



## CITY OF NEW BRAUNFELS POLICIES AND PROCEDURES

### PROCEDURE(S): FAMILY & MEDICAL LEAVE ACT (FMLA)

EFFECTIVE DATE: MAY 20, 2019

REVISION DATE(S): OCTOBER 1, 2022, February 2023

## FAMILY & MEDICAL LEAVE ACT (FMLA)

### A. Purpose

To provide team members with family and medical leave benefits pursuant to the Family and Medical Leave Act of 1993, as amended ("FMLA").

### B. Eligibility

Any team member who has been employed by the City for at least twelve (12) months, has worked for at least 1,250 hours during a twelve (12)-month period and has an FMLA-qualifying event is eligible to take medical leave as provided under the FMLA. The 12 months need not be consecutive. However, employment prior to a break in service of seven years or more will not be considered when determining whether a team member has worked for the City for at least twelve (12) months. FMLA will run concurrently with any loss of time due to a Workers' Compensation claim.

### C. FMLA Definitions

#### A. General Family and Medical Leave

1. **Eligible Family Member:** Team members parent, son or daughter, spouse or domestic partner.
2. **Parent:** For the purpose of this policy, "parent" is the biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis 1 to the team member when the team member was a child. This does not include parents "in law."
3. **Son or Daughter:** For the purpose of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter is defined as a



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biological, adopted or foster child, a stepchild, a legal ward, or child of an team member who is standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that the FMLA leave is to commence.

- a. **In loco parentis** refers to a person who provides either day-to-day care or financial support to a child. The status does not require a biological or legal relationship. Whether a team member stands in loco parentis to a child will depend on the particular facts.
4. **Spouse:** A husband or wife as defined or recognized under State law for purposes of marriage in the state where the team member resides, including common law marriage or an individual who was legally married to a person of the same gender in a state that recognizes same gender marriage.
5. **Domestic Partner:** An individual, 18 years of age or older, of the same or opposite gender as the team member, who shares a primary residence and common resources of life with a City team member for at least (six) 6 continuous months.
6. **Serious Health Condition**
  - The most common serious health conditions that qualify for FMLA leave are:
    - a. Conditions that require an overnight stay in a hospital or other medical care facility.
    - b. Conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three (3) consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
    - c. Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
    - d. Pregnancy (included prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).
7. **Health Care Provider:** A Doctor of Medicine or Osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, or other persons determined by the United States Secretary of Labor to be capable of providing health care services.



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Others capable of providing health care include podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker, physician assistant, or Christian Scientist Practitioners.

### **B. General Family Leave Provisions**

1. In accordance with the general provisions of the FMLA, the City will provide eligible team members 12 workweeks of leave for the following reasons:
  - a. Birth of a team members child, and to care for the newborn child;
  - b. Adoption of a child by the team member, or official placement of a child with the team member for foster care;
  - c. Care of the team members son, daughter, spouse, domestic partner or parent with a serious health condition; and
  - d. A serious health condition that makes the team member unable to perform the functions of the team member's job.
2. In determining the amount of leave available to a team member for the reasons above, the City will consider any FMLA leave taken in the twelve (12) months prior to the date the requested leave is to begin. This method is a "rolling 12-month period."
3. Spouses or domestic partners who are employed by the City are limited to a combined total of twelve (12) weeks in the amount of family leave they may take for birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.
4. Leave for birth and care of newborn or placement for adoption or foster care, must conclude within 12 months of the birth or placement and cannot be taken intermittently unless medically necessary or agreed upon by the team members department director.

### **C. Military Family Leave Definitions**

#### **1. Health Care Provider:**

For purposes of leave taken to care for a covered servicemember, any one of the following:



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a United States Department of Defense (“DOD”) health care provider, a United States Department of Veterans Affairs (“VA”) health care provider, a DOD TRICARE network authorized private health care provider, a DOD non-network TRICARE authorized private health care provider, or authorized health care providers (as defined above in Section III. A. 6) who is not affiliated with DOD, VA, or TRICARE.

#### **2. Military Caregiver Leave:**

Leave provided to an eligible team member to care for a covered servicemember with a serious injury or illness. For purposes of this type of FMLA leave, the eligible team member is defined as a spouse, domestic partner, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury and is actively receiving medical treatment. Military caregiver leave extends to those seriously injured or ill members of the Regular Armed Forces, National Guard or Reserves.

