

CITY OF CHESAPEAKE, VIRGINIA

NUMBER: 2.23 (22.0)

ADMINISTRATIVE REGULATION

EFFECTIVE DATE: 12/3/02

**SUBJECT: DEPARTMENT OF HUMAN RESOURCES
FAMILY AND MEDICAL LEAVE POLICY**

SUPERSEDES: 08/5/93

I. PURPOSE

It is the purpose of this Policy --

- A. To balance the demands of the workplace with the needs of City employees and their families;
- B. To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition, while also accommodating the legitimate interests of the City;
- C. To promote equal employment opportunity for women and men;
- D. To comply with the Family and Medical Leave Act of 1993.

II. DEFINITIONS

- A. **"Continuing care by a health care provider"** means one or more of the following:
 - (1) The employee or immediate family member in question is treated two or more times for an injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician's assistant under direct supervision of the health care provider.
 - (2) The employee or family member is treated for an injury or illness two or more times by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider, or is treated 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 -- for example, a course of prescription medication or therapy -- to resolve the health condition.
 - (3) The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability that cannot be cured. 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 either for restorative surgery after an accident or other injury or for a condition likely to result in incapacity of more than three days

absence for medical intervention or treatment (e.g., cancer, severe arthritis or kidney disease).

- B. **"Eligible employee"** means an employee who has been employed by the City of Chesapeake for at least 12 months (need not be consecutive months) and for at least 1,250 hours of service during the 12-month period preceding the commencement of leave. For purposes of determining whether an employee meets the hours of service requirement, the legal standards established under the Fair Labor Standards Act shall apply.
- C. **"Employment benefits"** means all benefits provided or made available to employees by the City of Chesapeake, including group health insurance for the employee and his or her family, life insurance, sick leave, annual leave, educational benefits, and retirement.
- D. **"Health care provider"** means 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 their State and performing within the scope of their practice as defined under State law; or nurse practitioners and nurse-midwives who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- E. **"Immediate family member"** means the child, spouse, or parent of the employee. "Immediate family member" also means any member of the employee's immediate household who resides with the employee at the time leave is requested and taken.
- F. **"Needed to care for"** means that the employee's immediate family member needs the employee's 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 or 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 receiving inpatient care.
- G. **"Parent"** means the biological or adopted parent of an employee or an individual who stands in the place of a parent to an employee. This term does not include parents "in law".
- H. **"Reduced leave schedule"** means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- I. **"Serious health condition"** means an illness, injury, impairment, or physical or mental condition that involves --
- (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; or
 - (2) any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a

health care provider, or

- (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 (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required.

J. **"Son or daughter"** means a biological, adopted, or foster child, a stepchild, and a legal ward or child with respect to whom an eligible employee stands in the place of a parent, who is --

- (1) under 18 years of age; or
- (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.

K. **"Spouse"** means a husband or wife.

L. **"Stand in the Place of a Parent"** means persons with day-to-day responsibilities to care for and financially support a child; or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

M. **"Workweek"** means seven (7) consecutive days or one hundred sixty-eight (168) consecutive hours. Each employee's workweek will correspond to the workweek worked by that employee for purposes of the Fair Labor Standards Act, except that employees who work a "work period" for purposes of the FLSA, such as sworn police and fire personnel, shall have a workweek of Monday through Sunday for purposes of this Policy.

III. FAMILY AND MEDICAL LEAVE -- GENERAL PROVISIONS

A. As further provided in this policy, eligible employees of the City of Chesapeake shall be entitled to a total of 12 workweeks of unpaid leave during any calendar year for one or more of the following:

- (1) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
- (2) Because of the placement of a son or daughter with the employee for adoption or foster care;
- (3) In order to care for an immediate family member of the employee, if such immediate family member has a serious health condition;

