

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Eden Freeman, City Manager

Date: May 26th, 2015

Re: Resolution Amending Sections 3.9, 3.10, 5.3 – 5.5, 5.14, Appendix J, Appendix K and the addition of Appendix DD to the City of Winchester's Comprehensive Employee Management System

THE ISSUE: Sections 3.9, 3.10, 5.3 – 5.5, 5.14, Appendix J, Appendix K and the addition of Appendix DD to the City of Winchester's Comprehensive Employee Management System (CEMS) require amendments to accommodate for recommended changes to the City's existing pay plan, overtime, modified duty requests, and nonessential/essential personnel closing requirements.

RELATIONSHIP TO STRATEGIC PLAN: Goal Four: Improve City services and advance the City's strategic plan goals by promoting a culture of transparency, efficiency and innovation.

BACKGROUND: The City of Winchester's Comprehensive Employee Management System was adopted by the Common Council of the City of Winchester in July 1979 and governs all City employees except those specifically exempted as stated within the system. City Staff has prepared a series of amendments to various sections within CEMS that alter existing policies pertaining to modified duty requests, overtime regulations, on-call duty, and nonessential/essential personnel attendance when the City deviates from its normal operating hours. See attached summary of current policies are applied and the proposed changes.

BUDGET IMPACT: No budget impact.

OPTIONS:

1. Approve the attached resolution
2. Modify and approve the attached resolution
3. Reject the attached resolution

RECOMMENDATIONS: City Staff recommends the approval of the attached resolution.

**RESOLUTION AMENDING SECTIONS 3.9, 3.10, 5.3 –5.5, 5.14, APPENDIX J, ADDENDIX K, AND THE
ADDITION OF APPENDIX DD TO THE CITY OF WINCHESTER’S COMPREHENSIVE EMPLOYEE
MANAGEMENT SYSTEM**

WHEREAS, the City of Winchester’s Comprehensive Employee Management System (CEMS) was adopted by the Common Council of the City of Winchester in July 1979; and,

WHEREAS, CEMS governs all City employees except those specifically exempted as stated within the system; and,

WHEREAS, CEMS has been periodically amended by City Staff and the Common Council since its inception to accommodate for various changes within the administration; and,

WHEREAS, City Staff has prepared a series of amendments to Sections 3.9, 3.10, 5.3 – 5.5, 5.14, Appendix J, Appendix K and the addition of Appendix DD to the CEMS; and,

WHEREAS, these amendments alter existing policies pertaining to the City’s modified duty requests, overtime regulations, on-call pay, and nonessential /essential personnel attendance when the City deviates from its normal operating hours.

NOW therefore be it RESOLVED the City of Winchester Common Council hereby adopts the proposed series of amendments to Sections 3.9, 3.10, 5.3 – 5.5, 5.14, Appendix J, Appendix K and the addition of Appendix DD to the City of Winchester’s Comprehensive Employee Management System.

3.9 Overtime Pay and Compensatory Time

A. Purpose

To establish a policy for compensating employees, *including employees of Constitutional Officers subject to the City's personnel policies* for overtime hours worked. This regulation is intended to comply with all ~~minimum~~ requirements of the Fair Labor Standards Act (FLSA) and other applicable law, ~~as known to the City~~. Further, it is the policy of the City that any overtime work necessary to the continued effective operation of the City shall be managed in the most efficient and economical manner possible.

B. Authorization for Overtime

Overtime work shall be authorized only to cover emergencies, necessary seasonal activity, weather conditions, and unusual working requirements, and may be authorized only by Department Heads prior to such work being performed. It is the responsibility of each Department Head to determine that overtime pay is administered in the best interest of the City and to assure adequate funds are available for the payment of overtime.

