

FMLA Notice to Employee

FAMILY MEDICAL LEAVE Act – (FMLA)

The Family and Medical Leave Act (FMLA) of 1993 is a United States federal Law. FMLA provides eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. **City of Billings** is a covered employer with at least 50 employees within a 75-mile radius and provides FMLA. **City of Billings** employees are eligible if they have:

- at least 12 months of service, and
- have *worked* at least 1,250 hours within the preceding 12-month period. Paid leave and unpaid leave, including FMLA leave, are not included.

The function of this notice is to provide employees with a general description of their FMLA rights. In the event of a conflict between this notice and the applicable law, employees will be afforded all rights required by law.

If eligible, there are two types of leave entitlements available, including the basic 12 workweeks of unpaid leave (Basic Family Leave), and the military family leave (Military Family Leave).

Basic FMLA Leave

Employees who meet the eligibility requirements described above are eligible to take up to 12 workweeks of unpaid leave during any 12-month period for one of the following reasons:

1. To care for the employee's son or daughter during the first 12 months following birth; or
2. To care for a child during the first 12 months following placement with the employee for adoption or foster care; or
3. To care for a spouse, child or parent who has a serious health condition; or
4. For incapacity due to the employee's pregnancy, prenatal medical or childbirth; or
5. Because of the employee's own serious health condition that renders the employee unable to perform essential functions of his or her job; or
6. For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces. (Military Family Leave)

The amount of FMLA leave for part-time employees will be pro-rated.

Employees' sick accrual usage is typically for basic cold, flu, or couple-day events. If an employee calls in sick more than three consecutive shifts, or has a planned medical procedure, then it is typically a FMLA qualifying event per Federal Law. Therefore, the FMLA process is required to certify the time away from work as FMLA, which includes medical documentation releasing them back to work from a medical procedure. Employees cannot opt out of complying with this law.

Married couples that work for the City of Billings

In cases where a married couple is employed by the City, the two spouses together may take a *combined* total of 12 weeks' leave during any 12-month period for reasons 1 and 2, or to care for the same individual pursuant to reason 3.

Military Family Leave includes two (2) types of Military Family Leave.

1. Qualifying exigency leave. Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of their Basic FMLA Leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

- **For Regular Armed Forces members**, "covered active duty or call to covered active duty status" means duty during the deployment of the member with the Armed Forces to a foreign country (outside of the United States, the District of Columbia, or any territory or possession of the United States, including international waters).
- **For a member of the Reserve components** of the Armed Forces (members of the National Guard and Reserves), "covered active duty or call to covered active duty status" means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation. Qualifying exigencies may include:
 - Short-notice deployment (seven or less calendar days)
 - Attending certain military events and related activities
 - Childcare or school activities
 - Addressing certain financial and legal arrangements
 - Periods of rest and recuperation for the military member (up to 15 calendar days of leave, dependent on orders)
 - Attending certain counseling sessions
 - Attending post-deployment activities (available for up to 90 days after the termination of the covered military member's covered active duty status, and to address issues arising from death of military member)
 - Attending to parental care needs arising from covered active duty or call to duty (arrange for alternative care for a parent of a military member, provide urgent or immediate care, admit or transfer to a care facility, or attend non-routine caregiver meetings with care facility staff)
 - Other activities arising out of the military member's covered active duty or call to active duty and agreed upon by the company and the employee.

2. Leave to care for a covered servicemember (military caregiver leave). There is also a special leave entitlement that permits employees who meet the eligibility requirements for FMLA leave to take up to 26 workweeks of leave during a single 12-month period if the employee is the spouse, son, daughter, parent, or next of kin caring for a covered military servicemember or veteran recovering from a serious injury or illness, as defined by FMLA's regulations.

- **For a current member of the Armed Forces**, including a member of the National Guard or Reserves, the member must be undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness.
- **For a covered veteran**, he or she must be undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must begin leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five-year period.

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 does 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.

Calculation of 12-Month Period for FMLA: *rolling, lookback*

The **City of Billings** will measure the 12-month period as a rolling 12-month period measured backwards from the date an employee uses any leave under this policy. Each time an employee takes leave, the city will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time. (For example: If an employee took 12 weeks leave beginning July 1, 2019 and requested to take 12 weeks leave beginning May 1, 2020, the request would be denied because the employee used 12 weeks looking back from May 1, 2020 through April 30, 2019.)

