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**CITY OF FOREST ACRES**

**Physical Disability and Personal Leave / FMLA Policy**

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Approval:  Date: 2/10/15  
City Administrator

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## **Physical Disability and Personal Leave / FMLA Policy**

### **I. Physical and Disability Leave**

(Applies to employees employed less than 12 months, employees who have worked fewer than 1250 hours in the preceding 12 months, and employees whose reasons for leave are not covered by the Family and Medical Leave Act.)

1. An employee who has completed initial probation (and any extension thereof) may request a leave of absence for up to four weeks when unable to work because of sickness, pregnancy or injury on or off the job. Such an employee may also apply for leave of absence for personal reasons. Personal leave is granted at the discretion of the City Administrator. Employees still in their probationary period who are absent for more than five consecutive scheduled workdays for any reason are automatically terminated but are eligible for rehire.
2. Employees are requested to apply for a leave of absence as far in advance of need as is possible, but an employee may be placed on leave without making prior application when the City determines circumstances warrant such action.
3. Physical disability leave begins on the first day of absence.
4. After the employee has exhausted all accrued annual and/or sick leave, as a general rule, an employee on leave of absence is not entitled to wages or fringe benefits and does not accrue fringe benefits.
5. Employees on leave of absence may not engage in other employment.
6. Employees desiring to return to work from a personal leave of absence should notify their department head in writing at least ten (10) days prior to their desired return date. If the City determines that the employee is able to resume his or her job duties, the employee may be recalled to his or her former position if there is a vacancy. If no such vacancy exists, the employee may be offered any job in which there is a vacancy for which the employee is qualified. If no such vacancy exists at the time the employee desires to return to work, the employee's leave of absence may be extended.
7. Any employee who has not been reinstated within six (6) months following the commencement of a personal leave of absence may be terminated. The circumstances of each employee's leave will be evaluated before any decision is made. This action does not affect the employee's eligibility to be considered for rehire.

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**II. Family and Medical Leave Act**

(Applies only to employees employed 12 months or longer and who have worked 1250 hours or more in the preceding 12 months, both prior to commencement of leave.)

**General:** Employees who meet the length of service and hours worked requirement described above have rights under the Family and Medical Leave Act. As a general rule, employees must request leaves of absence under the law and policy, but in appropriate situations, employees may be placed on leave status without application.

The City uses a rolling 12-month period in order to determine an employee's eligibility for leave on any given date. The 12-month period is measured backward from the date an employee wishes to use FMLA leave. Each time an employee wants to use FMLA leave, the City will look backward in time to determine how much FMLA leave the employee has used during the preceding 12 months.

**Reasons for Leave of Absence (Proof of need for leave of absence may be required regardless of the type of leave taken.)**

1. **Medical and Family Leave.** An eligible employee may be entitled to a leave of absence under this law and policy if a serious health condition, including disability resulting from an on the job injury, prevents the employee from being able to perform his job, if the employee's spouse, child or parent has a serious health condition and the employee must be absent from work in order to care for that relative, or to care for a natural child, adopted child, or formally placed foster child, provided that entitlement to leave to care for a child who is newly born or newly received in the employee's household shall end 12 months after a natural child is born or 12 months after an adopted or foster child is received in the employee's household.
2. **Military Caregiver Leave.** An eligible employee whose spouse, parent, child, or next-of-kin is a covered service member of the Armed Forces of the United States may be entitled to leave of absence to care for the service member if he is injured while on active duty.
3. **Qualifying Military Exigency Leave.** An eligible employee whose spouse, parent, or child is a member of the National Guard or Reserves of the United States Armed Forces and is on active duty or called to active duty in federal service may be entitled to a leave of absence due to one or more qualifying exigencies arising out of the active duty or call to active duty. Qualifying exigencies are: (1) Short-notice deployment (i.e., notice of 7 days or less); (2) Military events and related activities; (3) Childcare and school activities (regular or routine childcare by the employee does

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not count); (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

