



**CITY OF BOWLING GREEN  
ADMINISTRATIVE INSTRUCTION NO. 33**

**FAMILY AND MEDICAL LEAVE ACT**

These Administrative Instructions establish City policy with respect to compliance with the Family and Medical Leave Act (FMLA), as defined in the final regulations released by the Department of Labor (DOL).

**INSTRUCTIONS**

The Family and Medical Leave Act of 1993 establishes the right for “eligible” employees to take up to 12 weeks of unpaid, job-protected leave during a calendar year for certain family and medical reasons. Employees are “eligible” if they have been on the City’s payroll for at least twelve months and have worked at least 1,250 hours during the 12 months prior to the commencement of the leave. The 12 months do not have to be consecutive. In determining the hours worked, vacation, personal, sick leave or unpaid leave would not be included. Overtime hours would be considered hours worked. However, an employee’s entitlement to leave for the birth or placement of a son or daughter for adoption or foster care shall expire at the end of the 12-month period beginning on the date of such birth or placement.

Eligible employees whose spouse, son, daughter or parent is on covered active duty or called to covered active duty status may use their twelve-week leave entitlement to address certain qualifying exigencies. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single twelve month period.

**Reasons for Taking Leave**

An eligible employee may be granted leave for any of the following reasons:

1. For incapacity due to pregnancy or prenatal medical care.
2. For the “birth” and/or care of the employee’s “son or daughter” (includes natural birth or placement for adoption or foster care).
3. For the care of the employee’s parent, spouse, son, or daughter with a “serious health condition.”
4. For a serious health condition that makes the employee unable to perform one or more of the essential functions of his position.
5. For a spouse, son, daughter, parent, or next of kin to care for a covered service-member who is recovering from a serious illness or injury sustained in the line of duty on active duty, up to 26 weeks of leave may be taken.

6. For any qualifying exigency related to the employee's spouse, son, daughter, or parent who is a covered servicemember on or called to active duty.

### **Definition of Terms**

"Spouse" means a husband or wife that entered into marriage recognized under the law of the State where married or if married outside of any State, if valid where married and valid in at least one State. This includes a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriage; or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State as defined under Ohio law.

"Covered servicemember" means: (1) 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; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment recuperation, or therapy for a serious injury or illness.

"Son" or "Daughter" means a biological, adopted, or foster child, a stepchild, or a legal ward that is either under age 18, or age 18 or older and is incapable of self-care because of mental or physical disability, as defined by the Americans with Disabilities Act.

"Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as previously defined in this section. This term does not include parents "in-law".

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that renders the employee unable to perform his/her job and involves inpatient care or continuing treatment by a health care provider.

"Serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".

"Health care provider" means a licensed doctor of medicine or osteopathy, or licensed podiatrist, dentist, clinical psychologist, optometrist, chiropractor (with certain limitations), nurse practitioner, or nurse midwife.

“Continuing treatment” involves a period of incapacity:

(1) of more than three consecutive calendar days and any subsequent treatment that also involves at least treatment two or more times by a health care provider; or treatment by a health care provider on at least one occasion which results in a regimen of continuous treatment under the supervision of the health care provider; (2) due to pregnancy, or for prenatal care, or one treatment which results in a regimen of continuing treatment under the health care provider’s supervision; (3) due to a chronic serious health condition requiring treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy); (4) permanent or long-term incapacity due to a condition for which treatment may not be effective; (5) any period of absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or injury for a condition such as cancer that would likely result in a period of incapacity of more than three consecutive calendar days without medical treatment. Treatment would not include routine physical examinations.

### **Substitution of Accrued Leave Time**

Whenever an employee has accumulated unused sick leave, vacation, or personal business leave, that time shall be substituted for and counted against the employee’s 12-week FMLA entitlement. Employees will not be required to substitute compensatory time for unpaid FMLA leave; however, they may voluntarily elect to utilize accrued by unused compensatory time in order to remain in a paid status.

### **Advance Notice**

An employee must provide the City with written notice at least 30 days in advance before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or immediate family member. Such notice must set forth the reasons for the requested leave, the anticipated starting date of the leave, and the anticipated duration.

If 30-days’ notice is not practicable under the circumstances, for example, because of lack of knowledge of when leave will be required, a substantial change in circumstances, or a medical emergency, notice must be given as soon as possible after the employee becomes aware of the necessary scheduling arrangements.

If an employee fails to give at least 30-days’ notice of a foreseeable leave with no reasonable excuse for the delay, the City may deny the taking of FMLA leave until at least 30 days after the date the employee provides notice to the City of the need for FMLA leave.

Whenever an employee requests FMLA leave to care for a seriously-ill spouse, son, daughter, or parent, or due to the employee’s own serious health condition, the employee must furnish written certification of the serious health condition signed by the employee’s or immediate family member’s health care provider. Such certification should

be submitted at the time the employee requests leave, or in the case of an unforeseen leave, as soon after the leave commences as possible. Certification can be made using Federal Form WH-380 E or F, whichever is applicable.