Human Resources will utilize the payroll system to track FMLA; therefore, 12 workweeks for a 40-hour position will convert to 480 hours of FMLA entitlement. For Fire Suppression, 12 workweeks for a 43.7-hour position will convert to 524 hours of FMLA entitlement.

Military caregiver leave will also be based on a rolling, lookback period. FMLA leave taken for other FMLA circumstances during this 12-month period will be deducted from the total of 26 weeks available.

Montana Maternity Act (MCA 49-2-310)

If a female employee is not eligible for FMLA, Montana law requires they receive a reasonable leave of absence for maternity leave. "Reasonable" is determined case-by-case; however, typically physicians will state for a normal delivery is 6-weeks and C-section delivery is 8-weeks. If this situation applies to you, email FMLA@billingsmt.gov. The employee will be required to use all accruals available before being placed in an unpaid status. The City also reserves the right to extend their probationary period for the timeframe of their leave.

The **City of Billings** FMLA process will include City specific FMLA forms and the Federal Department of Labor (DOL) forms.

All are available on the city website: <https://ci.billings.mt.us/417/Forms-and-Resources>

- City of Billings – FMLA Request form
- [WH-382 Designation Notice](#)
- [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition](#)
- City of Billings – FMLA Return to Work form
- [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition](#)
- [WH-384 Certification of Qualifying Exigency For Military Family Leave](#)
- [WH-385 Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave](#)
- [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](#)

For questions, contact **City of Billings** – FMLA Coordinator:

- Email: FMLA@billingsmt.gov or Phone: (406) 657-8265

Procedure for Requesting FMLA Leave

Employees requesting FMLA leave should email the FMLA Request form to FMLA@billingsmt.gov. They should also share this information with their supervisor/department. Within five business days after receipt, Human Resources will email the employee with the DOL Notice of Eligibility and Rights or a FMLA letter.

- City of Billings – FMLA Request form

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. In an emergency, the employee may communicate with their supervisor and the supervisor should email FMLA@billingsmt.gov of the situation and the email to communicate with their employee.

When an employee requests leave, Human Resources will inform the employee whether he or she is eligible under the FMLA. If the employee is eligible for FMLA leave, the employee will be given written notice that includes details requesting any additional information he or she will be required to provide. If the employee is not eligible under the FMLA a written notice indicating the reason for ineligibility will be provided.

Designation of FMLA Leave

If there is sufficient information that the leave is a qualifying FMLA event, the **City of Billings** is allowed by the Federal law to designate leave as FMLA and will provide the designation notice or letter to the employee.

- [WH-382 Designation Notice](#)

Certification of Medical Certification

Upon receipt of your FMLA Request, employees must provide certification explaining the serious health condition or the family member's condition. The **City of Billings** will utilize the DOL forms for this information and should detail:

- the date on which the condition began
- the probable duration of the condition
- appropriate medical facts regarding the condition
- a statement that the employee is needed to care for a spouse, parent, or child
- a statement that the employee's own health condition makes it impossible for him or her to work

Certification for the Employee's Serious Health Condition

The **City of Billings** will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

- [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition](#)

Certification for the Family Member's Serious Health Condition

The **City of Billings** will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

- [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition](#)

Certification of Qualifying Exigency for Military Family Leave

The **City of Billings** will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

- [WH-384 Certification of Qualifying Exigency For Military Family Leave](#)

Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave

The **City of Billings** will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

- [WH-385 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave](#)
- [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](#)

Recertification

The **City of Billings** may request recertification every 30 days for the serious health condition of the employee or the employee's family member when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the City may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence.

If an employee's need for FMLA leave lasts beyond a single FMLA leave year, the City will require the employee to provide a new medical certification annually.

If the **City of Billings** is not satisfied with the certification, it may require a second opinion at its expense. In the event of conflicting opinions, a third provider will be retained, also at the City's expense, to render a binding decision.

Use of Intermittent and Reduced-Schedule Leave

- An employee does not need to use this leave entitlement in one block. Leave because of a serious health condition, or either type of family military leave may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the usual number of hours worked per workweek or workday), if *medically necessary*.
- Employees must make reasonable efforts to schedule leave for planned medical treatments, so as not to unduly disrupt the City's operations. Military Family Leave due to qualifying exigencies may also be taken on an intermittent basis. Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, *unless* both the City and employee agree to such intermittent leave.

