

## FAMILY MEDICAL LEAVE

### I. PURPOSE

To provide eligible employees with family and medical leave benefits, in accordance with the Family and Medical Leave Act.

### II. POLICIES AND PROCEDURES

Unpaid leave may be granted for any of the following reasons:

- For birth, or placement for adoption or foster care. (must conclude within 12 months of the birth or placement). In addition, if an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, or to care for a parent (but not a parent-in-law) who has a serious health condition.
- To care for the employee's spouse, son or daughter, or parent, who has a serious medical condition or
- For a serious health condition that makes the employee unable to perform the employee's job.

#### 1. Serious Health Condition

For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- **inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of **incapacity** (i.e., the inability to work, attend school or perform other regular daily activities), or any subsequent treatment in connection with such inpatient care;

#### 2. Continuing Treatment

Continuing treatment by a health care provider which includes one or more of the following:

- a period of **incapacity** of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment: (i) two or more times by, or under the direct supervision of, under orders of, or on referral by, a health care provider, or (ii) 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;
- any period of incapacity due to pregnancy, or for prenatal care;
- any period of incapacity or treatment for such incapacity due to a chronic serious health condition which (i) requires periodic visits for treatment by, or under the direct supervision of, a health care provider, or (ii) continues over an extended period of time

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- (including recurring episodes of a single underlying condition; and (iii)
- may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
- a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease);
- any period of absence to receive multiple treatments (including any period of recovery there from) by, or under the supervision of, under orders of, or on referral by, a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are **not** serious health conditions. In addition, routine physicals, eye examinations, and dental examinations are not considered treatment.

### 3. Other Employment

Under no circumstances may an employee on FMLA leave work another job, whether for pay, as a volunteer or as self-

employment, unless expressly authorized in writing by the Department Director and the City Manager.

### III. ELIGIBILITY

The City of Harlingen will provide up to twelve (12) weeks of *unpaid*, job protected leave to all "eligible" employees in any 12-month rolling period measured backward from the date an employee uses any FMLA leave. Employees are eligible if they have worked for The City of Harlingen for at least one year, *and* for 1,250 hours in the 12-month period immediately preceding the leave.

The City of Harlingen will require that the employee substitute for any portion of the family and medical leave all *accrued* sick leave or vacation leave. The employee may volunteer to also use his/her comp time or use leave without pay.

All substitute paid and unpaid time (including sick leave, vacation, compensatory and workers' compensation), if applicable, will run concurrently with the Family and Medical Leave.

Family and Medical Leave Act (FMLA) begins when an FMLA-qualifying situation takes place. FMLA does **not** begin when all company paid benefits have been exhausted.

### IV. PROCEDURE FOR REQUESTING LEAVE

In all cases, an employee requesting leave must complete an "Application for Family and Medical Leave" and return it to Risk

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Management or (Human Resources Director, if employed with HWWS) for processing.

The completed application must state the reason for the leave, the duration of the leave, and the starting and ending dates of the leave.

An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment, must submit an application for leave at least thirty (30) days. In the event of medical leave for planned medical treatment for the employee or for the employee's spouse, child or parent, the employee is required to make a reasonable effort to schedule the treatment so as not to unduly disrupt the City's operations.

All supervisors must **immediately** notify their Department Director if they have reason to believe an employee's absence is due to an FMLA-covered reason. (Note: Under the FMLA, an employee requesting paid or unpaid leave for an absence covered by the FMLA is not required to expressly mention FMLA. If the employee states a reason that qualifies as FMLA leave, the employee, will likely have met the FMLA's notice requirements).

### V. MEDICAL CERTIFICATION

An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by a "Medical Certification Statement" completed by a health care provider. The certification must state the date on which the health condition commenced, the

probable duration of the condition, and the appropriate medical facts regarding the condition. In the case of intermittent leave, the certification must also provide the dates and duration of the treatments necessitating the intermittent leave. The City of Harlingen may request a second or third medical opinion, if necessary, at the City of Harlingen's expense.

If the employee is needed to care for a spouse, child or parent, the certification must so state, along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his or her job.

Employees must also provide periodic reports during FMLA leave as to their status and intent to return to work, and will be required to submit a "fitness-for-duty" certification before an employee can return to work. In some cases the City may also require periodic recertifications of the serious health condition.

If an employee fails to provide any required certification within 15 days, the City may deny leave until the certification is provided.

If an employee elects to take FMLA leave in order to care for a family member, the employee may be required to provide reasonable documentation confirming a family relationship.

### VI. REDUCED WORK SCHEDULE

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis only if "medically necessary," or otherwise

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approved by their Department Director. In such cases, the employee may be temporarily transferred to alternative positions with equivalent pay and benefits. The transfer is to better accommodate recurring leave periods.