- (4) Because of a serious health condition that makes the employee unable to perform any of the essential functions of the employee's job.
- B. If an employee has accrued paid leave at the time of the absence for a family and medical leave purpose, the employee must substitute all applicable paid leave for unpaid FMLA leave until the paid leave is exhausted. Once such paid leave is exhausted, an employee may then take leave without pay under this policy. If paid leave is available, the following conditions apply:
 - (1) An employee who takes leave for his or her own serious health condition shall first exhaust his or her sick leave, and then other paid leave, before taking leave without pay under this policy.
 - (2) An employee who is a member of the sick leave bank shall exhaust any benefits available through it before going on unpaid leave.
 - (3) An employee who takes leave for the serious health condition of an immediate family member shall first exhaust any applicable sick leave for family illness (not to exceed six days of sick leave), and then annual, compensatory and overtime leave before taking leave without pay under this policy.
 - (4) An employee who takes leave following the birth or adoption of a son or daughter in order to care for the newborn or newly adopted child, and not due to the employee's own serious health condition, may use up to six days of applicable sick leave for family illness, and then shall use accumulated annual, compensatory and overtime leave before taking leave without pay under this policy.
- C. An employee who takes family and medical leave 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.
- D. 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.
- E. The employee does not accrue annual leave, sick leave, holiday pay, or other employment benefits during any period of leave without pay.
- F. The City will pay for the eligible employee's health insurance during the period of leave (not to exceed a total of twelve weeks in a calendar year), conditioned upon the employee's returning to work for the City at the end of the leave period. If the employee fails to return to work at the end of the leave period, the City will recover from the employee the premium that it paid for the employee's health insurance during the period of leave. Except, the City will not recover the premium from the employee if the employee fails to return to work because of the continuation, recurrence or onset of the serious health condition which entitled the employee to leave, or because of other factors beyond the employee's control.

- G. The employee shall have the option of continuing to pay the premiums for dependents' health care coverage during the period of leave.

IV. LEAVE FOR THE BIRTH, ADOPTION, OR FOSTER CARE PLACEMENT OF A SON OR DAUGHTER

- A. An eligible City employee may take family and medical leave for the birth, adoption, or foster care placement of a son or daughter, only during the 12-month period beginning with the birth, adoption, or foster care placement. 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.
- B. The employee is entitled to take this leave on an intermittent or reduced leave schedule basis, subject to the approval of the employee's supervisor and department head.
- C. 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 a purpose other than for the birth of a child.
- D. Leave for the birth or placement of a child may begin prior to the date of birth or placement, if necessary, for example, for prenatal care or court appearances.

V. LEAVE FOR AN EMPLOYEE'S OWN SERIOUS HEALTH CONDITION OR TO CARE FOR A PERSON WITH A SERIOUS HEALTH CONDITION

- A. An eligible City employee is entitled to take family and medical leave to care for an immediate family member with a serious health condition.
- B. An eligible City employee is entitled to take family and medical leave if he or she has a serious health condition.
- C. In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the City, subject to the approval of the health care provider of the employee or the health care provider of the immediate family member, as appropriate.
- D. Where both spouses are City employees eligible for leave under this section, the aggregate number of workweeks of leave to which both may be entitled for the care of a parent with a serious health condition is twelve. Where each spouse uses a portion of the total twelve (12) week entitlement for the care of a parent with a serious health condition, each spouse would remain entitled to the difference between the amount he or she has taken individually and twelve (12) weeks for a purpose other than the care of a parent.

- E. Leave under this section may be taken on an intermittent or reduced leave schedule when medically necessary.

VI. MEDICAL CERTIFICATIONS

- A. The City will require that the employee submit a request for leave to care for him or herself or an immediate family member, with certification issued by the health care provider of the eligible employee or of the immediate family member of the employee, as appropriate (the employee has at least 15 calendar days to obtain the certification). If the supervisor has not received the certification within the days requested, then he or she shall provide notice to the employee that the certification has not been received within the time required, and an additional 15 calendar days is provided. Failure to comply may result in denial of leave. Such certification shall be provided in a timely manner and shall be sufficient if it states --

- (1) the date on which the serious health condition commenced;
 - (2) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
 - (3) the probable duration of the condition;
 - (4) (a) for purposes of leave for an immediate family member, a statement that the eligible employee is needed to care for the person, and an estimate of the amount of time that such employee is needed to care for the person; and
 - (b) for purposes of leave for the serious health condition of the employee, a statement that the employee is unable to perform the functions of the position of the employee;
 - (5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
 - (6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for the serious health condition of the employee, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
 - (7) in the case of certification for intermittent leave or leave on a reduced leave schedule for the serious health condition of an immediate family member, a statement that the employee's intermittent leave or leave on a reduced schedule is necessary for the care of the family member, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.
- B. In any case in which the City has reason to doubt the validity of the certification provided under

