

## **CITY OF BROCKTON FAMILY MEDICAL LEAVE POLICY**

The Family and Medical Leave Act was enacted in 1993 and amended in 2008 to help employees balance the demands of work and family, and to care for their own and their families' medical problems, without risking their jobs. The purpose of this policy is to define the policy and procedures of the City with regard to family leave as required by the Family and Medical Leave Act of 1993 (FMLA).

### **Eligibility**

To be eligible for coverage under the FMLA, an employee must have worked for the City for at least 1,250 hours during the preceding twelve (12) month period. In other words, the hours of service requirement will be met if an employee has worked a total of 1,250 hours of service in the twelve (12) months immediately preceding the start of the FMLA leave. In determining whether an employee has met the 1,250 hours requirement, it is important to note that:

- Only the time actually worked, including overtime hours worked, is counted. Time not actually worked, including vacation, personal leave, sick leave, holidays, and any other form of paid time off (PTO), is not counted towards the 1,250 hours of service. Unpaid leave of any kind or periods of layoff are not counted.
- Time worked as a part-time, temporary, or seasonal employee counts toward the requirement.
- An employee returning from fulfilling a USERRA-covered military service obligation is credited with the hours of service that would have been performed but for the period of military service. The employee's pre-service work schedule can generally be used for calculations to determine hours that would have been worked during the period of military service.

### **Reasons for Leave**

Employees who have worked for the City for at least twelve (12) months and at least 1,250 hours during the prior twelve (12) months may take up to twelve (12) weeks of unpaid leave (FMLA leave) for the following reasons:

- an employee's own serious health condition (including conditions related to pregnancy and childbirth);
- the birth and care of the employee's newborn child (leave must be completed within 12 months of the date of birth);
- placement of a child with the employee for adoption or foster care (leave must be completed within 12 months of the date of placement);
  - *FMLA leave for adoption or foster care placement requested under this policy must be supported by reasonable proof (e.g., documentation from the licensed adoption agency or relevant court documents).*

- the serious health condition of the employee's child, parent (not parent in-law), spouse, or partner, requiring the employee's participation in care;
  - *Child must be under the age of 18 years of age or incapable of self-care because of a mental or physical disability.*
- any qualifying exigency arising out of the fact that the employee's spouse/partner, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; or
- to care for a covered service member with a serious injury or illness if the employee is the spouse/partner, son, daughter, parent, or next of kin of the service member ("Military Caregiver Leave").
  - *An eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the service member. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period.*

**\*\*\*NOTE:** FMLA leave due to birth, adoption, or foster care placement qualifies for the full 12 work weeks of FMLA coverage, regardless of any period of physical disability. FMLA leave due to a serious health condition is limited to the timeframe indicated by the health care provider on the Medical Certification Form. Therefore, some serious health conditions may not require or be eligible for a FMLA leave of 12 weeks.

### **Calculation of Amount of FMLA Leave**

Any FMLA leave taken by an employee during the preceding twelve (12) month period will be used to determine the amount of available leave pursuant to the Family and Medical Leave Act. The 12-month period is measured forward from the date an employee's first FMLA leave period begins. The next 12-month period would begin the next time FMLA leave is taken after completion of the prior 12-month period. For example, if an employee used four (4) weeks of leave beginning February 1, 2019, four weeks of leave beginning June 1, 2019, and four weeks of leave beginning December 1, 2019, the employee would not be entitled to any additional leave until February 1, 2020. On February 1, the employee would be entitled to four (4) weeks of leave and on June 1, the employee would be entitled to an additional four weeks, etc.

Employee eligibility is determined at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

**\*\*\*NOTE: Leave taken under a disability leave plan or as a workers' compensation absence that also qualifies as FMLA leave due to the employee's own serious health condition is designated as FMLA and counted against the employee's FMLA leave entitlement.**

## **Intermittent Leave**

The 12 work weeks of leave do not need to be consecutive. When leave is taken for a serious health condition, it may be taken intermittently (in small blocks of time such as days or hours) or on a reduced work schedule if medically necessary. A work week consists of the number of hours an employee is regularly scheduled to work each week. A reduced or intermittent work schedule during the period of FMLA leave may result in an employee receiving FMLA for more than 12 calendar weeks but for the equivalent amount of hours. It is important to note that an hour of absence that qualifies for coverage under FMLA reduces the employee's available FMLA time by one hour.

When intermittent or reduced schedule leave is unpaid, the City will make salary deductions based on the amount of time actually worked. Employees who are on intermittent or reduced schedule leave may be temporarily transferred to an available alternative position to better accommodate the leave requirements. The temporary position will have equivalent pay and benefits as the employee's regular job.

