



**CITY OF BOWLING GREEN  
ADMINISTRATIVE INSTRUCTION NO. 33**

**FAMILY AND MEDICAL LEAVE ACT**

These Administrative Instructions establish City policy with respect to compliance with the Family and Medical Leave Act (FMLA), as defined in the final regulations released by the Department of Labor (DOL). The DOL has established the effective date for the implementation of the final regulations as April 6, 1995.

The final regulations replace the interim final regulations that were effective August 5, 1993 for employees not covered by collective bargaining agreements, and February 4, 1994 for employees covered by collective bargaining agreements.

**INSTRUCTIONS**

The Family and Medical Leave Act of 1993 establishes the right for "eligible" employees to take up to 12 weeks of unpaid, job-protected leave during a calendar year for certain family and medical reasons. Employees are "eligible" if they have been on the City's payroll for at least twelve months and have worked at least 1,250 hours during the 12 months prior to the commencement of the leave. The 12 months do not have to be consecutive. In determining the hours worked, vacation, personal, sick leave or unpaid leave would not be included. Overtime hours would be considered hours worked. However, an employee's entitlement to leave for the birth or placement of a son or daughter for adoption or foster care shall expire at the end of the 12-month period beginning on the date of such birth or placement.

**Reasons for Taking Leave**

An eligible employee may be granted leave for any of the following reasons:

1. For the "birth" and/or care of the employee's "son or daughter" (includes natural birth or placement for adoption or foster care).
2. For the care of the employee's parent, spouse, son, or daughter with a "serious health condition."
3. For a serious health condition that makes the employee unable to perform one or more of the essential functions of his position.

**Definition of Terms**

"Spouse" means a husband or wife as defined under Ohio law.

“Son” or “Daughter” means a biological, adopted, or foster child, a stepchild, or a legal ward that is either under age 18, or age 18 or older and is incapable of self-care because of mental or physical disability, as defined by the Americans with Disabilities Act.

“Parent” means a biological parent of an individual or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents-in-law.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that renders the employee unable to perform his/her job and involves inpatient care or continuing treatment by a health care provider.

“Health care provider” means a licensed doctor of medicine or osteopathy, or licensed podiatrist, dentist, clinical psychologist, optometrist, chiropractor (with certain limitations), nurse practitioner, or nurse midwife.

“Continuing treatment” involves a period of incapacity:  
of more than three consecutive calendar days and any subsequent treatment that also involves at least treatment two or more times by a health care provider; (2) due to pregnancy, or for prenatal care, or one treatment which results in a regimen of continuing treatment under the health care provider’s supervision; (3) due to a chronic serious health condition requiring treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy); (4) permanent or long-term incapacity due to a condition for which treatment may not be effective; (5) any period of absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or injury for a condition such as cancer that would likely result in a period of incapacity of more than three consecutive calendar days without medical treatment. Treatment would not include routine physical examinations.

### **Substitution of Accrued Leave Time**

Whenever an employee has accumulated unused leave time, that time shall be substituted for and counted against the employee’s 12-week FMLA entitlement. Any accrued paid vacation or personal time shall be applied against any FMLA leave, provided any accrued sick leave shall only be applied against leave taken to care for a seriously ill parent, spouse, son or daughter, or for the employee’s own serious health condition. Employees will not be required to substitute compensatory time for unpaid FMLA leave; however,

they may voluntarily elect to utilize accrued by unused compensatory time in order to remain in a paid status.

#### **Advance Notice**

An employee must provide the City with written notice at least 30 days in advance before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or immediate family member. Such notice must set forth the reasons for the requested leave, the anticipated starting date of the leave, and the anticipated duration.

If 30-days' notice is not practicable under the circumstances, for example, because of lack of knowledge of when leave will be required, a substantial change in circumstances, or a medical emergency, notice must be given as soon as possible after the employee becomes aware of the necessary scheduling arrangements.

If an employee fails to give at least 30-days' notice of a foreseeable leave with no reasonable excuse for the delay, the City shall deny the taking of FMLA leave until at least 30 days after the date the employee provides notice to the City of the need for FMLA leave.

Whenever an employee requests unpaid FMLA leave to care for a seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition, the employee must furnish written certification of the serious health condition signed by the employee's or immediate family member's health care provider. Such certification should be submitted at the time the employee requests leave, or in the case of an unforeseen leave, as soon after the leave commences as possible. Certification shall be made using Optional Form WH-380, dated June 1993.

The City may require a second opinion from another health care provider. If the opinions differ, the City may require a third opinion from a health care provider jointly selected by the City and the employee. The third health care provider's opinion shall be final and binding. The costs of obtaining second or third opinions that have been incurred by an employee or family member shall be reimbursed by the City. Itemized receipts and verification of mileage traveled will be required.

