CITY OF SAN ANTONIO

Administrative Directive	**AD 4.20 Family and Medical Leave Act (FMLA) of 1993**
Procedural Guidelines	Guidelines to ensure consistent application of the Act and applicable revisions
Department/Division	Human Resources
Effective Date	August 5, 1993
Revision Date	January 1, 2009, March 15, 2010
Project Manager	Charles Kesl, Sr. HR Analyst

Purpose

The Family and Medical Leave Act (FMLA) is a federal law passed in 1993. It provides ***eligible employees*** up to twelve (12) weeks or up to 26 weeks in the case of Servicemember Family Leave of approved, unpaid, job-protected leave of absence in a twelve (12) month period for family and medical leave, when situations occur in the employees' lives that require time away from work to care for family and medical needs. The purpose of this administrative directive is to inform employees of their rights under FMLA and establish procedures to comply with the regulation. This administrative directive applies to all civilian and uniformed City employees.

Policy

It is the policy of the City of San Antonio to grant up to twelve (12) weeks or up to 26 weeks in the case of Servicemember Family Leave of Family and Medical Leave (FMLA) during any twelve ***(12) month rolling period*** to ***eligible employees*** in accordance with the Family and Medical Leave Act of 1993 (FMLA). The City uses a rolling ***twelve (12) month period*** measured backwards from the first date an employee uses family and medical leave to determine eligibility. Employees who have completed twelve (12) months of service and have worked 1,250 hours (actual worked hours, this does not include time taken on leave, holiday, etc.) prior to taking FMLA leave in the past twelve (12) months are eligible for family and medical leave. FMLA leave allows for unpaid leave, however, annual leave, personal leave, incentive leave, floating holiday and banked holiday balances must be substituted for unpaid FMLA leave according to Administrative Directive 4.4, Leave Administration. This administrative directive does not create any new paid leave.

FMLA leave may be used for qualifying regular absences, intermittent absences, or reduced work schedules.

Employees who are unable to return to work and who have exhausted their twelve (12) weeks of FMLA leave in the designated ***twelve (12) month rolling period*** may not have protection of leave or job restoration.

All absences for FMLA leave are chargeable against the amount of leave entitled under the Family and Medical Leave Act.

Misrepresentation by the employee for the reason for FMLA leave may result in termination.

Policy Applies To	
☐ External & Internal Applicants	☒ Current Temporary Employees
☒ Current Full-Time Employees	☐ Current Volunteers
☒ Current Part-Time Employees	☒ Current Grant-Funded Employees
☒ Current Paid and Unpaid Interns	☒ Police and Fire Academy Trainees
☒ Uniformed Employees Under Collective Bargaining Agreements	

Definitions

Eligible Employee	1. All full-time, part-time and temporary employees who have been employed by the City for at least twelve (12) months and have worked at least 1,250 hours during the ***twelve (12) month period*** prior to the commencement of the leave are eligible to take up to twelve (12) weeks of family medical leave for a qualifying condition or up to 26 weeks if taking a Servicemember Family Leave. The number of FMLA hours an employee is entitled to use is based on the employee's regular work schedule. a. Full-time employees that work a regular work schedule of forty (40) hours per week are entitled to 480 hours of FMLA leave. b. Part-time and temporary employees are eligible to take twelve (12) weeks of FMLA leave; however the amount of hours may not equal 480 hours. The amount of hours to which a part-time or temporary employee is entitled to take is determined on a pro rata or proportional basis by comparing the employee's normal work schedule. *(Example: an employee who works a three (3) day week and eight (8) hours each day is entitled to 288 hours of leave, (3 days x 8 hours x 12 weeks). If the employee's hours fluctuate, an average of the preceding twelve (12) weeks may be used to calculate the average weekly hours of an employee)* 2. Spouses employed by the City are jointly entitled to a combined total of twelve (12) weeks for the care of a newborn, adoption, or foster care placement of a child. However, if the leave is for the care of a sick child, to care for the other spouse, or for the employee's own ***serious health condition***, each spouse is allowed twelve (12) weeks of leave.
12 Month Period	A ***"rolling" twelve (12) month period*** is measured backwards from the date an employee uses family and medical leave. Each time an employee takes family and medical leave, the remaining leave entitlement would be any balance of the twelve (12) weeks or 26 weeks if taking a Servicemember Family Leave, that has not been used during the immediately preceding twelve (12) months. *(Example: If an employee takes four (4) weeks beginning February 1, 2005, four (4) weeks beginning June 1, 2005, and four weeks beginning December 1, 2005, the employee would not be entitled to any additional leave until March 1, 2006. However, beginning on March 1, 2006, the employee would be entitled to four (4) weeks of leave. On June 30, 2006 the employee would be entitled to an additional four (4) weeks, etc.) Attachment 1.*

