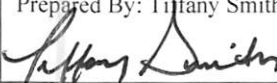
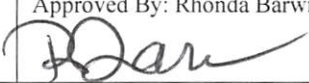




# CITY OF KINSTON

## Personnel Policy

Subject:  Family Medical Leave Act (FMLA)	Section: Human Resources		Review Responsibility: Director of Human Resources		
	Policy #:: 5	Effective Date: 6/17/2024	Rev. #: 4	Revision Date: 6/3/2024	Page: 1 of 5
	Supersedes: 4/1/2021	Prepared By: Tiffany Smith 		Approved By: Rhonda Barwick 	

### 1.0 Purpose

To establish guidelines to ensure procedures are followed according to the Family Medical Leave Act (FMLA) and federal regulations thereunder. Eligible employees are entitled up to 12 weeks of job-protected leave and benefits continuation for certain qualifying events. In the event of a military caregiver, an employee may receive up to 26 weeks to care for a covered service member with a serious injury or illness. Employees are reinstated to the same or equivalent position, under the same working conditions and rate of pay and to receive the same benefits as prior to the employees FMLA leave.

### 2.0 Organizations Affected

- 2.1 All full-time City employees working in all departments.
- 2.2 Eligible employees includes only those employees who (1) have worked for the City of Kinston for at least 12 months, and (2) have been employed for at least 1,250 hours of service during the 12-month period prior to the commencement of the FMLA leave.

### 3.0 Policy

The City will provide up to a maximum of twelve (12) weeks of leave with or without pay (based on available sick and vacation leave at the time of request) in a twelve (12) month period measured forward from the date the employee's family medical leave begins for eligible employees who request FMLA for one or more of the following reasons:

- 3.1 The employee's own serious health condition.
- 3.2 The employee's family member's serious health condition (your spouse/same-sex partner, parent, or child under the age of 18)
- 3.3 The birth or care of a newborn child
- 3.4 The adoption or foster care of the employee's child
- 3.5 Qualifying military exigencies
- 3.6 Military caregiver leave (up to 26 weeks)

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#### 4.0 Use of Leave

- 4.1 Employees may obtain FMLA leave requests and medical certification forms from Human Resources and must provide a 30 day advance notice of the need to take FMLA leave if possible. If 30 day advance notice is not possible, the employee should provide notice of the need for FMLA leave as soon as practicable. Employees on approved leave who qualify for FMLA but do not submit notice to their supervisors may be placed on FMLA by the City.
- 4.2 Human Resources will provide a written response within five (5) business days to employees who request FMLA leave. Employees who are placed on FMLA by the city will be notified as soon as possible.

Employees may use paid leave benefits during FMLA leave as follows:

- a. Sick Leave- until exhausted
- b. Vacation Leave- until exhausted
- c. Comp Time- if available and until exhausted
- d. Donated Leave- if approved
- e. Leave Without Pay- once all pay is exhausted

Employees are not required to use accrued leave during periods of time when receiving benefits from the voluntary short-term disability plan offered through employee benefits. If the illness extends beyond the 7 days elimination period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

- 4.3 Leave may be designated as FMLA when a qualifying event requires the use of three consecutive days of leave. Leave may be taken either consecutively, intermittently or on a reduced schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the City's operations and should cooperate with the City in such efforts. Employees must comply with their department's reporting procedures.
- 4.4 If Intermittent leave is taken to give the employee time for scheduled medical appointments to take a covered family member or take themselves, the employee shall only use the necessary time for the appointment against the FMLA leave. The employee shall inform their supervisor at least 30 days prior to the appointment if feasible, and if not 30 days is not feasible, then as soon as is reasonably possible under the circumstances. The department head will notify Employee Health for documentation of the leave against the FMLA request.

**When a work-related injury/illness causes a 'serious health condition', any absences from work will count against the employee's FMLA entitlement. An employee receiving Workers' Compensation wage benefits cannot simultaneously use sick, vacation, comp time or donated leave. When an employee is released by a health care provider, modified duty will be offered if possible. An employee may decline to return**

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**to work on modified duty, resulting in loss of Workers' Compensation benefits but will be allowed to use available paid leave for the remainder of the twelve (12) week FMLA covered period. Job restoration rights would not extend beyond the total twelve week period under FMLA.**

## 5.0 FMLA Notification and Medical Certification

- 5.1 Employees out of work for two (2) consecutive working days must notify Employee Health on the third (3) day before sick leave can be approved by the department head and prior to the employee returning to work. Any employee presenting department supervision with medical documentation from a health care provider for any reason shall be referred to Employee Health on the day the information is received.

