

## **Personnel Rule 7.1 – Family and Medical Leave**

### **7.1.0 Authority**

SMC 4.04.030 and subsequent revisions thereto, Definitions

SMC 4.04.040 and subsequent revisions thereto, Administration

SMC 4.04.050 and subsequent revisions thereto, Rule-Making Authority

SMC 4.20.060 and subsequent revisions thereto, Credit for Unpaid Absences

SMC 4.26 and subsequent revisions thereto, Family and Medical Leave

SMC 4.30 and subsequent revisions thereto, Documentation of Eligibility for Certain Uses of Sick Leave and Funeral Leave

SMC 4.36.125 and subsequent revisions thereto, Determination of Creditable Service

RCW 49.78.005, Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave--Rights under RCW 49.78.070(1)(b) preserved—Enforcement.

Family and Medical Leave Act of 1993 as amended (Regulations at 29 CFR, Chapter V, Section 825)

### **7.1.1 Definitions**

- A. “Active duty” shall mean duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13).
- B. “Appointing authority” shall mean the head of an employing unit authorized by ordinance or City Charter to employ others on behalf of the City, or a designated management representative. The term includes and can be used interchangeably with department head, department director, superintendent, and chief.
- C. “Child” shall mean a biological, adopted or foster child, a stepchild, a legal ward, or the child of a person standing in loco parentis, who is 18 years of age or younger, or who is older than 18 but incapable of self-care because of a mental or physical condition that exists apart from the serious health condition.
- D. “Contingency operation” has the same meaning given such term in 10 U.S.C. § 101(a)(13).
- E. “Covered servicemember” means 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 incurred in the line of duty

while on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

F. "Domestic partner" shall mean an individual with whom an employee shares the same regular and permanent residence, has a close personal relationship, and has agreed to be jointly responsible for basic living expenses incurred during the domestic partnership. To qualify to use sick leave to care for a domestic partner, an employee must file an affidavit of domestic partnership with his or her employing unit attesting that:

1. He or she is not married, and
2. He or she and his or her domestic partner is 18 years of age or older, and
3. They are not related by blood closer than would bar marriage in Washington, and
4. They were mentally competent to consent to contract when their domestic partnership commenced, and
5. They are each other's sole domestic partner, and
6. Any other domestic partnership in which the employee or his or her domestic partner participated with a third party was terminated not less than 90 days prior to the date he or she files an affidavit of domestic partnership or by the date of the death of the third party, whichever was earlier.

G. "Equivalent position" shall mean a position in which the employee enjoys the same status, seniority, rate of pay and benefits.

H. "Family and Medical Leave" shall mean properly certified paid or unpaid leave taken by an employee for a qualifying condition. The Family and Medical Leave entitlement is pro-rated for part-time employees.

I. "Intermittent or reduced leave schedule" shall mean paid or unpaid Family and Medical Leave that is taken sporadically or that results in a temporary reduction of the employee's normal work schedule, respectively.

J. "Military exigency" means a necessity as defined in the federal regulations implementing the FMLA arising out of a member of the National Guard or Reserves being on active duty status, or receiving notification of an impending call or order to active duty status, in support of a contingency operation.

K. "Next of kin," used with respect to an individual, means the nearest blood relative of that individual.

L. "Outpatient status," with respect to a covered servicemember, shall mean the status of a member of the Armed Forces assigned to one of the following:

1. A military medical treatment facility as an outpatient
2. A unit established for the purpose of providing command and control of members of the Armed forces receiving medical care as outpatients.

M. "Parent" shall mean the biological, step or adoptive mother or father of the employee or the employee's spouse or domestic partner. Parent includes an individual

who stood in loco parentis to the employee when the employee was a child; i.e., an individual who acted as a parent and who had day-to-day responsibilities to care for and financially support the employee. A legal or biological relationship is not necessary.

N. “Personnel Director” shall mean the head of the Personnel Department or his or her designated management representative.

O. “Probationary employee” shall mean an employee who has been appointed to a position within the classified service but who has not completed a 1-year period of probation.

P. “Regularly appointed employee” shall mean an individual who has a probationary, regular or exempt appointment to a position of City employment.

