EMPLOYEE – FMLA KIT

City of Billings - FMLA Notice to Employee

FAMILY & MEDICAL LEAVE: YOUR RIGHTS AND OBLIGATIONS

The *City of Billings* provides family and medical leave (FMLA) to eligible employees in accordance with the federal Family and Medical Leave Act. This notice summarizes your rights and obligations under this law.

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 workweeks of unpaid job-protection leave in a specified 12-month period, and requires group health insurance benefits to be maintained during the leave as if employees continued to work instead of taking leave.

Employees taking FMLA leave for their own serious health condition, or leave to care for a family member with a serious health condition, will be *required* to use their accrued, paid sick leave prior to being granted FMLA leave without pay. If the leave is for a reason that qualifies as FMLA leave and the employee's sick accruals are exhausted, the employee is *required* to use his or her accrued, paid vacation, subject to MCA 2-18-615. The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

Purpose

FMLA allows employees to balance their work and family life by taking leave for certain family and medical reasons. The FMLA seeks to accomplish this purpose in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

Eligibility

In order to be eligible for FMLA an employee must have been employed by the City of Billings a cumulative total of at least 12 months prior to leave *and* have worked 1,250 hours (exclusive of vacation, sick leave, holidays) in the 12 months preceding leave time. The 12 months of employment need not be consecutive months. The 1,250 hours include only those hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not included.

Entitlements

→Leave of up to a total of 12 workweeks in a 12-month period for one or more of the following reasons:

- For the birth of a son or daughter, and to care for the newborn;
- For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- To care for an immediate family member (spouse, child, or parent – but not a parent "in-law") with a serious health condition; and
- When the employee cannot perform the essential functions of his or her job because of a serious health condition.
- *Spouses employed by the same employer* are limited to a combined total of 12 workweeks of family leave for the following reasons:
    - Birth and care of a newborn child;
    - For the placement of a child for adoption or foster care, and to care for the newly placed child; and
    - To care for an employee's parent who has a serious health condition.
- *Active Military duty for an employee with a spouse, son, daughter or parent who:
    - Is on active duty in the Armed Forces in support of a contingency operation
    - Has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.
        - A "contingency operation" is an action or operation against an opposing military force.

**Active Military Duty leave is still being defined by the DOL – Until defined, the City will evaluate these leave requests on a case by case basis. Once defined, that will be the final ruling and any decision that had been made in the meantime will not set precedent.*

→Leave of up to a total of 26 workweeks in a 12-month period for the following reason:

- For a caregiver (which is defined as a spouse, son, daughter, parent or nearest blood relative) of a recovering service member, to care for the individual. The recovering service member must be a member of the Armed Forces (including the National Guard and Reserves) who is undergoing medical treatment, recuperation or therapy, is in an outpatient status, or is on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one incurred while in active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating. Employees are entitled to only one 26-week leave period to care for a wounded service member during the employee's employment.

Advance Notice

Thirty (30) days advance notice is required if your need for leave is foreseeable. When leave is not foreseeable notice "as soon as practicable" needs to be provided. "As soon as practicable" generally means verbal notice to the City typically within (2) business days of learning of the need to take FMLA leave.

Employees are required to give sufficient information to their Supervisor so that the Supervisor understands that the employee needs leave for an FMLA-qualifying reason (the employee need not mention FMLA when requesting leave to meet this requirement, but must explain why the leave is needed).

If employees do not make their Supervisor aware that they were absent for FMLA reasons and the employee wants the leave counted as FMLA leave, he or she must provide timely notice, generally within two (2) business days of returning to work, that leave was taken for an FMLA-qualifying reason.

Calculation of FMLA by the City of Billings

FMLA leave is calculated on a "Rolling" 12-month period beginning with the FMLA leave request date. At the time, an employee requests FMLA leave, records for the previous twelve months will be reviewed to determine if FMLA leave has previously been used and the amount of leave an employee is eligible to receive forward.

Serious health condition

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- Leave for multiple treatments by a health care provider for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Immediate family members

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of mental or physical disability that substantially limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA). The only exception to the above definition of immediate family member is for Military Personnel regarding Active Duty and Caregiver leave. Members can be defined as spouse, son, daughter or parent for Active Duty leave and the same for Caregiver leave however with one additional member as the nearest blood relative.

Intermittent Leave

FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a serious ill family member, or because of the employee's own serious health condition.
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the City's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. However, due to the intermittent schedule, the 12-week entitlement will be calculated using 480 hours for full-time employees who work forty hours a week. The amount of FMLA leave for part-time employees will be pro-rated. FMLA leave can be tracked in no less than 15 minute increments, per our payroll system.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with the City to schedule the leave so as not to unduly disrupt the City's operation, subject to the approval of the employee's health care provider. In such cases, the City may transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave better than the employee's regular job (if available).

