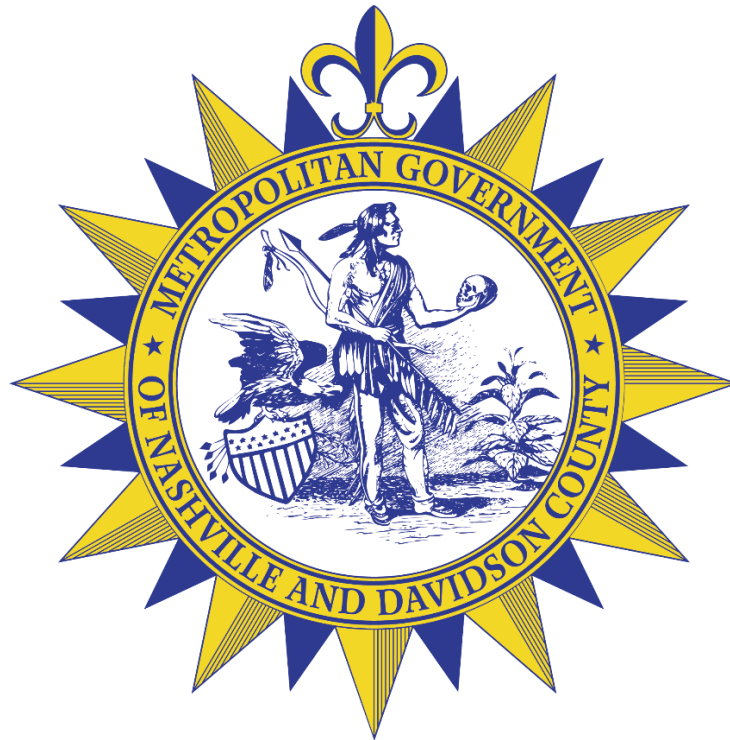


Metropolitan Government of Nashville and Davidson County



Family and Medical Leave Act (FMLA) Policy Handbook

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YOU SERVE METRO. WE SERVE YOU.

Metro Family and Medical Leave Act Policy Handbook

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NON-MILITARY LEAVE DISCUSSION - pp. 1-17
(For MILITARY LEAVE DISCUSSION - SEE pp. 17-21 BELOW)

Note: Dealing with the health, financial and family issues that go hand in hand with the need to take Family and Medical Leave can be challenging. In addition, returning to work following leave can be stressful. For assistance concerning such personal matters that are outside of the procedures of applying for FMLA leave, Metro offers the Employee Assistance Program (EAP) for free, confidential, one-to-one support at any time before, during, or after your use of leave. The EAP can be reached 24 hours a day, 7 days a week to help you manage the issues at hand and prepare for a successful return to the workplace. Visit the Human Resources webpage to view the EAP program or contact HR if assistance in receiving EAP services. For all issues relating to the procedures of applying for FMLA leave, and regarding the actual use of FMLA leave, please contact your department's HR Coordinator for assistance.

A. WHEN CAN I TAKE FAMILY OR MEDICAL LEAVE UNDER FMLA?

If you are eligible for FMLA (see § B) you may take leave under the following circumstances:

- If you have a serious health condition;
- If you are caring for your new baby, or caring for a newly adopted or newly placed foster child;
- If you are caring for your child, spouse or parent with a serious health condition;
- If you are caring for a wounded servicemember or veteran; or
- If you need time away from your job to address circumstances arising from the deployment of a servicemember or a member of the armed forces.

FMLA allows you to take time off (“leave”) without losing your job, your seniority, or your employer-provided health insurance.

B. WHEN ARE YOU ELIGIBLE FOR FMLA LEAVE?

You must have been employed by Metro for at least one (1) year AND for at least 1,250 hours in the 12-month period before the date your leave begins to be eligible for Family and Medical Leave. **Both** the hours **and** one-year period requirements must be met, coupled with a circumstance as stated in § A.

Reasons for FMLA ineligibility are as follows:

- You are not eligible if you have not worked at Metro for at least 1 year.
- Have not worked at least 1,250 hours in the 12-month period before your leave date begins.

- If it is not for a qualifying health condition.
- Domestic Partnerships
- Family members who are not in loco parentis.

C. HOW MUCH FMLA LEAVE CAN YOU TAKE?

If you are eligible, you may be granted a total of twelve (12) workweeks (480 hours) of leave, during any 12-month period. Employees' entitlement to FMLA leave may be converted from workweeks to an hourly equivalent for ease of tracking. Conversion of an employee's FMLA entitlement to an hourly equivalent must be based on the employee's total normally scheduled hours. For example, if an employee is regularly scheduled to work 50 hours per week, they are entitled to 600 hours of FMLA leave in a 12-month period.

D. WILL YOUR FMLA LEAVE BE PAID OR UNPAID?

Except as discussed below at §§ N and O, FMLA leave will be **unpaid** leave.

E. HOW DOES METRO COUNT THE FMLA LEAVE YOU ACTUALLY USE?

We each have our own "FMLA Year." Under this method, an employee would be entitled to 12 workweeks of leave during the 12-months beginning on the first date FMLA leave is taken. The next 12-month period would then begin the first time FMLA leave is taken after completion of any previous 12-month period.

For example, if any employee requests leave on July 17, 2023, the 12-month period for this employee and this occasion would be July 17, 2023, until July 17, 2024. The next time the employee requests leave (after July 17, 2024), a new 12-month leave year would begin.

F. WILL YOU HAVE A JOB WHEN YOU COME BACK?

You will ordinarily be returned to the same or to an equivalent position when you return from approved FMLA leave.

