

**CITY OF CHESAPEAKE, VIRGINIA**

**NUMBER: 2.23**

**ADMINISTRATIVE REGULATION**

**EFFECTIVE DATE: 05/23/2017**

**SUBJECT: DEPARTMENT OF HUMAN RESOURCES (HR)  
FAMILY AND MEDICAL LEAVE ACT (FMLA)  
POLICY**

**SUPERSEDES: 10/1/2013**

**I. PURPOSE**

This policy ensures compliance with the Family and Medical Leave Act (FMLA) of 1993, as amended by the National Defense Authorization Act (NDAA) for FY 2008 and FY 2010. The purpose of this policy is to allow an eligible employee to be absent from work for a maximum of twelve (12) workweeks in a rolling twelve-month period for Family and Medical Leave (FML) or up to twenty-six (26) workweeks in a rolling twelve month period for military caregiver leave.

**II. ELIGIBILITY**

An eligible employee is one who has been employed by the City for at least twelve (12) months and has worked at least 1,250 hours in the twelve (12) months immediately preceding the start of the leave.

**A. Employed for at least twelve (12) months**

The twelve (12) months an employee must have been employed by the City need not be consecutive. However, employment periods prior to a break in service of seven (7) years or more will not be counted in making this determination. An exception to this provision exists when the employee's break in service is caused by the fulfillment of his or her Uniformed Services Employment & Reemployment Rights Act (USERRA) covered service obligation. In that case, time spent performing such covered service will be counted in determining whether the employee has been employed for at least twelve (12) months. Federal regulations state that this provision does not provide any greater entitlement to the employee than would be available under USERRA.

**B. Worked for at least 1,250 hours**

Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. An exception exists for employees returning from fulfilling their USERRA-covered service obligations, who shall be credited with the hours of service that would have been performed but for the period of covered service. Under the FLSA, leave time does not count as hours of work. Therefore, paid leave does not count toward the 1,250 hour threshold.

### III. DEFINITIONS

- A. **Authentication** means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
- B. **Care of an immediate family member** is defined as the employee providing physical or psychological care, including situations where the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself/herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a seriously ill child, spouse or parent with a serious health condition who is receiving inpatient or home care.
- C. **Clarification** means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.
- D. **Complete and sufficient certification.** The employee must provide a complete and sufficient certification to the City. A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive.
- E. **Continuing treatment by a health care provider** is defined as one or more of the following:
1. Treatment two or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, for an injury or illness by a health care provider, or by a nurse under direct supervision of the health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity.
  2. Treatment for an injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy) to resolve the health condition. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity.
  3. For chronic serious health conditions, periodic visits to a health care provider, or by a nurse under direct supervision of a health care provider, at least two times a year; and treatment which continues over an extended period of time (including recurring episodes of a single underlying condition). Examples include: persons with Alzheimer's; persons who have suffered a severe stroke; or persons in the terminal stages of a disease who may not be receiving active medical treatment.

4. Absence to receive multiple treatments by a health care provider or by a provider of health care services under order of, or on referral by, a health care provider for restorative surgery after an accident or other injury, or for a condition likely to result in incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (e.g. cancer, severe arthritis or kidney disease).
- F. **Covered active duty or call to covered active duty status** means in the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; or in the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to the laws listed in 29 CFR § 825.102.
- G. **Covered servicemember** means 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 a serious injury or illness.
- H. **Covered veteran** means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and 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. The period between enactment of the FY 2010 NDAA on October 28, 2009 and March 8, 2013 is excluded in the determination of the five-year period for covered veteran status.
- I. **Employee** means an individual employed by the City of Chesapeake, a public agency covered employer as defined by FMLA, within the confines of the United States.
- J. **Employer representative** is defined as a health care professional, Human Resources (HR) professional or management official employed or contracted by the City of Chesapeake.
- K. **Employment benefits** are defined as all benefits provided or made available to employees by the City of Chesapeake to include, but not be limited to, group health insurance, life insurance, sick leave, annual leave, paid time off and retirement.
- L. **Health care provider** is defined as a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or a podiatrist, dentist, clinical psychologist, optometrist or chiropractor authorized to practice in his/her State and performing within the scope of his/her practice as defined under State law; or a nurse practitioner, nurse-midwife, clinical social worker or physician assistant who is authorized to practice under State law and who is performing within the scope of his/her practice as defined under State law; or Christian Science Practitioners listed with the First Church of Christ, Scientist, in Boston, Massachusetts.
- M. **Immediate family member** is defined as the spouse, son, daughter, or parent of the employee.