An employee is not entitled to take intermittent leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care said leave must be taken in continuous periods and within 12 months of the date of birth or placement.

Where a reduced or intermittent work schedule is requested due to planned medical treatment or due to a chronic serious health condition, the tentative date(s) on which treatment is to be given, the approximate duration of treatment, and its possible effects on the employee or the circumstances under which the chronic condition will necessitate leave **must** be included in the physician's certification. The employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt the employer's operations.

## **Both Spouses Working for the City**

When both spouses are employed by the City, they are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Eligible spouses are also limited to a combined total of 26 workweeks of leave in a single twelve (12) month period to care for a covered servicemember with a serious injury or illness ("Military Caregiver Leave")

The limitation on the amount of leave for spouses employed by the City does not apply to FMLA leave taken for the following FMLA-qualifying leave reasons:

- The care of a spouse or son or daughter with a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of his or her job; and
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

## **Employee Notice Requirements**

Employees are required to give at least thirty (30) days advance notice to their Department Heads and the Human Resources Director for leaves that are foreseeable (ie. expected birth or placement of a child or planned medical treatment). However, if the need for leave was not foreseeable and must begin in less than thirty (30) days, the employee must provide notice as soon as is practicable.

If an employee does not provide at least thirty (30) days advance notice, and it was possible and practical to do so, the City may delay the FMLA leave until 30 days after the date that the employee provides the notice.

## **Required Certifications and Leave Forms**

The employee is required to complete the following forms and submit them to the Human Resources Director:

- **Leave Request Form**: This form must also include your Department Head's signature acknowledging that they were informed of the request for leave and verifying your accrued leave balances, if applicable.
- **Insurance Disclosure Agreement**: This form must be completed to avoid any issues related to your insurance coverage. A completed and signed form is required, even if you do not participate in any City insurance programs.
- **Certification of Health Care Provider Form**: A certification issued by a health care provider is required to support an employee's request for leave. This certification form must be given to your physician (or to your eligible family member's physician) for completion and returned within 15 calendar days of the request.
  - ✓ [WH-380-E Employee's Serious Health Condition](#)
  - ✓ [WH-380-F Family Member's Serious Health Condition](#)
  - ✓ [WH-384 Certification for Military Family Leave](#)
  - ✓ [WH-385 Certification for Serious Injury or Illness of a Current Service Member](#)
  - ✓ [WH-385-V Certification for Serious Injury or Illness of a Veteran](#)
  - ✓ [Certification of Adoption or Foster Care Placement](#)

**Note:** This certification form must be given to your physician (or to your eligible family member's physician) for completion. Your physician shall submit the completed forms directly to the Human Resources Director, via fax, email or US Mail.

Human Resources will review the documents for completeness and adherence to this policy. If the form(s) is not completed correctly, or if there is additional information needed, Human Resources will contact the employee in writing. By way of example:

- A certification is considered incomplete if one or more applicable entries have not been completed.
- A certification is considered insufficient if the information provided is vague, ambiguous,

or non-responsive, including but not limited to, if it fails to clearly set forth the following details:

- Date on which the serious health condition began.
- The probable duration of the condition.
- A brief statement of treatment including appropriate medical facts within the knowledge of the health care provider about the condition.
- If the employee is seeking medical leave for his/her own medical condition, certification should also include a statement that the employee is unable to perform the essential functions of the employee's position.
- For a seriously ill family member, the certification should include a statement that the patient requires assistance and that the employee's presence is needed to care for the family member.
- If taking intermittent leave or a reduced leave scheduled for planned medical treatment, the dates on which such treatments are expected to be given, the duration of such treatments, and a statement of medical necessity for taking intermittent leave or working on a reduced schedule.

If an employee fails to provide a complete and sufficient certification despite the opportunity to cure the deficiency, the City may deny the employee's request for FMLA leave.

### **Notice of Eligibility**

When an employee requests FMLA leave, or when the City knows that an employee's leave may be for an FMLA-qualifying reason, Human Resources will notify the employee of the eligibility to take FMLA leave within five (5) business days of receipt, absent extenuating circumstances.

If the employee is not eligible for FMLA leave, the notice will state at least one reason why the employee is not eligible. Notification of eligibility will be in writing generated by the Human Resources Director and forwarded to the employee. The employee's Department Head will also be copied on the correspondence.

### **Additional Medical Certification**

In the event Human Resources thinks additional information is needed or has reason to doubt the validity of the employee's first medical certification, Human Resources can require an employee to submit to a second medical examination. The second physician shall be designated and paid by the City.