G. IMPORTANT DEFINITIONS:

- **Employee** - any person employed by Metro, Civil Service status or otherwise, on a full-time, part-time, or temporary basis. (This does not include contract employees or employees working through a temp agency).

- **Incapacity** - inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment for the condition, or recovery from the condition.
- **Serious Health Condition** - an illness, injury, impairment, or physical or mental condition which requires:
 - Overnight hospitalization (including prenatal care), including the period of incapacity or subsequent treatment in connection with the overnight care; An overnight hospitalization at the hospital must span over two calendar days.
 - Continuing treatment (for a chronic or long-term condition) under the care or supervision of a health care provider. Included under this heading are chronic conditions (e.g., asthma, epilepsy, etc.) that continue over an extended period and may cause episodic rather than a continuing period of incapacity and conditions that are not usually incapacitating but would result in a period of incapacity of more than 3 consecutive calendar days if medical treatment were omitted (e.g., chemotherapy, kidney dialysis, pregnancy, etc.). *Note that incapacity means the inability to work, attend school, or perform regular daily activities (eating, washing, walking, shopping, etc.) because of a serious health condition or treatment for or recovery from a serious health condition.*
- **Parent** - an employee's biological, adoptive, step, or foster parent, or someone who stood in loco parentis to the employee when the employee was a child.
- **Son or Daughter** - a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent who is either under age 18 or 18 or older and incapable of self-care because of a mental or physical disability.
- **Health Care Provider** - a physician, dentist, podiatrist, clinical psychologist, optometrist, or nurse practitioner who is authorized to practice medicine or surgery in the state in which the individual practices his/her profession.
- **Workweek(s)** - a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. For purposes of the policy, we will use the word “week;” whenever you see the word “week” in this policy we are referring to workweeks.
- **Spouse** for purposes of Metro’s FMLA policy includes:
 - Both persons in a lawful marriage as recognized by the State of Tennessee;

H. WHAT KINDS OF FMLA LEAVE ARE AVAILABLE TO ELIGIBLE EMPLOYEES?

- **Continuous, Block or Long-Term Leave.** An employee may take up to 12 workweeks of protected leave under the FMLA. Long-term leave involves an employee taking leave for one continuous period, as short as a few days or as long as the full 12 weeks.
- **Intermittent Leave.** Intermittent Leave means leave taken in separate periods of time due to a single Qualifying Reason, rather than for one continuous period of time. Intermittent leave may be taken for as short a time period as an hour, or two or three days in a month, or for an hour several times a week to receive treatment from a health care provider.
- **Reduced Schedule Leave.** A reduced schedule form of leave is a leave schedule that reduces an employee's usual number of working hours per week, or hours per workday. A reduced schedule leave is a change in the employee's schedule, normally from full-time to part-time.

I. HOW DOES THIS POLICY WORK FOR PREGNANCY, CHILDBIRTH, ADOPTION, FOSTER-CARE, CARING FOR COVERED FAMILY MEMBERS, AND THE CIVIL SERVICE RULES DEALING WITH ABSENCES AND USE OF LEAVE?

1. **Pregnancy:** Circumstances may require that FMLA leave begin before the actual birth of a child. A pregnant employee is entitled to FMLA leave for incapacity due to her pregnancy, for prenatal care or morning sickness if her condition makes her unable to work. While the Appointing Authority may require a health care provider to certify the need for leave, a pregnant employee is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive full calendar days.
2. **Childbirth and Bonding Time:** Parents and spouses are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. Parents and spouses are entitled to FMLA leave even if the newborn does not have a serious health condition. (See number 6 below for discussion of situation where both spouses are employed by Metro).
3. **Adoption and Foster Care:** Any employee who intends to be the adoptive or foster parent of a minor child may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. An employee's entitlement to leave for adoption

or foster care expires at the end of the 12-month period beginning on the date of the placement.

- 4. Caring For an Employee’s Spouse, Son, Daughter, or Parent:** Encompasses both physical and psychological care and includes situations where the family member is unable to care for basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. This leave also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care. Also included are situations where the employee may be needed to substitute for others who normally care for the family member or to decide for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member to be entitled to FMLA leave. Caring for a parent(s)-in-law is typically not covered by the FMLA.
- 5. Timing and Duration:** If only one spouse is employed by Metro, the leave period shall begin and end as described above and shall be limited to twelve (12) weeks of FMLA leave.
- 6. Both Spouses Employed By Metro General Government:** If both spouses are employed by Metro, they shall be limited to a combined total of twelve (12) weeks of leave during any 12-month period if the leave is taken for (a) the birth of the employee’s son or daughter or to care for the child after birth (healthy birth/”bonding time”); or (b) for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement (healthy child/”bonding time”); or (c) to care for the employee’s parent with a serious health condition. (C.S. Policy 4.16.5). Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually for one of those purposes, and 12 weeks for FMLA leave for other purposes. The “combined total” limitations do not apply where the reason for the leave is the serious health condition of either spouse or the serious health condition of a child in their household.
- 7. Application of Tennessee Maternity Leave Statute:** Civil Service Policy 4.16.3 states that FMLA leave, and maternity leave allowed by Tennessee law will run simultaneously Tennessee law allows employees who have been employed as full-time Metro employees for at least twelve (12) consecutive months to be absent for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant. If employees meet the State law requirements, you may therefore be absent for four (4) months as opposed to the 12-week period allowed by FMLA. For adoptions, the four-month period begins at the time the employee receives custody of the child. Employees who give at least three (3)

months' advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave. The additional four weeks of leave allowed by the Tennessee statute are not considered part of the combined limit under the FMLA if both spouses are employed by Metro. Therefore, regardless of how two Metro employees decide to split their combined 12 weeks of federal FMLA leave, if they qualify for leave under the maternity statute, each would be entitled to an additional 4 weeks of unpaid leave.

