

ADMINISTRATIVE POLICY 13-01R

FAMILY/MEDICAL LEAVE

1. POLICY ISSUANCE

This policy revises Administrative Policy No. 13-01, Family/Medical Leave. Revisions are found in section 5. Eligibility, Duration, and Notice, and relate to the employment threshold.

2. POLICY

- The Family/Medical Leave Policy makes available to eligible employees up to 18 weeks of unpaid leave in a 12-month period for the following reasons:
 - For the birth of the employee's child or for placement of a child with the employee through adoption or foster care;
 - When the employee is needed to care for the employee's child, spouse, or parent who has a serious health condition;
 - When the employee is unable to perform the functions of his or her job due to a serious health condition.

- Military Family Leave – Qualifying Reasons:
 - Exigency Leave - Any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of an eligible employee who is a member of the Regular Armed Forces, National Guard or Reserves that has been notified of an impending call to covered active duty status. The deployment must be foreign or overseas. The employee is entitled to up to 12 weeks of leave during a 12-month period.
 - Military Caregiver Leave - Care of a covered service member who is undergoing treatment, recuperation, or therapy for an injury sustained in the line of duty; this includes current members of the Armed Forces and honorably discharged veterans. The eligible employee is the spouse, son, daughter, parent, or next of kin of the veteran. The employee is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

Family/Medical Leave benefits commence on the date the requested leave is to occur or when the CBJ is notified that the purpose of leave was for a Family/Medical Leave qualifying event. If an employee is out on leave and later communicates that the purpose of the leave qualifies for Family/Medical Leave, or it is determined by the CBJ that the

leave was for a Family/Medical Leave qualifying event, the leave will be retroactively applied as Family/Medical Leave as authorized by 29 CFR Part 825.208(d) of the federal regulations implementing the Family Medical Leave Act of 1993.

3. **PURPOSE**

The Alaska Family Leave Act, AS 39.20.500--39.20.550, and the federal Family and Medical Leave Act of 1993 (Public Law 103-3; 29 U.S.C. Chapter 28) entitle employees to unpaid leaves of absence from work for childbirth or adoption of a child, and for purposes necessitated by a serious health condition which renders the employee unable to perform job duties, or to care for a close relative with a serious health condition.

Section 585 of the National Defense Authorization Act for FY 2008 (NDAA) (Public Law 110-181) amended the FMLA to provide eligible employees unpaid leaves of absence from work for “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation, and to care for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty.

The purpose of these laws is to help balance the demands of the workplace with the needs of employees and their families, to promote stability and economic security of the family unit, and to promote the public interest in preserving family integrity. This policy complies with the requirements of both the state and federal law and provides a more generous benefit to CBJ employees. The terms used in this policy have the meanings as defined in the state and federal Acts.

4. **DEFINITIONS**

Covered Active Duty or Call to Active Duty Status (Exigency Leave): A federal call or order to active duty in support of a contingency operation. Such active duty or call/order to active duty is only made to members of the Regular Armed Forces, National Guard or Reserve components or a retired member of the Regular Armed Forces or Reserve.

Child: The biological, adoptive, or foster son or daughter, a stepchild, or a legal ward of the employee or a child of a person standing in loco parentis who is under the age of 18 years, or is 18 years or older yet lacks the capability of self-care because of a mental or physical disability.

Parent: A biological parent or an individual who stands or stood *in loco parentis* (in place of a parent) to the employee when the employee was a child.

Spouse: A person with whom the employee lives in a relationship intended to be permanent, evidence of which can be established through legal documentation, including but not limited to: a marriage license; joint ownership of land; joint banking accounts;

joint credit card accounts; durable health care or property powers of attorney; primary beneficiaries of each other's life insurance policies.

Next of Kin (National Defense Authorization Act): A spouse, son, daughter, parent, or nearest blood relative of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty.

Health care provider: A doctor of medicine who is authorized to practice medicine or surgery by the state where they practice. The definition also includes: podiatrists, dentists, clinical psychologists, psychiatrists, optometrists, chiropractors (related to spinal manipulation), nurse practitioners, nurse mid-wives, clinical social workers, and Christian Science practitioners. These professionals must be performing within the scope of their practice as defined under state law.

Covered Service Member (Military Caregiver Leave): A covered service member is either:

- A current member of the Regular Armed Forces, National Guard or Reserve who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, for a serious injury or illness incurred in the line of duty on active duty, and is receiving medical treatment or oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider
- or an Honorably Discharged Veteran, including those on the temporary disability retired list, but not including former members or members on the permanent disability retired list, as long as the veteran was a member of the Regular Armed Forces, National Guard, or Reserves within five years of requiring care (the time period between October 28, 2009 and March 8, 2013 is not counted against the 5 year period for veterans discharged prior to March 8, 2013).

Serious health condition: An illness, injury, impairment, or physical or mental condition that involves one or more of the following:

Hospital care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a result of such inpatient care.

