POLICY & PROCEDURE

Subject: FAMILY MEDICAL LEAVE ACT & WASHINGTON STATE FAMILY CARE ACT				Index: HUMAN RESOURCES & RISK MANAGEMENT Number: 350-03 (replaces 300-24)
Effective Date	**Supersedes**	**Page**	**Staff Contact**	**Approved By**
10/15/2009	10/15/2005 ~~10/15/2009~~	1 of 9	Nancy A. Carlson	Denis Law

1.0 PURPOSE:

To establish a policy that implements the requirements of Federal and State laws concerning family and medical leave for the City and its workforce. Eligible employees are required to participate if the medical need is a FMLA qualifying event.

2.0 ORGANIZATIONS AFFECTED:

All departments and divisions

3.0 REFERENCES:

Collective Bargaining Agreements
City of Renton Policy & Procedure 350-09 - Leaves of Absence
City of Renton Policy & Procedure 350-08 - Sick Leave
City of Renton Policy & Procedure 330-12 - Vacations
City of Renton Policy & Procedure 300-48 - Overtime Eligibility (FLSA)
City of Renton Policy & Procedure 330-06 - Personal Holiday
City of Renton Policy & Procedure 300-08 - Worker's Compensation/Industrial Insurance Program
Federal Family and Medical Leave Act
Washington Law Against Discrimination
RCW 49.12.010, RCW 49.12.350, RCW 49.78
WAC 162-30-020, WAC 296-130, WAC 296-134

4.0 POLICY:

4.1 Eligibility:

4.1.1 An employee may be entitled to twelve (12) workweeks of paid/unpaid leave in any twelve-month period if he or she worked for the City of Renton at least 12 months, including at least 1250 hours in the twelve month period immediately before the date when the leave would begin. Statutory maternity-related disability leave is not included in determining the amount of leave available under this policy. This leave is available:

(1) to care for a newborn, newly-adopted or newly-placed foster child;
(2) to care for a child, parent or spouse with a serious or terminal health condition;
(3) to attend to a personal serious health condition that makes the employee unable to work;
(4) for periods of work-related injury or illness covered by worker's compensation;
(5) for any "qualifying exigency," as defined by the United States Secretary of Labor, arising when the spouse, child, or parent of the employee is called to active duty or is on active duty;
(6) to care for a service member who is a spouse, child, parent, or "next of kin" and who has suffered a serious injury or illness while on active duty. Eligible employees are eligible for up to twenty-six (26) workweeks of unpaid leave during a single 12-month period.

4.1.2 If a husband and wife both work for the City, the husband and wife may only take a combined total of 12 workweeks of leave in the following circumstances: (1) when each wishes to take leave for the birth, adoption or placement of a child in foster care or (2) to care for a parent with a serious health condition.

4.2 **Benefit Status During Leave:**

4.2.1 While an employee is on paid/unpaid FMLA leave, health benefits will continue uninterrupted. It is the employee's responsibility to pay his or her portion of applicable health benefits to continue healthcare coverage. An employee's failure to pay his or her applicable portion of any of the health care premium will result in loss of coverage and the City's obligation to maintain such coverage shall cease.

4.2.2 If the employee chooses not to return to work at the end of the FMLA leave period for reasons other than a continued serious health condition, the employee will be required to reimburse the City the amount it paid for the employee's health benefits during the leave period.

4.2.3 If the employee does not return at the end of the FMLA leave period, his or her failure to return will be the COBRA qualifying event.

4.2.4 An employee is not entitled to seniority or holiday, vacation, personal or sick leave accruals during periods of unpaid leave unless an employee has been in a paid status for at least half his or her scheduled hours in any pay period.

4.2.5 Employees may elect to continue life insurance and/or long-term disability coverage by paying the applicable monthly premium to the City during an unpaid leave. Coverage ceases under FMLA when an employee's premium payment becomes delinquent.

4.3 **Family Leave for a New Child:**

4.3.1 An employee who elects to take leave to care for a new child whether by birth, adoption or foster care will be required to take FMLA leave. The leave must be taken within twelve months of the birth, adoption, or placement of a child.

4.3.2 FMLA leave may be taken intermittently, either in blocks of time or by reducing the normal weekly or daily work schedule. Following approval of intermittent leave by the Human Resources and Risk Management Department, the employee must attempt to schedule his/her intermittent leave with the least disruption to City's operations. The schedule must be coordinated with his/her Department Administrator or designee.