If an employee substitutes accrued sick, vacation, or personal leave for FMLA leave, the employee must submit a completed "Application for Leave" form with medical documentation verifying the necessity for the leave. These documents must be provided

to the City as soon as is practicable. However, optional form WH-380 does not have to be utilized if accrued leave is substituted for unpaid FMLA leave.

As a condition of restoring an employee, whose FMLA leave was due to his or her own serious health condition, the employee must present written certification from a health care provider that the employee is able to resume work.

### **Recurring Notice**

Whenever an employee takes more than 4 continuous weeks of FMLA leave, the employee shall notify the City after completion of each 4-week period of his or her status and intent to return to work. If the employee provides a statement of intent to return to work, entitlement to leave and maintenance of health benefits continues. However, if the employee gives an unequivocal notice of intent not to return to work, the City is no longer obligated to continue health and dental benefits (other than COBRA requirements) or to restore the employee to his or her job.

Employees who desire to return to work prior to the end of their leave must give the employer reasonable notice (at least two working days).

### **Work Related Injuries and Illnesses**

Where an employee suffers a serious injury or illness at work that makes the employee unable to perform any one or more of the essential functions of the position, the employee would qualify for both workers' compensation benefits and Family Medical Leave. Time absent from work for work-related accidents and/or illnesses shall be counted concurrently towards both Family Medical Leave and Workers' Compensation.

### **Intermittent or Reduced Leave**

An employee requesting FMLA leave to care for a seriously ill immediate family member, or for such employee's own serious health condition, may take intermittent leave or work a reduced work schedule if medically necessary. Intermittent leave may also be taken as a result of the birth of a child or for the placement of a child for adoption or foster care. If the need for leave is foreseeable based on planned medical treatment, the City may temporarily transfer the employee to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave, provided the employee is qualified for the position.

### **Joint Use of FMLA Leave by Husband and Wife**

A husband and wife who work for the City and who are eligible for FMLA leave are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

1. for natural birth and/or care of “son or daughter;” or
2. for the placement and/or care of a son or daughter for the adoption or foster care; or
3. to care for a parent (but not a parent-in-law) with a serious health condition.

The limitation of a combined total of 12 weeks of FMLA leave among spouses does not apply when leave is based on the serious health condition of the other spouse or a son or daughter, or the employee’s own serious health condition.

### **Benefits Protection**

The City shall maintain the employee’s health and dental coverages for the duration of a FMLA leave. Premium payments for medical and dental insurance that are normally the responsibility of the employee shall continue to be paid by him or her through payroll deduction, regardless of whether the employee has accrued paid leave time to cover all or part of the FMLA leave the City will continue to pay its share of the employee’s monthly premiums that it would otherwise pay if the employee were on paid leave status or otherwise present for duty.

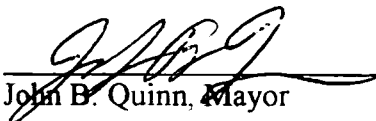
If a FMLA leave request is foreseeable, the employee must make arrangements with the City Finance Director at the time of requesting FMLA leave as to a payment schedule, or payroll deduction, to cover his or her share of the medical and dental insurance premiums coming due during the requested period of FMLA leave. If the need for leave is unforeseeable, such arrangements must be made with the City Finance Director no later than 15 days after commencement of the FMLA leave period.

If an employee on FMLA leave fails to submit any required premium to the City within 30 calendar days of the date the premium is due, the City may discontinue health and dental insurance for such employee. If the City chooses to discontinue coverage as a result of non-payment of premium(s) after the 30-day grace period, the employee’s health and dental benefits will be restored upon the employee’s return to work at the same level and terms as were provided when leave commenced.

If an employee fails to return to work after expiration of such employee's FMLA leave entitlement, the City may recover premiums it paid for maintaining group health and dental plan coverages during the FMLA leave period, unless the reason the employee fails to return to work is either (1) the continuation, recurrence, or onset of a serious health condition, or (2) other circumstances beyond the employee's control. The validity of "circumstances beyond the employee's control" will be judged by the City on a case-by-case basis.

Whenever an employee fails to return from FMLA leave due to "the continuation, recurrence, or onset" of a serious health condition, such employee must submit medical certification of the serious health condition to the City. If such an employee fails to furnish the required certification within 30 days, the City may recover the health and dental insurance premiums it paid on such employee's behalf during the FMLA leave period.

Upon return from a FMLA leave the employee shall be restored to the same position that the employee held when the leave started, if available, or if such position is unavailable, to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

  
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John B. Quinn, Mayor

10-11-01  
\_\_\_\_\_  
Date



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

OMB No.: 1215-0181  
Expires: 08-31-2007

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

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Type of Practice

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Address

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Telephone Number

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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

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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>3</sup> Treatment includes examinations to determine if a serious health condition exists and evaluations 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, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and 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 20 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, D.C. 20210.

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