Q. “Rolling 12-month period” shall mean a 12-month period measured backward from the first day that an employee takes unpaid Family and Medical Leave; each time an employee takes Family and Medical Leave the remaining leave entitlement would be any balance of the leave hours which has not been used during the immediately preceding 12 months.

R. “Seniority” shall mean a regular employee’s length of continuous service in his or her present class and all higher classes since original appointment to that class, excluding any break in service occasioned by a quit, resignation, retirement or discharge.

S. “Serious health condition” shall mean an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

T. “Single 12-month period” shall mean a 12-month period in which Covered Servicemember Family Medical Leave and other types of FML Leave may be taken for a total of 26 work weeks measured forward from the first day family medical leave is taken and ending 12 months after that date.;

U. “Son or daughter” shall mean a biological, adopted or foster child, a stepchild, a legal ward, or the child of a person standing in loco parentis, of any age.

V. “Status” shall mean the condition of being exempt, probationary or regular in the current position or class.

### **7.1.2 Application of this Rule**

A. This Rule applies to regularly appointed employees.

B. For regularly appointed employees who are represented under the terms of a collective bargaining agreement, this Rule prevails except where it conflicts with the collective bargaining agreement, any memoranda of agreement or understanding signed pursuant to the collective bargaining agreement, or any recognized and established practice relative to the members of the bargaining unit.

C. This Rule does not apply to individuals hired by the City on a temporary, intermittent or seasonal basis, or for a work schedule of fewer than 20 hours per week nor does it apply to individuals hired under contract to the City. Personnel Rule 11 pertains to temporary employees, and these workers are subject to applicable federal, state and local laws.

- D. This Rule does not apply to individuals who are employed under the terms of a grant that includes family and medical leave provisions that conflict with this Rule.
- E. Appointing authorities may establish written policies and procedures for the implementation and administration of this Rule to facilitate the management of the personnel system within their employing units, provided that such policies and procedures do not conflict with the provisions of this Rule.

### **7.1.3 Family and Medical Leave**

The City adopts and adheres to the state and federal Family and Medical Leave Act as amended and implementing regulations, except where the City ordinance provides a greater benefit.

#### **A. Eligibility**

1. All full-time employees that have completed six months of employment are eligible for unpaid Family and Medical Leave. The Family and Medical Leave entitlement is pro-rated for part-time employees.
2. Where an employee and his or her spouse/domestic partner both work for the City, each is entitled to up to the maximum amount of Family and Medical Leave, pro-rated for part-time employees.

#### **B. Qualifying Conditions**

An employee may take unpaid Family and Medical Leave for any 1 or a combination of the following reasons:

1. The non-medical care of the child of the employee or of the employee's spouse/domestic partner after birth;
2. The placement of a child with the employee or his or her spouse/domestic partner for adoption or foster care;
3. The care of the employee's spouse/domestic partner, or a child or parent of the employee or his or her spouse/domestic partner who has a serious health condition; or
4. The employee's own serious health condition that makes the employee unable to perform the functions of his or her job.
5. A qualifying military exigency for the spouse/domestic partner, son, daughter or parent of the employee as defined by the U.S. Department of Labor, including
  - i. Short notice deployment
  - ii. Military events and related activities
  - iii. Childcare and school activities
  - iv. Financial and legal arrangements
  - v. Counseling
  - vi. Rest and recuperation

vii. Post-deployment activities

6. The care of a spouse/domestic partner, parent, son, daughter, or next of kin who is a covered servicemember.

C. Family and Medical Leave Entitlement

1. The City's Family and Medical Leave Program provides for

- i. Up to the equivalent of 520 regular work hours (90 calendar days) of unpaid leave per rolling 12-month period for a combination of one or more of all leave categories described above in 7.1.3 B, except for leave to care for a covered servicemember (7.1.3 B.6); or
- ii. Up to 26 workweeks per single 12-month period for the care of a covered servicemember.

The total combined leave for covered servicemember care and all other categories of family and medical qualifying leave may not exceed 26 work weeks in a single 12-month period.

