

CITY OF BRANSON, MISSOURI
ADMINISTRATIVE RULES

RULE NUMBER 9 REFERENCING ARTICLE 18 OF THE HUMAN RESOURCES MANUAL
AMENDED 7-10-2012, 8-13-2013, 5-28-2019

A RULE PERTAINING TO **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Section 1. Eligibility

In adherence to the Family and Medical Leave Act (FMLA) of 1993 and as revised effective January 16, 2009, the city will comply by granting up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave will be calculated using the 12 month rolling backward method. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Eligible employees must have worked for the City for 12 months or 52 weeks and must also have worked at least 1,250 hours during the preceding 12-month period. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. In addition, the employee must work in a worksite where 50 or more employees are employed by the city with 75 miles of that office or worksite.

Section 2. Leave Entitlement

For FMLA-qualifying leave under this policy, the employee must be taking leave for one of the reasons listed below:

- A. The birth, adoption of, or foster care placement of a child; or to provide care for the child.

If the leave is for the birth or placement of a child, the employee must give at least 30 days' notice if possible. If this is not possible, as much notice as is practical must be provided. If a husband and wife both work for the City and each wishes to take leave for the birth, adoption or placement of a child in foster care, the husband and wife may only take a combined total of 12 weeks of leave. Leave must be concluded within 12 months of the event of birth or placement.

- B. To care for a spouse, child or parent with a serious health condition (as defined by the Department of Labor).

If the leave is for family medical care the employee must make a reasonable effort to schedule the treatment as not to unduly disrupt the operations of the city, and, if possible, must provide the city with not less than 30 days' notice.

- C. The serious health condition of the employee (as defined by the Department of Labor).

An employee may take leave because of a serious health condition that makes the employee unable to perform the essential functions of the employee's position. A serious health condition is defined as a condition that requires inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care, or a condition that requires continuing treatment by a licensed health care provider. Upon return from a medical leave, employees must have written authorization from their healthcare provider.

Section 3. Military Family Leave Entitlements

- A. **Military Caregiver Leave:** Up to 26 weeks of job-protected unpaid leave in a single 12-month period to care for a covered service member with a serious injury or illness. A covered service member is a current 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. A serious injury or illness is one that was incurred by the service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the City for other types of FMLA leave. An eligible employee is limited to a combined total of 26 weeks of leave for any FMLA-qualifying reason during the "single 12-month period," but only 12 weeks may be for a FMLA-qualifying reason other than to care for a covered service member. A covered service member includes a spouse, son, daughter, parent or next of kin. Next of kin is defined as the closest blood relative of the injured or recovering service member.
- B. **Qualifying Exigency Leave:** Up to a total of 12 weeks of job-protected unpaid leave during the normal 12-month period established in Section 4 below for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty, in support of a contingency operation. The qualifying exigency is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces. If a husband and wife both work for the City and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave. Qualifying exigencies include:
- Issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from

the date of notification.

- Military events or related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or supported by the military, military service organizations or the American Red Cross that are related to the active duty or call to active duty status of a covered military member.
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate care basis, enrolling or transferring a child to a new school or day care facility, attending certain meetings at a school or day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member.
- Making or updating financial and legal arrangements to address a covered military member's absence.
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member.
- Taking up to five (5) days of leave to spend with a covered military member who is on short-term temporary, rest and recuperation leave during deployment.
- Attending certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member.
- Additional activities that arise out of active duty, provided that the City and employee agree, including agreement on timing and duration of the leave.

Section 4. Designation of a 12-Month Leave Period

For the purposes of measuring the 12-month period during which each annual 12 weeks of leave entitlement occurs, the City shall use a rolling 12-month period measured backward from the date an employee's ~~first~~ FMLA leave begins, except as noted in Section 3 above, regarding military caregiver leave. When an employee requests FMLA leave, the City will look back 12 months from the date that the FMLA leave is to begin. If no other FMLA leave has been taken in that time, 12 weeks will be available. If, however, the employee has taken FMLA leave within the last 12 months from the date the newly requested leave is to begin, the employee's allotment will be reset based on the amount of leave previously taken in that 12 months.