Types of FMLA Leave	1. Regular leave is when the employee takes off from work for a continuous uninterrupted block of time. 2. Reduced schedule is when the employee takes only part of a day off for a designated period. 3. Intermittent leave is when the employee takes off either part of a day or a full day from work because of a ***serious health condition***, returns to work for a period of time, and then again takes time off because of the same ***serious health condition***. Typical reasons an employee might take intermittent leave include leave for follow-up medical appointments or for medical treatments such as dialysis or chemotherapy. 4. Active Duty Family Leave - Employees with a spouse, parent, or child who is an active-duty member of the Armed Forces or a member of the National Guard or Reserves who has been called to ***covered active duty*** in the Armed Forces may take up to 12 weeks of FMLA leave in a ***12-month period*** when they experience a "***qualifying exigency***." (FMLA amendment of 1/28/2008). The employee shall provide notice to his/her supervisor of the need to request Active Duty Family Leave as soon as possible after the ***qualifying exigency*** is known. 5 Servicemember Family Leave - Employees who are the spouse, parent, child, or ***next of kin*** of a servicemember who incurred a serious injury or illness on ***covered active duty*** in the Armed Forces may take up to 26 weeks of leave in a single ***12-month period*** (including regular FMLA leave). to care for a "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", or such a veteran who was such a member at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. The term," ***next of kin***", used with respect to an individual, means the nearest blood relative of that individual. During the single 12-month period described under the Servicemember Family Leave in this section, an ***eligible employee*** shall be entitled to a combined total of 26 workweeks of leave. If an employee takes FMLA leave for reasons other than those under the Servicemember Family Leave within 12 months of requesting Servicemember Family Leave, the previously taken FMLA leave shall be subtracted from the 26-week Servicemember Family Leave entitlement. *(Example: A female employee takes 9 weeks of leave for the birth of a child. Her husband is called to military duty and is injured and sent home. The employee would be entitled to an additional 17 weeks of leave for the purpose of caring for her husband in the 12-month period at issue.)*
Qualifying Exigency	FMLA allows families of National Guard and Reserve personnel called to active duty to a Federal ***contingency operation*** to take FMLA job-protected leave to manage their affairs — "qualifying exigencies." The rule defines "qualifying exigencies" as: (1) short notice deployment (2) military events and related activities (3) childcare and school activities (4) financial and legal arrangements (5) counseling (6) rest and recuperation (7) post-deployment activities and (8) additional activities where the employer and employee agree to the leave.