2. An employee is eligible to take Family and Medical Leave on an intermittent basis or reduced leave schedule where the leave is taken for a serious health condition of the employee or an eligible family member and such intermittent or reduced schedule leave is medically necessary. An employee is also eligible to take Family and Medical Leave on an intermittent basis or reduced leave schedule for a qualifying military exigency, regardless of medical necessity. The available leave is pro-rated for a part-time employee based on the normal work schedule. If the employee works a fluctuating schedule, the amount of leave available shall be based on the straight-time hours worked during the 12 months immediately preceding the pay period in which the leave is to begin. Intermittent and reduced leave schedule Family and Medical Leave may be taken in 15-minute increments. Any paid leave taken for a Family and Medical Leave-qualifying reason may also be taken in 15-minute increments.

An employee who takes Family and Medical leave on an intermittent or reduced leave schedule for planned medical treatments may be temporarily transferred to a position that better accommodates the intermittent or reduced leave schedule. The position to which the employee is transferred must have equivalent pay and benefits. The employee must be restored to the position from which he or she was transferred when his or her Family and Medical Leave terminates or his or her entitlement expires. The hours worked in the alternate position do not count against the employee's Family and Medical Leave entitlement.

3. The entitlement to the equivalent of 520 regular work hours of unpaid leave for all leave categories described above in 7.1.3 B, except for leave to care for a covered servicemember (7.1.3 B.6) is per rolling 12-month

period measured backward from the current date. The entitlement to 26 work weeks of unpaid leave for the care of a covered servicemember is per single 12-month period from when the leave begins.

4. The entitlement to Family and Medical Leave taken for the non-medical care of the employee's newborn child or a child placed with the employee or his or her spouse/domestic partner for foster care or adoption expires 12 months after the birth or placement of the child. Leave taken for this reason must be concluded by the first anniversary of the child's birth or placement.
5. An employee may use any paid leave balance to cover an absence for a Family and Medical Leave-qualifying condition. The Family and Medical Leave-qualifying condition must satisfy the requirements of the paid leave program utilized as well. The employee's use of paid leave may be instead of or in addition to unpaid Family and Medical Leave. Paid leave taken for a Family and Medical Leave-qualifying condition is subject to the protections provided under Rule 7.1.3 (D) as long as it is properly certified.

#### D. Family and Medical Leave Protections

1. An employee is entitled to take Family and Medical Leave for a qualifying condition as defined in Personnel Rule 7.1.3 (B).
2. An employee must be reinstated to the position from which he or she took Family and Medical Leave or to an equivalent position. The employee's right to restoration to the same or equivalent position is no greater than if the employee had been continuously working.
3. The City shall maintain an employee's coverage under one of the City's group health plans while on Family and Medical Leave at the level and under the conditions the coverage would have been provided if the employee had continued in employment continuously for the duration of such leave. If the employee fails to return from unpaid Family and Medical Leave for any reason other than a continuation, recurrence or onset of his or her serious health condition or because of other circumstances beyond the employee's control, he or she may be required to reimburse the City for such coverage. A service or disability retirement, or a return to work for a minimum of 30 days prior to separation shall be considered a return to work for purposes of this Rule.
3. An employee's paid or unpaid absences that are designated and certified as Family and Medical Leave-qualifying cannot be used as the basis, in whole or in part, for an adverse personnel action.

#### E. Notice and Certification Requirements

1. The appointing authority or designated management representative shall conspicuously post the United States Department Of Labor bulletin, "Your Rights Under the Family and Medical Leave Act of 1993" and the City's bulletin, "Notice to Employees Explaining Family and Medical Leave

Benefits, Conditions and Obligations.” It is the responsibility of the appointing authority or designated management representative to inform employees when their absences may qualify for Family and Medical Leave and to designate their leaves as such.

- a. Employees shall provide at least 30 days’ advance notice of the need and reason to take Family and Medical Leave when the need for leave is foreseeable. In the case of an unforeseen need for leave, employees shall provide notice of the need and reason to take Family and Medical Leave as soon as possible. If an employee is unable to provide notice of the need and reason for leave, the City shall accept notice from the employee’s representative.
- b. When Family and Medical Leave is taken for the employee’s serious health condition or the serious health condition of the employee’s spouse/domestic partner or the child or parent of the employee or his or her spouse/domestic partner, the employee shall furnish a health care provider’s certification of the condition and the need for leave. When Family and Medical Leave is taken for a qualifying military exigency, the employee shall provide a copy of the servicemember’s active duty orders or other documentation issued by the military which indicates that the covered military member is on or will be called to active duty in support of a contingency operation.