If the second opinion is different from the first certification, the City shall require an employee to be available for a third medical examination. The third physician shall be designated by both the employee and the City, and will be at the City's expense. The third physician's opinion is final and binding on the City and the employee.

**Note:** This certification form must be given to your physician (or to your eligible family member's physician) for completion. Your physician shall submit the completed forms directly to the Human Resources Director, via fax, email or US Mail.

### **Recertification**

The City may, under certain circumstances, request that an employee “recertify” his or her serious health condition or the serious health condition of his or her family member within the same leave year.

The City may request the employee provide a recertification no more often than every 30 days and only when the employee is actually absent or has requested to be absent. The following reasons demonstrate when the City may seek recertification:

- The employee requests an extension of leave,
- The circumstances described by the previous certification have changed significantly, or
- The employer receives information that casts doubt on the employee’s stated reason for the absence or the continuing validity of the existing medical certification.

The City may ask for the same information in a recertification as that permitted in the initial medical certification. As with the initial certification, in most circumstances, the employee has 15 calendar days after the employer’s request to provide a complete and sufficient recertification. The employee is responsible for paying for the cost of a recertification.

During recertification the City may provide the health care provider with a record of the employee’s absence pattern, such as an attendance record of FMLA leave use, and ask the health care provider if the serious health condition and need for leave is consistent with the absence pattern provided.

The City may request recertification every six months in connection with an absence. If the initial medical certification indicates that the employee will need intermittent or reduced schedule leave for longer than six months, including cases where the serious health condition has no anticipated end, the employer may request a recertification every six months, but only in connection with an absence by the employee.

**Note:** This certification form must be given to your physician (or to your eligible family member’s physician) for completion. Your physician shall submit the completed forms directly to the Human Resources Director, via fax, email or US Mail.

### **Annual Medical Certification**

Where the need for leave for an employee’s or family member’s serious health condition lasts beyond a single leave year, the City requires a new certification in each subsequent FMLA leave year. Because it is a new certification and not a recertification, the City may seek second and third opinions for these new medical certifications, as well as authenticate or clarify the certification with the health care provider.

**\*\*\*NOTE: The employee’s failure to provide any of the certification(s) or recertification(s) reasonably required by the City as set forth above may result in denial of the employee’s request for FMLA leave.**

### **Paid Leave**

All employees taking FMLA leave will be required to use all accrued and unused sick leave during

their absence. In the event an employee exhausts all available sick time during his/her leave, then he/she may, in his/her sole discretion, use any accrued and unused paid time off including personal time, compensatory time, time due and/or vacation. **Employees shall indicate on their initial request for FMLA leave whether they will opt to use paid time off once all available sick leave has been exhausted.** Once the employee exhausts his/her paid leave in accordance with this section, unpaid leave will commence for the remainder of the leave.

## **Insurance and Benefits**

### ***I. Group Health Insurance***

An employee shall be entitled to maintain group health insurance coverage on the same basis as if they had continued to work for the City. To maintain uninterrupted coverage, the employee will have to continue to pay their share of insurance premium payments. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage.

The payment shall be made either in person or by mail **no later than the 15<sup>th</sup> day of each month** to:

Human Resources Department  
45 School Street  
Brockton, MA 02301

**If the employee's payment is more than thirty (30) days overdue, the coverage will be dropped by the City.**

If the employee does not return to work upon expiration of the FMLA leave, the employer may seek reimbursement from the employee of the premiums paid for maintaining health coverage during the leave provided that the employee's failure to return is for a reason other than a serious health condition or circumstances beyond the control of the employee.

### ***II. Life Insurance***

The City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee will be responsible for making those payments, along with health care payments.

### ***III. Earned benefits***

The employee will not accrue any vacation time, sick leave, holiday, personal leave, floating holidays, clothing allowance, seniority, bereavement leave, or other benefits during any unpaid part of leave.

The use of family or medical leave will not be considered a break in service when vesting or eligibility to participate in benefit programs is being determined.

After returning from FMLA leave, the employee will receive all accrued and unused vacation

time, sick leave, seniority and other benefits for which they were eligible prior to start of the leave.

### **Extension of Leave**

An employee who needs to be absent from work beyond the twelve (12) week work period covered by FMLA (or for an employee not covered by this policy), may be eligible for an extension of their leave. *For more information, please refer to your respective collective bargaining agreement and/or City Ordinances.*

**\*\*\*NOTE: An employee's job is not protected while on a leave not covered by FMLA.**

### **Return To Work**

During the period of FMLA leave, the department may require reports from the employee at reasonable intervals (generally 30 calendar days or more) on their status and intention to return to work. An employee should notify their supervisor in writing if they will not be returning from leave as planned. Failure to return to work at the end of the scheduled leave may be considered a voluntary resignation.