- N. **Incapable of self-care** means that the individual requires active assistance or supervision to provide daily self-care in several activities of daily living or instrumental activities of daily living, including, but not limited to, bathing, dressing, eating, cooking, shopping, maintaining a residence, and others.
- O. **Intermittent leave** means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.
- P. **In loco parentis** means having day-to-day responsibilities to care for and financially support a child; or in the case of an employee, a person who had such responsibility for the employee when he/she was a child. A biological or legal relationship is not necessary.
- Q. **Military caregiver leave** means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993.
- R. **Next of kin of a covered servicemember** is defined as the nearest blood relative other than the covered service member's immediate family member, in the order of priority specified in the definition in 29 CFR § 825.102.
- S. **Parent** is defined as the biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to an employee when the employee was a son or daughter as defined below. This term does not include parents "in law."
- T. **Parental care** is defined as leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an urgent, immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.
- U. **Qualifying Exigency** is defined as a non-medical activity that is directly related to the covered servicemember's covered active duty or call to covered active duty status which falls within one of the categories described in 29 CFR § 825.126.
- V. **Qualifying Exigency Leave** is defined as leave arising when the immediate family member is a covered servicemember on covered active duty or has been notified of an impending call or order to covered active duty. Covered individuals include those in the Regular or Reserve Components of the Armed Forces being deployed to a foreign country.
- W. **Reduced leave schedule** is defined as a leave schedule that lessens the usual number of hours per workweek, or hours per workday, of an employee.
- X. **Rolling Twelve Month Period** is the (12) twelve month period prior to the start of the requested FML and is used to determine eligibility.

Y. **Serious health condition** is defined as an illness, injury, impairment, or physical or mental condition that involves any of the following:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
2. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three (3) consecutive calendar days, that also involves continuing treatment by a health care provider;
3. Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or for prenatal care.

Voluntary or cosmetic treatments which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgeries after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this definition are met.

Z. **Serious injury or illness means** 1) in the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and 2) in the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran and falls under one of the four (4) categories listed in the definition in 29 CFR § 825.102.

AA. **Son or daughter** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

BB. **Spouse** is the husband or wife of the employee as defined or recognized under State law for purposes of marriage in the State (e.g. US States, Territories, possessions, and District of Columbia) where the employee entered into marriage or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state, including same sex and common law marriage in States where it is recognized.

- CC. **Workweek** is defined as seven (7) consecutive days or one hundred sixty-eight (168) consecutive hours. The term “workweek” is the employee’s usual or normal schedule (hours/days per week) prior to the start of the leave. Employees who work a "work period" for purposes of the Fair Labor Standards Act (FLSA,) such as sworn police and fire personnel, shall have a workweek of Monday through Sunday for purposes of this Policy. If the employee normally works a part time schedule or variable hours, the amount of leave to which the employee is entitled is determined on a prorated basis.

#### **IV. TYPES OF FAMILY AND MEDICAL LEAVE**

Eligible employees of the City are entitled to an approved absence for one or more of the following reasons:

- A. For birth of a son or daughter, and to care for the newborn child;
- B. For placement with the employee of a son or daughter for adoption or foster care;
- C. To care for an immediate family member with a serious health condition;
- D. Because of a serious health condition that makes the employee unable to perform the functions of the employee’s job;
- E. Because of any qualifying exigency arising out of the fact that the employee’s immediate family member is a military member on covered active duty, or has been notified of an impending call or order to covered active duty status; and
- F. To care for a covered servicemember with a serious injury or illness if the employee is the immediate family member or next of kin of the covered servicemember.

#### **V. GENERAL PROVISIONS**

- A. An eligible employee taking FML shall be entitled, on return from such leave, to be restored to the position of employment held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

