

Leave

4.1 Leaves of Absence

As far as practicable, leaves of absence must be requested and approved before they become effective. On rare occasions, where the need for or time of an absence cannot be anticipated and where conditions warrant, leave may be approved after the absence. Leaves of absence will be granted, as far as practicable, at the times desired by the employee, but subject to the needs of the City. No leave of absence with pay will be granted in anticipation of future leave credit. No leave shall be granted to an employee once the employee has submitted their intent to terminate employment.

Persons on authorized leave shall retain all of the rights accorded employees on the job, except that employees on leave without pay do not earn annual or sick leave during the period of absence. Periods of leave without pay shall not be counted in determining the rate of accrual of annual leave except as indicated in the following section on Military Leave.

The following general conditions are applicable for all leaves of absence:

- a. An employee must submit a written request and secure their manager's or supervisor's signature before submitting it to Human Resources for approval.
- b. Leaves of absence will not be granted for employees to engage in other gainful employment.
- c. In leaves of thirty (30) days or more, the anniversary date for merit review purposes will be adjusted by the length of the leave.
- d. Employees on leaves of eight (8) weeks or less will return to the job they held prior to going on leave, provided: the job still exists, and they have tenure to hold the job. Any individual hired or transferred to fill this vacancy should be informed that this assignment will be of a temporary nature.
- e. For employees returning from leaves of over eight (8) weeks, every effort will be made to place the employee in the same or comparable job.
- f. The duration of the leave will be specified and the employee will notify the City of his or her intent to return as soon as possible, and no later than one week prior to the return.

Employees granted leaves of absence under this policy shall resume work on the first scheduled work day following the expiration date of the approved absence. In the event that the employee does not do so, he or she will be considered to have resigned his/her position.

In addition to the general conditions applying to all leaves of absence, the following conditions and procedures will apply to the specified types of leave of absence.

4.2 Leave Without Pay

An employee requesting leave without pay must do so in writing to his or her immediate supervisor/manager, stating the reason for the leave and the duration requested. The request, together with the manager's recommendation, should be forwarded to the Finance and Administration Director or designee for approval. If approved by the Finance and Administration Director or designee, it will then be forwarded to the City Manager for approval.

Annual and sick leave will not be earned or credited during such leaves of absence without pay; however, prior earned, credited and/or accumulated annual and sick leave may be reserved for the employee and become effective upon the employee's return to service.

Hospitalization insurance may be continued by payment of the premiums by the employee for up to eighteen (18) months (in accordance with COBRA Legislation). All other benefits shall not accrue during the period of leave without pay, but shall be reinstated upon return.

Leave without pay is not considered a break in service, unless it exceeds ninety (90) days, but leave without pay over thirty (30) days changes an employee's anniversary date (i.e., for purpose of merit review date, etc.).

An employee failing to return from leave of absence without pay, at the designated date, unless extenuating circumstances exist which have been approved by the Department Head, Finance and Administration Director or designee and the City Manager, will be considered to have resigned his or her position.

4.3 Bereavement Leave of Absence

Any full-time regular employee who experiences a death in his or her immediate family may be granted up to 24 consecutive hours of paid bereavement leave. In the case of 24-hour shift employees (Fire & Rescue), up to 30 consecutive hours of paid bereavement leave may be granted. Immediate family being defined as spouse, children, parents, brother, sister, aunt, uncle, grandparent, grandchild, step-children, step-parents, niece, nephew, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, guardian or relative residing in the employee's household. This leave shall commence upon notification and approval by the Department Head. In the event of multiple deaths in the employee's immediate family, each death shall be treated separately and the bereavement leave shall be granted accordingly. To be eligible for bereavement the employee shall have worked his or her complete scheduled workday before and after the bereavement leave period, unless the employee was on an approved paid leave.

In the event of the death of a City of Manassas employee, City employees may be granted up to three hours of paid bereavement leave to attend the services. Additional time may be granted at the discretion of the City Manager.

If more than the allotted number of days leave is required, other leave available to the employee may be used, including sick leave.

Bereavement leave not defined as close family must be taken as annual leave, leave without pay or compensatory leave subject to Department Head approval.

4.4 Jury Leave and Witness Leave

Time off for jury duty is granted to all employees, in accordance with applicable law.

