department/division may require an employee to comply with the usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. (§ 825.302(d)).

J. *Bonuses.* If a bonus, award, or other payment is based on the achievement of a specified goal (e.g., hours worked, production output, perfect attendance, safety, etc.) and the employee has not met the goal due to FMLA leave, then the bonus or payment can be denied (and does not need to be pro-rated) as long as other employees on an equivalent leave status (e.g., vacation, sick days, paid time off, etc.) for a reason that does not qualify as FMLA leave are treated the same. (§ 825.215(c)(2)).

K. *Secondary employment.* An employee is prohibited from engaging in any secondary employment that occurs when the employee is off work from City employment on FMLA leave.

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L. *Recordkeeping.* Each department/division will be responsible for establishing procedures for entering and tracking FMLA leave in the payroll system for benefit purposes, as well as, maintaining records and documents related to health care certifications in a separate confidential medical file. (§ 825.500).

IX. RETURN FROM FAMILY/MEDICAL LEAVE

A. *Restoration to position.* An employee returning from FMLA leave within the 12-week (or 26-week) FMLA period shall be restored to the position held prior to the leave commencing; or if the previously held position is unavailable, shall be restored to an equivalent position with equivalent pay and benefits, within his/her current department or division. (§ 825.214).

1. *Necessary leave.* An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. (§ 825.311(c)).

2. *Qualifications expired.* If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc. as a result of the FMLA leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return. (§ 825.215(b)).

X. FAILURE TO RETURN FROM FAMILY/MEDICAL LEAVE

A. *Failure to Return.* An employee who fails to return from FMLA leave after the 12 weeks (or 26 weeks) of FMLA leave has expired and has not been approved for leave of absence or after being medically certified to do so, may be subject to disciplinary action, up to and including termination.

B. *Personal leave of absence.* An employee who is unable to return to work after the 12-week (or 26-week) FMLA period has expired may apply for a leave of absence through his/her department director. (See Personal Leave of Absence Section of the Personnel Policies).

1. If the leave of absence is approved, the employee will be permitted to use accrued vacation/sick leave/comp time. If the employee does not have any accrued vacation, sick leave, or comp time, he/she will be placed in an unpaid status.

2. If after the leave of absence expires the the employee may be subject to termination.

C. *Restoration after expiration of FMLA.* The employee does not have the right to restoration to his/her position after the 12-week (or 26-week) FMLA entitlement has expired. An employee whose leave exceeds 12 weeks (or 26 weeks) will be

returned to the same or similar position, only if available. If the same or similar position is not available, the employee may be terminated.

XI. ADMINISTRATION

A. Each City department shall have an assigned FMLA Coordinator who is responsible for administration of the Servicemember FMLA policy as it pertains to that department's employees. If an employee has questions or concerns about the interpretation or administration of the Servicemember FMLA policy they are to consult their FMLA Coordinator.

B. The Personnel Department shall be responsible for general oversight and interpretation of the Servicemember FMLA; provide advice and guidance to all FMLA Coordinators regarding applications of the Act; and, the coordination of all FMLA dispute resolution activities between The City and the United States Department of Labor, Wage and Hour Division.

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