FMLA Approval

Once Human Resources receives the completed FMLA forms, the employee, supervisor (who signed the FMLA Request form) and payroll will be notified, in writing, if the request is approved, provisionally approved, or denied. The letter will be mailed to the employee's home address.

The final decision on the amount of approved leave time will be based on the medical certification stating the time needed.

Medical Certification

The City requires that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a medical certification issued by a health care provider.
Exceptions to this are:

- Request for Military Active Duty:
  - You will need to provide a copy of the individual's military orders as proof of certification.
- Requests for adoption:
  - You will need to provide a copy of the adoption paperwork as proof of certification.
- Requests for birth:
  - No medical certification is required in the event of birth.

The employee has 15 calendar days to obtain the required certification and return it to the Human Resources division.

The City may require the employee to obtain a second or third opinion if it doubts the validity of the medical certification. The City also may require recertification once every 30 days, at the employee's expense, during the FMLA leave. However, there are some exceptions to this time frame that would allow recertification prior to the end of this 30 day period. Examples of this would be:

- the employee requests an extension of the leave
- the original certification has changed
- the City doubts the validity of the certification
- the employee is unable to return from leave

A "health care provider" is defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, or nurse-midwife who is authorized to practice by the State and performing within the scope of their practice as defined by State law.

Timekeeping while on leave

It is the responsibility of the employee to make arrangements with their supervisor. The employee's accruals need to be utilized in the following order and coded appropriately on their timecard:

1. FMLA – Sick
2. FMLA – Vacation
3. Compensatory Time (if applicable)
4. FMLA – w/out pay

According to 29 C.F.R. Section 825.207 (i), Compensatory time can not be charged against the employees FMLA leave entitlement. However, the City requires that all accruals be exhausted prior to going to an unpaid status. In some scenarios with Workers Compensation and bargaining units, FMLA will be coded differently. Please contact HR/Payroll with any questions.

Pay
Prior to being granted FMLA leave without pay, an employee must exhaust all accruals. The total of the paid and unpaid FMLA leave will count against the 12-workweek FMLA leave entitlement.

Holiday pay
Yes, the holiday hours will count towards the FMLA entitlement, however in order to be paid; the employee has to be in a paid status either the day before or the day after the holiday. (MCA 2-18-603). If the employee is on an unpaid FMLA leave, they may not be eligible for the holiday pay.

While on Leave
The City may not restrict your activities. However, we do have an Outside Employment Policy that has to be adhered to - refer to Human Resources Policy Manual. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

Health Benefits
The City is required to maintain group health insurance coverage for an employee on FMLA leave on the same terms as if the employee continued to work. However, during an unpaid FMLA leave or after the first 32 hours if you are on Workers Compensation (which runs concurrently with FMLA), the employee is responsible to pay their insurance premiums (health, dental, flex) and the City will continue paying the City's portion. Additional voluntary deductions, such as Additional Life Insurance, Long Term Disability & Pre-Paid legal, also must be paid by the employee during any such unpaid leave in order to continue coverage. If the employee fails to make a required payment, benefits may be discontinued. If the employee fails to return to work after taking FMLA leave, the employee may be liable for repayment of health insurance premiums paid by the City during FMLA leave.

Workers' compensation & FMLA
FMLA and Workers Compensation leave run concurrently, provided the reason for the absence qualifies as a serious health condition under the FMLA.

Communication while on FMLA
Your department Supervisor and/or Human Resources can and may check in with you periodically throughout your FMLA leave to ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work.

Returning to Work Certification
Under the law, you must be reinstated to the same position you had prior to taking the leave, or to an equivalent position if you return to work immediately after FMLA.

Return to Work Certification reflecting, light/limited duty accommodations, will be *required* when an employee returns to work from FMLA used to treat the employee's own serious health condition. The employee must present the ***Return to Work Certification*** *immediately* upon his or her return to work.

Current position
Employees who are unable to return to work and have exhausted their 12-weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

City of Billings – FMLA Coordinator contact numbers:

- Phone number: 657-8265
- Fax number: 657-8390

The Family and Medical Leave Act is currently under review and revision in 2008. Once finalized, a new a revised FMLA Kit will be sent out in early 2009.

FAMILY AND MEDICAL LEAVE (FMLA) - REQUEST FORM

Eligible employees are entitled under the Family and Medical Leave Act (FMLA) up to 12 weeks of unpaid, job-protected leave for certain family and medical reasons. **Submit this request form to your Supervisor.** Thirty (30) days notice is required when the need for leave is foreseeable. When advance notice is not possible, the employee must provide notice as soon as practical, typically within 2 business days. Requesting FMLA leave or being out sick 3+ days does not mean FMLA is automatically approved.