B. Leave for the Birth, Adoption, or Foster Care Placement of a Child

1. An eligible City employee may take FML for the birth, adoption (including preparing for an adoption) or foster care placement of a child, during the 12-month period beginning with the birth, adoption, or foster care placement of the child, except that FMLA leave may be taken prior to actual placement or adoption of a child if absence from work is necessary for the placement or adoption to proceed (e.g., court appearances, travel to another country for foreign adoptions, adoption or foster parent counseling). An employee's right to take leave for the birth of a child or placement of a child for adoption or foster care ends twelve months after the child's birth or placement with the employee.
2. Leave under this section may be taken on an intermittent or reduced leave schedule basis, subject to the approval of the employee's supervisor and department head. The City may require the employee to transfer temporarily to an available alternate position for which the employee is qualified that better accommodates recurring periods of leave than the employee's regular position does. The alternate position must have equivalent pay and benefits; however, the duties may not be equivalent. Approval of the Director of Human Resources or designee is required prior to transferring the employee.
3. Where both parents are employed by the City, the aggregate number of workweeks of leave to which both may be entitled is twelve (12). Where each parent uses a portion of the total twelve (12) week entitlement for the birth or placement of a child, each parent would then still be entitled to the difference between the amount he or she has taken individually and twelve (12) weeks for an eligible purpose other than for the birth of a child.

C. Leave For An Employee's Own Serious Health Condition Or To Care For An Immediate Family Member With A Serious Health Condition

1. An eligible City employee is entitled to take FML for his/her own serious health condition or to care for an immediate family member with a serious health condition.
2. In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, including a workers' compensation injury involving a serious health condition, employees should make a reasonable effort to schedule the treatment so as not to unduly disrupt City operations.
3. Leave under this section may be taken on an intermittent or reduced leave schedule basis when medically necessary. The City may require the employee to transfer temporarily to an available alternate position for which the employee is qualified that better accommodates recurring periods of leave than the employee's regular position does. The alternative position must have equivalent pay and benefits; however, the duties may not be equivalent. Approval of the Director of Human Resources or designee is required prior to transferring the employee.

D. Leave For A Qualifying Exigency

Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). Qualified exigency leave may be taken for the following reasons, as described in 29 CFR § 825.126:

1. Short-notice deployment (i.e., seven (7) or less calendar days);
2. Military events and related activities;
3. Childcare arrangements and school activities;
4. Financial and legal arrangements;
5. Counseling provided by someone other than a health care provider;
6. Rest and recuperation (leave permitted up to fifteen (15) calendar days beginning on the date the military member commences each instance of short-term, temporary, rest and recuperation leave during the period of deployment);
7. Post-deployment military activities occurring within ninety (90) days of covered active duty termination (e. g. attending ceremonies, briefings, events, other official programs); and
8. Parental care.

E. Military Caregiver Leave

Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious injury or illness.

1. Military caregiver leave may be taken by a City employee to care for a covered servicemember who is his or her immediate family member or next of kin.
2. Serious injury or illness as it applies to a covered veteran includes:
  - a. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;
  - b. A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of disability(ies) related to military service or would do so absent treatment;

- c. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers; or
  - d. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating.
3. If FML is taken for this circumstance, an eligible employee is entitled to twenty-six (26) workweeks of leave during a single twelve (12) month period beginning on the first day the eligible employee takes FML to care for the covered servicemember and ending twelve (12) months after that date. If the employee does not use the full twenty-six (26) workweeks in a single twelve month period, the remaining workweeks are forfeited.

FML taken for this circumstance will be applied on a 'per covered service member, per injury or illness' basis. Therefore, two periods of twenty-six (26) workweeks of FML may not be taken for the same injury or illness, but they may be taken to care for different covered servicemembers, or for the same covered servicemember who suffers a subsequent serious injury or illness, subject to the limitation of twenty-six (26) workweeks within any single twelve (12) month period. If the employee is taking military caregiver leave and subsequently requires a FML designation for another qualifying condition, a combined total of twenty-six (26) workweeks of leave cannot be exceeded in a single twelve month period.

- 4. If a husband and wife are both City employees and wish to take leave for a covered injured or ill service member, the husband and wife shall only take a combined total of twenty-six (26) weeks in a single 12-month period.
- 5. Leave under this section may be taken on an intermittent or reduced leave schedule when medically necessary. If leave is taken on an intermittent basis, the City may require the employee to transfer temporarily to an available alternate position for which the employee is qualified that better accommodates recurring periods of leave than the employee's regular position does. The alternate position must have equivalent pay and benefits; however, the duties may not be equivalent. Approval of the Director of Human Resources or designee is required prior to transferring the employee.

## **VI. NOTIFICATION REQUIREMENTS**

- A. When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the Human Resources (HR) Department must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances.

- B. For planned absences employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, the employee must notify HR as soon as practicable. For unplanned absences, employees are expected to follow established call-out procedures. Supervisors should notify the Departmental Payroll/HR Liaison of any health-related absence greater than 3 days.
- C. When HR has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), HR must notify the employee whether the leave will be designated, the amount of days that will be counted as FMLA leave, and the return to work certification requirements within five (5) business days absent extenuating circumstances.

