

Document Type: Regulation
Number: 3.15cc
Effective: 10-01-13
Revised: 02-06-20, 12-10-20
Legal References: 42 U.S.C. § 2601,
2611-2619;
I.C. § 2-218

FAMILY AND MEDICAL LEAVE – MILITARY RELATED

I. INTRODUCTION

The City of Boise is covered under the federal Family and Medical Leave Act (FMLA) and complies with all its requirements. This regulation addresses Family and Medical Leave (FML) for eligible employees when the employees' circumstances qualify for leave due to a spouse, child, or parent being called up for or on active duty in the Armed Forces, or to care for a servicemember who is their spouse, child, parent, or next of kin and becomes seriously ill or injured while serving on active duty in the Armed Forces.

This regulation applies to all city employees.

II. EMPLOYEE ELIGIBILITY

To be eligible for FML, employees shall have worked for 12 months and have worked at least 1,250 hours in the 12 months prior to taking FML.

Previous periods of employment with the city can be counted to meet the 12-month service requirement. Employment periods prior to breaks in employment of seven years or more are not counted; however, employment periods prior to a break in employment of more than seven years are counted if such breaks are due to National Guard or Reserve military duty.

Employees who return to work from National Guard or Reserve military duty are credited for the time that they are on military leave to meet the 1,250 hours of service.

III. FML FOR ACTIVE DUTY

Eligible employees can take up to 12 weeks of FML in a 12-month period because employees' circumstances qualify due to a spouse, child, or parent who is a servicemember of the Armed Forces' Reserve components or National Guard or retired servicemember of the Armed Forces or Reserves and is on active duty or called to active duty status in support of a contingency operation. FML is not available for servicemembers who are part of the Regular Armed Forces. Circumstances that qualify for leave include:

- A. Military events and related activities: employees can take leave to attend official ceremonies, programs, or events sponsored by the military that are related to servicemembers' active duty or call to active duty or attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to servicemembers' active duty or call to active duty;
- B. Childcare and school activities: employees can take leave to arrange alternative childcare, provide childcare on an urgent, immediate need basis, but not every day. Employees can take leave to enroll in or transfer a child to a new school or day care facility, or attend meetings with school or day care staff, such as parent-teacher conferences, due to servicemembers' active duty or call to active duty. Children includes servicemembers' biological, adopted, or foster children; stepchildren; legal wards; or children for whom servicemembers have day-to-day responsibilities to care for and financially support; *children must be under age 18*, unless they are incapable of self-care because of a mental or physical disability at the time that FML begins.;
- C. Financial and legal arrangements: employees can take leave to make or update financial or legal arrangements to address servicemembers' absence while on active duty or call to active duty, such as executing powers of attorney, transferring bank account signature authority, or obtaining military identification cards and to act as the servicemembers' representative before governmental agencies to obtain, arrange, or appeal military service benefits while servicemembers are on active duty or called to active duty and for 90 days following termination of active duty status;
- D. Counseling: employees can take leave to attend counseling that is provided by someone other than a healthcare provider for servicemembers or their children for needs arising from servicemembers' active duty or call to active duty. Children include servicemembers' biological, adopted, or foster children; stepchildren; legal wards; or children for whom servicemembers have day-to-day responsibilities to care for and financially support; *children must be under age 18*, unless they are incapable of self-care because of a mental or physical disability at the time that FML begins.;
- E. Post-deployment activities: employees can take leave to attend arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military that occur within 90 days following termination of servicemembers' active duty status or to address issues arising from servicemembers' death while on active duty, including meeting and recovering the body and making funeral arrangements; and
- F. Additional activities: employees can take leave to address any other events that arise from servicemembers' active duty or call to active duty when agreed to by the city and employee that such events qualify for leave and agree upon the timing and duration of leave.

IV. EXCEPTIONS

Eligible employees can take up to seven calendar days of FML for short-notice deployments beginning on the date servicemembers are notified of an impending call or order to active duty. **Short-notice deployment** leave can be used to address issues that arise from servicemembers' call or order to active duty seven calendar days or less prior to the date of deployment. Employees also can take up to five days of FML for rest and recuperation. **Rest and recuperation** leave can be used to spend time with servicemembers on short-term, temporary rest and recuperation leave during a period of deployment.