8. Application of the Pregnant Workers Fairness Act

The FMLA and the PFWA can overlap in some situations, entitling employees to legal protections under both laws. When an employee is covered by the FMLA and the PFWA, a covered employer must provide the employee with the rights afforded by both laws: 12 weeks of unpaid, job-protected leave (FMLA) and a reasonable accommodation related to pregnancy, childbirth or associated medical conditions (PFWA). As a result, these laws can work together and be used in tandem.

These laws can overlap because they provide legal protections that address childbirth, preparations for childbirth and caregiving afterward. Due to their requirements, the FMLA and ADA intersect. For example, an employee may be entitled to intermittent FMLA leave for a pregnancy-related medical condition. Under the PFWA, a covered employer would be required to reasonably accommodate that employee for their medical condition unless doing so would create an undue hardship for the employer. Additionally, if an employee does not qualify for or has exhausted their FMLA leave, they may be entitled to pregnancy-related leave under the PFWA. Accordingly, FMLA-covered employers must consider an individual's PFWA rights when a worker attempts to exercise their FMLA rights for pregnancy-related conditions, childbirth or caregiving.

- 9. Use of Intermittent Leave:** When leave is taken after the birth or placement of a child for adoption or foster care, you may take leave intermittently or on a reduced leave schedule only if the Appointing Authority agrees. Such a schedule reduction might occur, for example, where an employee, with the Appointing Authority's agreement, works part-time after the birth of a child, or takes leave in several segments. When leave is taken in order to care for a family member, the use of intermittent leave or reduced schedule leave includes: a) situations where the serious health condition of the family member is intermittent and b) situations where the employee is only needed to care for the family member on an intermittent basis, such as where other care is normally available or where care responsibilities are shared with other family members or a third party.

- 10. Interaction with Civil Service Rule 4, §4.4:** Civil Service Rules Chapter 4, Section 4.4 requires an employee to notify a designated supervisor, no later than the first hour of the scheduled workday, stating the reason for an absence. Your department may have its own “call-in” policy for notifying a supervisor of your absence. Under the FMLA, you are required to follow whatever “call-in” policy your department has in place, and you must provide sufficient information to allow the Appointing Authority to determine if your absence qualifies under the FMLA. Simply calling in “sick” without providing more information will not be considered sufficient notice for FMLA leave.

- 11. Interaction with Civil Service Rules Chapter 4, §4.7:** Pursuant to Civil Service Rules, Chapter 4, Section 4.7, for approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave an employee may use to care for an employee’s spouse, parent, or child, who lives in the employee’s household or for whom the employee is the primary caregiver.

J. HOW AND WHEN DO YOU REQUEST FMLA LEAVE?

In most cases, you must complete a “Request for Family or Medical Leave,” form available to employees by contacting your department’s HR Coordinator, or available to employees on the Metro website at www.nashville.gov, “Employment” sub-site. The Request must be promptly returned to your HR Coordinator or supervisor. Your completed Request must state the reason for the leave, the expected duration of the leave, and the starting and ending dates of the leave. The Request must also indicate whether you are seeking long-term, (block/continuous) leave, intermittent leave, or reduced schedule leave.

If you plan to take family or medical leave because of an expected birth or placement (adoption or foster care), or because of a foreseeable, planned medical treatment, you must submit a Request at least thirty (30) days before the leave is to begin. If your need for leave is unforeseeable you must provide notice to your HR Coordinator or supervisor as soon as possible, either the same or the next business day after the onset of the condition requiring leave. If your need for leave is foreseeable, and you fail to provide sufficient notice, the Appointing Authority can require you to explain in writing, the reason why you did not provide adequate notice.

While your first notice may be verbal, a written Request must be completed and submitted to your HR Coordinator or supervisor as soon as possible. In cases where you have a serious illness or injury, your spouse, family member or other responsible party may provide your initial notice if you are unable to do so personally. Failure to provide notice or to submit a Request for leave, or a failure to request leave in a timely fashion, may result in delay or denial of FMLA leave and possible disciplinary action if you are absent without leave.

Please remember, that even if you do not wish to have your leave considered or counted as FMLA leave, the Appointing Authority has the right to designate leave taken for an FMLA purpose as FMLA leave. If the reason for the absence meets the definition of a "serious

health condition" or other approved reason for leave under the FMLA, the employer may designate (and so advise the employee) and count the absence against the employee's 12-week FMLA entitlement even if the employee has not requested that it be counted as such. (DOL Letter Ruling FMLA-68, July 1995).

K. HOW DOES METRO RESPOND TO A REQUEST, AND WHAT INFORMATION DO YOU NEED TO PROVIDE TO METRO TO ESTABLISH YOUR NEED FOR FMLA LEAVE?

After you request FMLA leave, or if you have been absent for more than three full calendar days due to an illness or injury, your HR Coordinator should, within five (5) business days, provide you with a letter or e-mail enclosing a form entitled "NOTICE OF ELIGIBILITY AND RIGHTS AND RESPONSIBILITIES." The message and the form will advise you whether you are eligible for FMLA leave based on your time-in-service. If you are not eligible, the Notice will advise you of at least one reason why you are not eligible. If you are eligible, the letter or e-mail will contain all the requirements for you to follow to obtain FMLA leave and will fully explain your rights and obligations under the law. You may find enclosed: a medical certification form for you to take to a health care provider, a health care provider instruction sheet, and job description documents for your provider to review.

