

ORDINANCE NO.2021-11

AN ORDINANCE AMENDING THE CITY OF LAFOLLETTE
PERSONEL POLICY AS SET FORTH IN ORDINANCE NO. 2001-06

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND
ALDERMAN OF THE CITY OF LAFOLLETTE, TENNESSEE, as follows:

That Section V (F) of the City of LaFollette Personnel Policy shall be amended by
deleting the existing section and replacing the same as follows:

See Attached Exhibit for a copy of said new section V(F)

A. **Conflict with Other Ordinances.** In case of conflict between this ordinance or any
part thereof, and the whole or part of any existing or future ordinance of the City of
LaFollette, the most restrictive shall in all cases apply.

B. **Validity.** If any section, clause, provision, or portion of this Ordinance shall be held
to be in doubt or unconstitutional by any court of competent jurisdiction, such holding
shall not affect any other section, clause, provision, or portion of this Ordinance which is
not of itself invalid or unconstitutional.

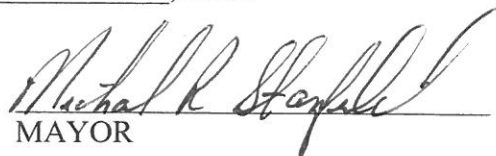
C. **Remaining Sections.** This amendment only applies to Section V(F) of said policy
and all remaining terms and sections not specifically amended herein shall remain in full
force and effect.

D. **Effective Date.** This ordinance shall become effective upon passage and publication,
the public welfare requiring it.

Passed 1st reading, August 3, _____, 2021.

Passed 2nd reading, August 3, _____, 2021.

Passed 3rd reading, September 14, _____, 2021.


MAYOR


RECORDER

Councilperson, Mr. Furman, moved the adoption of the foregoing Ordinance on first reading, second by Councilperson Mr. Kitts, upon roll call the vote on said motion was as follows:

AYE: Mr. Farmer
Ms. Gurman
Mr. Huskins
Mr. Kitts

NAY:

FAMILY AND MEDICAL LEAVE ACT

Purpose

The purpose of this policy is to provide a family and medical leave policy in compliance with Public Law 103-3, titled Family and Medical Leave Act (FMLA) of 1993. The policy also provides the changes to FMLA that come as part of the National Defense Authorization Acts as amended.

Eligibility

The Family and Medical leave policy is applicable to employees who have worked at least 12 months for the City and who have worked at least 1,250 hours during the preceding 12-month period, and work for an employer with 50 or more employees within 75 miles of the work site. Such employees are eligible for a maximum of 12-26 weeks leave under the act, depending upon eligibility circumstances. Special rules apply for husbands and wives employed by the same employer, for exempted key employees (top 10 percent of all wage earners, and who are paid on a salary basis), and for local educational agencies. Individuals who are *not* covered include elected officials, political appointees, volunteers, independent contractors, and legal advisors.

FMLA Circumstances

Employees may be eligible for Family and Medical Leave for one or more of the following reasons:

1. For the birth and care of the newborn child of the employee;
2. For placement with the employee of a son or daughter for adoption or foster care;
3. To care for an immediate family member with a serious health condition as defined by the FMLA;
4. Medical leave when the employee is unable to work because of a serious health condition;
5. To care for an immediate family member as defined under the FMLA who is injured while on active duty if that injury renders the service member unfit for military duty;
6. To handle a "qualifying exigency" relating from an employee's spouse or child being called to active duty.

Paid / Unpaid Leave

Family Medical Leave (FML) may be paid or unpaid. If the employee has available paid leave, that leave will run concurrently with FML. If the employee does not have paid leave available, or he/she exhausts paid leave, while out on FML, the remainder of the approved FML will be unpaid. Employees on unpaid leave will not accrue paid leave if they are on unpaid leave for more than 15 days in a month.

Employees requesting FML must generally use their accumulated compensatory time, sick leave, or annual/vacation leave. The combination of paid leave, and unpaid leave may not exceed the total allowable leave under the FMLA.

Guidelines

An eligible employee may take up to 12 weeks of FML in a 12-month period for the birth of a child or the placement of an adopted or foster care child. Leave may also be taken to care for one's self, a child, spouse, or parent who has a serious health condition. The right to take leave applies equally to male and female employees who are eligible. Eligible employees may take up to 12 weeks of FML to deal with family issues resulting from a spouse, son, daughter, or parent being called to active duty (including being notified of an impending call to active duty).