Section 5. Intermittent or Reduced Schedule Leave

When medically necessary, employees may take FMLA leave intermittently, which means taking leave in separate blocks of time for a single qualifying reason, or work on a reduced leave

schedule, or reducing the employee's usual weekly or daily work schedule. Recertification rules will apply.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the City's operations. Employee absences from work for intermittent FMLA require notifying the supervisor in advance. If the employee fails to notify the supervisor in advance of the leave, such leave will not be considered FMLA-qualifying. If such non-qualifying leave is taken when no hours are available, such leave may be unpaid and the employee may face disciplinary action.

FMLA leave may also be taken intermittently for a qualifying exigency arising out of the active duty status or call to active status of a covered military member. If the FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the approval of the Human Resources Representative.

Section 6. Medical Leave Qualification

To qualify for medical leave an employee must have a serious health condition which renders the employee unable to perform the essential functions of the employee's job. A serious health condition is an illness, injury, impairment or mental condition which involves inpatient care, continual treatment by a health care provider and/or treatment for substance abuse. The City shall require a signed physician's certification as proof of the serious health condition of either the employee or his qualifying family member, as detailed by this Rule.

Section 7. Use of Accrued Leave

An employee requesting or being placed on family or medical leave will be required to use any eligible accrued leave, such as vacation or sick leave. Accrued leave will be substituted, hour for hour, for an equal number of hours of unpaid leave. Total FMLA allowed, both paid and unpaid, shall not exceed the 12 weeks entitlement for each 12 month period, except as noted in Section 3 above, regarding military caregiver leave.

Section 8. Job Restoration

Generally, employees granted FMLA leave will be returned to the same position held prior to leave, or one that is equivalent in pay, benefits, and other terms and conditions of employment.

Section 9. Employee Benefits

Health care benefits for all regular employees on FMLA leave will continue during leave. The City and employee will continue paying portions of the monthly premiums per City policy. An employee on unpaid leave must make arrangements with the City to pay costs, premiums and expenses due the City during leave. Any employee choosing not to return from leave may be required to repay the City for portions of the premium. No accrual of vacation or sick leave benefits will occur while the employee is on unpaid leave.

Section 10. Leave Limitation for Working Spouses

When a husband and wife both work for the City, and the adoption or birth of a healthy child occurs or there is a need to care for a sick parent, the combined FMLA leave for both employees is limited to 12 weeks total.

Section 11. Notification

Thirty (30) days' notice to the Human Resources Director is required for an eligible employee to take leave under this rule. Should emergency conditions prevent such notice, notification of leave to the City is required as soon as is practical, normally the same or next business day after the employee becomes aware of the need for leave. Reporting status periodically may be required. When the City learns that a leave request is FMLA qualifying, the City will notify the employee that the leave is designated and will be counted as FMLA leave.

Section 12. Certification

Certification of the need for care for personal illness or injury or that of a family member is required. The following information must be provided the City by the health care provider:

- *Date of the serious health condition
- *The duration of the condition
- *If applicable, the medical reasons verifying the need for intermittent leave or reduced work schedule, and dates for treatment.
- *Certification of the need for military family leave

The certification form may be obtained from the Human Resources Director.

Section 13. Other Employment During Leave

An employee on FMLA leave is prohibited from working at a second job or in any form of self-employment.

Section 14. Release to Return to Work

A physician's release (certification that the employee is able to resume work) is required when returning from a leave of absence of three (3) or more consecutive work days due to a serious medical condition.

Section 15. More Information

Any matters not addressed in this administrative rule shall be determined in accordance with the Family and Medical Leave Act. Any questions regarding the Family and Medical

Adopted January 1, 2010

Leave Act should be addressed to the Human Resources Director, or can be answered at www.dol.gov/whd/fmla/index.htm.

Section 16. Disciplinary Action

Employees are required to follow all provisions of this Rule to qualify for FMLA leave. Any employee who knowingly provides false information/records in order to qualify for Family Medical Leave will be subject said Rule 4, Section 2, Disciplinary Action, B. (5) a. dishonesty in any form or degree, or falsification of records or reports for official use, which can result in discipline up to and including termination of employment.

The above Administrative Rule is hereby established and adopted in accordance with the Human Resources Manual of the City of Branson, Missouri.

Stanley E. Dobbins, City Administrator

Date