Covered Active Duty	In the case of a member of a regular component of the Armed Forces, duty during deployment to a foreign country and in the case of a member of a reserve component of the Armed Forces, duty during deployment to a foreign country under a call or order to active duty.
Contingency Operation	A military operation that- a. is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or b.results in the call or order to, or retention on, ***covered active duty*** of members of the uniformed services under any provision of law during a war or during a national emergency declared by the President or Congress.
Immediate Family Members	1. Spouse: A husband or wife as defined under State law for purposes of marriage or a common-law spouse as recognized by the State of Texas. 2. Son or Daughter: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in place of a parent, who is under eighteen (18) years of age, or eighteen (18) years or older and is incapable of self-care because of a mental or physical disability. 3. Parent: The biological parent of an employee or an individual who stands or stood in place of a parent to the employee when the employee was a child under the age of eighteen (18).
Examples of Serious Health Conditions	1. ***Serious health conditions*** include injury, illness, impairment, or physical or mental condition that involves: a. Inpatient care in a hospital, hospice, or residential medical care facility. b.Continuing treatment by a ***health care provider*** for incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: treatment two or more times by a ***health care provider*** within 30 days of the period of incapacity; or treatment on at least one occasion which results in a regimen of continuing treatment such as incapacity due to pregnancy, or prenatal care. Conditions that cause episodic rather than a continuing period of incapacity such as asthma, diabetes, epilepsy, etc. are qualifying conditions of FMLA. 2. Periodic treatment by a ***health care provider*** for a chronic, defined as at least twice a year, or long-term health condition that is incurable or so serious that, if not treated, could result in a period of incapacity of more than three (3) days. a. Examinations and evaluations to determine if a ***serious health condition*** exists are covered under FMLA. (*Routine physical examinations, eye examinations, or dental examinations do not qualify for FMLA leave.)* 3. Conditions for treatment of restorative dental or plastic surgery after an injury or removal of cancerous growths are ***serious health conditions***.

Examples of Serious Health Conditions (Cont.)	4. Absences for incapacity of the employee or the ***immediate family member*** that does not receive treatment from a ***health care provider*** during the absence, and even if the absence does not last more than three (3) days may be considered a ***serious health condition***. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or an employee who is pregnant may be unable to report to work because of severe morning sickness. *(Conditions that require only brief treatment and recovery, such as common colds, flu, ear aches, non-migraine headaches, etc. do not qualify as serious conditions.).* 5. In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), serious health condition means an injury or illness that was incurred in line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in line of duty on active duty) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran, serious health condition means an injury or illness that was incurred by the member in line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in line of duty on active duty and that manifested itself before or after the member became a veteran.
Examples of Health Care Providers	1. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery. 2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors. 3. Nurse practitioners, nurse-midwives, and clinical social workers. 4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. 5. Any ***health care provider*** from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a ***serious health condition***. 6. A ***health care provider*** listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.
Next of Kin	Term used to identify family members eligible to take Servicemember Family Leave who are the nearest blood relative of the injured service member.

Policy Guidelines

Eligibility	Employees may be eligible to take FMLA leave if they have twelve (12) months of service with the City. All time worked for the City of San Antonio is counted. The 1,250 hours worked must be within the twelve months prior to taking FMLA leave. It is the employee's responsibility to inform the Human Resources Department of any prior service with the City.

Reasons for Taking Family and Medical Leave	1. Birth and care of the newborn child of the employee. 2. Placement with the employee of a son or daughter for adoption or foster care. 3. Employees with a spouse, parent, or child who is on or has been called to ***covered active duty*** in the Armed Forces. 4. Care for an ***immediate family member*** or ***next of kin*** with a ***serious health condition***. 5. ***Serious health condition*** of the employee.
Use of Paid, Unpaid Leave or Comp Time	1. The City requires employees who request FMLA leave to substitute all accrued annual leave, personal leave, incentive leave, floating holiday, compensatory (comp) time, and banked holiday available before taking unpaid leave. 2. The time taken runs concurrently with the employee's FMLA leave entitlement. Therefore, the time taken is counted against the employee's FMLA leave entitlement
Medical Certification	1. Employees will be required to submit medical certification from a ***health care provider*** of the employee or employee's family member as indicated in the Family Medical Leave Act. Failure to submit required medical certification within fifteen (15) calendar days of a request for certification may result in denial of the requested leave until the required certification is provided in the case of foreseeable leave. In the case of unforeseeable leave for medical reasons, certification must be provided within fifteen (15) days or as soon as reasonably possible under the particular facts and circumstances. In the case that a second or third medical opinion is required as allowed by the regulation, it will be at the expense of the City. 2. Medical certification within a twelve (12) month period is required only once, in the case of intermittent leave or leave on a reduced schedule, unless the circumstances or condition regarding the leave have changed. 3. Recertification of a medical condition may be requested by an employer according to the FMLA Regulation when circumstances described by the previous certification changes significantly or when the information received casts doubt upon the employee's reason for the absence.
Fitness-for-Duty/Return to Work	Fitness for duty certification is required in cases involving an employee's own ***serious health condition*** that made the employee unable to perform the employee's essential functions of the job. Failure to provide such certification to the Human Resources Department upon returning to work will result in denial of restoration until the employee submits the certification.