In addition, it is equally important for the Department Head to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the employer should have stopped it but did not, or if he knows or has reason to know of its practice. No employee shall start work before the appointed time, work through lunch or work past the appointed time without prior authorization from their Department Head. Nothing herein shall be construed to preclude disciplinary action for an employee's refusal after proper notice to cease and desist the performance of unauthorized work. ~~and notification of the Director of Administration.~~

C. Categories of Jobs

Under the Fair Labor Standards Act, there are two basic categories of jobs:

- Exempt (E) - those employees not covered by the Act
- Non-exempt (N) - those employees covered by the Act

The exempt category consists of three subordinate categories which are applicable to the City's classified service:

- executive
- administrative
- professional

FLSA requirements apply to positions and employees qualifications -- not to classes. The City's class descriptions serve as a general guide in determining whether individual positions are exempt or non-exempt from the provisions of the FLSA. All City classes will be identified as exempt (E) or non-exempt (N), and this designation shall be placed in the City's Schematic List of Classes.

D. Defintions:

1. *Fire protection employee: An employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who – (1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by the City, and (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.*
2. *Law enforcement employee: An employee (1) who is a Police Officer, Sheriff's deputy or other uniformed or plain-clothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes; (2) who has the power to arrest; (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a court of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics; or (4) is a Corrections Officer who has the responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions.*
3. *Overtime: Overtime is defined as hours worked by a non-exempt employee (excluding employees in law enforcement and fire protection as otherwise defined herein) in excess of 40 hours during a seven (7) consecutive day work period. Overtime for non-exempt law enforcement personnel shall be hours of work in excess of 80 hours during a 14 consecutive day work period. Overtime for non-exempt fire protection personnel shall be hours of work in excess of 144 hours during a 21 consecutive day work period.*

E. D. Eligibility for Overtime Pay and Compensatory Time

1. Department Heads on advice of the *Human Resources Administration* Director shall establish a department overtime pay and compensatory time policy in accordance with these provisions and determine eligibility giving consideration to budgetary restrictions. ~~Under special situations, an employee may be deemed eligible for overtime pay or compensatory time while identified as EXEMPT under the FLSA.~~ Departmental policies shall be submitted to the City Manager for approval. No deviations from

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established policy may be made except through written request to and approval by the City Manager.

2. Employees identified as NON-EXEMPT from the provisions of the FLSA shall receive ~~cash~~ payment at time and one-half the employees regular rate of pay for all hours worked in excess of the limit established for the work period in Section 3.9F 40E. THE CITY MAY ELECT TO GRANT COMPENSATORY TIME IN LIEU OF ~~CASH~~ PAYMENT TO ~~THIS CATEGORY OF THE~~ EMPLOYEE AT THE RATE OF TIME AND ONE-HALF FOR EACH HOUR OF OVERTIME WORKED. Payment at the final salary rate shall be made to NON-EXEMPT employees on separation who have accrued compensatory time.
3. Employees who have accrued compensatory time shall be permitted to use such time within a reasonable period after making a request if the use of the compensatory time does not unduly disrupt the operations of the City. Time frames for use of compensatory time and maximum accrual amounts (compensatory time banks) shall be determined by the Department Head provided the employee does not accrue in excess of 40 hours. Accrued compensatory time shall be used before annual or floater time.
4. Department Heads are not eligible for overtime pay or compensatory time.
5. No payment shall be made to EXEMPT employees for compensatory time ~~on separation~~.

F. E. Establishment of the Work Period

1. Non-Exempt Employees (excluding ~~Sworn~~ Law Enforcement *and Fire Protection Employees-Officers*)

The work period for purposes of overtime eligibility and compliance with the Fair Labor Standards Act shall be seven (7) consecutive days commencing with 00:01 a.m. Saturday through midnight Friday. This seven day work period will correspond to the reporting period on the employee's time and attendance sheets. Overtime pay or compensatory time for non-exempt employees must be given for all hours in excess of 40 hours in a seven day work period. However, Department Heads are required, to the extent possible, to reduce or eliminate overtime hours worked within the work period in which they are earned. Overtime pay must always be calculated on the basis of a seven day work period, and may never be averaged over a two week pay period.