You MUST return the completed medical certification form to your HR Coordinator within fifteen (15) calendar days. For block or long-term FMLA leave for your own condition, you will be provided with a form entitled "Certification of Health Care Provider for Employee's Serious Health Condition" that you must take to your provider for them to complete and sign. For both block (long-term) FMLA leave and for intermittent or reduced schedule leave related to the need to care for an eligible family member, you will be provided with a form entitled "Certification of Health Care Provider for Family Member's Serious Health Condition." For both kinds of intermittent leave (intermittent or reduced schedule), that are based upon your own serious health condition, you will be provided with a form entitled "Certification for Intermittent Leave Request Because Of Employee's Own Serious Health Condition."

The responsibility to return the required medical certification is YOUR responsibility, not your health care provider's responsibility. The Appointing Authority is entitled to receive an informative Medical Certification from your health care provider. The Appointing Authority can require you to obtain additional information from your health care provider if the initial Certification is incomplete, difficult to read, vague or unsigned. If the certification you return is incomplete or insufficient, the Appointing Authority will advise you of the problems with the certification and will give you seven (7) calendar days in which to return to your provider and cure the deficiencies in the certification. If you fail to cure the deficiencies in a timely fashion, the Appointing Authority may deny your request for leave.

However, instead of denying your request, the Appointing Authority may wish to use its own health care provider to contact your health care provider to seek clarification of issues

raised by your provider's initial Medical Certification. Or, the Appointing Authority may also have your department HR Coordinator, department head, or an appropriate member of the Central HR staff contact your health care provider to seek clarification of the information contained in your provider's initial Medical Certification. Your direct supervisor will NOT be involved in the authentication or clarification contacts with your provider. For either of these types of contact with your provider to take place, your provider may ask you to sign a form entitled "Authorization for Release of Health Information." This release will allow Metro personnel to contact your provider for the limited purpose of authenticating and/or clarifying the information in your medical certification. If you sign the form and allow the Appointing Authority to contact your provider, your request for leave will continue to be processed. It is the responsibility of the employee to ensure all reasonable efforts are made to remedy any unclear medical certifications. Failure to do so may prevent approval of FMLA leave.

L. DECISION AND DESIGNATION OF LEAVE

Once the Appointing Authority has sufficient information to determine whether your condition qualifies for leave under the FMLA, you should receive another letter or e-mail from the Appointing Authority, advising you of the response to your request. The message to you should be sent within five business days of the Appointing Authority's receipt of sufficient information and will include a document entitled "Designation Notice." The letter and "Designation" will advise you if your request has been approved or denied, or if the Appointing Authority needs additional information. The additional information may be obtained from you and your provider, may involve Metro's own physician, may involve Metro HR personnel contacting your provider, or may involve the Appointing Authority exercising its right to obtain additional medical opinions concerning the health condition involved. (Described below).

The Designation may advise you of the amount of leave that will be counted against your FMLA leave entitlement. If this amount is known, the Designation should list the number of hours, days, or weeks that will be counted against your entitlement. If it is not possible to estimate the time to be counted, such as your use of intermittent leave on an intermittent basis for an unforeseeable flare-up of a chronic condition, you may request an estimate of the amount of leave being counted against your entitlement once every thirty days. The Appointing Authority may notify you of the count of your leave usage in writing, and this notice may be via a notation on your pay stub.

If you take FMLA leave for your own serious health condition, the Appointing Authority may require you to present a fitness-for-duty certification prior to your being restored to your position. If the Appointing Authority will require such a certification, the Designation will so indicate, and you may receive a copy of your job description documents with the Designation, to take to your provider as part of the fitness-for-duty certification process. ("Intent To Return and Fitness for Duty/Medical Release" form).

The Appointing Authority may, as described above, require you to obtain a second Medical Certification from a different provider (not employed by Metro), chosen by and paid for

by Metro. If there is a conflict between the first two health care providers Certifications, the Appointing Authority may require you to obtain a third Certification, again from an independent health care provider chosen by good faith agreement between you and the Appointing Authority, paid for by Metro. Pending the outcome of additional Certification(s) you will be provisionally (temporarily/conditionally) entitled to FMLA leave and the continuation of your health insurance. If the Certification(s) ultimately establish that you were not entitled to FMLA leave, the time you were absent will be treated as paid leave until your existing paid leave is exhausted. Any leave taken more than what you had saved as paid sick or vacation leave or held back pursuant to Civil Service Rule 4.16 will be unpaid leave. (See §N below).

After you have been approved for FMLA leave, the Appointing Authority may request recertification of a serious health condition if the leave is for pregnancy, or a chronic or permanent/long-term condition. Recertification may be requested no more often than every thirty (30) days after the date of the initial Certification, unless the minimum duration of the period of your incapacity as described on your provider's initial Certification is longer than thirty (30) days. With certain exceptions, the Appointing Authority may not request recertification for long-term or intermittent FMLA leave, until the minimum period of incapacity (greater than 30 days) has passed. If you request an extension of leave, if medical conditions described in the initial Certification have significantly changed or if the Appointing Authority receives information casting doubt on the continuing validity of the initial Certification, the Appointing Authority may request recertification earlier than the end date first indicated. As with the initial Certification, you will have fifteen (15) calendar days to obtain and return your provider's recertification, and the Appointing Authority may contact your provider for clarification or authentication under the same terms as apply to the original certification. The cost of obtaining a recertification shall be borne by you. The Appointing Authority may provide your health care provider with a record of your absence pattern and ask your provider if the need for leave for the serious health condition is consistent with that pattern. In all cases, the Appointing Authority may request a recertification at least once every six months.