When an employee receives a notice to report for jury duty, he or she must notify his or her supervisor immediately and submit a copy of the official summons for jury duty or witness service to his or her Department Head and the Human Resources Department prior to the beginning date of such service. Any employee appearing in court as a defendant or plaintiff shall not be eligible for this leave. If an employee is released from jury service prior to the end of his or her shift, he or she must report for work.

An employee compensated by jury or witness fees shall be paid only the difference between such compensation and his or her regular base salary for the period of leave, thereby ensuring no loss of pay. In order to receive his or her regular pay, employee must remit compensation for court services to the City immediately upon receipt. Reimbursement allowed to the employee for travel expenses incurred by his or her attendance in court may be retained by the employee.

4.5 Military Leave

The policy of the City of Manassas is to follow the letter and spirit of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), which guarantees jobs to returning members of the U.S. armed forces under most circumstances.

Subject to the exceptions set out in the statute and summarized below, any person whose absence from City employment is required for service in the uniformed services is entitled to be re-employed by the City if –

- the person gives advance written or verbal notice of service, if reasonably possible,
- the cumulative length of absence and all prior absences does not exceed five years (or the longer period of time provided in 38 U.S.C.A. § 4312 (c)),
- the person applies for reemployment not later than –
 - the next work day after release from service, if the service was less than 31 days or was for purposes of an examination to determine the person's fitness for duty,
 - 14 days after release from service, if the service was for more than 30 days but less than 181 days,

- 90 days after release from service, if the service was for more than 180 days.

In the case of a person hospitalized for, or convalescing from an illness or injury incurred in, or aggravated during, the term of service, substitute “the period necessary for recovery” for “release from service” in the bullet points above. In no case will the City be obligated to reemploy the person if the period necessary for recovery exceeds two years.

The following exceptions apply to the reemployment obligation set forth above:

- If the City's circumstances have so changed as to make reemployment of the person impossible or unreasonable,
- If reemployment of the person would impose an undue hardship on the City,
- If the person was a temporary employee in a brief, non-recurring job assignment.

The person serving in the uniformed services shall be re-employed in –

- The position he or she would have held, but for the absence in uniformed service, if the absence was for less than 90 days. However, if the person is not qualified to perform the duties of that position, he or she shall be placed in the position which he or she left.
- The position he or she would have held, but for the absence in uniformed service, or an equivalent position, if the absence was for more than 90 days. However, if the person is not qualified to perform the duties of that position, he or she shall be placed in the position which he or she left or an equivalent position.
- If the person is not qualified to perform either the position he or she would have held, but for the absence in uniformed service, or the position he or she formerly held, then the employee shall be placed in any other position which is the nearest approximation to such a position.
- If two or more persons are entitled to reemployment to the same position, then the first to leave the position shall be the only one re-employed in the position and the other(s) shall be employed in positions of similar status and pay.

4.5.1 Military Reserves Leave of Absence

- a. It is the policy of the City to grant military leave to full-time regular employees who qualify under the terms of Section 44-93 of the Code of Virginia (1950), as amended, shall be granted paid leave of absence without loss of vacation and/or sick leave for annual active duty training as a member of the National Guard or any reserve component of the armed forces for a period not exceeding fifteen (15) work days per federal fiscal year. For 24-hour shift employees, the term “workday” means 1/260th of the total hours scheduled during a federal fiscal year. For a 24-hour shift employee scheduled 2592 hours per year, the leave entitlement is 150 hours, or 6 shifts and 6 hours. Such leave is applicable for annual training and may not be used for normal training activities, weekend drills, or any part of extended active duty.
 - i. An employee requiring more than fifteen (15) work days for federally funded military training shall be granted the time off required for the performance of such duty.

Such absences shall be without pay or, at the option of the employee, may be charged to annual or compensatory leave balances.