The City may require a second opinion from another health care provider. If the opinions differ, the City may require a third opinion from a health care provider jointly selected by the City and the employee. The third health care provider's opinion shall be final and binding. The costs of obtaining second or third opinions that have been incurred by an employee or family member shall be reimbursed by the City. Itemized receipts and verification of mileage traveled will be required.

Whenever an employee requests FMLA leave to care for a covered service member, who is a spouse, son, daughter, parent, or next of kin, who is recovering from a serious illness or injury sustained in the line of duty on active duty or for any qualifying exigency related to the employee's spouse, son, daughter, or parent on or called to active duty the employee must furnish written certification of the need for the leave. Such certification should be submitted at the time the employee requests leave, or in the case of an unforeseen leave, as soon after the leave commences as possible. Certification shall be made using Federal Forms WH-384 or WH-385, whichever is applicable.

When accrued sick, vacation, or personal business leave is substituted for unpaid FMLA leave, the employee must submit to the City a completed "Application for Leave" form with medical documentation verifying the necessity for the leave. These documents must be submitted to the City as soon as practicable.

As a condition of restoring an employee, whose FMLA leave was due to his or her own serious health condition, the employee must present written certification from a health care provider that the employee is able to resume work.

### **Recurring Notice**

The City may request recertification of the employee's or family member's condition in accordance with Federal regulations governing FMLA. If the employee provides a statement of intent to return to work, entitlement to leave and maintenance of health benefits continues. However, if the employee gives an unequivocal notice of intent not to return to work, the City is no longer obligated to continue health and dental benefits (other than COBRA requirements) or to restore the employee to his or her job.

Employees who desire to return to work prior to the end of their leave must give the employer reasonable notice (at least two working days).

### **Work Related Injuries and Illnesses**

Where an employee suffers a serious injury or illness at work that makes the employee unable to perform any one or more of the essential functions of the position, the employee could be eligible for both workers' compensation benefits and Family Medical Leave. Time absent from work for work-related accidents and/or illnesses shall be counted concurrently towards both Family Medical Leave and Workers' Compensation.

### **Intermittent or Reduced Leave**

An employee requesting FMLA leave to care for a seriously ill immediate family member, or for such employee's own serious health condition, may take intermittent leave or work a reduced work schedule if medically necessary. Intermittent leave may also be taken as a result of the birth of a child or for the placement of a child for adoption or foster care. If the need for leave is foreseeable based on planned medical treatment, the City may temporarily transfer the employee to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave, provided the employee is qualified for the position.

### **Joint Use of FMLA Leave by Husband and Wife**

A husband and wife who work for the City and who are eligible for FMLA leave are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

1. for the birth and/or care of the child after birth; or
2. for the placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement; or
3. to care for a parent (but not a parent-in-law) with a serious health condition.

### **Benefits Protection**

The City shall maintain the employee's health and dental coverages for the duration of a FMLA leave. Premium payments for medical and dental insurance that are normally the responsibility of the employee shall continue to be paid by him or her through payroll deduction, regardless of whether the employee has accrued paid leave time to cover all or part of the FMLA leave the City will continue to pay its share of the employee's monthly premiums that it would otherwise pay if the employee were on paid leave status or otherwise present for duty.

If a FMLA leave request is foreseeable, the employee must make arrangements with the City Finance Director at the time of requesting FMLA leave as to a payment schedule, or payroll deduction, to cover his or her share of the medical and dental insurance premiums coming due during the requested period of FMLA leave. If the need for leave is unforeseeable, such arrangements must be made with the City Finance Director no later than 15 days after commencement of the FMLA leave period.

If an employee on FMLA leave fails to submit any required premium to the City within 30 calendar days of the date the premium is due, the City may discontinue health and dental insurance for such employee. If the City chooses to discontinue coverage as a result of non-payment of premium(s) after the 30-day grace period, the employee's health and dental benefits will be restored upon the employee's return to work at the same level and terms as were provided when leave commenced.

If an employee fails to return to work after expiration of such employee's FMLA leave entitlement, the City may recover premiums it paid for maintaining group health and dental plan coverages during the FMLA leave period, unless the reason the employee fails to return to work is either (1) the continuation, recurrence, or onset of a serious health condition, or (2) other circumstances beyond the employee's control. The validity of "circumstances beyond the employee's control" will be judged by the City on a case-by-case basis.

Whenever an employee fails to return from FMLA leave due to "the continuation, recurrence, or onset" of a serious health condition, such employee must submit medical certification of the serious health condition to the City. If such an employee fails to furnish the required certification within 30 days, the City may recover the health and dental insurance premiums it paid on such employee's behalf during the FMLA leave period.

Upon return from a FMLA leave the employee shall be restored to the same position that the employee held when the leave started, if available, or if such position is unavailable, to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Handwritten signature of Richard A. Edwards in black ink, followed by the date 4-1-15.

Richard A. Edwards, Mayor

Date