2. **Non-Exempt Sworn Law Enforcement *Employees Officers***

In accordance with the ~~partial~~ overtime exemption provided in *Section 7(k)* of the Fair Labor Standards Act, Title 29, Chapter V, Section 553.429 C.F.R. §553.230, the work period for non-exempt ~~sworn~~ law enforcement

~~officers~~*employees* for purposes of overtime eligibility shall be fourteen (14) consecutive days commencing with 00:01 a.m. Saturday through midnight Friday two weeks hence. This fourteen day work period will correspond to the reporting period on the employee's time and attendance recordsheets. Overtime pay or compensatory time for non-exempt *law enforcement* employees must be given for all hours in excess of 80 hours in a fourteen day work period. However, the Department Head is required, to the extent possible, to reduce or eliminate overtime hours worked within the work period in which they are earned. Overtime pay must always be calculated on the basis of a fourteen day work period.

3. *Non-Exempt Fire Protection Employee*

A 21-day standard work period has been established for non-exempt Fire Protection employees. Fire Protection employees receive pay based on 144 compensable hours during a single work period. All hours worked in excess of 144 are reimbursable as overtime. In addition, paid time off taken for regularly scheduled hours will be included in the overtime hour's calculation. Overtime will be managed in accordance with approved work schedules, which are typically 144 hours during a work period. Variations from established work schedules must be specifically authorized by the Fire Chief.

G. F. Overtime Pay Calculation

~~Overtime pay is calculated by multiplying the "regular rate" of pay by a factor of time and one-half. The regular rate of pay is defined as the rate per hour paid for normal non-overtime work and is determined by dividing total compensation for the work period by the number of hours in the employee's regular work period.~~

It is the policy of the City that compensation for compensable hours worked by non-exempt personnel in excess of the established work period within a single work week/period shall be paid as overtime pay.

1. *Overtime Hours worked in excess of the established work period will be paid at the rate of one and one-half times the annual hourly equivalent of the employee's salary, and will be paid in the first feasible pay period after it is earned.*

a. Non-exempt employees, excluding Law Enforcement and Fire Protections employees, will be paid overtime for hours worked in excess of 40 in a 7-day work period.

b. Non-exempt Law Enforcement employees will be paid overtime for all hours worked in excess of 80 in a 14-day work period.

1.c. Non-exempt Fire Protection employees will be paid overtime for all hours worked in excess of 144 in a 21-day work period.

2. *When compensatory time is intended as a substitute for overtime pay, it must be given at the same rate at which overtime pay would have been earned as described in this section.*

H. ~~G.~~ Definition of Hours Worked

All time during which an employee is required or permitted to be on the employer's premises on duty or at a prescribed work place, except for meals or other periods when he is free from duty, is considered as hours worked.

Payment for annual leave, holidays, and compensatory time shall also be counted as hours worked for the purposes of calculating overtime. Payments made for other periods during which no work is performed including sick leave, military leave, civil leave, injury leave, funeral leave and on call/ standby are not included in hours worked for calculating overtime eligibility. For NON-EXEMPT ~~uniformed Fire Protection and Rescue personnel, and Law Enforcement employees; except Corrections Officers,~~ hours worked is defined to include all hours of pay that an employee works or is in a paid status including but not limited to annual leave, sick leave, holidays, and compensatory time.

To assist departments in defining hours worked under the provisions of FLSA, the following definitions apply:

1. Meals

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is relieved of duty and free to use the time for his own purposes. It is not counted as hours worked or paid time. Any "meal period" of less than 30 consecutive minutes must be paid as hours worked.

It is not necessary that an employee be permitted to leave the premises during the meal period. However, the time will have to be counted as time worked if the employee is required or permitted to perform any duties while eating.

2. Training

Time spent attending classes after hours required by the City to maintain the job must be defined as hours worked.