Eligible team members may also use this leave to care for a covered Veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness.

#### **3. Serious Injury or Illness:**

An injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating. This includes pre-existing conditions that were aggravated by service in the line of duty while on active duty and those incurred in the line of duty while on active duty.

#### **4. Serious Injury or Illness of a Veteran:**

An injury or illness incurred by the member in line of duty on active duty in the Armed Forces and that manifested itself before or after the member became a veteran. This includes:



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- a. Pre-existing conditions that were aggravated by service in the line of duty while on active duty and those incurred in the line of duty while on active duty, and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or
- b. A physical or mental condition for which the covered veteran has received a VA Service-Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based in whole or in part on the condition precipitating the need for caregiver leave, or
- c. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service or would do so absent treatment, or
- d. An injury, including psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

#### **5. Covered Servicemember:**

A member of the Armed Forces, including a member of the National Guard, Regular Armed Forces or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

#### **6. Covered Veteran:**

An individual who was a member of the Armed Forces, National Guard, or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible takes FMLA leave to care for the covered veteran.

#### **7. Parent of a Covered Servicemember or Covered Veteran:**

A covered servicemember or veteran's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember or veteran.



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This term does not include parents “in-law.”

#### **8. Son or Daughter of a Covered Servicemember or Covered Veteran:**

The servicemember or veteran’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember or veteran stood in loco parentis, and who is of any age.

#### **9. Next of Kin of a Covered Servicemember or Covered Veteran:**

For purposes of the military caregiver leave, “next of kin” is the nearest blood relative, other than the covered servicemember or veteran’s spouse, domestic partner, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember or veteran by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember or veteran has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA, in which case the designated individual shall be deemed to be the covered servicemember or veteran’s next of kin.

#### **10. Qualifying Exigency Leave:**

Leave provided to an eligible team member while the team members spouse, domestic partner, son, daughter or parent, is on “covered active duty” or call to “covered active duty” status. This leave is provided to address issues related to short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activates. The military member must be on “covered active duty” or call to “covered active duty” status in the National Guard, Reserves or Regular Armed Forces.

#### **11. Son or Daughter on Covered Active Duty or Call to Covered Active-Duty Status:**



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The team members biological, adopted, or foster child, stepchild, legal ward, or a child for whom the team member stood in loco parentis, who is on covered active duty or call to covered active-duty status, and who is of any age.

#### **12. Covered Active Duty or Call to Covered Active-Duty Status**

A member of the National Guard or Reserves who is under a call or order to active-duty deployment to a foreign country or has been notified of an impending call or order to active duty deployment to a foreign country in support of a contingency operation.

#### **13. Military Family Leave Provisions**

In accordance with the military family provision of the FMLA, the City will provide an eligible team member leave for the following purposes:

##### **A. Qualifying Exigency Leave:**

- a. Leave for any qualifying exigency arising out of the fact that the team members spouse, domestic partner, son, daughter, or parent is a military member on "covered active duty" or has been notified of an impending call or order to "covered active duty" in support of a contingency.
- b. Leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
- c. A team member is eligible for 12 workweeks of leave. In determining the amount of leave available to a team member for a qualifying exigency, the City will consider any FMLA leave taken in the twelve (12) months prior to the date the requested leave is to begin. This method is a "rolling twelve-month period."

##### **B. Covered Servicemember Leave ("Military Caregiver Leave"):**

- a. Leave to care for a Covered Servicemember or Covered Veteran with a serious



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- injury or illness if the team members is the spouse, domestic partner, son, daughter, parent, or next of kin of the servicemember or veteran.
- b. A team member is eligible for 26 workweeks of leave during a “single 12- month period.” The “single 12-month period” begins on the first day the eligible team member takes “military caregiver leave” and ends 12 months after that date.
  - c. The maximum leave permitted during a 12-month period is 26 workweeks for eligible team members under “military caregiver leave:” or a combined 26 workweeks for “military caregiver leave” and all other FMLA qualifying reasons.
  - d. Spouses who are employed by the City are limited to a combined total of 26 weeks for “military caregiver” leave.

