



# MIAMIBEACH

## Policies and Procedures

### **FAMILY AND MEDICAL LEAVE**

#### POLICY

It is the City's intent to provide Family and Medical Leaves (FML) to those City of Miami Beach employees in compliance with the requirements of the Family and Medical Leave Act (FMLA) of 1993, as amended by the federal government as recently as October 2009. Additionally, the City has contracted with Unum to act as its FML Administrator, effective January 1, 2010. This policy will outline the new processes and procedures that will be followed to integrate both the changes in law and the change in Administrator.

#### PROCEDURE

##### LEAVE CATEGORIES

Regular and Provisional employees who have been employed by the City for at least twelve (12) months and worked at least 1,250 hours in the 12 months immediately preceding the leave request are eligible to request up to twelve (12) workweeks (480 hours) of leave in a 12 month period, for the following events:

##### Birth, Adoption, Foster Care

- Birth of the employee's son or daughter or in order to care for the child after birth.
- Placement of a child for adoption or as a precondition to adoption.
- Placement of a child in foster care.

This entitlement expires twelve (12) months after the birth, adoption or placement.

##### Care of Immediate Family Member

To care for an employee's immediate family member (spouse, registered domestic partner, son, daughter, parent) who has a "serious health condition," including caring for either physical or psychological needs.

Pursuant to Chapter 11A "Discrimination", Article V "Family Leave" of the Miami Dade County Code of Ordinances, an employee may also request FML to care for a grandparent with a serious health condition. In order for this type of leave to be approved, an employee must have assumed primary financial responsibility for the grandparent.

##### Personal Illness

- An employee with a "serious health condition" that renders the employee unable to perform the functions of the position.

### Caregiver Leave

To care for an immediate family member (spouse, registered domestic partner, son, daughter, parent) or next of kin who is a 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 an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of his/her office, grade, rank or rating. This also covers care for veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illnesses that occurred any time during the five (5) years preceding the date of treatment for which leave is requested under this category.

Up to twenty six (26) weeks during a twelve (12) month period can be granted for this type of leave.

### Exigency Leave

Leave can be granted due to a qualifying necessity arising out of the fact that an immediate family member (spouse, registered domestic partner, son, daughter or parent) is on active duty (or has been notified of an impending call to order to active duty) in the Armed Forces in support of a contingency operation.

## DEFINITIONS

1. A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient or outpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.
2. "Continuing Treatment" is defined by:
  - a period of incapacity of more than three (3) consecutive calendar days plus treatment by a health care provider twice within 30 days of the beginning of the period of incapacity, the first visit of which must take place within seven (7) days of the first day of incapacity;
  - a period of incapacity of more than three (3) consecutive calendar days plus treatment by a health care provider once with a continuing regimen of treatment; which visit must take place within seven days of the beginning of the incapacity;
  - any period of incapacity related to pregnancy or for prenatal care;
  - any period of incapacity or treatment for a chronic condition, which requires at least two (2) visits to a health care provider for the condition per year;
  - a period of incapacity for permanent or long-term conditions for which treatment may not be effective, or
  - any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a condition which would likely result in an incapacity of more than three (3) consecutive calendar days absent medical treatment.

3. "Needed to care for" an immediate family member encompasses both physical and psychological care (e.g., to provide medical, hygienic, nutritional needs, safe transportation, or to provide reassurance to one receiving inpatient care). Regulations also include situations when an employee is needed to fill in for others caring for family member, or making arrangements for a change in care (e.g., transfer to a nursing home).
4. "Immediate family member", for purposes of this policy, is defined as spouse, registered domestic partner, son, daughter or parent.
  - "Spouse" means a husband or wife as recognized by Florida law.
  - "Registered Domestic Partner" means a domestic partner who is registered with the City of Miami Beach and the Human Resources Department.
  - "Son or Daughter" means a biological, adopted or foster child, a stepchild, a legal ward of or a child of a person standing in loco parentis; A child who is either less than 18 years of age, or older with a physical or mental impairment that substantially limits one or more major life activities who requires active assistance or supervision to provide for his/her own grooming, dressing, eating, cooking, cleaning, shopping, etc.
  - "Parent" means the biological parent or guardian, or a person who served as guardian to the employee.
  - "Grandparent" shall mean any grandparent of an employee for whom the employee has assumed primary financial responsibility.
5. "The twelve month period" for determining whether the twelve (12) workweek entitlement has been exhausted is based on a rolling twelve (12) month period measured backward from the first date of leave requested, with the exception of Caregiver Leave, which is based on a twelve (12) month period measured forward from the first date of leave requested.