The Appointing Authority may require periodic reports from employees on their health status and intent to return to work. These reports are from the employee, not from their provider, and may be requested no more often than every thirty (30) calendar days.

Consequences for Failure to Provide Certification – an employee who fails or refuses to provide requested Certification(s) or recertification(s) may have their Request for FMLA leave denied and may be subject to discipline up to and including termination from employment. Finally, be advised that any employee who fraudulently obtains a family or medical leave approval by submitting false or forged information may be subject to disciplinary action, to and including termination.

The Appointing Authority's Right to Retroactively Designate Leave as FMLA – In some situations, the Appointing Authority may retroactively (after-the-fact) designate leave you have already begun or completed, as FMLA leave. This situation may occur where an employee does not provide the Appointing Authority with notice that a need for leave was

based upon a serious health condition, and Metro learns of the severity of the illness or injury after-the fact. The Appointing Authority should provide you with notice of a retroactive designation of FMLA leave, within 5 days of the time it has acquired sufficient information to allow an FMLA designation to be made.

M. WHAT IS INVOLVED IN REQUESTING INTERMITTENT OR REDUCED SCHEDULE LEAVE?

To be granted intermittent or reduced schedule leave, you must first submit a medical certification that demonstrates that the leave is medically necessary for a serious health condition. The term “medically necessary” means there must be a medical need for the leave, as distinguished from voluntary treatments and procedures. Also, it must be shown that the medical need cannot be accommodated outside working hours. The certification must set forth the dates on which treatment is expected to be given and the duration of each treatment or absence. Second, you must make a reasonable effort to schedule the leave so as not to unreasonably disrupt the operations of your department, and at the time you request leave, you must consult with your supervisor or department head, to develop an agreeable work/leave schedule. Third, you must also give at least thirty (30) calendar days’ notice when the need for leave is foreseeable and not less than one or two business days when the need for leave is unforeseeable. Please note – You **MUST** satisfy all three elements to be approved for intermittent or reduced schedule leave. If you fail to establish the leave is medically necessary, fail to consult with your supervisor to schedule the leave, or fail to provide adequate notice, your request may be delayed or denied.

Other important factors related to intermittent or reduced schedule leave:

1. Metro counts leave in increments of one hour. However, you will not be charged FMLA time for time spent working.
2. The actual workweek is the basis of leave entitlement. Therefore, if you ordinarily work 40 hours a week and you take off 8 hours, you will use 1/5 of a week of FMLA leave. Similarly, if you worked full-time and a normal 8-hour day, but you work 4-hour days under a reduced leave schedule, you would be using 1/2 week of FMLA leave. While working, unless prior accommodations have been approved, the employee is expected to follow all productivity and behavior standards of the department.
3. If you work a part-time schedule or variable hours, the amount of FMLA leave you use is determined on a pro rata or proportional basis.
4. If you are required to work overtime but are unable to do so because of an FMLA-qualifying reason, the hours you would have been required to work may be counted against your FMLA entitlement. The opposite is true for voluntary overtime assignments.

5. When leave is taken after the birth or placement of a child for adoption or foster care, you may take leave intermittently or on a reduced leave schedule only if the Appointing Authority agrees. Such a schedule reduction might occur, for example, where an employee, with the Appointing Authority's agreement, works part-time after the birth of a child, or takes leave in several segments.
6. If you use intermittent leave that is foreseeable, based upon a planned medical treatment, the Appointing Authority may transfer you to another position within the same department during the time you are using intermittent leave. The new position must provide the same pay and benefits, although the pay may be reduced to match the hours worked.
7. Intermittent or reduced schedule leave does not require your department to reduce your workload and the Appointing Authority is free to re-assign some or all of your work to other employees.
8. The Appointing Authority may discipline an employee on approved FMLA leave if the employee fails to follow their department's Attendance policy. So, an employee with approved intermittent leave for migraines, who fails to follow department policy by giving no notice of being absent, as required by policy, can be disciplined.
9. Intermittent or reduced schedule leave will expire if the frequency of your absences exceeds what was originally approved. For example, if you were originally approved for two absences per 10-day work period, and after the first month has passed you begin taking four or five days per pay period, the Appointing Authority may terminate your intermittent leave. You are then free to submit a new request with a new medical certification establishing a serious health condition and a need for more extensive leave. The Appointing Authority will act on the first violation of approved intermittent leave allotment, and there is no guarantee that you will be approved and converted to more extensive intermittent leave.

N. HOW WILL YOUR PAID SICK AND VACATION LEAVE BE AFFECTED IF YOU TAKE FMLA LEAVE?

Your paid leave, including sick, vacation, personal or administrative leave, will be substituted for unpaid leave, so long as accrued time is available according to the rules. What this means is your existing "bank" of paid leave will run concurrently (at the same time) with the 12 workweeks of FMLA leave, i.e., they will be counted and used together.

Pursuant to Civil Service Rules, Chapter 4, Section 4.7, for approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave an employee may use to care for an employee's spouse, parent, or child, who lives in the employee's household or for whom the employee is the primary caregiver. In addition, under Civil Service Rule 4.16, you have the option to "hold back" (save) up to fifteen (15) vacation days from substitution and concurrent counting against your FMLA leave. If you wish to hold back vacation days from

FMLA leave pursuant to this policy, you must enter the number of days you wish to hold back on the Request for Family or Medical Leave form, at the time you make application for FMLA leave.