2. Travel

~~Time spent on away from home travel outside of regular work hours for required City business may be considered work time. Department Heads on advice of the Administration Director shall determine when travel counts as hours worked. Normal travel from home to work and work to home is not work time.~~

Time spent traveling in a capacity which is not considered normal home-to-work travel must be defined as hours worked. Such travel time includes:

- a. Traveling to a work site in another city for a special one day assignment.*
- b. Travel which is part of the principal activity of an employee's job during the work day. For example: travel between job sites.*
- c. Travel which requires the employee to be away from home overnight. When away from the home communities, hours worked are calculated by using a comparison to the typical start and finish times of a regular work day.*

4. Sleep Time

- a. Duty of less than 24 hours: Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities. ~~Thus~~Under such conditions, an non-exempt employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other personal activities when not busy. It makes no difference if the employee is furnished facilities for sleeping.
- b. Duty of 24 hours or more: Where an non-exempt employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than eight hours, only eight hours will be ~~credited~~excluded from hours worked. Where no expressed or implied agreement to the contrary is present, the eight hours' sleeping time and lunch periods constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Wage and Hour Division of the Department of Labor has adopted the rule that if the employee cannot get at least five hours' sleep during the scheduled period the entire time is working time.

H. Time of Payment

~~There is no requirement under FLSA that overtime compensation be paid weekly. The general rule is that overtime pay earned in a particular work week must be paid on the regular pay day for the period in which the work week ends. If the correct amount of overtime pay cannot be determined until sometime after the regular pay period, the City shall pay the overtime compensation as soon after the regular pay period as practicable. Payment shall not be delayed for a period longer than is reasonably necessary for the City to compute and arrange for payment and in no event shall payment be delayed beyond the next pay day after such computation can be made.~~

I. Volunteers

1. Non-Employee Volunteers

Individuals who volunteer or donate their services, usually on a part-time basis for public service, religious or humanitarian objectives not being performed at the request of or for the benefit of the City are not considered employees of the City during these hours even if they receive a nominal fee or are reimbursed for expenses.

3. Employee Volunteers

An employee may perform volunteer services for the City as long as the services are not the same type of services as the person is employed to perform. If, while off-duty, an employee performs the duties of his position, the time he puts in shall be considered "hours worked" for the purposes of calculating overtime pay. An employee who believes he is entitled to overtime pay shall submit a claim to the supervisor within fifteen (15) working days of the event. Nothing herein shall prohibit an employee from serving as a member of a volunteer organization provided this service does not conflict with employment requirements.

J. Secondary Employment

The City shall not permit an employee who is already employed with the City in a full-time capacity to accept a secondary job ~~with the City except with~~without the prior authorization of the City Manager. Employees must complete the Secondary Employment Request form and submit to Human Resources.

K. Shift Trading

~~An employee may trade shifts with another employee only with the prior approval of the supervisor. The hours worked as a substitute may be excluded~~

~~by the department in the calculation of the hours for overtime compensation when traded in the same work week.~~

L.K. Recordkeeping Requirements

Each department must keep attendance records of regular and overtime hours worked and leave usage for all non-exempt employees. ~~Electronic Time sheets records~~ provide adequate documentation. The actual hours worked must be recorded in the City's Time Keeping System and ~~the completed forms~~ submitted to the Finance Department the Monday of pay week. All employee time and attendance records, leave usage reports and payroll records must be kept for three years, and are maintained in the ~~Administration~~ Finance Department.

3.10 On Call Pay (Standby)

On call pay is compensation for *non-exempt* eligible employees who are *designated by the Department Head as "on-call" and* required to be available when needed to handle emergency situations occurring outside of standard working hours.

- A. When conditions warrant, the Department Head will schedule sufficient manpower to work outside of standard working hours.
- B. An employee who is required to remain on the City's premises or so close thereto that he cannot use the time effectively for his own purposes is working. An employee who is not required to remain on the City's premises but is required to leave word at his home or with officials where he may be reached is "on call".
- C. ~~In most cases, employees will be guaranteed a department defined minimum of straight time compensation per day while on call which is not applied towards the normal work week.~~ *A non-exempt employee who is designated as "on-call" and who is off City premises and is not working shall receive \$28.00 per day during weeknights, \$42.00 per day on weekends, and 50.00 dollars per day on holidays. This compensation shall be in addition to the 2 hour minimum that an employee receives when called in to work and time spent beyond the 2 hour minimum.*
- D. When an employee is called back to work after hours, he will receive credit for the actual time worked or two hours' time, whichever is greater. ~~, beginning at the time he reports to work~~ *When activated, the employee is entitled to compensation for all time necessary to respond, including time spent on the telephone and travel time.* Hours worked on call back *count as hours worked for calculating overtime eligibility* ~~apply to the normal work week.~~

