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I.C. § 2-218

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## FAMILY AND MEDICAL LEAVE (FMLA)

### I. INTRODUCTION

The City of Boise is covered under the federal Family and Medical Leave Act and complies with all FMLA requirements. This regulation addresses FMLA leave for eligible employees because of the birth of a child or the placement of a child for adoption or foster care; to care for a parent, spouse, or child with serious health conditions; or because of employees' own serious health conditions.

This regulation applies to all employees.

### II. EMPLOYEE ELIGIBILITY

To be eligible for FMLA leave, employees must have worked at City of Boise for 12 months and have worked at least 1,250 hours in the 12 months prior to taking FMLA leave.

Previous periods of employment with the City of Boise 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 breaks 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. REASONS FOR TAKING FMLA LEAVE

Eligible employees can take up to 12 weeks of FMLA leave in a 12-month period:

- A. for the birth and to care for a newborn child;
- B. for the placement of a child with them for adoption or foster care;
- C. to care for their spouse, child, or parent who has a serious health condition; or
- D. because their own serious health condition – serious health conditions include illness, injury, impairment, or physical or mental conditions that include, continuous treatment and incapacity lasting more than three calendar days, inpatient care, and chronic or permanent long-term conditions.

*Child:* Employees can take FMLA leave for their biological children; adopted children; foster children; stepchildren; legal wards; or children for whom employees have day-to-day responsibilities to care for or financially support. Children must be under age 18 unless they are incapable of self-care because of a physical or mental disability, as defined under the federal Americans with Disabilities Act, at the time that FMLA leave begins.

*Parent:* Employees can take FMLA leave for their biological, adoptive, step or foster father or mother, or for any person who had day-to-day responsibilities or provided financial support for them as children. Employees cannot take FMLA leave for parents-in-law.

*Spouse:* Employees can take FMLA leave for 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 FMLA leave, Human Resources will discuss resolution of the dispute with employees and make the final determination.

FMLA leave for serious health conditions does not cover common short-term illnesses. Conditions such as the common cold, flu, ear infections, upset stomach, minor ulcers, and headaches are not considered to be serious health conditions. Restorative dental or plastic surgery after injuries, removal of cancerous growths, mental illnesses, or allergies may be considered serious health conditions under certain circumstances.

Supervisors who become aware of an employee's need for Family and Medical Leave (FML) shall notify Human Resources as soon as possible. If a dispute arises about whether leave qualifies as FMLA leave, Human Resources will discuss resolution with the affected employee and make a final determination.

#### IV. AMOUNT OF FMLA LEAVE

The City of Boise designates the 12-month period in which employees can take FMLA leave for qualifying reasons by measuring a “rolling” 12-month period backward from the date employees take any FMLA leave.

If two spouses work for the city, they are limited to a combined total of 12 weeks of FMLA leave because of the birth, adoption, or foster care placement of a child, or to care for a parent with a serious health condition. Spouses remain eligible to take FMLA leave individually for other FMLA-qualifying reasons from the time that remains out of the original 12-week leave designation.

#### V. REQUESTING FMLA LEAVE

Human Resources determines if employees' need for leave qualifies as FMLA leave based on information received from employees or their spokesperson, such as their spouse or health care provider.

Employees who request FMLA leave must give 30 days' advance notice to their supervisors. If employees fail to provide such notice, they can be required to explain to their supervisors why such notice was not provided. If employees request leave due to a FMLA-qualifying reason which was previously approved, they must specify the qualifying reason for leave or the need for FMLA leave. When employees are previously approved for leave due to more than one FMLA-qualifying reason, the city can inquire further to determine which qualifying reason supports the leave.

Employees who cannot provide at least 30 days advance notice of their need for leave, because of a change in circumstances or a medical emergency, must notify their supervisors as soon as practicable. After employees submit requests for leave, the City of Boise will provide the following notices within five business days:

- A. FMLA Eligibility Notice that states whether employees are eligible for FMLA leave. Employees do not receive additional eligibility notices for subsequent FMLA leaves during a 12-month leave period if their eligibility status remains unchanged; if employees' eligibility status changes, Human Resources 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, Human Resources 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, Human Resources 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 FMLA leave. 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 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 of Boise 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.