- subsection (A) of this section, 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. If the employee has submitted a completed Medical Certification form, the City shall not contact the employee's doctor for further information. If the completed certification shows that the employee is entitled to family and medical leave and the City is not satisfied, the only option is to pay for a second opinion.
- C. In the case of a conflict between the first and second health care provider opinions, the City may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or 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 recertifications on a reasonable basis.
 - E. Where an employee claims an inability to return to work because of the continuation, recurrence or onset of a serious health condition, the City may require the employee to support the claim with written certification from the employee's or immediate family member's health care provider, as appropriate. The certification shall state that the employee's serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired; or it shall state that the employee is needed to care for the immediate family member who has a serious health condition on the date that the leave of the employee expired. The employee shall provide this notification at least seven calendar days prior to the end date of the original request for leave.

VII. PROCESS

- A. When an employee requests any type of leave, the department/agency head or designee must determine whether or not the leave is for a purpose covered under this Policy. If so, the leave time shall be counted towards the 12 weeks of leave provided for under this Policy.
- B. When the department/agency head or designee determines that the employee has requested leave for a purpose covered under this Policy he or she should gather the following information:
 - (1) Determine the employee's eligibility. Will the employee have worked for the City for at least 12 months (not necessarily consecutive) as of the date leave will begin? Did the employee work at least 1,250 hours during the twelve months immediately preceding the start of the leave?
 - (2) Document the reason for the leave. If the employee has submitted a written request for leave that contains medical information, forward that information to the Department of Human Resources.
 - (3) Determine the estimated starting date for the leave. Has the employee given at least 30 days notice? If not, why not? Was 30 days notice practicable? If so, the

department/agency head or designee may delay the starting date to 30 days from the request. The decision to delay the beginning date must be made in writing and made a part of the employee's personnel file.

- (4) Determine the type of leave requested. Does the employee want to take intermittent leave, reduced schedule leave, or full time leave? Remember that granting reduced or intermittent leave for the birth, adoption, or foster care placement of a child, is discretionary. However, when reduced schedule or intermittent leave is medically necessary, the department/agency head or designee must grant it.
 - (5) Determine the anticipated duration of leave. Remember, a total of 12 workweeks during any calendar year is the maximum that is permitted under this policy. Requests for leave beyond the stated maximum would be subject to approval under other applicable leave policies.
 - (6) Check the employee's leave balance. How much sick, annual, overtime, or compensatory leave does the employee have? Remember, any available paid leave which applies to the employee's leave request must be used prior to the employee taking family leave without pay (Section III, B.) The employee is required to use his or her sick leave (where it is the employee's own serious health condition that is the reason for the leave). The employee is required to use any applicable sick leave for family illness, in instances where this Policy applies. If the employee anticipates going into a leave without pay status, the Director of Human Resources must approve such leave in advance and verify if the employee is eligible for the health care payment entitlement.
 - (7) Is the employee's spouse also an employee of the City? (Remember that for new children or the illness of a parent, a total of 12 workweeks is allowed between both the employees.)
 - (8) If leave is requested for a new child, determine the child's date of birth.
- C. The department/agency head or designee should discuss with the employee the arrangements for continuing payment of dependents health insurance premiums by the employee.
 - D. The department/agency head or designee should find out where to send the employee's paycheck during any paid leave.
 - E. Where the employee has requested leave for a serious health condition of his or her own, or of a family member, the department/agency head or designee should provide the employee with a copy of the City's Family and Medical Leave Act Fact Sheet, and a Medical Certification form. The employee should be informed that he or she is responsible for insuring that the health care provider completes and returns the form. Where leave is requested for the employee's own serious health condition, the department/agency head or designee should include a statement of the essential functions of the employee's job. The completed Medical Certification form shall be sent to the Department of Human Resources. Medical Certification forms must be kept in a separate confidential file. They must be treated as confidential medical records.

- F. When an employee who has been out on family and medical leave for his or her own serious health condition is ready to return to work, the employee shall present to his or her immediate supervisor a statement from his or her doctor certifying that the employee is medically able to return to work.

- G. Whenever a request for family or medical leave is denied, the denial and the reasons therefore must be made in writing and given to the employee, and a copy must be placed in the employee's official personnel file.