## PROCESSES

### Applying For Family Medical Leave:

Effective January 1, 2010, employees shall contact Unum, the City's FML Administrator, when requesting FML by calling 877-217-5495. Employees must provide Unum with all of the required information during the initial intake and comply with all Unum practices and policies in order to obtain and/or maintain FML authorization. Such required information may include, but not be limited to:

- Name, social security number, employee ID number
- Date of birth
- Complete address and phone number

- Company
- Marital status and number of dependents
- Occupation (job title)
- Physician's name, address and phone number
- Brief description of medical condition
- Cause of medical condition (illness or injury) or need for leave
- The last day worked and first day absent from work due to condition
- Date they expect to return to work (if known) or the actual date if already returned to work
- Supervisor's name, title, telephone number, fax number and e-mail address

As applicable, employees will be given a deadline by which to return completed forms, such as the Medical Certification, to Unum. If Unum does not receive complete required forms and information in a timely fashion, FML may be denied.

Employees shall also notify their supervisor, according to their respective reporting procedures, that an application for FML has been submitted.

Employees who receive FML approval will be provided with a Written Designation Notice from Unum once approved. The City, through its Human Resources Department, will be notified of approval designations on a daily basis.

Employees must call Unum at 877-217-5495 each day the employee will be taking intermittent leave and/or as otherwise required by Unum.

For those employees whose FML was requested and approved prior to January 1, 2010, those employees will be required to follow the past FML reporting procedures, by calling the designated personnel in their respective departments pursuant to departmental policies.

Unum will correspond with the employee on a regular basis in order to determine the employee's return to work date. Unum will confirm the employee's return to work with the employee's supervisor.

Employees who do not comply with Unum's requirements, instructions, stated deadlines, etc. (or the City's, for those employees whose FML was requested and approved prior to January 1, 2010), at any point during the FML request/authorization/continued leave process may be denied FML. Employees who do not follow the applicable reporting and/or return to work requirements are subject to progressive discipline, up to and including termination.

## POLICY PROVISIONS

### Notice Requirements

Employees are required to request leave at least 30 days in advance of the need for FML if it is foreseeable or planned (i.e. for birth, adoption or foster care placement of a child, for planned medical treatment, etc.). Where leave is not foreseeable, the employee shall request leave as soon as the need for leave is known.

#### Concurrent Use of Leave

Employees are required to use accrued leave while on FML, with the exception of those on approved Short Term Disability (see below).

Accrued leave includes, but is not limited to: annual (vacation), sick, floating holidays, compensatory time (for those eligible to accrue), planning days, Goodwill Ambassador, Cleanliness Index, and Service Shopper. When the employee exhausts their accrued leave, they may request leave donations pursuant to the restrictions in the Classified Employees Leave Ordinance or Unclassified Employees Leave Ordinance, as applicable. Once all accrued and/or donated leave has been exhausted, the employee may be on FML without pay.

Employees who are placed on supplemental injury compensation (ISC) pursuant to the terms of the Classified Employees Leave Ordinance or Unclassified Employees Leave Ordinance, or Workers' Compensation pursuant to state law, as applicable, will be placed on FML concurrently.

However, City recognized holidays shall not count against the FML entitlement if the employee is on approved FML on a City recognized holiday.

#### Coordination with Short Term Disability

For those employees who have elected to participate in the City's Short Term Disability program, they will be required to use accrued leave while on FML for the first 14 days of being out of work. If the claim is deemed approved under Short Term Disability, the employee will not have to use accrued leave after the 14<sup>th</sup> day out of work. They may elect to use their accrued leave to make up the difference between their regular bi-weekly base pay and the disability payment, if they so choose. In order to do so, the employee will have to coordinate that option with the Human Resources Department.

#### Second and Third Opinions

The City reserves the right to request a second opinion with regard to medical certification of an illness or injury. This shall be at the City's expense. If the second opinion conflicts with the original opinion, the City may require, at its expense, that the employee obtain a third opinion, which shall be binding on both parties.