## VII. CERTIFICATIONS

- A. Certifications for an Employee's Own Serious Health Condition or to Care for an Immediate Family Member with a Serious Health Condition
  - 1. Employees requesting time off due to their own serious health condition or to care for an immediate family member who is seriously ill will be required to submit a request for leave, with certification issued by the health care provider of the eligible employee or of the immediate family member of the employee, within fifteen (15) days of the request. If it is not practicable under the particular circumstances to do so, despite the employee's diligent, good faith efforts, the employee must submit an explanation for the delay. If the explanation is determined to be reasonable, the City may allow additional time for the employee to furnish such certification. Any absence relating to a serious health condition for which the City is made aware may be provisionally designated as FML pending receipt of the certification. If the healthcare provider charges for completing the certification, the employee is responsible for the healthcare provider's charge. Employees shall follow established call-in procedures within their department, as appropriate.
  - 2. Required information. The City may require an employee to obtain a medical certification from a health care provider that sets forth the following information:
    - a. The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization.
    - b. The approximate date on which the serious health condition commenced, and its probable duration.

- c. A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (e.g. physical therapy, occupational therapy), or any other regimen of continuing treatment.
  - d. If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job, as well as the nature of any other work restrictions, and the likely duration of such inability. If an employee requests leave on an intermittent or reduced schedule basis, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of such treatments and any periods of recovery.
  - e. If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in 29 CFR § 825.124, and an estimate of the frequency and duration of the leave required to care for the family member.
3. In the event the City finds a certification incomplete or insufficient, the City shall advise the employee in writing what additional information is necessary to make the certification complete and sufficient. The employee shall have seven (7) calendar days to cure any such deficiency, unless it is not practicable under the particular circumstances, despite the employee's good faith efforts to do so. If the deficiencies are not cured and the certification is not timely resubmitted, the City may deny the taking of FML.
- a. A representative of the HR Department may contact the employee's health care provider with the employee's permission for purposes of clarifying a certification after the employee has had an opportunity to cure any deficiencies, as provided above. The employee's department management shall not contact the employee's health care provider.
  - b. In any case in which the City has reason to doubt the validity of the certification provided under subsection (A) of this section, a representative of the HR Department may contact the employee's health care provider to verify the authenticity of the submitted certification. The City may require that the eligible employee obtain the opinion of a second health care provider designated or approved by the City, at the City's expense.

- c. In the case of a conflict between the first and second health care provider opinions, the City may require, at the City's expense, that the employee obtain the opinion of a third health care provider, approved jointly by the City and the eligible employee. The opinion of the third health care provider shall be considered to be final and shall be binding on the City and the employee.
- d. The City may require that the eligible employee obtain subsequent recertification every thirty (30) days given the employee's particular circumstances, unless the medical certification indicates that the minimum duration of the condition is more than thirty (30) days. If the medical certification indicates that the minimum duration of the condition is more than thirty (30) days, the City will wait until that minimum duration expires before requesting a recertification. In all cases, the City may request a recertification of a medical condition every six months in connection with an absence by the employee. Any recertification requested by the City shall be at the employee's expense and subject to the provisions for authentication and clarification, including second and third opinions

B. Certification of Qualifying Exigency Leave and Military Caregiver Leave

1. The City may require certification of a qualifying exigency for which an eligible employee requests leave. The certification shall be provided on, or contain the same information specified in, U. S. Department of Labor Form WH-384. The employee shall also provide to the City a copy of the military member's covered active duty orders or other documentation issued by the military for the member's service. Certification for Rest and Recuperation leave may include a copy of the military member's Rest and Recuperation leave orders or other documentation issued by the military setting forth the dates of the military member's leave.
2. The City shall require certification completed by an authorized healthcare provider of a covered servicemember if an eligible employee requests leave to care for the covered servicemember with a serious injury or illness. Authorized healthcare providers for this requirement are described in 29 CFR § 825.310. The certification shall be provided on, or contain the same information specified in, U. S. Department of Labor Form WH-385 or WH-385-V, as applicable. The City shall also accept invitational travel orders or invitational travel authorizations issued to any family member to join an injured or ill service member at his or her bedside, under the terms specified in 29 CFR § 825.310(e).
3. Documentation of a covered servicemember's enrollment in the VA's Program of Comprehensive Assistance for Family Caregivers is sufficient certification of the servicemember's serious injury or illness to support an employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation. The City may seek authentication and clarification of such documentation but may not request second opinions or recertifications when the servicemember's serious injury or illness is shown by documentation of enrollment in