Eligible family members of military personnel defined as the spouse, son, daughter, parent or next of kin of a covered service member may take a maximum of 26 weeks leave under FML to care for a wounded member of the armed forces. This includes family members of the National Guard or Reserves who are undergoing medical treatment, recuperation, therapy, or other medical treatment for a "serious injury or illness".

The "parent", as defined the Family and Medical Leave Act, need not be the employee's biological parent, provided that the individual "stood in loco parentis" (acted as a parent), to the employee when the employee was a child. Benefits under FMLA are not extended to parent's "in-law".

FMLA defines the term "spouse" to mean a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage. "Spouse" also includes a husband or wife in a marriage that was validly entered into outside of the United States if it could have been entered into in at least one state. No employer would be required to grant an eligible employee FML to care for an unmarried domestic partner.

"Son or daughter" is defined in part as one who is under age eighteen (18) or as an adult who is incapable of self-care because of a mental or physical disability. Medical leave may be taken for a biological child, as well as foster children, adopted children, step children or legal wards such as a niece, nephew, or grandchild whom the employee is raising.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment.
2. A period of incapacity of more than three consecutive calendar days that also involves treatment two or more times by a health care provider or treatment which results in a regimen of continuing treatment under the supervision of the health care provider.
3. Any period of incapacity due to pregnancy or for prenatal care.
4. A chronic condition that requires periodic treatments, continues over an extended period of time, and may cause episodic rather than a continuous period of incapacity.

5. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, requiring continuing supervision of a health care provider.
6. Multiple treatments either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatments, such as cancer, severe arthritis, or kidney disease.

Serious Injury or Illness for an Injured Service member is defined as a covered service member's injury or illness incurred in the line of duty on active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the member's office, grade, rank, or rating. This could include medical treatment, recuperation, therapy, outpatient care and other treatments for a serious injury or illness.

During periods of unpaid FML, an employee may not accrue any additional seniority or similar employment benefits during the leave period in months in which they work fewer than 15 days; or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken leave.

Spouse / Same Employer

If spouses are employed by the same employer and eligible to take leave for the birth or adoption of a child, or care for a parent, their aggregate leave under FMLA is limited to 12 weeks. If the father takes four weeks leave to care for a child, the mother would be entitled to eight weeks leave, for a total of 12 weeks. If, however, the spouses experience their own serious health condition, both employees are entitled to the full 12 weeks.

Right to Return to Work

On return from FML, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his/her position has been restructured to accommodate the employee's absence.

If the employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The city, however, may be required by the Americans with Disabilities Act (ADA) to offer the employee an accommodation (i.e. additional leave, light duty, job restructuring, etc.).

Notice and Scheduling

An eligible employee must provide the city at least 30 days advance notice of the need for leave for birth, adoption, or planned medical treatment when it is foreseeable. This 30-day advance notice is not required in cases of medical emergency or other unforeseen medical events.

Parents who are awaiting the adoption of a child and are given little notice of the availability of the child may also be exempt from this 30-day notice.

It is the city's responsibility to designate leave in writing as FMLA leave and to notify the employee. Employees may not retroactively claim that leave was for FMLA. Failure to provide notice of the need for FML may result in the leave not being designated as FML.

The city will, if necessary, provide the notice of employee FMLA rights in alternate formats.

Certification

The city reserves the right to verify an employee's request for FML. If an employee requests leave because of a serious health condition or to care for a family member with a serious health condition, the city may require that the request be supported by certification from the health care provider of either the eligible employee or the family member, as appropriate. Failure to submit proper certification may result in a delay of FML approval. If the city has received a complete and sufficient certification but has a reason to doubt that it is valid, the city may, at their expense, require a second opinion from a different health care provider chosen by the city. The city can choose the health care provider to provide the second opinion, but generally may not select a health care provider who it employs on a regular or routine basis. If the second opinion differs from the original certification, the city may require the employee to obtain a third certification from a healthcare provider selected by both the employee and city. The opinion of the third health care provider is final and must be used by the city. The city is responsible for paying for the second and third opinions, including any reasonable travel expenses for the employee or family member. While waiting for the second (or third) opinion, the employee is provisionally entitled to FMLA leave.

This certification must contain the date on which the serious health condition began; it's probable duration, and appropriate medical facts within the knowledge of the health care provider regarding the condition. The certification must also state the employee's need to care for the family member. Medical certifications will be treated as confidential and privileged information under HIPAA and the State's Public Records laws as appropriate.

An employee may be required to report periodically to the city the status and the intention of the employee to return to work. Before return is granted, employees who have taken unpaid leave under this policy may be required to furnish the city with a medical certification from the employee's health care provider that the employee is able to resume work.