**The foregoing notwithstanding, employees are expected to notify their department on the first day of illness and absences from work without leave for two (2) consecutive days without notice shall be considered job abandonment, subjecting the employee to disciplinary action up to and including termination.**

- 5.2 The Employee Health Clinic will notify the Human Resources Department and the employee's department verbally and in writing of the need for leave when the medical criteria of a serious health condition are met. The FMLA notification and medical certification forms will ordinarily be sent to the employee by the Human Resources Department via certified mail within two (2) working days of learning of the need for leave. This notification informs the employee that the City intends to count the leave as FMLA leave.
- 5.3 The employee's health care provider will have fifteen (15) days from date of notification to provide Employee Health with the required medical certification. It is the employee's responsibility to ensure the required medical certification is made available. The decision to designate the leave as FMLA may be made pending the receipt of the medical information. If this information is not provided within the time frames and/or does not meet the criteria of a serious health condition under FMLA, then the leave may be withdrawn. Should the City doubt the validity of the request, the employee may be required to obtain a second opinion from a qualified health care provider. If the second opinion conflicts with the first opinion then a third will be required. This will be final and binding on the employee and City.

## 6.0 Defining a Serious Health Condition

- 6.1 A serious health condition is defined as a condition that involves in-patient care in a hospital, hospice, or residential or medical care facility or continuing treatment by a qualified health care provider. If in-patient care is not required, care must involve continuing treatment or supervision by a qualified provider where:

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- a. The condition requires absence of more than three (3) days from work
- b. The condition is incurable or so serious that if not treated it would likely result in a period of incapacity of more than three (3) days
- c. The treatment is prenatal care

6.2 Continuing treatment is defined as treatment that requires the employee or family member to be treated by a qualified health care provider two or more times for the same injury or illness, or under continuing supervision for a chronic condition or disability that cannot be cured.

6.3 A qualified health care provider is defined as a doctor of medicine, an osteopathic doctor, a podiatrist, a dentist, a clinical psychologist, an optometrist, a chiropractor, a nurse or midwife.

## 7.0 Continuation of Benefits

7.1 The City will continue health coverage during FMLA leave as if the employee was present. Employee contributions for health care premiums during and paid portion of FMLA leave will be collected through payroll deductions; employee paid portions of premiums due during unpaid portions of FMLA leave will be collected using the present procedure for collections during other types of leave without pay.

7.2 If an employee does not return to work with the City after FMLA leave, s/he will be required to pay retroactively the City's portion of health care premium costs during the leave without pay period for FMLA purposes, except in the case of death, retirement or serious illness in the immediate family.

## 8.0 Record Keeping

8.1 The City will maintain records on FMLA activities as follows:

- a. Basic payroll and identifying employee data
- b. Dates that FMLA leave was taken by employees
- c. Hours of FMLA leave, if taken in less than full day increments
- d. Copies of written notices from employees requesting leave and notices given to employees as required under FMLA
- e. Documents describing employee benefits or employer policies and practices about the taking of paid and unpaid leave
- f. Premium payments for employee benefits
- g. Records of any dispute between the City and employee regarding designation of leave as FMLA leave, including any written statements about the reasons for the designation and for disagreement.

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Visit the Wage and Hour Division website at [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla) for resources containing information about the FMLA, including:

- Key News
- Facts Sheets
- Posters
- Interpretive Guidance
- General Guidance
- e-Tools
- Forms- <http://www.dol.gov/whd/forms/>
- Law

## 9.0 Forms Provided by the Department of Labor

- 9.1 Designation Notice
- 9.2 Notice of Eligibility and Rights & Responsibilities
- 9.3 Certification of Health Care Provider for Employee's Serious Health Condition
- 9.4 Certification of Health Care Provider for Family Member's Serious Health Condition
- 9.5 Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
- 9.6 Certification for Serious Injury or Illness of a Current Service Member- for Military Family Leave
- 9.7 Certification of Qualifying exigency for Military Family Leave