### VII. BENEFITS COVERAGE DURING LEAVE

During a period of family or medical leave, an employee will be retained on the City of Harlingen's health plan under the same conditions that applied before leave commenced. To continue health coverage, the employee must continue to timely make any contributions that he or she made to the plan before taking leave. Arrangements need to be coordinated with the Risk Management Department. The City may recover premiums if paid to maintain health coverage for an employee who fails to return to work from FMLA leave, unless the employee is unable to return due to a serious health condition or something else beyond the employee's control. Medical certification is required under such circumstances. An employee is not entitled to the accrual of any seniority or employment benefits that would have occurred if not for the taking of leave. An employee who takes family or medical leave will not lose any employment benefits that accrued before the date leave began.

**TMRS** - Employee contributions to TMRS may be made on a voluntary basis through a special arrangement with the City while an employee is in a leave without pay status. It is the employee's responsibility to initiate such

an arrangement by timely contacting the City's Human Resources Department and completing the necessary paperwork.

### VIII. RESTORATION TO EMPLOYMENT FOLLOWING LEAVE

An employee eligible for family and medical leave - with the exception of those employees designated as "highly compensated employee" - will be restored to his or her old position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The City of Harlingen cannot guarantee that an employee will be returned to his or her original job. A determination as to whether a position is an "equivalent position" will be made by the City of Harlingen.

An employee must complete a "**Notice of Intention to Return from Family or Medical Leave**" before he or she can be returned to active status. If an employee wishes to return to work prior to the expiration of an extended family or medical leave of absence, notification must normally be given to the employee's supervisor at least two (2) working days prior to the employee's planned return, where feasible.

The failure of an employee to return to work upon the expiration of a family or medical leave of absence may subject the employee to immediate termination unless an extension is granted. An employee who requests an extension of family or medical leave must do so in writing and prior to the expiration of the approved leave.

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Certain highly compensated key employees may be denied reinstatement when necessary to prevent “substantial and grievous economic injury” to the City’s operations. A “key” employee is a salaried eligible employee who is among the highest paid ten percent of employees within 75 miles of the worksite. Employees will be notified of their status as a key employee, when applicable, after they request FMLA leave.

### IX. COORDINATION WITH OTHER PROGRAMS

Employees cannot be disqualified from the Qualified Leave Program and Well Pay Program because of FMLA absences.

If, due to business necessity, the department needs to fill the position during the leave period, authorization may be requested from and coordinated with the HR department for the hiring of a temporary employee.

### X. TEMPORARY REPLACEMENTS

If, due to business necessity, the department needs to fill the position during the leave period, authorization may be requested from and coordinated with the HR department for the hiring of a temporary employee.

### XI. FLSA CONSIDERATIONS

Salaried executive, administrative, and professional employees of the City who meet the Fair Labor Standards Act (FLSA) criteria

for exemption from minimum wage and overtime do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for the FLSA’s exemptions extends only to eligible employees’ use of leave required by the FMLA.

### XII. OTHER PROVISIONS

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law that provides greater family or medical leave rights.

This policy is intended to explain benefits available to eligible employees under the FMLA. It is not intended to create any rights to leave beyond those created by the FMLA. If you would like additional information on the FMLA, please contact the Risk Management Department. When an employee gives notice of the need for FMLA leave, the employee will be given additional information as to his or her rights and responsibilities under the FMLA. In addition, employees may contact the nearest office of the U.S. Department of Labor’s Wage & Hour Division for more information.

### XIII. APPENDICES

- A. Certification of Health Care Provider
- B. Employer Response to Employee Form
- C. Notice of Intention to Return from Family Medical Leave

Certification of Health Care Provider  
(Family and Medical Leave Act of 1993)

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division



(When completed, this form goes to the employee, *Not to the Department of Labor.*)

OMB No. 1215-0181  
Expires 07/01/04

1 Employee's Name

2 Patient's Name (if different from employee)

3 Page 4 describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.

(1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_ (5) \_\_\_\_\_ (6) \_\_\_\_\_ or None of the above

4 Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5 a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity<sup>2</sup> if different):

b. Will it be necessary for the employee to take work only **intermittently** or to **work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated<sup>2</sup> and the likely duration and frequency of episodes of incapacity<sup>2</sup>.

<sup>1</sup> Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

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6 a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

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7 a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

c. If neither a nor b applies, is it necessary for the employee to be absent from work for treatment?