O. WHAT HAPPENS IF YOU ARE INJURED ON THE JOB OR HAVE PAID FOR OPTIONAL SHORT-TERM DISABILITY INSURANCE?

In-Line-Of-Duty Injury Leave (IOD) - If you suffer an injury on duty (IOD), qualify, and are placed on Metro's In-Line-Of-Duty Injury Leave (Civil Service Rule 4.8), and the condition requiring use of IOD injury leave qualifies as a serious health condition under the FMLA (see Definitions above):

1. You will receive the paid benefits of IOD leave which will be substituted for, and run concurrently with, your unpaid FMLA leave.
2. Other forms of available paid leave (sick, vacation, personal or administrative) will NOT be substituted or used concurrently with IOD leave, i.e., you will not be simultaneously paid for BOTH IOD leave benefits and other forms of available paid leave.
3. If you exhaust available IOD leave benefits during a portion of unpaid FMLA leave, your other forms of accrued paid leave, except for sick leave (CS Rule 4.8 §6) will be substituted for unpaid FMLA leave, and your paid leave and unpaid FMLA leave will run concurrently.
4. The counting of FMLA leave will start at the same time as the beginning of your approved IOD leave, which is the first date you are absent from work and will be counted concurrently with FMLA leave from that date forward.

Please note that although IOD injury leave has a maximum duration of 130 days, FMLA job protection will not apply beyond the FMLA's 12-workweek period. Additional protection may be available pursuant to Civil Service Rules or Policies governing IOD injury leave.

Light Duty –Under the FMLA you are not required to accept a light duty assignment to maintain your eligibility for unpaid FMLA leave. If your department offers you a light duty assignment: a) the department may limit the duration of the assignment; b) either you or the department may voluntarily terminate the assignment at any time; c) while on light duty status you will retain the right to return to your original position until your 12 month FMLA “year” has expired; and d) the time you elect to spend working in a light duty status does not count against your 12 weeks of unpaid FMLA leave.

Short Term Disability Insurance - If you are enrolled in the optional Short-Term Disability (STD) insurance and the condition requiring use of STD benefits qualifies as a serious health condition (see Definitions §G above) your available paid leave will NOT be substituted or used concurrently with FMLA leave. The beginning of FMLA leave will start on the first day you are absent from work, including the seven (7) day waiting period required by STD insurance, and will thereafter be counted concurrently with FMLA leave

from that date forward. Please note that because STD benefits have a maximum duration of 173 days (180 days less the 7-day waiting period), FMLA job protection will not apply beyond the FMLA's 12-workweek period. Additional protection may be available pursuant to Civil Service Rules. In cases of pregnancy leave covered by STD insurance, federal FMLA job protection will last 12 workweeks and state law protection will extend an additional month.

P. WHAT HAPPENS TO YOUR BENEFITS COVERAGE DURING FMLA LEAVE?

During a period of FMLA leave, you will be retained on the same health/dental/optical coverage that you selected and contributed to at the time you requested FMLA leave. If Metro provides a new health plan or if the benefits that Metro offers change while you are on FMLA leave, you will be entitled to receive coverage under the new plan to the same extent had you not taken FMLA leave.

Metro employees have three options for the payment of premiums while on FMLA leave:

- (i) You may pay all premiums in advance prior to taking FMLA leave.
- (ii) You may pay all premiums as they come due monthly by making monthly payments direct to Metro. See your supervisor or HR Coordinator if you wish to use this option.
- (iii) You may request Metro to pay your share of the premiums for medical, dental, and vision insurance while you are on FMLA leave and Metro will recover those payments from you after you return to work. When you do return to work, there will be double deductions from your paycheck until all premiums are repaid. Deductions from pay may be spread out over a longer period if your serious health condition causes you to apply for a disability pension.

If you fail to return to work after the expiration of FMLA leave, you will be required to reimburse Metro for payment of health insurance premiums during the leave, unless Metro determines that the reason you fail to return is the result of your own serious health condition, a family member's serious health condition, or due to the serious injury or illness of a covered servicemember, or other circumstances beyond your control. Metro may require a certification from a treating physician to confirm the medical facts necessary to make this determination. The expense of obtaining such a certification will be borne by the employee.

Q. WHAT HAPPENS TO SELF-DIRECTED DEDUCTIONS FROM YOUR PAYCHECK DURING FMLA LEAVE?

As described above, when you are on FMLA leave, all or part of your leave may be "paid" leave, if you are using paid vacation and/or sick leave during the initial period you are absent. In paid status, all your self-directed deductions (Sportsplex, MECCC, child support

etc.) will continue to be taken from your paycheck per your prior directions. However, if you are in unpaid status for a pay period during FMLA leave, your self-directed deductions from your paycheck will cease. You will need to decide to direct-pay your payments to all your self-directed deduction recipients during your unpaid leave.

R. HOW WILL USING FMLA LEAVE AFFECT PENSION, CONTINUOUS SERVICE DATE, AND LONGEVITY CALCULATION?

If an employee takes FMLA leave, any period of FMLA leave shall be treated as continued service for purposes of eligibility to participate and vesting service in Metro’s pension plan.

If an employee is in a Leave Without Pay (LWOP) status for longer than 20 days, their continuous service date will be adjusted based on any days they are absent beyond twenty (20) days. An employee’s Civil Service benefits such as vacation, longevity, and lay-off rights are based upon the continuous service date. An employee’s longevity calculation is based on their continuous service date per the longevity Resolution (RS2001-642).

S. WHAT HAPPENS WHEN YOU ARE READY TO RETURN FROM FMLA LEAVE?

If you are using long-term, continuous FMLA leave for your own serious health condition, you may be required to complete, (prior to your actual return), an “Intent To Return and Fitness For Duty/Medical Release” form, found on the Metro Human Resources website, toward the end of your approved leave. If Metro will require such a certification, the Designation Notice you are given when your leave was approved, will enclose a copy of your job description documents to take to your health care provider along with the Fitness for Duty form. If you wish to return to work prior to the expiration of approved FMLA leave, you must give notice to your supervisor at least five (5) working days prior to your planned return.