A **call for active duty** refers only to a federal call to active duty; a state call for active duty is not covered unless under order of the President according to federal law in support of a contingency operation.

A **contingency operation** refers to a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or can become involved in military actions, operations, or hostilities against an enemy of the United States or opposing military force or a military operation that results in the call, order to, or retention on active duty of members of the uniform service according to federal military law or any other provision of federal law during a war or national emergency that is declared by the president or Congress.

A **child** on active duty or call to active duty status refers to an employee's biological child, adopted child, or foster child; a stepchild; a legal ward; or a child for whom an employee has day-to-day responsibilities to care for and financially support and the child is on active duty or called to active duty status. *The child can be any age.*

A **parent** on active duty or call to active duty status refers to an employees' biological, adoptive, step or foster father or mother, or for any person who had day-to-day and financial responsibilities for the employee as a child. Parent does not include parents-in-law.

A **spouse** means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into. This also includes a marriage that was entered into outside of any State, if the marriage is valid in the place where it was entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: If a dispute arises about whether leave qualifies as FML, Human Resources will discuss resolution of the dispute with employees and make the final determination.

V. FMLA LEAVE TO CARE FOR A SERVICEMEMBER WITH A SERIOUS ILLNESS OR INJURY

Eligible employees can take up to 26 workweeks of FML during a single 12-month period to care for a servicemember who is their spouse, child, parent, or next of kin with a serious illness or injury incurred in the line of duty while on active duty as a member of the Armed Forces, including the National Guard or Reserves, and is: undergoing medical treatment, recuperation, or therapy; assigned as an outpatient to a military medical treatment facility; assigned to a unit providing command and control of Armed Forces' members who are receiving outpatient medical care; or on the temporary disability retired list. Leave is not available for former servicemembers of the Regular Armed Forces, Reserves, or National Guard and servicemembers on the permanent disability retired list.

A serious illness or injury is an illness or injury that servicemembers receive while they are in the line of duty on active duty and makes them medically unfit to perform the duties of their office, grade, rank, or rating.

A child of a servicemember is a biological child, adopted child, or foster child; a stepchild; a legal ward; or a child for whom a servicemember has day-to-day responsibilities to care for and financially support. *The child can be any age.*

A parent of a servicemember is servicemembers' biological mother or father or person who had day-to-day responsibilities to care for and financially support servicemembers as children. Parents do not include parents-in-law

Next of kin of a servicemember is the nearest blood relative other than the servicemembers' spouse, parent, son, or daughter in the following order of priority: blood relatives who have legal custody of servicemembers; brothers and sisters; grandparents; aunts and uncles; and first cousins, unless servicemembers have specifically designated in writing another blood relative as their nearest blood relative. If no designation is made and there are multiple family members with similar levels of relationship to servicemembers, all such family members are considered next of kin.

If a dispute arises about whether leave qualifies as FML, Human Resources will discuss resolution of the dispute with employees. Any discussions and the decision about leave will be documented.

VI. AMOUNT OF FMLA FOR ACTIVE DUTY

The city designates the 12-month period as a "rolling" 12-month period backward from the date employees take any FML. During this 12-month period employees can take FML because employees' circumstances qualify due to a spouse, child, or parent who is a servicemember of the Armed Forces' Reserve components or National Guard or retired servicemember of the Armed Forces or Reserves and is on active duty or called to active duty status in support of a contingency operation.

VII. AMOUNT OF FMLA LEAVE

A single 12-month period of leave to care for a servicemember with a serious illness or injury begins on the first day employees take leave to care for the servicemember and ends 12 months after that date. If employees do not take the full 26 workweeks of leave during a single 12-month period, they forfeit the remaining amount of leave. The city provides leave on a per servicemember, per injury basis.