E. IF AN EMPLOYEE ON CALL IS NOT AVAILABLE OR CANNOT BE REACHED
WITHIN A REASONABLE PERIOD AS PRE-DETERMINED BY THE
DEPARTMENT HEAD, HE WILL NOT BE ENTITLED TO ON CALL PAY AND
MAY BE SUBJECT TO THE CITY'S DISCIPLINARY POLICY.

5.3 Sick Leave

Sick leave benefits are a privilege granted by the City to every classified employee. Sick leave is not earned in the sense that it must be taken. It is accrued and is available when justified. Sick leave benefits shall be granted for the following reasons:

A. Absence of Employee Due to Personal Illness and Doctor Appointments
- illness or injury incapacitating the employee to perform assigned duties; doctor or dental appointments during working hours; and exposure to contagious disease such that the employee's presence on duty would jeopardize the health of fellow workers on the job.

B. Light Duty Return-to-Work Modified Work Assignment Policy

No employee is to be returned to work following an off-duty illness, injury or surgery until the attending physician has released the employee to full duty. The City, however, will make available to an employee who has a non- contagious condition an offer to perform work in a light duty capacity modified duty assignment where there is a legitimate business necessity and where the attending physician has given written authorization to return to light duty perform essential functions of the work assignment. The employee will be paid at an hourly rate classified for the light duty work. ~~The employee may choose to use available sick leave to supplement any salary difference.~~ Any return to light duty modified duty work assignments must be on recommendation of the Department Head to the Administration Human Resources Director with final approval of the City Manager. (See Appendix DD – Modified Work Assignment Procedures)

C. Absence of Employee Due to Illness or Injury in Immediate Family - illness or injury in the immediate family requiring the attendance of the employee. Immediate family is defined as an employee's spouse, children, parents, or other relatives living in the household.

In accordance with the City's established FMLA policy, FMLA runs concurrent with sick leave and begins following the third day of leave.

Sick leave benefits will accrue at the rate of eight (8) hours per month of service. The regular schedule of some employees exceeds 40 hours per week. When employees are authorized to work more than 40 hours on their normal work schedule, they earn leave on a prorated basis. Classified employees whose normal work week schedule is less than 40 hours shall earn leave in proportion to scheduled hours. Accumulation of sick leave benefits will be unlimited. Payment of sick leave benefits will be at a rate equivalent to that payable if the employee was present for work.

In case of illness, an employee (or representative) will notify his Department Head or immediate supervisor as soon as reasonably possible. Failure to notify supervisor in a

reasonable period of time is cause for disciplinary action. Abuse of sick leave may result in an employee's immediate discharge from the City.

The employee may be required to furnish the Department Head and the [Administration-Human Resources](#) Department with a written statement from the physician. This statement shall include:

- B. the nature of the employee's condition,
- C. the expected date on which the employee will be able to return and perform full, unrestricted work duties as described in the job description for the position, and
- D. the approximate anticipated date of medical release by the physician.

If the [Administration-Human Resources](#) Department determines that sick leave benefits cannot be granted to an employee, then the absence will be controlled by the guidelines for other leave categories (i.e., annual leave, leave without pay, etc.). Absence due to job related injury will be recorded as workers compensation as defined in the injury leave policy.

Classified employees who have five or more continuous years of employed service with the City shall be paid 25% of the accumulated sick leave balance at the time of termination or retirement. The amount paid shall not exceed \$5,000.00 for any one employee.