## VI. MEDICAL CERTIFICATION

If FMLA leave is taken because of employees' or their family members' serious health condition, employees will receive a Certification of Health Care Provider form within five business days after leave requests are received. If employees do not provide advance notice of the need for leave, they will receive a Certification of Health Care Provider form within five business days after leave begins. Employees also receive notice of anticipated consequences for failing to provide adequate certification.

Employees must complete and submit medical certifications to Human Resources within 15 calendar days from the date certifications are provided.

If a medical certification is deemed incomplete or insufficient, the employee will be advised in writing of what additional information is necessary to make certifications complete and sufficient. Employees must return revised medical certifications to Human Resources within seven calendar days. With the employees' or their family members' permission, Human Resources can contact the employees' health care provider for clarification or authentication of a medical certification after the employee has had the opportunity to revise insufficient or incomplete certifications. Supervisors are prohibited from contacting an employees' health care provider for such information.

The city can require employees to obtain a second medical certification from a health care provider that is selected and paid for by the employee's department. If the city receives a medical opinion from a second health care provider that is different from employees' health care provider, the city can require the employee to obtain a third medical certification from a third health care provider at the department's expense. The city and employee should discuss and agree upon the selection of the third health care provider. The third health care provider's medical opinion will be considered the final medical

opinion. The city provides employees with copies of second and third medical certifications, if requested, within five business days.

If FMLA leave is requested for employees' or their family members' serious health condition that continues beyond a single leave year, employees shall provide Human Resources with new medical certifications each leave year.

Under certain circumstances, the city can require recertification of employees' or their family members' medical conditions. For example, the city can request a recertification every 30 days for pregnancy or chronic conditions.

Human Resources can request additional medical information if required by the city's paid leave policies or disability plans. Employees only need to provide such information for receiving payments or benefits. Employees' right to take unpaid FMLA leave is unaffected if they fail to provide such information for payments or benefits.

#### VII. WHILE ON FMLA

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

If employees need to take more, or less FMLA leave than originally anticipated while on leave, they shall notify the city within two business days.

Employees on FMLA leave shall not engage in other employment.

#### VIII. SCHEDULING FMLA

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

Employees who request intermittent leave shall 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 with limited work interruptions, if available.

Employees who take intermittent leave 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 weeks of leave. Voluntary overtime hours that employees do not work due to serious health conditions are not counted against employees' 12 weeks of leave.

## IX. PAY AND BENEFITS DURING LEAVE

FMLA leave is unpaid. The city of Boise requires employees use all accrued leave, including compensatory time, concurrently with FMLA leave. Employees who have no accrued leave may still be eligible to take unpaid FMLA leave.

FMLA leave taken after employees' accrued leave is exhausted shall be unpaid.

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

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

Employees' short-term disability leave or workers' compensation leave shall be counted as FMLA leave. 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, employees will be 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.

## X. RETURNING FROM FMLA LEAVE

Employees returning to work will be required to present Human Resources with a fitness for duty release prior to returning to work.

Employees who return from FMLA leave 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 of Boise, might not be reinstated to any position. "Key" employees will be notified of their status in writing when they apply for FMLA leave 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 of Boise 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.

Employees who return from FMLA leave retain all benefits they accrued prior to the start of leave. They also will receive any unconditional pay increases or eligible bonuses that were distributed during their FMLA leave; *eligible bonuses* generally do not include bonuses based on employee achievement of specified goals.

If employees' original worksite closes during FMLA leave, employees taking FMLA leave have the same rights as employees who did not take FMLA leave.

#### XI. COMPLIANCE WITH THE FAMILY AND MEDICAL LEAVE ACT

This regulation is intended to comply with the FMLA and should be interpreted considering federal regulations implementing the act.