Employees can take more than one period of 26 workweeks of leave if leave is used to care for different servicemembers or to care for the same servicemember who has a subsequent serious illness or injury, except that no more than 26 workweeks of leave can be taken within any single 12-month period. Employees can take more than one period of 26 workweeks of leave for a servicemember, with more than one serious injury or illness, only when the injury or illness is a subsequent injury or illness. If employees take leave to care for more than one servicemember or for subsequent serious injuries or illnesses of the same servicemember and the single 12-month periods overlap, employees are limited to 26 workweeks of leave in each single 12-month period.

If servicemembers' serious injury or illness extends beyond employees' 26 workweeks of leave, employees cannot take additional FML to care for the servicemember unless employees are eligible for leave to care for a family member with a serious health condition.

The 26 workweeks of FML to care for a servicemember with a serious illness or injury can include leave taken for other FMLA-qualifying reasons, but no more than 12 workweeks of such leave can be used for other FMLA-qualifying reasons. For example, employees can take 12 workweeks of leave for the birth of a child and 14 workweeks of leave to care for a seriously ill or injured servicemember.

If two spouses work for the city and take FML to care for a servicemember with a serious illness or injury, they are limited to a total of 26 workweeks of leave during the single 12-month period for all FMLA-qualifying reasons. They remain subject to the 12 workweek limit for the portion of leave that can be taken to care for a newborn child or seriously ill parent.

VIII. REQUESTING FMLA LEAVE

Employees who request FML because employees' circumstances qualify due to a spouse, child, or parent who is a servicemember of the Armed Forces' Reserve components or National Guard or retired servicemember of the Armed Forces or Reserves and is on active duty or called to active duty status in support of a contingency operation must notify their supervisors as soon as practicable.

Employees who request FML to care for a servicemember with a serious illness or injury must give 30 days' advance notice to their supervisors. If employees fail to provide notice, they can be required to explain to their supervisors why such

notice was not provided. If employees request FML to care for a servicemember with a serious illness or injury and such leave was previously approved, employees must specify the particular reason for leave or the need for FML. Employees who cannot provide at least 30 days advance notice of their need for leave must notify their supervisors as soon as practicable.

When employees are previously approved for leave due to more than one FMLA-qualifying reason, the city may inquire further to determine for which qualifying reason the leave is needed.

After employees submit requests for leave, the city will provide the following notices within five business days:

- A. FMLA Eligibility Notice that states whether employees are eligible for FML. Employees do not receive additional eligibility notices for subsequent FMLs during a 12-month leave period if their eligibility status remains unchanged; if employees' eligibility status changes, the city will notify them of any ineligibility for leave within five business days of the request.
- B. FMLA Rights and Responsibilities Notice that describes employees' rights and responsibilities under FMLA and consequences for failing to comply. If specific information in the notice changes, the city will provide written notice to employees within five business days of receiving employee's first notice of need for leave after any change; the notice will reference the prior notice and provide new information. At any time, the city can be contacted about and will respond to any questions about employees' rights and responsibilities under FMLA.
- C. FMLA Leave Designation Notice that describes whether leave is designated and counted as FML. If employees' leave qualifies as leave to care for a servicemember with a serious illness or injury and leave to care for family member with a serious health condition, it will be designated as leave to care for a servicemember with a serious illness or injury in the first instance. Employees will receive one designation notice for each FMLA-qualifying reason per 12-month leave period. Employees also will receive written notification if any information changes in designation notices for subsequent requests within five business days.

Employees are notified of the number of hours, days, or weeks that will be counted against their 12 or 26 weeks of leave. If such information is known at the time leave is designated, employees will be notified in the designation notice. If it is not possible for the city to provide such information, employees will receive such information upon request once in a 30-day period when leave is taken during that time. If employees receive oral notice from the city of such information, they will receive written confirmation no later than the following payday unless the payday is less than one week from the oral notice in which case written confirmation will be provided no later than the subsequent payday.

IX. CERTIFICATION FOR ACTIVE DUTY LEAVE

Employees who request leave due to a spouse, child, or parent who is a servicemember of the Armed Forces' Reserve components or National Guard or retired servicemember of the Armed Forces or Reserves and is on active duty or called to active duty status in support of a contingency operation must provide the city with a copy of servicemembers' active military orders and other certification.

