

ORDINANCE NO. 2009-13

An Ordinance Relating to Family and Medical Leave (FMLA)

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 2-6-44 of the Municipal Code of the City of Cedarburg is hereby amended as follows:

SEC. 2-6-44 FAMILY AND MEDICAL LEAVE

~~Leaves of absence approved by the City Administrator will run concurrent with, and not in addition to, the leaves available under both the federal and state Family and Medical Leave Acts. A qualifying employee may substitute or use accrued leave for portions of the family or medical leave.~~

~~Under both the Wisconsin and federal Family and Medical Leave Acts, employees employed by the City for more than 52 consecutive weeks, who have worked at least 1,000 hours during the preceding 52 week period, are eligible for family and medical leave.~~

~~Medical and life insurance premiums will continue at the employee's rate. Any benefit accrued prior to the leave will not be forfeited and eligibility for disability benefits will remain in effect.~~

~~If an employee delays giving notice of leave without a reasonable excuse, the start of the leave may need to be delayed. A specific notice form must be completed to indicate the type of leave; any paid portions; medical, life premium payments arrangements; any required medical certification, etc. The employee must truthfully and promptly complete this information (fraudulent information is grounds for termination).~~

~~An employee must cooperate with any necessary arrangements including, for example, reassignment of duties if an intermittent or reduced work hours leave is involved. The City Administrator, with justifiable cause, may require an employee to reschedule medical treatment subject to availability of the health care provider.~~

~~The employee must promptly notify the City Administrator if he or she has not intention of returning to work after the leave.~~

~~An eligible employee may take up to 12 weeks unpaid leave within any calendar year (January 1 through December 31) for the following reasons (Note: leave taken for a reason covered under the FMLA will be counted as part of, and not in addition to, the leave permitted under FMLA.~~

- ~~(a) — **Birth or Newborn Care of an Employee's Child:** An employee's entitlement to leave must be taken within 12 months after the child's birth. An employee may substitute accrued leave for part of the FMLA leave. The total 12 workweeks of FMLA leave includes any paid leave hours. An eligible employee may take no more than a total of 12 weeks family or medical leave in a calendar year.~~
- ~~(b) — **Adoption or Foster Care Placement:** An employee's entitlement to leave must be taken within 12 months after the child's adoption or placement. Eligible employees will be granted a total of 12 weeks unpaid leave for adoption or foster care placement. An employee may substitute or use accrued leave for part of the FMLA leave. An eligible employee may take no more than a total of 12 weeks family or medical leave in a calendar~~

year.

- ~~(c) **Care of a Spouse, Child or Parent Having a “Serious Health Condition:”** Eligible employees will be granted a total of 12 workweeks unpaid leave for care of family members with a serious health condition. A serious health condition is defined as “an illness, impairment, or physical or mental condition” involving either inpatient care or continuing treatment by a health care provider. Examples include, but are not limited to, heart attacks, cancers, strokes and severe respiratory conditions. For purposes of this policy, family members are defined as a spouse, an employee’s parent, or a child (step, foster, biological, or adopted under the age of 18 or a child over the age of 18 who is “incapable” of self care because of mental or physical disability). An employee may also substitute or use accrued leave for part of the FMLA leave. An eligible employee may take no more than a total of 12 weeks Family or Medical Leave in a calendar year.~~

~~An employee may take up to 2 weeks to care for a seriously ill parent-in-law.~~

~~The City will require that an employee provide proof of eligibility by requiring certification from a health care provider that care is required by the employee when a serious health condition is involved. The City will accept medical certification from doctors, dentists, clinical psychologists, chiropractors and other practitioners. The City reserves the right, at the City’s expense, to require a second or third opinion.~~

- ~~(d) **Employee’s Own Serious Health Condition.** Eligible employees, with medical certification, are entitled to receive 12 weeks Family and Medical Leave. An employee may also substitute or use accrued leave for part of the FMLA leave. An eligible employee may take no more than a total of 12 weeks family or medical leave in a calendar year.~~

Employee Eligibility: A City of Cedarburg employee is covered by the Federal Family and Medical Leave Act (FMLA) if that person has been employed for at least 12 months, and has worked for the City at least 1,250 hours during the previous 12 months. An employee is covered by Wisconsin’s FMLA (WFMLA) if that person has worked 1,000 hours during the previous 52 week period.

Reasons for Leave: Eligible employees are entitled to 12 weeks of unpaid leave each calendar year for: the birth of a child and to care for the newborn child (leave must be concluded within 12 months following birth); or the placement of a child with the employee for adoption or foster care (leave must be concluded with 12 months following placement); or to care for the employee’s child, spouse, or parent (but not parent -in-law) with a serious health condition; or for the employee’s own serious health condition that renders the employee unable to perform the functions of his/her position. **A serious health condition is:** A physical or mental illness, injury, impairment or condition involving inpatient care, or outpatient care that requires continuing treatment or supervision by a health care provider.