T. WHAT HAPPENS IF YOU DO NOT RETURN FROM FMLA LEAVE?

If you fail to return to work upon the expiration of FMLA leave, you may be subject to discipline, up to and including termination, unless an extension has been granted. If you request an extension of FMLA leave due to the continuation, recurrence, or onset of a serious health condition for yourself or your spouse, child, or parent, you must submit a request for an extension, in writing, to the supervisor or HR Coordinator for your department. This written request should be made as soon as you realize that you will not be able to return at the expiration of your approved leave period. You will be required to obtain and submit a new medical certification from your health care provider that explains the need for an extension of your FMLA leave.

U. WHAT HAPPENS TO YOUR HEALTH INSURANCE IF YOU DO NOT RETURN FROM FMLA LEAVE?

COBRA (derived from the Employee Retirement Income Security Act – ERISA), provides that an employer’s group health plan must ensure that covered employees who would lose coverage because of a “qualifying event,” will be entitled to elect to continue coverage under the plan. Employees who have lost their jobs may continue the group plan for up to 18 months, at the employee’s expense at the same group rate provided to current employees. A “qualifying event” includes termination (except for gross misconduct) or reduction of hours, or an employee’s cancellation of existing health care coverage while on FMLA leave.

V. ARE YOU PERMITTED TO WORK AT OTHER JOBS WHILE YOU ARE ON FMLA LEAVE?

Yes, with two conditions. Civil Service Rules at Chapter 3, Sec. 3.8 allow a Metro employee to engage in employment with another organization if he/she satisfactorily performs his/her job responsibilities with Metro. Outside employment includes self-employment. Under the Rule, outside employment must be approved in advance, in writing, to the Appointing Authority. Certain additional conditions apply and are listed in the Rule. An employee eligible for FMLA leave may engage in outside employment provided: A) the employee’s health care provider approves the outside employment by certifying that the outside employment will not impede the employee’s recovery from, or treatment for, a serious health condition; and B) the employee’s Human Resources Coordinator approves the outside employment as being consistent with Section 3.8. An employee seeking permission to engage in outside employment while on FMLA leave is responsible for having their health care provider submit a separate letter to their HR Coordinator that satisfies the medical aspect of these requirements.

MILITARY PROVISIONS

W. MILITARY FAMILY/MEDICAL LEAVE

There are two forms of Military FMLA leave, “Qualifying Exigency” leave and “Military Caregiver” leave. Any reference to the Department of Defense will be referred to as the “DOD.”

Qualifying Exigency Leave

When a family member is deployed to a foreign country with the Armed Forces, your life can change very quickly. Many of these changes can require your prompt attention. Even though no one is ill or injured, you may need time away from work to address these issues. If your spouse,

parent, son or daughter is a military member who is deployed or has been notified of an impending deployment to a foreign country, and you are an eligible employee, you may be entitled to qualifying exigency leave.

Qualifying exigency leave allows you to take up to a total of 12 workweeks of FMLA leave for qualifying exigencies, such as making different day care arrangements for the military member's children or attending official military ceremonies as your family member prepares to deploy.

Who can take Qualifying Exigency Leave?

To take qualifying exigency leave, the military member must be your spouse, parent, son or daughter.

- **Parent** - means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to you when you were a child. This term does not include parents "in law."
- **Son or daughter** - for qualifying exigency leave, son or daughter means your biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom you stood in loco parentis, and who is of any age.
- **In Loco Parentis** - a person stands in loco parentis if that person provides day-to-day care or financial support for a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood in loco parentis to the child for purposes of FMLA leave.

Covered Active Duty

Once you have determined that you are an eligible employee, you must determine whether your spouse, parent or child who is serving in the military is on "covered active duty" or call to "covered active duty" status (or has been notified of an impending call or order to "covered active duty").

"Covered Active Duty" means: For members of the regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country. For members of the reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

If your military relative is on covered active duty, you may be able to take FMLA leave for the following qualifying exigencies:

- To address any issues arising from the military member's short-notice deployment (i.e., deployment within seven or less days of notice). You may take leave for up to seven calendar days, beginning on the day the military member receives notice of deployment, to attend to any issue arising from the short-notice deployment.

- To make or update financial and legal arrangements arising from the military member's covered active duty. This could include preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or acting as the military member's representative in arranging for military service benefits.
- To attend military events and related activities. These could include official military ceremonies, military programs, family support programs, and/or informational briefings sponsored or promoted by the military or military service organizations that are related to the military member's covered active duty.
- To spend up to fifteen calendar days with a military member who is on Rest and Recuperation leave during covered active duty. (*Note: You may only use this leave during the military member's R & R leave.*)
- To address certain childcare and related activities concerning the military member's child that arise from the military member's covered active duty. These could include arranging for alternative childcare; providing childcare on a non-routine, urgent, immediate need basis; enrolling in or transferring a child to a new school or day care facility; and attending certain meetings at a school or a day care facility. This provision allows for the arrangement of alternative childcare. It does not allow you to take leave for routine childcare, such as to become the primary caregiver while the military member is on covered active duty. (*Note: You do not need to be related to the military member's child. But (1) the military member must be your spouse, parent or child, and (2) the child for whom you are taking leave must be the child of the military member.*)
- To attend post-deployment activities for up to 90 days following the termination of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and to address issues arising from the death of a military member, including attending funeral services for the military member.
- Any other event that you and the Appointing Authority agree is a qualifying exigency and agree to the timing and duration of the leave.
- To address certain activities related to the care of the military member's parent who is incapable of self-care. These could include arranging for alternative parental care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the parent to a new care facility; and attending certain meetings at a care facility or with hospice staff. (*Note: You do not need to be related to the military member's parent. But (1) the military member must be your spouse, parent or child, and (2) the parent for whom you are taking leave must be the parent of the military member.*)