FMLA and Workers Compensation

If the employee is eligible, Worker's Compensation leave and FMLA run concurrently. We do not require FMLA forms for these situations, since Worker's Compensation manages these cases. Payroll Coding for Worker's Compensation FMLA varies depending on the employee group (bargaining or non-bargaining). For questions contact **City of Billings** Work Comp Coordinator at: (406) 657-3061

Use of Paid and Unpaid Leave for FMLA

City of Billings employees are required to use their accrued, paid sick leave (FMLA-Sick) prior to being granted FMLA leave without pay. If the employee's sick accruals are exhausted, the employee is required to use his or her other accrued leaves (vacation (FMLA-Vacation), compensatory time, holiday leave bank) before they can take unpaid FMLA. Personal Days are not required to be used. The total of the paid and unpaid FMLA leave will count against their FMLA leave entitlement.

It is the responsibility of the employee to code their time keeping (timecard/employee portal) appropriately during approved FMLA. Typically the employee's sick accruals need to be exhausted first and coded as FMLA – Sick (FM) and then FMLA – Vacation (FV).

According to 29 C.F.R Section 825.207 (i), Compensatory time cannot be charged against the employee's FMLA entitlement. However, the City of Billings requires all accruals to be exhausted prior to FMLA – Without Pay (FW)

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

Employee Status and Benefits during Leave

While an employee is on approved leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

During paid leave, HR/Payroll will deduct the employee's portion of the health plan premium as a regular payroll deduction. In order to continue coverage on additional voluntary deductions, such as additional life, LTD, etc., HR/Payroll will also deduct these premiums, unless otherwise directed by the employee.

If the leave becomes unpaid, the employee must pay his or her portion of the premium. The employee will be billed directly by Human Resources, and a billing statement will be emailed to them with payment instructions. In an unpaid situation, Human Resources is not able to bill the employee for health savings account (HSA) contributions. An employee's healthcare coverage may cease if the employee's premium payment is more than 30 days late. All other benefits cease to accrue during the unpaid portion of the leave.

Request for *Donated Sick Leave* While on FMLA or MT Maternity Act Leave, Without Pay

The request for donated sick leave is to help cover FMLA or Maternity Act leaves where the employee is "medically unable to work" and has exhausted their own accruals, and has the approval of their department to make the donation request.

Reporting While on Leave

The **City of Billings** may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Return to Work/Fitness for Duty - Certifications

Because the **City of Billings** wishes to ensure the well-being of all employees, any employee returning from FMLA leave for their own serious health condition will need to provide a FMLA Return to Work (RTW) or Fitness for Duty (FFD) certification/medical note signed by their health care provider.

- An employee who fails to provide certification will be prohibited from returning to work until it is provided. An employee who fails to provide certification may be discharged from employment.

- Certifications may be required when an employee returns from intermittent FMLA leave if serious concerns exist regarding the employee's ability to resume their duties safely.

Employee Status after Return from Leave

Upon return from approved leave, the employee will be restored to their original or an equivalent position with equivalent pay, benefits and other employment terms in effect for all employees. An employee who fails to return at the end of FMLA leave will in most cases be considered to have voluntarily resigned their position with **City of Billings**, unless the leave period is extended, in advance, by Human Resources.

Under certain conditions, employees who are designated as "key" may be denied job restoration rights. These employees must be in the highest paid 10% of the workforce, and their absence must mean a substantial economic loss to the City. If a person designated as "key" still takes family leave, the **City of Billings** will pay the City's health care premiums, but no guarantees are made about returning them to the positions they left.

In the event an employee is not able to return work at the end of the 12 workweeks of protected leave, the City is no longer required to restore the employee to an equivalent position.

If the employee elects not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member, or a circumstance beyond the employee's control, the **City of Billings** may require the employee to reimburse the City's contributions to the employee's health insurance costs during the leave period.

False/Misleading information while on FMLA

Providing false or misleading information to justify a FMLA absence may result in discipline, up to and including termination. FMLA provisions indicate that at the discretion of the **City of Billings**, health care premiums may be recovered from employees who do not return to work.

Employees are required to follow the Federal Law and cooperate with all requests for information regarding whether absences are FMLA-qualifying. Failure to comply may result in leave being delayed, denied, or the employee being disciplined for not providing documentation to validate their time away.