Notice of Need for Leave: Employees are required to give their supervisor as much notice as possible of the need to take FMLA leave (30 days is required for scheduled leave requests). Failure to provide timely notice as required may result in an employee’s request for leave being denied until at least 30 days after the date notice is provided.

Substitution of Paid Leave for Unpaid FMLA Leave: Under Wisconsin law, an employee may choose to substitute any paid leave, including sick leave, for up to **six weeks** of FMLA leave for

the birth or adoption of a child. Thereafter, under Federal law, the employee may choose or the employer may require staff members to substitute vacation, personal holiday, legal holiday, or compensatory time for FMLA leave. Under Wisconsin law, the employee may choose to substitute any paid leave, including sick leave, for up to **two weeks** of unpaid FMLA medical leave. Thereafter, under Federal law, the employee may choose or the employer may require staff members to substitute paid leave for unpaid FMLA medical leave. Under no circumstances will employees be entitled to FMLA leave in excess of the authorized 12 weeks as a result of the substitution of paid leave. Any leave, paid or unpaid, that is designated as leave under FMLA will count against the employee's FMLA entitlement. Employees should check with City's Payroll Officer in case of disagreement as to whether leave should be designated as FMLA leave.

Intermittent leave or leave on a reduced work schedule: Leave for medical purposes must be given only when there is a medical need for such leave which can best be accommodated through an intermittent or reduced leave schedule and the leave is being used for the employee's own serious health condition, or to care for a family member with a serious health condition. Family leave on an intermittent basis must be consistent with family leave requirements. Questions regarding the duration of any requested intermittent leave should be addressed to the City's Payroll Officer.

Benefit Continuation :

- Group Health Insurance: For employees on paid leave (e.g., annual leave or sick leave) under FMLA, group health insurance will continue as with any paid leave. For leave without pay under FMLA, the employee's insurance will continue as if the employee had been continuously employed. Employees will be advised of their individual eligibility for continuation of group health insurance under FMLA. Employees are required to pay the employee portion of health insurance premiums, if applicable, during unpaid leave under FMLA. Coverage will be terminated for employees who do not pay their portion of the cost of coverage.
In the event an employee's coverage is terminated due to non-payment while on leave, the employee may re-enroll upon return to work in whatever coverage was in effect prior to taking leave under FMLA. Coverage will be effective the first day the employee returns from leave under FMLA.
In the event an employee does not return to work for reasons other than the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control, the agency will collect from the individual the employer portion of cost of coverage payments incurred during the leave.
- Benefits Accrued Prior to Leave: Employees will not accumulate sick leave during leave without pay under FMLA. Sick leave or personal holidays which are not substituted for FMLA leave will be available to the employee upon return from leave.
- Continuous Service: Employees will continue to accrue continuous service for seniority purposes while on leave under FMLA. The time an employee is on FMLA leave (either paid or unpaid) will be treated as continuous service for purposes of vesting and eligibility to participate in the retirement plan. However, the time an employee is on unpaid FMLA leave will not be counted as creditable service for purposes of calculating retirement annuities.

Return from FMLA Leave: When returning from leave taken under FMLA, an employee will be returned to the same or equivalent position. However, an employee has no right under FMLA to return to the same position. If state law or a collective bargaining agreement governs an employee's return to work, those provisions shall be applied. Employees will be required to provide a fitness-for-duty certification signed by the employee's health care provider before returning to work from FMLA leave taken for the employee's own serious health condition. Failure to provide a fitness-for-duty certification upon request may result in denial of reinstatement until the required certification is provided.

FMLA and Other Leave Benefit Provisions: FMLA entitlement is coordinated with the provisions of the Wisconsin Family and Medical Leave Act (WFMLA), as well as leave benefits provided by the City or the applicable collective bargaining agreement. Leave qualifying under both laws will be counted against the employee's entitlement under both the federal and state laws, as well as towards the employee's entitlement under administrative rule or the applicable collective bargaining agreement.

Questions regarding the Family and Medical Leave Act should be referred to the City's Payroll Officer.

For a comparison of Federal and Wisconsin Family and Medical Leave laws please visit the following website:

http://dwd.wisconsin.gov/er/family_and_medical_leave/publication_erd_9680_p.htm

Application form for Family/Medical Leave: <http://oser.state.wi.us/docview.asp?docid=1199>

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 9th day of November 2009.

Gregory P. Myers, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Kaye K. Vance, City Attorney