Benefits	1. Health benefits will continue automatically under the Act if the employee is on paid status. If the leave is paid and payroll deductions are made, the premium payments will continue to be deducted during the leave of absence. If the employee is on unpaid FMLA leave, the employee is required to pay their premiums for continuation of medical benefits. The medical benefits will stop if the employee fails to pay. The Employee Benefits Division, Human Resources Department will mail the employee an invoice for premium payments. 2. The City may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted. 3. TMRS, retirement fund contribution, will continue under the Act if the employee is on paid status.
Job Protection	Employee is entitled to be returned to the same position the employee held when leave started, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, as provided for in the Act, on return from FMLA leave. Exceptions to deny job restoration to employees pursuant to FMLA include but are not limited to the following: a. A reduction in force. b. Employee is unable to return to perform the essential functions of the job. c. Key employees may be denied restoration, as defined in the Act; if it is determined that denial of restoration is necessary to avoid substantial and grievous economic injury to the operations of the City.
Workers' Compensation and Extended Sick Leave (Short & Long-Term Disability)	When an employee is on FMLA leave due to a ***serious health condition*** or injury that occurred "on or off" the job, the employee's FMLA twelve (12) week leave entitlement shall run concurrently with a workers' compensation absence as well as short-term and long-term disability leave if employee is eligible.
Roles & Responsibilities	
Employees	1. Employees are required to give thirty (30) days advance notice for foreseeable leave such as the birth or adoption of a child or planned medical treatments. If the FMLA qualifying event is not foreseeable, the employee must give notice as soon as practicable. When conditions or circumstances change, the employee is required to give as much notice as possible to the Human Resources Department. A request for FMLA leave should be completed by the employee and given to the Human Resources Department in all cases. 2. Employees are required to submit a medical certification form from a ***health care provider***. The employee has fifteen (15) calendar days to submit the requested certification. If there is a delay in submitting the required medical certification form, the employee must contact and inform the Human Resources Department of the delay. Failure to submit medical certification may result in an unauthorized leave. 3. If circumstances of the leave change, and the employee is able to return earlier than previously indicated, the employee is required to notify their supervisor two workdays prior to new return to work date, unless otherwise approved by the department.

Employees (Cont.)	4. Employees are required to submit a fitness for duty or return to work certification in cases involving an employee's own ***serious health condition*** that made the employee unable to perform the employee's job. Failure to provide such certification when required will result in a delay to the employee being allowed to return to work. 5. Employees are required to call and speak with their supervisor and the Human Resources Department during their regularly scheduled work hours regarding the status of their medical condition and their intent to return to work once every two weeks. 6. Employees are required to pay their medical premiums for the continuation of medical benefits, if FMLA leave is unpaid, inactive status.
Managers and Supervisors	1. Managers and supervisors are responsible to inform the Human Resources Department when an employee is off more than three (3) consecutive days for a qualifying event, so that the appropriate paper work can be prepared and mailed out immediately to the employee. 2. Managers and supervisors are responsible to inform the Human Resources Department when an employee has requested intermittent or reduced FMLA leave each time the employee requests his/her absence be counted towards FMLA leave or the supervisor identifies the absence as a FMLA qualifying event to ensure policy compliance. 3. Managers and supervisors are responsible to ensure that the employee reports to the Human Resources Department upon returning to work.
Human Resources	**Human Resources Departments** 1. Human Resources Department is responsible to disseminate all the required information to the employee to include Administrative Directive 4.20, FMLA Notice of Eligibility and Rights & Responsibilities form, Certification of Health Care Provider, Designation Notice form, Notice of Leave Slip and the Department of Labor form entitled Your Rights Under The Family And Medical Leave Act Of 1993. 2. Human Resources Department is responsible to complete the Human Resources portion of the Notice of Eligibility and Rights & Responsibilities form, have the employee sign and provide a copy to the employee. 3. Human Resources Department is responsible to inform the supervisor within two days of the employee's request for FMLA leave by sending a copy of the Notice of Eligibility and Rights & Responsibilities form.