- ii. Leave designated as federally funded military training duty shall be only for those dates stated on the employee's military orders.
- b. If called to duty with the National Guard under orders of the Governor (pursuant to Sections 44-75 and 44-78 of the Code of Virginia (1950), as amended) in an emergency, an employee will receive full pay during period of such absence.
- c. Reservists whose military salary is less than their City salary are eligible to participate in the military supplemental pay program. Reservists are not required to reduce their annual/compensatory balances to qualify for the military supplemental pay program. The supplemental pay is the difference between the City pay and the employee's authorized military pay. Military supplemental pay shall not exceed twelve (12) months from the date of recall to active duty or the date of military discharge, whichever occurs first. There shall be no military supplement pay if military pay exceeds City pay. The supplemental pay will not be included in retirement eligible earnings. In order to participate in the military supplemental pay program, employees must provide proof of military earnings to the Department of Human Resources.
- d. An unpaid leave of absence for military reasons also is granted to full-time regular employees who enlist, are drafted, or are recalled into active service in the Armed Forces of the United States. An employee granted an extended leave is suspended from active participation in all employee benefit programs during the leave of absence period. Upon completion of military service, an employee is permitted to return to employment with the City and participate in the City benefits with such tenure, status, and pay as he/she would have enjoyed if he/she had not been absent for such purposes, under the following conditions.
 - i. The employee must not serve for more than four years active military service from date of entry (unless involuntarily detained).
 - ii. The employee must satisfactorily complete the period of active duty.
 - iii. The employee must be qualified to perform the duties of the former position. If the employee is disabled during military service and cannot perform the duties of the former position, he/she will be entitled to the nearest comparable job that he/she is qualified to perform.
 - iv. Application for re-employment must be made within ninety (90) days after completion of military service.

4.6 Family and Medical Leave Policy

A family and/or medical leave of absence shall be defined as an approved absence available to eligible employees for up to 12 weeks of unpaid leave during any 12 month period under particular circumstances that are critical to the life and well being of a family member. Family members being defined as an employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law." The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA), or unless the employee's son or daughter is a covered servicemember on covered active duty (or has been notified of an impending call to covered active duty) in support of a contingency operation. Leave may be taken for the following reasons:

- a. The birth of a child or the placement of a child with the employee for adoption or foster care (such leave must take place within one year of the birth or placement), or
- b. The employee is needed to care for a child, spouse or parent who has a serious health condition, or
- c. The employee is unable to perform the functions of his or her position because of a serious health condition, or
- d. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or next of kin is a covered servicemember on covered active duty (or has been notified of an impending call to covered active duty). In addition, eligible employees may take job protected, unpaid leave or substitute appropriate paid leave for up to a total of 26 workweeks in a single 12 month period to care for a covered servicemember with a serious injury or illness.

This policy applies to all leaves of absence covered by the definition above. If an employee is entitled to paid leave under another benefit plan or policy, the paid leave and Family leave run concurrently. When paid leave has been exhausted, family leave continues up to 12 weeks in any 12-month period as unpaid leave. Servicemember caregiver leave is granted for up to 26 work weeks during a single 12-month period per covered servicemember.

An employee is entitled to unpaid family medical leave provided: that employee has been employed for at least twelve (12) months by the City and that employee has worked at least 1250 hours in the previous 12-month period.

The City will require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse or parent. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform the functions of his or her position. For leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to provide care. (See Section 4.6.6 for this procedure.)

If there is reason to doubt the validity of the certification provided by the health care provider, the City may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the City, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the City and the employee.

If medically necessary for a serious health condition to the employee or his or her spouse, child or parent, leave may be taken on an intermittent or reduced leave schedule. If leave which is foreseeable based on planned medical treatment is requested on this basis, however, the City may require the employee to transfer temporarily to an alternative position which better accommodates recurring periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits.

Spouses who are both employed by the City are entitled to a total of twelve weeks of leave (rather than twelve weeks each) for the birth or adoption of a child or for the care of a sick parent.

Spouses who are both employed by the City are entitled to a combined total of 26 weeks in a single 12-month period if the leave is to care for a covered servicemember with a serious injury or illness.

The terms "twelve month period" and "year" mean the twelve month period measured forward from the date any employee's first FMLA leave begins, as defined in the federal regulations at 29 C.F.R. § 825.200 (b) (3) and (c). The single twelve-month period for servicemember caregiver leave shall commence with the first day the eligible employee takes servicemember caregiver leave and ends 12 months after that date regardless of the 12 month period established for prior FMLA qualifying events.

Time absent from work for a work-related accident that meets the definition of FMLA leave will be counted against the employee's FMLA entitlement.

4.6.1 FMLA – Intermittent or Reduced Leave Schedule

FMLA leave may be taken intermittently or on a reduced-leave schedule under certain circumstances. **Intermittent** leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A **reduced** leave schedule is a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full time to part time.