#### Fitness for Duty

All employees returning to work after FML usage for their own illness or injury shall provide a Fitness for Duty form, completed and signed by the treating physician, stating that the physician has read the employee's job description and that the employee can perform the essential functions of that position. Employees shall return this form to the Human Resources Department prior to being allowed to return to work.

#### Spouses

Pursuant to the FML regulations, spouses (or registered domestic partners, as applicable) who both work for the same employer may be limited to a combined total of 12 workweeks of leave in the 12 month period for certain leave categories.

Those spouses (or registered domestic partners, as applicable) who both work for the City of Miami Beach, and would otherwise be entitled to 12 workweeks of FML, will be limited to a

combined total of 12 workweeks of leave during the 12 month period, for the following leave categories:

- Birth of the employee's son or daughter or in order to care for the child after birth.
- For placement of a child with the employees for adoption or foster care, or to care for the child after placement.
- To care for the employee's parent with a serious health condition.

#### Scheduling of Intermittent Leave

For those intermittent and/or reduced schedule leaves other than non-medical, the employee must make every reasonable effort to schedule the treatment and/or leave outside of their normal working hours (i.e. before or after work or on weekends), or as least disruptive to the department's operation as possible. A supervisor may require a note from the treating physician.

#### Intermittent time for Non-Medical Leave

Leave may be taken continuously, intermittently, or on a reduced leave schedule, subject to certain restrictions. Leave for non-medical reasons (i.e. bonding due to birth/adoption/foster care) may be taken on an intermittent or reduced leave schedule only with supervisor approval. Requests must be made at least 24 hours in advance of the starting time of the requested leave.

Employees who request non-medical intermittent FML and are denied that leave by their supervisor will be subject to progressive discipline up to and including termination if the employee calls out sick or uses emergency leave without sufficient documentation as to the sick or emergency circumstances (i.e. note from the treating physician, etc.).

#### Extension Requests

An extension of FML beyond the federally mandated FML may be granted by the City for up to an additional 12 workweeks (480 hours) with proper documentation and proven medical necessity with the approval of the employee's department director and the Human Resources Department. Extension Requests are subject to the same definitions, processes and provisions as the original 12 workweek entitlement, as outlined herein. Not all extension requests will be granted. The City retains the absolute and sole right to grant or deny such requests.

#### Non-forfeiture

Accrued benefits (i.e. sick and vacation leave, pension benefits, etc.) will not be forfeited by an employee taking FML. However, employees taking FML in an unpaid status will no longer accrue additional leave, nor will they accrue pension benefits, for that unpaid timeframe.

#### Benefit Premiums

The City provides all employees with the opportunity of continuing their core insurance coverage(s) while on an unpaid leave of absence. The employee will need to make a monthly payment to cover any unpaid premiums. Payments should be made at the beginning of each month for his/her portion of the premiums due. For any voluntary benefit coverage(s), the employee will have to make arrangements with the benefit provider to continue premium payment and coverage.

If an employee does not continue to contribute towards the core insurance premiums while on an unpaid leave, he/she will have the unpaid balance deducted from subsequent paychecks upon return to work.

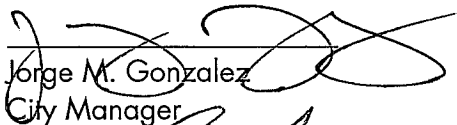
If the employee does not return to work and had not been paying for his/her insurance premiums while on leave, the insurance coverage will be cancelled retroactive to the last payment made. The employee will be responsible for all medical costs incurred from the date covered by the last premium payment.

Any questions regarding the City's FML policy should be directed to the Human Resources Department and/or Unum, the City's FML Administrator.


#### REFERENCE

Family and Medical Leave Act of 1993, as amended  
Miami Dade County Code of Ordinances, Chapter 11A "Discrimination", Article V "Family Leave"  
City of Miami Beach Code of Ordinances, Chapter 62 "Human Relations", Article III "Domestic Partnerships"  
City of Miami Beach Classified Employees Leave Ordinance  
City of Miami Beach Unclassified Employees Leave Ordinance

PREPARED BY: Human Resources Department

APPROVED BY:   
Jorge M. Gonzalez  
City Manager

DATE: \_\_\_\_\_

APPROVED BY:   
James Sutter  
Internal Auditor

DATE: 12/22/09

APPROVED BY:   
Ramiro Inguanzo  
Human Resources Director

DATE: 12/14/09