To meet certification requirements, employees must provide the city with:

- A. a signed statement or description of the facts regarding and supporting qualifying circumstances for which leave is requested, including copies of military meeting announcements, confirmations of appointments with school officials, or copies of bills for financial or legal services;
- B. the approximate start date of the leave;
- C. if leave is requested on a reduced schedule or intermittent basis, an estimate of the frequency and duration of qualifying circumstances;
- D. if applicable, the duration of the leave; and
- E. if qualifying circumstances involve meeting with a third party, a brief description of the purpose of the meeting and contact information for that party, such as name, title, organization, address, telephone number, fax number, and e-mail address.

The city does not request additional information from employees who submit complete and sufficient certifications. If leave involves a meeting with a third party, the FMLA allows the city to contact the third party to verify the schedule and nature of the meeting without employees' permission. The city is also permitted to contact an appropriate unit of the federal Department of Defense to verify that servicemembers are on active duty or call to active duty status without employees' permission.

X. CERTIFICATION FOR LEAVE TO CARE FOR A SERVICEMEMBER WITH A SERIOUS ILLNESS OR INJURY

Employees who request leave to care for a military servicemember with a serious illness or injury incurred while serving on active duty in the Armed Forces must obtain certification completed by authorized health care providers. Health care providers from the federal Department of Veterans Affairs, federal Department of Defense, and DOD TRICARE network and non-network private health care providers are authorized to complete certification for such leave.

The city can request that authorized health care providers supply the following information:

- A. Their contact information (name, address, telephone number, fax number, and e-mail address), type of medical practice, medical specialty, and whether they are authorized to complete FML certifications;

- B. Whether servicemembers' injury or illness was incurred in the line of duty on active duty;
- C. The approximate date on which servicemembers' injury or illness commenced, and its probable duration;
- D. A description of appropriate medical facts regarding servicemembers' health condition that are sufficient to support employees' need for leave; such medical facts must include whether the injury or illness can render servicemembers' medically unfit to perform duties of their office, grade, rank, or rating and whether servicemembers are receiving medical treatment, recuperation, or therapy;
- E. Information that establishes that servicemembers are in need of care;
- F. Whether servicemembers will need care for a single continuous period of time (including any time for treatment and recovery) and an estimate of the beginning and ending dates for this period of time; and
- G. When employees request leave on a reduced schedule or intermittent basis for covered servicemembers, whether there is medical necessity for such periodic care and an estimate of the treatment schedule and frequency of appointments.

In addition to requesting certification information from authorized health care providers, the city can request certification information from employees or servicemembers, including:

- A. Name and address of the employer of employees requesting leave to care for servicemembers, name of employees who request leave, and name of servicemembers for whom employees are requesting leave;
- B. The relationship of employees to servicemembers for whom employees are requesting leave;
- C. Whether servicemembers are current members of the Armed Forces, National Guard, or Reserves and their military branch, rank, and current unit assignment;
- D. Whether servicemembers are assigned to a military medical facility as an outpatient or to a unit to provide command and control of members of the Armed Forces who are receiving medical care as outpatients (such as a medical hold or warrior transition unit) and the name of the medical treatment facility or unit;
- E. Whether servicemembers are on the temporary disability retired list; and
- F. A description of care to be provided to servicemembers and an estimate of the amount of leave needed to provide such care.

Whenever certification is requested, employees must provide the city with complete and sufficient certification. The city can request clarification or authentication of information in certifications. The city does not require second or third opinions or recertifications for leave to care for a servicemember with a serious illness or injury.

The city can require employees to provide confirmation of their family relationship to seriously injured or ill servicemembers.

The city will accept invitational travel orders (ITOs) or invitational travel authorizations (ITAs) as sufficient certification regardless of whether employees are named in ITOs or ITAs. Employees must provide the city with confirmation of their family relationship to servicemembers when they certify the need for leave to care for a servicemember with a serious illness or injury with an ITO or ITA. Employees who provide ITOs or ITAs to support intermittent leave requests do not need to provide any additional or separate certification that leave taken on an intermittent basis is medically necessary. If employees need leave beyond the expiration date that is specified in ITOs or ITAs, the city can request that they have authorized health care providers complete a certification form as requisite certification for the remainder of employees' necessary leave period. The city can request authentication and clarification of ITOs or ITAs. The city does not require second or third opinions or recertifications if leave is authorized under ITOs or ITAs.