Failure to provide certification in a timely manner may result in delay or denial of FMLA.

Reduced and Intermittent Leave

FMLA Leave may be taken intermittently or on a reduced schedule when medically necessary as certified by the health care provider. Intermittent leave is defined as the smallest increment the payroll system will accommodate. Intermittent or reduced leave schedules for routine care of a new child can be taken only with the city's approval. The schedule must be mutually agreed upon by the employee and the city.

Employees on intermittent or reduced leave schedules may be temporarily transferred by the city to an equivalent alternate position that may better accommodate the intermittent or reduced leave schedule.

Intermittent or reduced leave may be spread over a period of time longer than 12 weeks, but it will not exceed the equivalent of 12 workweeks total leave in a 12-month period.

Restoration

Employees who are granted leave under the FMLA policy will be reinstated to an equivalent or the same position held prior to the commencement of their leave. Certain highly compensated key employees, who are salaried and among the 10 percent highest paid workers, may be denied restoration.

Restoration may be denied to key employees if:

1. the city shows that such denial is necessary to prevent substantial and grievous economic injury to the city's operations;
2. the city notifies the employee that it intends to deny restoration on such basis at the time the city determines that such injury would occur; and
3. in any case in that the leave has commenced, the employee elects not to return to work within a reasonable period of time after receiving such notice

Employees voluntarily accepting a light duty assignment in lieu of continuing FML maintain their right to restoration to the original or an equivalent job until the twelve (12) weeks of FML has passed.

Failure to Return to Work

According to the FMLA "if an employee is unable to or does not return to work at the end of twelve (12) weeks of FML, all entitlement and rights under the FMLA cease at that time; the employee is no longer entitled to any further restoration rights under the FMLA, and the employer is no longer required to maintain group health benefits pursuant to the FMLA."

Notification of Discharge

An employee may be discharged from employment at the end of the twelve (12) week entitlement period if the employee has not returned to work, has not supplied written notification of their intent to return to work or is unable to perform his/her job duties. The city, however, may be required by the Americans with Disabilities Act (ADA) to offer the employee an accommodation (i.e. additional leave, light duty, job restructuring, etc.) prior to discharge.

The 12-Month FMLA Period

The 12-month period during which an employee is entitled to 12 workweeks of FML is measured as follows. An employee is entitled to 12-26 weeks of leave during the 12-month period after the leave begins. The next FML period will begin the first time the employee requests FML after the completion of the previous 12-month period. **(Option – The employer may choose as the 12-month period: (a) the calendar year (January to December), (b) fixed 12 month period (July to June), or (c) the 12-month period counted forward or backward from the date of the last leave.)**

Denial of FMLA Leave

If an employee fails to give timely, advance notice when the need for FMLA leave is foreseeable, the city may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the city of the need for FMLA leave.

If an employee fails to provide, in a timely manner, a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, the city may delay continuation of FMLA leave until an employee submits the certificate. If the employee never produces the certification, the leave is not designated as FML.

If an employee fails to provide a requested fitness-for-duty certification to return to work, the city may delay restoration until the employee submits the certification.

Employee Benefits While on FMLA

During periods of FML, the city will continue to provide health insurance benefits at the employee rate. If premiums are current, the city will maintain health insurance benefits during periods of unpaid leave without interruption. Any payment for premiums or other payroll deductible insurance policies must be paid by the employee. The city is obligated to reinstate employment benefits upon an employee's return to work.

The city has the right to recover from the employee all health insurance premiums paid by the employer during the unpaid leave period if the employee fails to return to work after leave. In the event that an employee is unable to pay his/her portion of premiums during the time of unpaid FML, the city may deduct any unpaid premiums from the employee's pay upon return to work, subject to FLSA restrictions. Employees who fail to return to work because they are unable to perform the essential functions of their job, because of their own serious health condition, or because of the continued necessity of caring for a seriously ill family member may be exempt from this recapture provision.

FML under this policy does not constitute a qualifying event that entitles an employee to Consolidated Omnibus Budget Reconstruction Act (COBRA) benefit; however, the qualifying event triggering COBRA coverage may occur when it becomes clearly known that an employee will not be returning to work. At that point, the employee ceases to be entitled to leave under this policy and may be offered COBRA.

Workers' Compensation While on FMLA

Workers' Compensation injury/illness meets the criteria for a serious health condition, therefore the workers' compensation absence and the FMLA leave entitlement will run concurrently.