A “Return to Work Certification Form” must be completed by you and your physician and submitted to Human Resources no later than three to five (3-5) business days prior to your return to work. **This form is NOT required if you are on FMLA leave for a family member.**

### **Record Keeping**

The employee's department shall monitor the day-to day leave tracing for the employee and promptly notify Human Resources of all hours used for FMLA leave.

All medical documentation, along with a copy of the employee's application for FMLA leave under this policy, will be kept in Human Resources. Medical documentation under this policy is kept separate from employee personnel files and is confidential.

Further information and/or forms can be found on the Human Resources website at:  
<https://brockton.ma.us/city-departments/human-resources/>.



## **DEFINITIONS**

### **Parent:**

A biological, adoptive, step or foster father or mother or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. This term does not include parents “in-law”.

### **Child:**

A son or daughter who is under 18 years of age, or is 18 years of age or older and incapable of self-care because of a mental or physical disability. And who is a biological child, an adopted child, a foster child (a child for whom the employee performs the duties of a parent as if it were the employee’s child), a step-child (a child of the employee’s spouse from a former marriage), a legal ward (a minor child placed by the court under the care of a guardian), or a child of an employee standing in loco parentis.

Please note: The FMLA regulations provide separate definitions of “son or daughter” for its military family leave provisions that are not restricted by age.

### **Spouse:**

A husband or wife recognized under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into in a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.

### **Incapable of Self Care:**

The individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living including cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephone and directories, using a post office, etc.

### **Physical or Mental Disability:**

A physical or mental impairment that substantially limits one or more of the major life activities of an individual as regulated under 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA).

### **Serious Health Condition:**

An illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice or residential medical care facility, or that involves continuing treatment by a health care provider. If inpatient care is not required, absence from work (or school, in the case of a child), or incapacity from normal activities is part of the definition of “serious health condition.”

The period of actual physical disability associated with childbirth is considered a serious health condition and qualifies for Family & Medical Leave, whether as paid or unpaid leave.

Also included in the definition of “serious health condition” are chronic conditions which require periodic treatments, or conditions that may cause episodes of symptoms preventing the employee

from reporting for work. Examples of such conditions may include, but are not limited to, most cancers, back conditions requiring extensive therapy or surgery, severe arthritis, severe nervous disorders, Alzheimer's disease, and kidney disease.

**Non-Serious Medical Conditions:**

Ordinarily, unless complications arise, the following are examples of conditions that do not meet the definition: common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, cosmetic treatments, etc.

**Incapacity:**

Inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

**Treatment:**

Examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical exams, eye exams, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to the health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FML.

**Eligible employees:**

Employees who have been employed by the City for: (1) at least 12 months; and (2) at least 1,250 hours during the 12 months before the start of the leave. (NOTE: The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.)

**Employment Benefits:**

All benefits provided by the City to employees including but not limited to; group life insurance, health insurance, annual and sick leave, educational benefits, and retirement contributions.

**Family and Medical Leave:**

A job-protected leave without pay (or use of an employee's accrued leave with pay) for up to 12 workweeks (or up to 26 weeks for qualified Military leave) during a Leave Plan Year for the reasons specified in this policy in conformance with the federal Family and Medical Leave Act (FMLA) of 1993.

**Healthcare Provider:**

Healthcare providers include: (1) doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice; (2) any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and (3) others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law. This also includes Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, although an employee or family member may be required to submit to a medical examination for a second or third opinion (not treatment) from a non-Christian Science practitioner.

**Qualified Exigency Leave:**

Military leave which may be used for such pressing or urgent situations as:

- short-notice deployment (defined as notice of an impending call or order to active duty within seven days of the date of deployment);
- military events and related activities, such as informational briefings, family assistance programs, or official ceremonies and events;
- childcare and school activities, including arranging alternative childcare, caring for children on an immediate, urgent basis, and attending school meetings;
- making financial and legal arrangements, such as executing powers of attorney, obtaining military identification cards, or preparing a will or trust;
- counseling;
- rest and recuperation (that is, to spend time with a military family member who is on short term rest and recuperation leave);
- post-deployment activities, including arrival ceremonies, reintegration events, and issues relating to the death of a military family member; and
- other events arising out of a family member's service that may qualify, as long as the employer and employee agree that it qualifies, and agree on the timing and length of leave to be taken.