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8 a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable duration of this need

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Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

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To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule

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Employee Signature

Date

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A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity<sup>2</sup> or subsequent treatment in connection with or consequent to such inpatient care

2. Absence Plus Treatment

(a) A period of incapacity<sup>2</sup> of more than three consecutive calendar days (including any subsequent treatment or period of incapacity<sup>2</sup> relating to the same condition), that also involves

- (1) Treatment<sup>3</sup> two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a 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; or
- (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment<sup>4</sup> under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity<sup>2</sup> (e.g., asthma, diabetes, epilepsy, etc.)

5. Permanent/Long-Term Conditions Requiring Supervision

A period of incapacity<sup>2</sup> which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity<sup>2</sup> of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification (29 CFR 825.306).

Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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<sup>2</sup> Treatment includes examinations to determine if a serious health condition exists and treatments of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, acetaminophen, or ibuprofen; rest; drinking fluids; use of ice, heat, or other similar activities that can be initiated without a visit to a health care provider.

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**Public Burden Statement**

We estimate that it will take an average of 10 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**DO NOT SEND THE COMPLETED FORM TO THIS OFFICE; IT GOES TO THE EMPLOYEE.**



**(Family and Medical Leave Act of 1993)**

Date:

OMB No. : 1215-0181  
Expires : 07/31/04

To: \_\_\_\_\_  
(Employee's Name)

From: \_\_\_\_\_  
(Name of Approver (Employer Representative))

**Subject: REQUEST FOR FAMILY/MEDICAL LEAVE**

On \_\_\_\_\_, you notified us of your need to take family/medical leave due to:  
(Date)

- The birth of a child, or the placement of a child with you for adoption or foster care, or
- A serious health condition that makes you unable to perform the essential functions for your job; or
- A serious health condition affecting your  spouse,  child,  parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ and that you expect  
leave to continue until on or about \_\_\_\_\_  
(Date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave, or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that (where appropriate to use, circle where indicated)

1. You are  eligible  not eligible for leave under the FMLA.
2. The requested leave  will  will not be counted against your annual FMLA leave entitlement.
3. You  will  will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by \_\_\_\_\_ (insert date: (must be at least 15 days after you are notified of this requirement)), or we may delay the commencement of your leave until the certification is submitted.
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We  will  will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used, the following conditions will apply. (Insert)

5. (a) If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you, and it is agreed that you will make premium payments as follows: *(Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)*

(b) You have a minimum 30-day *(or, indicate longer period, if applicable)* grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We  will  will not pay your share of health insurance premiums while you are on leave.

(c) We  will  will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you  will  will not be expected to reimburse us for the payments made on your behalf.

6. You  will  will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.

7. (a) You  are  are not a "key employee" as described in § 825.217 of the FMLA regulations. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us as discussed in § 825.218.

(b) We  have  have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. *(Explain (a) and/or (b) below. See § 825.279 of the FMLA regulations.)*

8. While on leave, you  will  will not be required to furnish us with periodic reports every \_\_\_\_\_ *(indicate interval of periodic reports, as appropriate for the particular leave situation)* of your status and intent to return to work *(see § 825.309 of the FMLA regulations)*. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you  will  will not be required to notify us at least two work days prior to the date you intend to report to work.

9. You  will  will not be required to furnish recertification relating to a serious health condition. *(Explain below, if necessary, including the interval between certifications as prescribed in § 825.308 of the FMLA regulations.)*

This optional use form may be used to satisfy mandatory employer requirements to provide employees taking FMLA leave with written notice defining specific expectations and obligations of the employee and explaining any consequences of a failure to meet those obligations. (29 CFR 825.301(b))

Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

#### Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, DC 20210.

DO NOT SEND THE COMPLETED FORM TO THE OFFICE SHOWN ABOVE.



**Notice of Intention to Return From Family or Medical Leave City of Harlingen**

Name: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Date Leave Commenced: \_\_\_/\_\_\_/\_\_\_

Date of Planned Return: \_\_\_/\_\_\_/\_\_\_

I understand that my restoration to employment is subject to the following conditions:

1. As a condition of restoration, I must provide written certification from my health care provider that I am able to resume working.
2. Every attempt will be made to restore me to my original position. If my original position is unavailable, I will be placed in an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. The determination of "equivalent position" will be made by the City of Harlingen.
3. Upon return from family and medical leave I will not be entitled to the accrual of any seniority or employment benefits during the period of leave.

\_\_\_\_\_  
Signature

\_\_\_/\_\_\_/\_\_\_  
Date

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I have examined \_\_\_\_\_ and his/her job description (Copy attached)

( \_\_\_\_\_ ) and certify that he/she

\_\_\_\_\_ is fully able to resume working.

\_\_\_\_\_ may return to limited duty. Please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Health Care Provider's Signature

\_\_\_/\_\_\_/\_\_\_  
Date