Absence plus treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves: (a) treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider within thirty days of the beginning of the period of incapacity; or (b) treatment by a health care provider that results in a regimen of continuing treatment under the

supervision of the health care provider. The first visit to a healthcare provider must occur within seven days of the first day of incapacity.

Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.

Chronic conditions requiring treatment: A chronic condition which (a) requires at least two visits per year for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider; (b) continues over an extended period of time (including recurring episodes of a single underlying condition); and (c) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

Permanent/long term conditions requiring supervision: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

Multiple treatments (Non-chronic conditions): Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Qualifying Exigency: (National Defense Authorization Act): Any period of non-medical absence that is directly related to the covered military member's active duty or call to active duty status. The seven categories of qualifying exigencies are:

- Short notice deployment – Leave is permitted for up to seven days if the military member receives seven or less days' notice of a call to active duty. This seven day short term leave does not count against the 12-week allotted leave.
- Military events and related activities.
- Temporary childcare arrangement – Leave will not be permitted for ongoing childcare.
- Financial and legal arrangements.
- Counseling by a non-medical counselor – examples would include a member of the clergy, etc.

- Rest and recuperation – Leave is permitted for up to fifteen days when the military member is on temporary rest and recuperation leave. Leave may be taken intermittently.
- Post-deployment activities.
- Parental Care—Leave is permitted to care for the parent of a military member when parent is incapable of self-care. Care must be emergent and cannot be used for long-term care.

Week: As used in this policy, week refers to the calendar week, irrespective of the employee’s particular workweek.

5. ELIGIBILITY, DURATION AND NOTICE

A. **Eligibility:** All employee requests for leave due to a family/medical leave qualifying reason are contingent upon a determination by the CBJ that the employee is eligible for family/medical leave. This includes a determination of eligibility and may include a requirement for medical certification. The CBJ may also require and pay for a second or third medical opinion, as allowed by federal regulations, before approving the leave.

Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to family/medical leave.

1. **Employment Threshold:** An employee is eligible to take family/medical leave if the employee is employed by the CBJ for at least 35 hours per week for 6 consecutive months or for at least 17.5 hours per week for at least 12 months, immediately preceding the leave; OR if the employee has worked 1250 hours in the previous 12 months immediately preceding the leave.
2. **Not based on gender:** Eligibility for family/medical leave is not gender based; family/medical leave is available to both male and female employees.
3. **Coordination with USSERA:** Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count towards fulfilling the length of employment and hours of work requirements to be eligible for family/medical leave.

B. Duration:

1. **Birth or placement of a child:** For birth of the employee's child or for placement of a child with the employee for adoption or foster care, an eligible employee is entitled to a total of 18 weeks of leave within a 12-month period, however the employee's eligibility to take leave for this reason expires 12 months after the birth or placement of the child.
2. **Employee's serious health condition:** For a serious health condition that renders the employee unable to perform the functions of the employee's position, an employee is entitled to a total of 18 weeks of leave within a 12-month period.
3. **Care for family member with serious health condition:** To care for the spouse, child, or parent of the employee, if such spouse, child or parent has a serious health condition, an eligible employee is entitled to a total of 18 weeks of leave within a 12-month period.
4. **"Qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status:** To arrange for child care, financial and legal preparation, see a service member off or welcome home; attend pre-deployment and reintegration briefings, and family support meetings to support a service member's tour of active duty or notification of impending call to duty, an eligible employee is entitled to take up to 12 weeks of leave within a 12-month period.
5. **Care for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty:** Military Caregiver Leave is available during "a single 12-month period" during which an eligible employee is entitled to a combined total of 26-weeks of all types of FMLA leave.

C. Notice:

1. **Required of employee to give to employer:** Where the need for family/medical leave is foreseeable based upon an expected birth or placement, or for a planned medical treatment, the employee should provide the department supervisor/director with at least 30 days notice in writing before the date the leave is to begin. However, if such notice is not possible then the employee shall provide such notice as is practicable.
2. **Decision of employer on eligibility to take family/medical leave:** Upon receiving notice either orally or in writing of an employee's intent to take family/medical leave, the supervisor must make a decision granting or denying the leave within five working days. Provisional permission to take family/medical

leave can be granted, but may be later withdrawn if the employee is unable to provide the required certification or other proof of need in a timely manner.