XI. WHILE ON FMLA LEAVE

During FML, employees must keep their supervisors informed of the estimated duration of leave and their intended date to return from leave.

While on leave, if employees need to take more or less FML than originally anticipated, they must notify the city within two business days.

While on FML employees **shall not** engage in other employment.

XII. SCHEDULING FMLA LEAVE

FML can be taken all at once or, under certain circumstances, on an intermittent or reduced leave schedule. *Intermittent leave* is leave taken in separate blocks of time for a single FMLA-qualifying reason. An *FMLA reduced leave schedule* is a work schedule that reduces employees' usual number of working hours per workday or workweek. Employees will be informed whether they can take intermittent leave or a reduced leave schedule when they apply for FML. When it is physically impossible for employees using intermittent leave or working on a reduced schedule leave to begin or end their work midway through a shift, the entire time that employees are absent will be designated as FML.

Employees who request intermittent leave or a reduced leave schedule because employees' circumstances qualify for leave due to a spouse, child, or parent who is a servicemember of the Armed Forces' Reserve components or National Guard or retired servicemember of the Armed Forces or Reserves and is on active duty or called to active duty status in support of a contingency operation must provide proper notice and required certification.

Employees who request intermittent leave or a reduced leave schedule must arrange medical treatments and appointments to minimize work disruptions. The city can transfer such employees temporarily to positions that permit them to

take intermittent leaves or reduced leave schedules with limited work interruptions.

Employees who take intermittent leave or a reduced leave schedule and are unable to work required overtime because of a FMLA-qualifying reason can have the hours that they would have been required to work counted against their 12 or 26 weeks of leave.

XII. PAY AND BENEFITS DURING FMLA LEAVE

FML is unpaid. The city of Boise requires employees use their accrued leave, including compensatory time, concurrently with FML. Employees shall comply with the city's policies on accrued paid leave when such leave is substituted for unpaid FML. Employees who are not eligible for accrued paid leave, or have exhausted their accrued paid leave, or do not meet the requirements of the city's policies regarding accrued paid leave, shall take unpaid FML.

Holidays that occur during FML will be paid in accordance with the city's Holiday regulation.

Leave accruals while on FML will be in accordance with the city's Sick Leave, Vacation Leave and Wage Payment and Overtime regulations.

Employees' short-term disability leave shall be counted as FML. Employees' accrued leave is not substituted for paid short-term disability leave or workers' compensation leave.

The city will maintain group health plan benefits for employees on FML. Employees on unpaid FML or who do not have enough accrued leave to cover their portion of the copay, are responsible for arranging with Human Resources to pay their full portion of the premium copay. While on FML, they are notified how to make the payments for their share of their group health plan premiums during leave. If the city terminates employees' group health insurance coverage due to nonpayment of premium copayment(s), the city will provide written notice to employees 15 calendar days in advance of the coverage termination date. Employees will be required to reimburse the city for any group health insurance premiums paid during leave if employees do not return to work from leave. Employees who do not return to work from FML and those who lose coverage due to nonpayment of premium copayments can continue their group health insurance coverage under COBRA.

XIV. RETURN FROM MILITARY-RELATED FML

Employees who return from FML will be reinstated to their former positions or to positions with equivalent pay, benefits, and other employment terms and conditions. If employees are no longer qualified for their former positions because of their inability to attend certain work-related functions or classes as a

result of leave, the city will provide them with a reasonable opportunity to fulfill those conditions upon returning to work.

Certain "key" employees, who are among the highest paid employees at the city, might not be reinstated to any position. "Key" employees will be notified of their status in writing when they apply for FML and will receive notice at that time of the potential consequences with respect to reinstatement and maintenance of health benefits if they are not reinstated. The city will notify "key" employees in writing the reasons for denying reinstatement when such decision is made. The city will make a final determination whether to reinstate "key" employees if they request job restoration; such employees will be notified in writing of the city's final determination.