4.3.3 Leave due to maternity disability prior to or immediately following giving birth will not be counted toward the employee's annual FMLA entitlement but will count as Washington State medical disability leave.

4.4 **Medical Leave for a Serious Health Condition:**

4.4.1 An employee who elects to take leave to care for a child, parent or spouse who has a serious health condition, or to attend to a personal serious health condition, will be required to take FMLA leave.

4.4.2 FMLA leave may be taken intermittently, either in blocks of time or by reducing the normal weekly or daily work schedule. Following approval of intermittent leave by Human Resources and Risk Management, the employee must attempt to schedule his/her intermittent leave without disrupting the City's operations. The schedule must be coordinated with his/her Department Administrator or designee.

4.5. **Medical Certification by Health Care Provider**

4.5.1 Certification by a health care provider will be required for leave approval. Any requested certifications must include all the following information:

(1) The date on which the serious medical condition began; and
(2) The probable duration of the condition; and

(3) The physician's certification that the employee meets the definition of a serious health condition; and

(4) That the employee is unable to work or perform the requirements of the job; or

(5) That the employee is needed to care for a child, parent or spouse who meets the definition of a serious health condition including an estimate of the amount of time care is required; and

(6) The dates on which medical treatment is expected to be given and the duration of treatment when applicable.

4.5.2 Re-certification may be requested no more than every 30 days and only in connection with an absence except in certain circumstances as defined by the U.S. Department of Labor.

4.5.3 If the medical certification fails to confirm that the reason for the absence was an FML qualifying reason, the Human Resources and Risk Management Department will withdraw the designation of FML (with written notice to employee).

4.6 **Second and Third Opinions:**

Second or third opinions by a health care provider may be required for leave approval. At the discretion of the City, a second medical certification by a doctor selected by the City may be requested. If the second certification differs from the initial certification, the employee and the City may mutually select a third health care provider, paid by the City. The opinion of the third doctor is final and binding.

4.7 **Military Caregiver Leave:**

4.7.1 An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

4.7.2 A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating.

4.8 **Active Duty Leave:**

An eligible employee may take up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or

parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

4.9 **Return to Work:**

A Fitness for Duty certificate signed by the consulting physician will be required prior to return from leave, unless 1) the employee is out for five or fewer consecutive days, or 2) when FMLA is required for a family member. The employee's practitioner shall complete the City's Fitness For Duty/Physician Or Practitioner Certification, and forward it to the Human Resources and Risk Management Department.

4.10 **Termination of Leave:**

Upon completion of FMLA leave, the employee will be entitled to return to the same position held when the leave began or to a similar position, if his or her position is no longer available with equivalent benefits and pay. Except as otherwise provided by the applicable collective bargaining agreement, reinstatement is not available under the following conditions:

4.10.1 The employee takes another job while on leave.

4.10.2 The position was eliminated by a bona fide restructuring or RIF (reduction in force).

4.10.3 The employee fails to return from the FMLA leave at the authorized FMLA ending date without prior written approval.

4.10.4 Except for Worker's Compensation injuries or illnesses, if the leave continues beyond the 12-workweek period, reinstatement rights are at the discretion of the City.

5.0 DEFINITIONS:

5.1 **Serious Health Condition:** An illness, injury impairment or physical or mental condition that involves one of the following statements:

Hospital Care: **Inpatient care** (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with, or consequent to, such inpatient care.

Absence Plus Treatment: A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) **Treatment two or more times** by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity) or

(2) **Treatment** by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of the health care provider.

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

Chronic Conditions Requiring Treatments: A **chronic condition,** which:

(1) Requires **periodic visits** (at least two visits per year) 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 (e.g., asthma, diabetes, epilepsy, etc.

Permanent/Long-term Conditions Requiring Supervision: A period of **incapacity** 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.

Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive **multiple treatments** (including any period of recovery there from) 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 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).

Serious Injury or Illness of Service Member: Any injury or illness incurred by the member in line of duty while on active duty in the Armed Forces, which may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

5.2 **Rolling Twelve (12) Workweeks:** The "rolling" 12 workweek eligibility will be calculated based on the previous twelve months use of Family and Medical Leave from the date of requested use. The rolling 12 workweeks are not based on a calendar year; each year begins at the end of any FMLA leave previously used. In no case will use of Family or Medical Leave exceed twelve (12) weeks in any twelve-month period.

5.3 **Child:** A child is one who is under age 19 for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or stepchild. Also included is any person age 19 or older who is incapable of self-care because of mental or physical disability, for whom the employee is legally charged with the duties, rights and responsibilities of a parent.