6. CERTIFICATION - PROOF OF NEED

- A. **Certification of Health Care Provider required:** Employees requesting family/medical leave shall provide to the department director certification of the circumstances on which the request is being made, including the statement of a health care provider of the employee's pregnancy, the employee's spouse's pregnancy, or a serious health condition of the employee or the employee's spouse, child or parent. Health Care Provider Certification forms shall be provided by the CBJ. The CBJ may contact the Healthcare Provider to certify the Provider's authenticity and obtain clarification of any vague or unresponsive information. The CBJ may also make a determination without the submission of a Health Care Provider Certification form.
- B. **Proof of placement of child:** Documentation of placement or adoption proceedings is required where applicable.
- C. **Proof of fitness for duty:** Prior to returning to work, employees who have been on family/medical leave due to their own serious health condition may be required to present a certificate from the employee's health care provider indicating that the employee is able to resume work.
- D. **Proof of Military Duty:** Employees requesting family/medical leave for a "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation shall provide to the department director certification of the circumstances on which the request is being made, including notification by the armed services of the service member's call to active duty status for a foreign deployment.
- E. **Certification of Service Member injury required:** Employees requesting family/medical leave for the injury of a covered service member shall provide to the department director certification of the circumstances on which the request is being made, including the statement of a health care provider of the serious health condition of the employee's spouse, child, parent, or next of kin. Health Care Provider Certification forms shall be provided by the CBJ. The employer may request a second (and third) opinion from a healthcare provider.

7. MEASURING PERIOD

- A. **Eligibility Measuring Period:** The 12-month period during which an employee is eligible for family/medical leave shall be a rolling 12-month period measured backward from the date an employee begins family/medical leave. Every time an

employee requests family/medical leave, their entitlement will be measured according to the amount of family/medical leave taken in the past 12 months.

B. Block, intermittent, and reduced schedule leave: Leave taken due to a serious health condition of the employee, for the employee to care for a qualified family member, or for “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, may be taken any of the following ways:

1. **Block:** A continuous leave of absence in which the entitlement is taken all at one time.
2. **Intermittent:** Leave of periods from an hour to several weeks. Examples of such leave include leave taken occasionally for medical appointments or leave taken several days at a time over a period of several months, for treatment sessions such as chemotherapy.
3. **Reduced schedule:** Leave that decreases an employee’s usual number of working hours per week or per day.

Leave taken due to the birth, adoption or placement of a child will be taken in a block of time unless, in the department director’s discretion, it is determined that permitting the employee to take the time off on an intermittent or reduced schedule basis would be in the best interests of the CBJ.

8. COORDINATION WITH OTHER LEAVE

Employees requesting family/medical leave shall first exhaust their accrued leave, banked medical leave, and holiday and compensatory time banks before utilizing leave without pay. However, an employee may retain up to the equivalent of one workweek's worth of personal leave on the books when entering into leave without pay. The number of hours in the workweek will depend on the number of hours the employee normally works, e.g., 37.5, 40, 56, or 60. Employees who have exhausted their family/medical leave may request leave without pay under the CBJ Personnel Rules, or the MEBA, IAFF, or PSEA collective bargaining agreements, whichever is applicable.

Employees may request donated leave from other CBJ employees to help offset costs associated with leave without pay or employee health co-pay premiums. To exercise this option, employees must exhaust their accrued leave, banked medical leave, holiday, and compensatory time banks and waive their right to retain the equivalent of one workweek's worth of personal leave.

When an employee is on a workers' compensation leave because of an on-the-job injury or illness that also qualifies as a serious health condition under FMLA, the workers' compensation leave and family/medical leave will run concurrently.

9. BENEFIT ENTITLEMENT

Health insurance coverage for employees on family/medical leave shall be maintained on the same basis as such coverage is available to an employee who is actively at work during the 18 weeks of family/medical leave.

The CBJ's obligation to maintain health benefits under family/medical leave stops if and when an employee informs the employer of the his/her intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted.

The CBJ may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from family/medical leave. An employee who returns to work from taking family/medical leave must work for at least 30 days before the employee's obligation to reimburse the CBJ for his/her health care coverage and life insurance is eliminated. The employee will not be liable for repayment if his/her failure to return to work results from:

- A. The continuous, recurrence, or onset of a serious health condition of the employee and/or family member; or
- B. Circumstances beyond the control of the employee.

Administrative Policy 05-02, Delegation of City Manager's Authority to Decide Employee Benefit Issues and Appeals, provides the process by which an employee may appeal to the CBJ to be released from the reimbursement obligation.

10. TEMPORARY CHANGES IN DUTY ASSIGNMENTS FOR PREGNANT EMPLOYEES

A pregnant employee may request a temporary change in duty assignment or transfer. Requests shall be made to the department director.

11. REPLACEMENT OF EMPLOYEE ON FAMILY/MEDICAL LEAVE

An employee on family/medical leave may be replaced by a temporary or substitute employee depending on the needs of the agency and the duration of the family/medical leave. An employee shall resume the employee's position upon completion of family/medical leave if the position has not been eliminated for budgetary reasons.

12. **GENERAL PROVISIONS**

- A. **Scope:** This policy applies to all agencies and employees of the City and Borough of Juneau, Alaska.
- B. **Authority to promulgate policy:** The City Manager of the City and Borough of Juneau, Alaska, maintains the authority granted by the CBJ Charter to order policy and the guidelines for implementation.
- C. **Effective date:** This policy will take effect as of the signing date.

Dated at Juneau, Alaska, this **12th** day of **January, 2015**.



Kimberly A. Kiefer
City and Borough Manager