Human Resources (Cont.)	4. Human Resources Department is responsible to notify employees in writing that their time off may be designated as FMLA leave if the absence is a qualifying condition of the Act, when employees are off work for more than three (3) consecutive calendar days. Notification with all the necessary information and forms must be completed and mailed via certified mail to the employees immediately by the Human Resources Departments. 5. Human Resources Department is responsible to notify employees that FMLA leave will run concurrently with Workers' Compensation and Extended Sick Leave (Short and Long-Term Disability) when applicable. 6. Human Resources Department is responsible to complete the employer response to the employee on the Designation Notice form to verify eligibility of employee. The Human Resources Departments will forward the original completed medical certification form to the Recruitment Division, Human Resources Department along with all other required documentation. 7. Human Resources Department is responsible for posting the Department of Labor Form entitled Your Rights under the Family and Medical Leave Act of 1993 at all work sites. 8. Human Resources Department is responsible to ensure that special leave codes are assigned to FMLA leave. Only the time actually designated as FMLA leave may be charged against the employee's entitlement when leave is taken intermittently or when leave is taken for a reduced work schedule. The hours charged shall be cumulative until such time as the total is equivalent to the approved FMLA leave entitlement. The Human Resources Departments will track leave used for intermittent or reduced leave and update the employee periodically. **Time Administrators** 1. Time Administrators are responsible to inform the Human Resources Departments when an employee has requested intermittent or reduced FMLA leave each time the employee requests his/her absence be counted towards FMLA leave to ensure policy compliance. 2. Time Administrators will enter time entry codes for employees on FMLA leave when notified by the Human Resources Departments.

PROCEDURES

Employees are required to give thirty (30) days advance notice for foreseeable leaves such as the birth or adoption of a child or planned medical treatments. If the FMLA qualifying event is not foreseeable, the employee must give notice as soon as practicable and provide a medical certification form completed by the ***health care provider*** within fifteen (15) days when possible. When conditions or circumstances change, the employee is required to give as much notice as possible. A request for FMLA leave should be completed by the employee and given to the Human Resources Department for processing.

The City of San Antonio may also initiate FMLA leave for their employees where information suggests it is a qualifying condition. If the department is not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work. Calculation of FMLA leave begins on the first day of the leave period.

Supervisors and managers are responsible for notifying the Human Resources Departments when their employees are out for more than three (3) consecutive days so that the appropriate paper work can be prepared and mailed out immediately to inform the employee that their time off may be designated as FMLA leave if the absence is a qualifying event under the Act.

Calls by relatives or persons other than the employee will be accepted on exceptional cases where the employee can show that he/she was incapacitated due to a FMLA ***serious medical condition*** and was not able to call in and report the FMLA absence.

The Human Resources Departments will process all FMLA leave requests and ensure that the employee is given all the information and forms are completed properly and in a timely manner in accordance with the Family and Medical Leave Act of 1993.

This policy is intended to insure compliance with The Family and Medical Leave Act and regulations, as amended, and shall be construed accordingly. In the event of a conflict between the policy and the Act and regulations, the Act and regulations shall take precedence.

Information and/or clarification may be obtained by contacting the Human Resources, Employee Relations Division.

Recommended by:

Elizabeth Braune
Human Resources Director

1/15/10
Date

Approved by:

A.J. Rodriguez
Deputy City Manager

1/15/10
Date

Approved by:

Sheryl Sculley
City Manager

3-11-10
Date

CITY OF SAN ANTONIO

EMPLOYEE ACKNOWLEDGMENT FORM
FOR

ADMINISTRATIVE DIRECTIVE 4.20
Family Medical Leave Act of 1993

Employee:

I acknowledge that on _____, 20____, I received a copy of Administrative Directive 4.20, Family Medical Leave Act of 1993. I understand if I should have any questions I should contact my Human Resources Generalist.

Employee Name (Print)	Department
Employee Signature	SAP ID #