Certification

The Appointing Authority may require that a request for Qualifying Exigency leave be supported by a certification confirming the need for leave. Two forms of documentation may be required: (1) a copy of the covered servicemember's active-duty orders from the DOD, and (2) a signed statement from the employee describing the type of qualifying exigency leave requested, based upon the eight categories of leave described above. The Appointing Authority will only request a copy of the covered servicemember's orders for the first request for leave. However, the

Appointing Authority may request certification from the employee (a signed statement) of the reason for each qualifying exigency leave request during the time the covered servicemember is on active-duty status. Metro has a form (“Certification of Qualifying Exigency for Military Leave”) for you to use to provide the necessary certification.

The signed statement (certification) should include the approximate date the exigency commenced or will commence. If you request leave for a single, continuous period (block leave) you should provide the beginning and end dates for your absence. If reduced schedule or intermittent leave is requested, you should provide an estimate of the frequency and duration of the qualifying exigency. If a third party is involved, you must provide contact information identifying the third party, the nature of the services they provide, as well as phone, fax, e-mail, and address information. Metro has a certification form (for employees to use to certify the need for this form of leave.

the Appointing Authority is allowed to verify the information on the certification form and may contact the DOD to verify the orders for a call to active duty. As for the various forms of Qualifying Exigency leave, the Appointing Authority may call the third party involved to verify a counseling session, meeting, or appointment schedule. The employee's permission is not required. Unlike standard (medical) FMLA leave, there is no process for recertification for Qualifying Exigency leave, and no process for obtaining 2nd or 3rd certifications.

Notice of Need for Qualifying Exigency Leave – Notice of a need for Qualifying Exigency leave must be given “as soon as practicable.” Generally, this means making the request the same day, or the day after, the date the employee first learns of the need for leave. The need for leave is usually triggered by the covered servicemember’s receipt of orders. The initial notice may be verbal but must be followed promptly by a written request. If the need is foreseeable, the 30-day notice requirement for regular FMLA leave applies.

Block, Intermittent, Reduced Leave Schedule – Other than those forms of leave that have their own time/days limitations, Qualifying Exigency leave may be taken in a single continuous block of time, intermittently, or on a reduced leave schedule. If an employee takes leave on an intermittent or reduced schedule basis, the Appointing Authority will not transfer the employee to another position.

Military Caregiver Leave

To take this form of leave, you must be eligible for FMLA leave under the time-in-service requirements described above. Metro has a “Request for Military Caregiver Leave” form for you to use to ask for this form of leave.

Who can take Military Caregiver Leave?

To take military caregiver leave, you must be the spouse, parent, son or daughter, or next of kin of the covered servicemember.

- **Parent** - means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to you when you were a child. This term does not include parents “in law.”
- **Son or daughter** - for qualifying exigency leave, son or daughter means your biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom you stood in loco parentis, and who is of any age.
- **In Loco Parentis** - a person stands in loco parentis if that person provides day-to-day care or financial support for a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood in loco parentis to the child for purposes of FMLA leave.
- **Next of Kin** - is the nearest blood relative, other than the spouse, parent, son, or daughter, in the following order of priority:
 1. A blood relative who has been designated in writing by the servicemember for purposes of FMLA military caregiver leave.
 2. Blood relatives who have been granted legal custody of the servicemember.
 3. Brothers and Sisters
 4. Grandparents
 5. Aunts and Uncles
 6. First Cousins

If the servicemember designates a next of kin in writing for purposes of FMLA military caregiver leave, that relative is the only next of kin for FMLA leave purposes. If the servicemember makes no such designation, all the family members sharing the same level of family relationship to the servicemember are considered the next of kin. For example, if a servicemember has three siblings, and no other blood relative has been designated in writing as next of kin for FMLA purposes or granted legal custody, all three siblings may take military caregiver leave as the next of kin (either simultaneously or consecutively).

Military caregiver leave may be taken to care for a “covered servicemember” with a serious injury or illness. A covered servicemember may be either a current servicemember OR a veteran of the Armed Forces.

Current Servicemember

A **Current Servicemember** is a current member of the Armed Forces, including a member of the National Guard 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.

For a current servicemember, a **serious injury or illness** is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember’s active duty and that were aggravated by service in the line of duty on active duty.

Leave is not “extra” leave Military Caregiver leave is NOT 26 weeks in addition to the regular 12 weeks of FMLA leave. Military caregiver leave is family leave, designed for a family member to care for an injured covered servicemember.

Employee notice of the need to take (FMLA) military caregiver leave.

As with other forms of FMLA, an employee needing military caregiver leave must provide Metro with timely and adequate notice. Timely notice depends on whether the need for leave was foreseeable or not. If the need is foreseeable for a planned medical treatment, the 30-day notice requirement for regular FMLA leave applies. In cases involving ITO or ITA leave, the employee may submit the Request form after departing to be with the injured or ill covered servicemember.

Form of Leave - Military caregiver leave may be taken intermittently on a reduced leave schedule, or in a single block of time. Leave taken on an intermittent or reduced leave schedule must be medically necessary.

Transfer to alternative position - The Appointing Authority may transfer an employee who needs leave on an intermittent or reduced leave schedule to care for a covered servicemember when the leave is foreseeable (such as for a planned medical treatment). Equivalent duties are not required.