### **D. Entitlement, Conditions and Procedures**

#### **1. Job Security**

Team members taking leave under the FMLA will be allowed to return to the same or equivalent position upon returning to work. Any team member taking FMLA due to their own serious health condition may be required to provide a completed Intent to Return from Leave and Fitness for Duty/Medical Release form.

#### **2. Continuation of Medical Benefits**

While the team members leave status is paid FMLA, the City will continue to provide the team member with insurance benefits. These benefits will be provided to the team member under the same conditions as if the team member was actively working. The team member must continue to pay applicable premiums, co-payments, deductibles and other out-of-pocket expenses (including premiums for dependent coverage, if any).

When a team members leave status is unpaid FMLA, the City will continue the eligible team members benefits. During the period of unpaid FMLA, the team member receives the same benefits and has the same payment obligations as team members who are working. Team members on unpaid FMLA must make arrangements with the Human Resources Department to



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continue paying their share of the premium.

A team member who is on unpaid FMLA and chooses not to pay, or agrees but fails to pay insurance premiums, shall have insurance benefits cancelled for non-payment of insurance premium. Upon returning to their regularly scheduled work hours, a team member whose insurance benefits are cancelled (due to non-payment of premium) shall have insurance benefits restored as if there was no break in coverage. Insurance benefits for the team member will be restored without the team member having to meet any qualifications, take a physical examination or satisfy pre-existing conditions.

### **3. Failure to Return to Work**

The City may require any team member who fails to return to work after using FMLA to reimburse the City for any insurance premiums paid by the City to maintain the team members health, vision and/or dental coverage.

### **4. Modified Duty**

Modified duty assignments are based on the availability of temporary works until the team member can perform his/her regular job functions. Modified duty assignments may be in the team members department or another other department within the City. The team members physician, a member of management and the Human Resources Department will jointly establish the modified duty physical limitations and describe in a Bona Fide team member offer. Modified duty shall not exceed ninety [90] days per incident, unless there are extenuating circumstances [reviewed on a case-by-case basis]. Returning to work in a modified duty status for non-workers 'compensation related leaves is optional.

### **5. Notification of Need**

Team members are required to give thirty (30) day notice of intent to take FMLA to their supervisors and the supervisor must submit a **Supervisor's Request for Team Member FMLA Form** to Human Resources. If 30-day notice is not possible, notice should be provided immediately upon determination of need. Human Resources will determine whether or not a team member qualifies for FMLA leave.



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### **6. Certification**

Any team member requesting FMLA leave under this policy must provide a completed certification to support the request for FMLA leave (Team member's Serious Health Condition, Family Member's Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The medical certification form must be fully completed by the patient's health care provider. The qualifying exigency certification form must be fully completed by the team member, must include appropriate facts supporting the need for leave and must include written documentation supporting the request.

The City may, at its expense, require a second opinion from a health care provider of its choice. If the opinions of the two health care providers conflict, the City may require, at its expense, a third medical opinion from a health care provider mutually agreed upon by the team member and the City. The third opinion shall be considered final and binding on both the team member and the City.

The City is not permitted to require a second or third opinion for "qualifying exigency certifications." The City is not permitted to require a second or third opinion for "military caregiver leave certifications" completed by health care providers affiliated with DOD, VA, or TRICARE. However, second or third opinions may be required by the City for "military caregiver leave certifications" that are completed by health care providers who are not affiliated with DOD, VA, or TRICARE.

### **7. Reduced/Intermittent Work Schedule**

Any team member on a reduced/intermittent work schedule while on FMLA must provide a completed certification form (Team member's Serious Health Condition, Family Member's Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The certification form must be completed by the patient's health care provider, must state that intermittent leave is medically necessary and must specify the approximate length of time the team member will be on a reduced work schedule.



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“Qualifying exigency leave” as defined above may also be taken on an intermittent or reduced work schedule basis. The certification must provide the date on which the qualifying exigency commenced or will commence and the end date; where leave will be needed on an intermittent basis, the frequency and duration of the qualifying exigency; and appropriate contact information if the exigency involves meeting with a third-party.

The certification forms must be submitted directly to the Human Resources Department.

When a team member requests intermittent leave or a reduced work schedule, the team member may be temporarily transferred to alternative positions with equivalent pay and benefits. The purpose of the temporary transfer is to better accommodate the intermittent leave schedule.