If FMLA leave is for birth or foster care, use of intermittent leave is subject to the City's approval. FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

4.6.2 Serious Health Conditions

"Serious health condition" means an illness or injury, impairment or physical or mental condition that involves the following:

- a. Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
- b. Continuing treatment by a health care provider which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities) due to:
 - i. A health condition (including treatment therefor, or recovery therefrom) lasting more than three (3) consecutive days and any subsequent treatment or period of incapacity relating to the same condition that also includes: treatment two or more times by or under the supervision of a health care provider; or treatment by a health care provider one time with a continuing regimen of treatment; or
 - ii. Pregnancy or prenatal care (a visit to the health care provider is not necessary for each absence); or
 - iii. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider and may involve occasional episodes of incapacity (e.g. asthma, diabetes). A visit to the health care provider is not necessary for each absence; or
 - iv. A permanent or long-term condition for which treatment may not be effective (e.g. Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required rather than active treatment; or
 - v. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three (3) days if not treated (e.g. chemotherapy or radiation treatments for cancer).

4.6.3 Notification and Reporting Requirements

When the need for leave is foreseeable, such as for the birth or adoption of a child, or planned medical treatment, the employee must provide a thirty (30) day notice and make efforts to schedule leave so as not to disrupt City operations. When the need for leave is unforeseeable, the employee must give as much notice as practicable. Failure to provide required notice may result in the denial of leave until the required notice period has passed. In cases of illness, the employee will be required to report every three (3) weeks on his or her leave status and intention to return to work.

4.6.4 Status Of Employee Benefit During Family Leave Of Absence

Any employee who is granted an approved leave of absence under this policy is advised to provide for the retention of his or her group insurance coverages by arranging to pay his or her portion of the premium contributions during the period of unpaid absence. Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Human Resources Office by the first day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.

In the event that an employee elects not to return to work upon completion of an approved unpaid leave of absence, the City may recover from the employee the cost of any payments made to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control. Benefit entitlements based upon length of service will be calculated as of the last paid work day prior to the start of the unpaid leave of absence. Annual and sick leave will not be earned or credited during unpaid leaves of absence.

Except as required by COBRA, the City's obligation to maintain health benefits during leave under FMLA ceases:

- a. If and when the employee's employment relationship would have terminated;
- b. The employee notifies the employer of his/her intent not to return to work; or
- c. The employee fails to return from leave.

4.6.5 Return to Work

Where required by law, the City will restore the employee to the same or equivalent job. An "equivalent" position must involve the same, or substantially the same, duties and responsibilities requiring equivalent skill, effort, responsibility and authority.

Employees are required to provide a written “fitness for duty” certification from their treating physician prior to being restored to employment. Failure to return from FMLA leave may result in termination.

4.6.6 Procedures

All requests for family and medical leaves of absence due to illness must be originated by the employee and will include a Certification of Health Care Provider form that has been completed and signed by the treating health care provider. If possible, the form should be submitted thirty (30) days in advance of the effective date of the leave. The completed certification must include:

- a. The date on which the serious health condition commenced,
- b. The probable duration of the condition, and
- c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

In addition, for purposes of leave to care for a child, spouse, or parent, the certificate should give an estimate of the amount of time that the employee is needed to provide such care. For purposes of leave for an employee's illness, the certificate must include the date the condition began, its expected duration, diagnosis and a brief statement of treatment. For medical leave for the employee's own medical condition, the certification must state that the employee is unable to perform the function of his or her position. In the case of certification for intermittent leave or leave on a reduced-leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.

FMLA leave must be designated before leave starts, whenever possible. The City must determine if paid leave to be taken counts towards an employee's FMLA leave entitlement and so notify the employee immediately. The City's notification to the employee of the designation may be oral, but must be confirmed in writing by the next regular pay period. All inquiries or questions about leave must be forwarded by the department head to Human Resources immediately upon notification from the employee. If the City has sufficient knowledge to determine if leave qualifies as FMLA leave and does not notify the employee, the City may not designate the leave as FMLA leave retroactively. The City may designate FMLA retroactively in the following cases:

- (i) If an employee is out for a reason that qualifies for FMLA leave and the City does not learn of the reason for the leave until the employee returns to work, the City may designate the leave as FMLA leave within two (2) business days of the employee's return; or
- (ii) If the City has provisionally designated the leave under FMLA and is awaiting receipt from the employee of documentation.

All requests for family and medical leaves of absence due to illness shall require follow-up certification of continuing disability every thirty (30) days. The Finance and Administration Director or designee may require follow-up certification at less than a 30-day interval if:

- (iii) The employee requests an extension of leave; or
- (iv) Changed circumstances occur regarding the illness or injury; or
- (v) The City receives information that casts doubt on the validity of the most recent certification.