



## **RE: FAMILY AND MEDICAL LEAVE ACT**

### **Background:**

Family and Medical Leave Act of 1993 (FMLA) is a US labor law that requires covered employers to provide employees with job-protected, unpaid leave for qualified medical and family reasons. Since 2017, employees on FMLA have not been allowed to work any outside employment. This was brought to leaderships' attention as being a difficulty for some employees who work secondary jobs.

### **Analysis:**

It has been determined that a caregiver should be allowed to work outside employment since they are, technically, not the ones that are injured or sick.

### **Recommendation:**

Staff is in agreement with this change.

### **MEMO PREPARED BY:**

**Amanda Hunsucker** | Director of Human Resources

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**RESOLUTION NO. 2024-35**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE CITY'S PERSONNEL CODE BY MODIFYING POLICY 7.1.10 FOR THE PURPOSE OF MODIFYING THE PROVISIONS RELATED TO FAMILY AND MEDICAL LEAVE.**

**WHEREAS** City Charter Section 7.2 requires the Council to adopt a personnel code; and

**WHEREAS** the City maintains its personnel code in a Personnel Handbook, which is modified by Resolution from time to time; and

**WHEREAS** the City Council desires to modify the Personal Code as set forth herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City's Personnel Code is hereby amended by repealing the current Policy referenced as "7.1.10 Family and Medical Leave" in its entirety and adopting in lieu thereof a new policy, which said policy shall read as follows (Explanation: Language in bold-face type (e.g., **thus**) is language to be added. Language in bold-faced brackets (e.g., [**thus**]) is not enacted and is intended to be omitted or deleted.):

**7.1.10 Family and Medical Leave.**

The Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee 12 work weeks of unpaid leave during any 12-month period for the following reasons:

1. Birth of Child. The birth of the employee's child or to care for such child;
2. Placement of Child for Adoption or Foster Care. The child's placement with the employee for adoption or foster care;
3. Family Serious Health Condition. The care of a spouse, child, or parent who has a serious health condition;
4. Employee Serious Health Condition. The employee's own serious health condition;
5. For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. An eligible employee may also take up to 26 workweeks of leave during a "single 12-month period" to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member.

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46           The "single 12-month period" for military caregiver leave is different from the 12-  
47           month period used for other FMLA leave reasons.

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49   The following provisions shall apply:

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- 51       a) Entitlement to family leave expires 12 months after the birth or adoption of a  
52       child.
- 53
- 54       b) Leave for birth or adoption shall be limited to one consecutive leave period. Leave  
55       for serious health conditions may be intermittent or on a reduced time basis if such  
56       schedule is needed for medical reasons. The City may move an employee on  
57       intermittent or reduced time leave to an alternative position that can accommodate  
58       such scheduling.
- 59
- 60       c) When leave is foreseeable, an employee must give the City 30 days advance  
61       notice. In addition, when foreseeable leave is for planned medical treatment, the  
62       employee must make a reasonable effort to schedule the treatment so as not to  
63       unduly disrupt the City's operation. If it is not possible to provide 30 days' notice,  
64       as much notice as is practicable must be provided. During leave, an employee is  
65       required to report periodically on his/her status and intent to return to work.
- 66
- 67       d) "Serious health condition" is defined as a health condition that involves in-patient  
68       care in a hospital, hospice, residential care facility, or continuing treatment by a  
69       health care provider. Entitlement to leave expires 12 months from the date the  
70       employee's first FMLA leave begins.
- 71
- 72       e) The City will continue health care coverage of the employee during family leave,  
73       on the same basis as if the individual had been actively at work.
- 74
- 75       f) During periods of FMLA leave, the employee can maintain their existing group  
76       health insurance coverage with the City provided their required premiums are paid  
77       in advance. The City will provide notice to employees whenever they are 15 days  
78       behind in payment of required premiums. An employee's continued failure to make  
79       payment will result in the termination of coverage once the premium is overdue by  
80       30 days.
- 81
- 82       g) The City will return the employee to the same or an equivalent position and  
83       employment benefits upon return from approved family leave.
- 84
- 85       h) The City requires certification from a health care provider concerning the serious  
86       health condition of the employee or family member.
- 87
- 88       i) The City has the right to require proof of a family relationship and requires advance  
89       notice of a requirement for medical treatment from a physician and/or facility  
90       where treatment will be given. For additional information concerning FMLA contact  
91       Human Resources.

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92  
93 To be eligible for FMLA leave, an employee must have worked for at least 12 months and  
94 have worked at least 1250 hours during the 12 months prior to the start of the FMLA  
95 leave, which does not include periods of paid and unpaid sick or vacation leave. According  
96 to the DOL, paid and unpaid leave does not count towards the 1250 hours; it is hours  
97 worked.

98  
99 Disability due to pregnancy is treated as any other illness or disability. An employee  
100 needing time off from work will first use accrued sick leave and vacation with unpaid leave  
101 being given under the provisions of Family and Medical Leave Act. If an employee does  
102 not qualify for FMLA due to time of service, the employee will be guaranteed six (6) weeks  
103 of unpaid leave.

104  
105 An employee may be eligible for Short Term Disability the first six weeks of maternity  
106 leave. The second six weeks is considered as voluntary time off therefore the employee  
107 is ineligible for STD unless under doctor’s orders.

108  
109 Outside employment while an employee is on Family and Medical Leave is prohibited  
110 **unless the employee is the caregiver, as defined by the FMLA, for a family member.**  
111 Denial of leave may result if such outside employment takes place. **In the event that an**  
112 **employee is the caregiver for a family member, as defined by the FMLA, the**  
113 **employee may work outside employment.**

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115 **SECTION 2:** This Resolution shall be in full force and effect from and after its final  
116 passage by the City Council and after its approval by the Mayor, subject to the provisions  
117 of section 3.11(g) of the City Charter.

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119 **ADOPTED BY THE COUNCIL THIS 28<sup>th</sup> DAY OF May, 2024.**

120  
121 ATTEST:  
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123 \_\_\_\_\_  
124 PRESIDING OFFICER CITY CLERK

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126 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.**

127  
128 ATTEST:  
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130 \_\_\_\_\_  
131 MAYOR CITY CLERK

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133 APPROVED AS TO FORM:  
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135 \_\_\_\_\_  
136 CITY ATTORNEY