An employee’s leave cannot be denied pending receipt of a health care provider’s certification of the serious health condition. The employee shall be placed on provisional Family and Medical Leave. If the employee fails to provide adequate certification within 15 calendar days of his or her notification of the need and reason for Family and Medical Leave, his or her leave taken to date shall be converted to unprotected paid leave or unpaid leave, as appropriate.

- c. An employee who takes vacation, sick leave, personal holidays, compensatory time off, or executive or merit leave for a Family and Medical Leave-qualifying condition shall be subject to the notice and certification requirements of the Family and Medical Leave program.
- d. The appointing authority may require recertification of an employee’s need for continuing Family and Medical Leave, but may not require such recertification more often than every 30 days.

#### **7.1.4 Return to Work**

- A. An employee shall be required to provide a medical release to return to work when leave has been taken for his or her own serious health condition. The appointing authority shall inform the employee of this requirement at the time that the employee’s leave is designated as Family and Medical Leave. If the employee

is not informed of this need for a medical release when his or her leave is designated as Family and Medical Leave, the appointing authority may not require the medical release.

- B. An employee who is released to return to work before his or her Family and Medical Leave expires shall notify the appointing authority to schedule a return date. If the employee does not want to return before the end of the original leave, the appointing authority has the discretion to approve an unpaid personal leave of absence for the duration.
- C. An employee who fails to return from Family and Medical Leave or who continues on unpaid leave after his or her Family and Medical Leave is exhausted shall not be entitled to maintenance of his or her health care coverage or restoration to his or her position unless he or she is eligible for and granted a sabbatical leave of absence which provides for health care coverage.
- D. An employee who fails to return to work from Family and Medical Leave for any reason other than a continuation of his or her serious health condition or other circumstances beyond the employee's control shall be treated as a voluntary quit. The appointing authority will provide the employee written notice via personal delivery or certified mail of this intended personnel action. If the employee fails to respond to the notice within five business days of the notice being sent, the personnel action will be final on the date the Family and Medical Leave was scheduled to end.

#### **7.1.5 Effect of Unpaid Leave on Service Credit**

- A. An employee who takes unpaid leave of absence authorized under Personnel Rule 7.1, Family and Medical Leave; Personnel Rule 7.2, Pregnancy Disability Leave and Limited Duty Assignment; Personnel Rule 7.3, Leave of Absence; or Personnel Rule 7.4, Sabbatical Leave shall have any period(s) of unpaid leave deducted from his or her service credit for purposes of calculating seniority for layoff.
- B. A probationary employee who takes unpaid leave of absence authorized under Personnel Rule 7.1, Family and Medical Leave; Personnel Rule 7.2, Pregnancy Disability Leave and Limited Duty Assignment; Personnel Rule 7.3, Leave of Absence; or Personnel Rule 7.4, Sabbatical Leave, or who takes paid leave authorized under Personnel Rule 7.6, Vacation; Personnel Rule 7.8, Sick Leave and Sick Leave Transfer; or Personnel Rule 7.9, Funeral Leave shall have his or her probationary period adjusted for any period(s) of absence in excess of 30 working days.
- C. An employee who takes unpaid Family and Medical Leave may continue to pay his or her contributions to the retirement system in exchange for retirement service credit; otherwise, any period of unpaid Family and Medical Leave is deducted from his or her service credit.
- D. An employee who takes unpaid leave of absence authorized under Personnel Rule 7.1, Family and Medical Leave; Personnel Rule 7.2, Pregnancy Disability Leave and Limited Duty Assignment; Personnel Rule 7.3, Leave of Absence; or

Personnel Rule 7.4, Sabbatical Leave shall have his or her next salary increment date adjusted for any period(s) of absence in excess of the equivalent of 240 regular pay hours.

#### **7.1.6 Unpaid Leave Limitations**

No period of unpaid leave or combination of unpaid leaves granted under Personnel Rule 7.1, Family and Medical Leave; Personnel Rule 7.2, Pregnancy Disability Leave and Limited Duty Assignment; Personnel Rule 7.3, Leave of Absence; or Personnel Rule 7.4, Sabbatical Leave shall exceed 12 months except with the prior approval of the appointing authority and the Personnel Director.