this program. The employee must respond to the request for certification/ documentation within fifteen (15) days of the request. If it is not practicable to do so despite the employee's diligent, good faith efforts, the employee must submit an explanation for the delay. If the City determines that the explanation is reasonable under the circumstances, the City may allow additional time for the employee to provide such certification. Any absence relating to a serious health condition for which the City is made aware may be provisionally designated as FML pending receipt of the certification. Failure to provide certification may result in a denial of leave. The City may seek clarification and authentication, but second and third opinions are not allowed and recertification is not permitted.

4. For purposes of confirmation of family relationship, the City may require the employee giving notice of the need for leave to provide reasonable documentation of family relationship.

## **VIII. USE OF PAID OR UNPAID LEAVE AND BENEFITS CONTINUATION**

### **A. General Provisions**

1. If an employee has accrued paid leave at the time of his/her absence, the employee must exhaust all applicable paid leave and then may take leave without pay for the remaining duration of the approved FML.
2. The taking of leave under this Policy shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced, except paid leave taken under this Policy.
3. The employee does not accrue annual leave, sick leave, holiday pay, or other employment benefits during any period of leave without pay under this Policy.

### **B. Health Insurance Premiums**

#### **1. Employer Share**

The City will maintain health and dental coverage under the same conditions as if the employee were not on leave. The City will continue to pay the employer portion of an eligible employee's health and dental insurance during the period of FML. In the event the employee does not return to work after the employee's FML entitlement has been exhausted or expires, the City will recover from the employee the City's share of the health and dental insurance premiums paid during the period of leave, unless the employee does not return to work because of the continuation, recurrence or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under the FMLA, or because of other factors beyond the employee's control including, but not limited to, those circumstances described in 29 CFR §

825.213(a).

2. Employee Share

The employee is responsible for paying the employee's portion of his/her health and dental insurance premiums during the period of FML. If the employee continues to pay the employee portion of the health and dental premiums while on approved FML, he/she will continue to be covered under the City's group health and dental insurance. If paid leave is used for any portion of the FML, employee premiums will be deducted through regular payroll deductions. At the time an employee begins unpaid FML, it is the employee's responsibility to submit premium payments to the City. Failure to pay these premiums may result in the loss of health and dental coverage within thirty (30) days of the missed payroll deduction following notice to the employee. Upon the employee's return to work, the employee will be restored to the coverage and benefits the employee would have had if leave had not been taken and the premium payment(s) not missed.

C. VRS Contribution

If the employee is on leave without pay the first business day of the month, the employee will not be reported to the Virginia Retirement System (VRS) for purposes of retirement credit for that month.

D. Other Benefits (e.g. Vision Insurance, Prepaid Legal Services, Flexible Spending)

If an employee is on leave without pay, it is the employee's responsibility to make payment arrangements with the Department of Finance no later than thirty (30) days following the date the employee begins a leave without pay status.

**IX. RETURN TO WORK**

A. Employees may be required to report periodically on their status and intent to return to work. The City may require that the employee provide reasonable notice of changed circumstances (e.g. timeline) where foreseeable. If an employee gives unequivocal notice of intent not to return to work, the City's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee's employment cease.

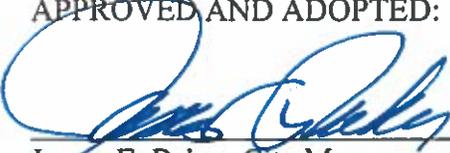
- B. The City may require a fitness for duty certification at the completion of an employee's FML, at the employee's expense, for the particular health condition that caused the employee's need for FML. The certification from the employee's health care provider must certify that the employee is able to resume work with information sufficient to establish that the employee can perform the essential functions of the employee's job, as well as the nature of any work restrictions, and the likely duration of such restrictions. No second or third opinions on a fitness-for-duty certification may be required. The City may delay restoration to employment until an employee submits a required fitness-for-duty certification.

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Dana E. Sanford, Deputy City Attorney

5.22.2017  
\_\_\_\_\_  
Date

APPROVED AND ADOPTED:

  
\_\_\_\_\_  
James E. Baker, City Manager

5/23/2017  
\_\_\_\_\_  
Date