SECTION I: TO BE COMPLETED BY THE EMPLOYEE

Employee Name: _____ Department: _____

Job Title: _____ Date of Hire: _____

TYPE OF LEAVE: ☐ Continuous ☐ Workers Comp. ☐ Intermittent (comment below on proposed schedule):

_____

REASON FOR LEAVE – *Mark all that apply*:

- ☐ Birth of a child and to care for the newborn child
- ☐ Placement of a child with an employee for adoption or foster care
- ☐ Care of child with a serious health condition
- ☐ Care of a parent with a serious health condition
- ☐ Care of a spouse with a serious health condition
- ☐ Serious health condition that makes employee unable to work
- ☐ Active Duty/Caregiver Military Leave
- ☐ In patient hospitalization
- ☐ Continuous treatment by a health care provider

EXPLANATION of LEAVE: _____

Estimated LEAVE BEGIN DATE: _____ **Estimated RETURN DATE:** _____

ACKNOWLEDGEMENT by Employee:

-FMLA Medical Certification from a health care provider is *required within 15 days* to support all requests for FMLA leave due to the employee's own serious health condition or that of a family member. Exceptions: Military Active Duty leave requires a copy of the "military orders". Adoption leave requires a copy of the adoption paperwork. Birth does not require medical certification.

-FMLA Return to Work Certification will be *required* when an employee returns to work from FMLA leave for the employee's own serious health condition.

-City of Billings policy states that an employee on an approved FMLA leave must substitute paid leave for unpaid leave, in the following order:

#1. FMLA-Sick #2. FMLA-Vacation #3. Compensatory Time (if applicable) #4. FMLA-W/out Pay

I acknowledge the above FMLA request; FMLA paperwork and authorizing paid leave, instead of unpaid leave. I also acknowledge that the FMLA request is not valid until it has been certified and approved by Human Resources. Finally, I acknowledge, I will communicate on an ongoing basis with my Supervisor and HR on any changes in my FMLA leave (if approved) and return date.

_____ _____

Employee's Signature Date of Request

SECTION II: TO BE COMPLETED BY EMPLOYEE'S SUPERVISOR:

I acknowledge, pending certification (if required), the above employee's FMLA request:

_____ _____ _____

Supervisor's Printed Name Supervisor's Signature Date

Please return completed form to Human Resources. HR will respond to the request and notify the employee if any additional documentation and/or requirements. **Please call 657-8265 if you have any questions.**

Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 7/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: Leta Lintern, City of Billings HR Associate/Benefits Coordinator = Fax: 657-8390/ Email: LinternL@ci.billings.mt.us/ Ph: 657-8265

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: _____
First Middle Last

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

_____

_____

_____

_____ _____
Employee Signature Date

CONTINUED ON NEXT PAGE

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address:_____

Type of practice / Medical specialty: _____

Telephone: (_____)_____ Fax:(_____)_____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   ___No ___Yes. If so, dates of admission: _____

   Date(s) you treated the patient for condition: _____

   Was medication, other than over-the-counter medication, prescribed? ___No ___Yes.

   Will the patient need to have treatment visits at least twice per year due to the condition? ___No ____ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
   ____ No ____Yes. If so, state the nature of such treatments and expected duration of treatment:

   _____

   _____

2. Is the medical condition pregnancy? ___No ___Yes. If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

_____

_____

_____

_____

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ___No ___Yes.

   Estimate the beginning and ending dates for the period of incapacity: _____

   During this time, will the patient need care? __ No __ Yes.

   Explain the care needed by the patient and why such care is medically necessary:

   _____

   _____

   _____

   _____

   _____

5. Will the patient require follow-up treatments, including any time for recovery? ___No ___Yes.

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Explain the care needed by the patient, and why such care is medically necessary: _____

   _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? __ No __ Yes.

   Estimate the hours the patient needs care on an intermittent basis, if any:

   _____ hour(s) per day; _____ days per week from _____ through _____

   Explain the care needed by the patient, and why such care is medically necessary:

   _____

   _____

   _____

   _____

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ____No ____Yes.

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

   Frequency: _____ times per _____ week(s) _____ month(s)

   Duration: _____ hours or ___ day(s) per episode

   Does the patient need care during these flare-ups? ____ No ____ Yes.

   Explain the care needed by the patient, and why such care is medically necessary: _____

_____

_____

_____

_____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

_____

_____

_____

_____

_____

_____

_____ _____

Signature of Health Care Provider **Date**

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.
DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.