When a team member requests intermittent leave for the birth of a child, it is subject to the approval of the Director of Human Resources and Department Director.

Intermittent Leave will now be counted toward the computation of overtime.

### **8. Confidentiality**

Completed certifications are considered confidential medical records and will be disclosed only on a strict need-to-know basis.

### **9. Team Member’s Responsibilities**

Any team member requesting FMLA leave must give notice to his/her supervisor no later than 30 days prior or a FMLA leave request (Team member’s Serious Health Condition, Family Member’s Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The completed certification must be submitted directly to the Human Resources Department.



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A team member requesting FMLA for the birth of a child; placement of a child for adoption or foster care, or to care for a parent is required to notify their department director or his/her designee if his/her spouse or domestic partner is also employed by the City.

Team members on FMLA leave may be required to report their status and/or intent to return to work to their department director or his/her designee at least every two weeks.

#### **10. Re-certification**

Re-certification from a health care provider may only be required from the health care provider every thirty (30) days. The City is not permitted to require re-certification for “qualifying exigency” certifications or military “caregiver leave” except as noted above in Section V. E.

#### **11. Use of Paid Leave**

- a. All accrued paid time, including sick and vacation, will run concurrently with all FMLA leave. Accrued sick and vacation time, and any other paid time must be exhausted prior to taking unpaid FMLA Leave.
- b. When taking FMLA for a “qualifying exigency” purpose, a team member cannot use his/her accrued sick leave.
- c. When taking FMLA to care for a covered servicemember “military caregiver leave,” a team member must exhaust his/her accrued sick and vacation prior to taking unpaid FMLA leave.

#### **12. Manager/Supervisor’s Responsibilities**

Proper FMLA use and classification is a process that requires interactive communication between the team member and supervisor/manager. It is the responsibility of the team member to notify the City of the need to use FMLA leave and provide the appropriate certification form(s) to support the same. If there is evidence that the leave may qualify as FMLA, or if a supervisor/manager learns that a team members absence may be for a FMLA- qualifying reason, the supervisor/manager must promptly notify Human Resources of the qualifying reason. It is the responsibility of the team members supervisor/manager to designate the absences as FMLA



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when reporting the team members hours in the payroll system.

If a team member leave potentially qualifies as FMLA leave, Human Resources must provide the team member a Notice of Eligibility and Rights and Responsibilities within three (3) business days that the team members is eligible for FMLA leave.

If the leave qualifies as FMLA leave based on a subsequent certification, Human Resources will notify the team member, within five (5) business days of receiving the certification, that the leave will be designated as FMLA leave. If a team member fails to provide the subsequent certification form, Human Resources will still designate the leave as FMLA leave. If the leave does not qualify as FMLA leave based on the subsequent certification, Human Resources will advise the department to promptly correct the FMLA classification.

A team member must submit a Work Capabilities Form to Human Resources prior to returning to work in order to establish a full duty or modified duty release.

### **13. Coordination with Workers' Compensation Benefits**

In those cases where the team member is eligible for FMLA and Workers' Compensation (WC), these benefits shall run concurrently. The City will require the team member to use injury and accrued paid leave (e.g. vacation, sick, etc.) before taking unpaid leave. This coordination shall occur when a team member sustains a serious work-related injury resulting in an overnight stay in a medical care facility or misses more than three (3) workdays (in excess of 4 hours a day) due to a compensable work-related injury.

### **14. Key Team Members**

A "key" team member is a salaried team member of the City that is among the highest ten [10%] of the City's team members and lives within 75 miles of the team members worksite. If the City decides that it will suffer substantial and grievous economic injury to its operations if a key team member on FMLA leave is reinstated at the end of the leave, it can deny reinstatement to the key team member. In order to deny



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reinstatement to the key team member, the City must:

- a. Notify the team member of his/her status as a key team member in response to the team members notice of intent to take FMLA leave.
- b. Notify the team member that reinstatement will be denied and the reasons for the denial.
- c. Provide a reasonable opportunity for the key team member to return to work after giving notice that they will not be reinstated.
- d. Make a final determination about reinstatement at the end of the FMLA leave period if the team member, then requests reinstatement.