### **Length of Leave**

1. **Medical and Family Leave.** An eligible employee may take the equivalent of a total of 12 work weeks of leave during any 12 consecutive months for his own serious health condition, that of a parent, spouse or child, or to care for a newly born or newly received child. Leave to care for a newly born or newly received child must be taken consecutively. Leave required because of the employee's own serious health condition or that of a spouse, child, or parent, may be taken intermittently or by means of a modified work schedule when necessary.
2. **Military Caregiver Leave.** Leave to care for an injured service member may be taken for up to 26 work weeks in a single 12 month period. Any leave taken by the employee for any other FMLA-qualifying reason will count against the 26 weeks of permitted to care for an injured service member.
3. **Qualifying Military Exigency Leave.** Leave taken because of a qualifying exigency is available for up to 12 work weeks in any 12 consecutive months. Leave taken because of short notice deployment is limited to 15 days from the date of notice, and leave taken to be with the service member during periods of rest and recuperation are limited to 5 days per period of rest and recuperation. Leave taken to attend post-deployment activities must be taken within 90 days of the end of active duty service.

### **Coordination of Leave and Paid Time Off**

An employee who must be absent due to his own serious health condition will be paid for time lost from work from any sick leave balances, if any. An employee who must be absent for any other FMLA-qualifying reason will be paid for time lost from work from accrued annual leave balance, if any. Leave taken under this policy counts toward the employee's 12 weeks of leave (or 26 weeks, where appropriate) regardless of whether all or part of the employee's leave is paid.

### **Effect of Leave on Accrual of Fringe Benefits**

1. **Health Benefit Plan.** Employees taking leave under this policy must

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continue to pay their portion of the health benefit plan premiums on the same date that such portion of premiums would be deducted from the employee's wages.

2. Accrual of Paid Leave. Unpaid time lost from work due to leave granted under this policy is NOT considered time worked for the purpose of accrual of paid time off.

#### **Employee Responsibility**

Employees who request leave under this policy must give 30 days advance notice or such lesser amount of notice as is possible in the particular circumstances. When the need for leave is unforeseeable, the employee must follow the normal procedure for reporting an absence. Employees may not engage in other employment while on leave of absence without the express written permission of the City Administrator.

#### **Termination of Leave of Absence**

A leave of absence under this policy will end when the need for the leave of absence ends, or when the maximum leave described above has been taken, whichever occurs sooner.

#### **Reinstatement**

At or before the conclusion of the FMLA leave of absence, the employee is entitled to reinstatement to his former position or to a position equivalent to his former position. The employee must demonstrate that he is fit for duty and must give reasonable notice of intent to return to work.

#### **Extension of Leave without Benefits**

An employee who is unable to perform the duties of his position due to his own disability and who has exhausted his entitlement to leave under the Family and Medical Leave Act by taking 12 consecutive weeks may, in the discretion of the City Administrator, upon written application, be granted up to an additional 12 weeks of leave. This additional leave of absence does not entitle the employee to reinstatement or to payment of any portion of his health benefit plan premiums. If the employee is able to return to work prior to the exhaustion of his extended leave, he may be returned to his previous position if it is vacant and is to be filled, or to some other position of equal or lesser compensation for which he is qualified and where there is a vacancy to be filled. If the employee is not returned to active employment, he may be continued on extended

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leave of absence status until he is returned to active duty status or his leave of absence expires, whichever occurs sooner.

Employees who have exhausted their FMLA leave under other circumstances, but who continue to require leave which would qualify for FMLA leave if such leave had not been exhausted, may apply for an extended leave of absence for personal reasons. Such extended leaves of absence are granted only in the discretion of the City Administrator.

#### **Automatic Termination of Employment**

An employee's employment automatically terminates if he does not return to full active employment status at the conclusion of his leave of absence or extended leave of absence. This does not affect the employee's ability to reapply for the position at a later time. Further, employees with circumstances that warrant special consideration should bring those circumstances to the attention of management.

#### **Special Situations**

1. Spouses. When both a husband and a wife are employed, their combined right to a leave of absence to care for a child or a parent is 12 weeks in a 12 month period, or 26 weeks in a single 12 month period to care for an injured service member.
2. Key Employees (salaried employee in highest paid 10% of all employees). Such employees may be denied reinstatement rights if reinstatement would cause substantial and grievous economic injury to operations.

### **III. Notice of Rights**

Federal Law requires that we provide you with the notice of your rights that appears on the following page.

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**Basic Leave Entitlement**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition, or
- For a serious health condition that makes the employee unable to perform the employee's job

**Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post deployment reintegration briefings. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

**Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

**Eligibility Requirements**

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

**Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

**Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

**Substitution of Paid Leave for Unpaid Leave**

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

**Employee Responsibilities**

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30-day notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures. Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

**Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

**Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

**Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.