5.4 **Spouse:** The person to whom the employee is legally married, or a person in a common law marriage recognized in another state. This does not include domestic partners.

5.5 **Parent:** The biological parent or the person legally charged with the duties, rights and responsibilities of parenting the employee.

5.6 **Medical Necessity:** There must be a medical need for leave (as distinguished from voluntary treatments and procedures), as certified by the consulting physician. If an intermittent or reduced work schedule is requested based on a medical necessity, it must be such that medical need can be best accommodated through an intermittent or a reduced work schedule.

5.7 **Intermittent or a Reduced Work Schedule:** Intermittent or a reduced work schedule is reduction in hours normally scheduled during the workweek. An employee may take FMLA intermittently, with Human Resources and department approval, to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks over a "rolling" twelve-month period.

5.8 **Health Benefits:** Includes medical, dental and vision coverage.

5.9 **Delinquent:** Payment is due before the first of the month, delinquent if not received on the tenth of the month for current month's coverage.

5.10 **Next of Kin:** The nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

5.11 **Qualifying Exigency**: Issues arising from a covered military member's short notice deployment; Military events and related activities; Childcare and school activities; Financial and legal arrangements; Counseling; Rest and recuperation; Post-deployment activities; and additional activities not encompassed in the other categories, but agreed to by the employer and employee.

6.0 PROCEDURES:

6.1 Requesting Leave:

6.1.1 An eligible employee with a qualifying event requesting leave under this policy is required to provide reasonable advance notice (30 days) for events that are foreseeable. If it is not possible to give 30 days' notice, the employee must give notice as soon as possible. The request should be submitted to the employee's immediate supervisor on the Request for Family Medical Leave form.

6.1.2 Upon the employee's request for FMLA, Human Resources and Risk Management will provide the employee with the appropriate paperwork. If the leave is taken for the serious health condition of the employee, Human Resources and Risk Management will include the job classification of the employee's position as well as a Fitness for Duty to Return from Leave Certification Form for the employee to submit to their health care provider. A Fitness for Duty certificate signed by the consulting physician will be required prior to return from leave, unless 1) the employee is out for five or fewer consecutive days, or 3) when FMLA is required for a family member. The employee will complete the top section of either the Employee Version or Family Member Version of the Family and Medical Care Leave Certification of Health Care Provider Form and request that the health care provider complete the remainder of the form and return it to Human Resources and Risk Management. The Fitness for Duty to Return from Leave Certification Form signed by the consulting physician must be submitted to the employee's supervisor prior to or on the day they return to work.

6.1.3 Completed Family Medical Leave Request forms, after review and signature by the appropriate supervisor and Department Administrator, should be forwarded immediately to Human Resources for approval and processing. Human Resources and Risk Management will coordinate with the employee and payroll for payment of insurance premiums and for other attendant requirements.

6.2 **Use of Paid and Unpaid Leave:**

6.2.1 An employee who is taking leave to care for a child who is ill or to take the child for medical care must use all accrued leave before moving to unpaid leave. However, the same benefits and requirements that govern the employee's personal use of accrued sick leave shall apply toward the use of sick leave for the child's treatment or supervision.

6.2.2 An employee who is taking leave to care for a newborn, newly-adopted, newly placed foster child or a spouse, or parent who has a serious health condition must use all accrued leave before moving to unpaid leave.

6.2.3 An employee who is taking leave because of the employee's own serious health condition or for the birth of a child must use all accrued leave before moving to unpaid leave.

6.2.4 An employee on concurrent FML and Worker's Compensation is not required to exhaust accrued leave before going to unpaid leave.

6.3 Each time an employee takes FMLA leave, the amount of leave the employee has taken under this policy will be subtracted from the 12 work weeks of available leave and the balance remaining is the amount the employee may take during the remainder of the "rolling" 12 month period.

6.4 An employee who fails to return to work on the date specified on the Family Medical Leave form without receiving an extension for a leave of absence (see policy 350-09) in advance, is subject to disciplinary action up to and including termination. Employees who do not return from FMLA leave may be required to reimburse the City for any health benefits made by the City on their behalf during the duration of the leave.

7.0 WASHINGTON STATE FAMILY CARE ACT:

Employees who take approved Family Care Act leave must use all accrued leave before moving to unpaid leave. Such leave may be used to care for a child of the employee with a health condition that requires treatment or supervision or for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency condition.