5.4 Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) ~~of 1993~~, provides employees with unpaid ~~job protected leave for family and medical leave as the result of~~ the birth, adoption or placement of a child for foster care, to care for a spouse, child or parent with a serious health condition or due to the disabling illness of the employee. This policy is intended to supplement but not replace the provisions of the FMLA. Reference should be made to the Act for any requirements or provisions not set out in this section.

A. Eligibility

To be eligible for FMLA leave, an employee must have been employed by the City for at least twelve (12) months, and have provided at least 1,250 hours of service during the twelve (12) months before leave is requested and work at a site with at least 50 employees within a 75 miles radius. An eligible employee is entitled to a total of twelve (12) work weeks (480 hours) of FMLA leave during the rolling twelve (12) month period from the date the first FMLA

begins for one or more of the following:

1. Because of the birth of a child of the employee and in order to care for such child.
2. Because of the placement of a child with the employee for adoption or foster care.
3. In order to care for the spouse, child or parent of the employee having a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of his position.
5. Because of a spouse, son, daughter, or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces. ([See Special Rules for Military Members](#))

FMLA leave may be taken for birth or placement of a child only within twelve (12) months of that birth or placement. FMLA leave may begin before the actual date of birth of a child, if the expectant mother's condition makes her unable to work.

In any case in which the City employs a husband and wife, the aggregate number of work weeks of leave to which both may be entitled shall be limited to twelve (12) work weeks during the above defined twelve (12) month period, if such leave is taken under Section 5.4(A)(1) or (2) or (3).

[FMLA hours eligible will be determined by the primary work schedule of an employee if he or she is working more than a 40 hour per week schedule.](#)

1) Special Rules for Military Members (USERRA)^[PM1]

[The Uniformed Services Employment and Reemployment Rights Act \(USERRA\) requires that a person reemployed under its provisions be given credit for any months and hours of service he or she would have been employed but for the USERRA-covered service in determining eligibility for Family and Medical Leave Act \(FMLA\) leave.](#)

[Qualifying Exigency Leave -- This provision allows eligible employees of covered employers to take up to 12 weeks of job-protected FMLA-qualifying leave: Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty \(or has been notified of an impending call or order to active duty\) in the Armed Forces in support of a contingency operation.](#)

[Military Caregiver Leave -](#)An eligible employee is entitled to twenty-six (26) weeks of FMLA leave during a single twelve (12) month period [for the following](#): because of a spouse, son, daughter, parent, or nearest blood relative caring for a [recovering-injured covered](#) service member.

FMLA defines a covered service member as “a current member of the Armed Forces, including a member of the National Guard or Reserves, who is 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; or a covered veteran who is 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 is the spouse, son, daughter, parent or next of kin. “Next of kin” means the nearest blood relative (other than the covered service member’s spouse, parent, son or daughter) in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, Brothers and sisters, Grandparents, Aunts and uncles., and First cousins. If the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA, then that individual is deemed to be the service member’s or veteran’s only FMLA next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members will be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously.

B. Definitions

1. Child is defined as a biological, adopted or foster child, a step-child, a legal ward, or a child for whom the employee is "in loco parentis", who is under eighteen (18) years of age, or if eighteen (18) years of age or older is incapable of self-care because of mental or physical disability.
2. Parent is defined as the biological parent of an employee, or an individual who stood "in loco parentis" to an employee when the employee was a child. This term does not include parents "in law".
3. Spouse is defined as husband or wife. (same-sex spouses are spouses under federal law if they are spouses under state law, all federal laws and regulations that include spouses include the broader same-sex definition in those states where same-sex marriage is legal.)
4. Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.
5. ~~A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active duty that may~~

~~render the person unable to perform the duties of the member's office, grade, ranch, or rating.~~

C. **FMLA Leave Usage**

1. FMLA leave shall be taken as leave without pay. The use of annual leave, sick leave, injury leave, compensatory time and floater day balances must run concurrently with FMLA. An employee must provide thirty (30) days advance written notice before the date on which the leave would begin in any case where the necessity for the leave is foreseeable. (See Appendix J)
2. FMLA leave may be taken intermittently or on a reduced schedule if medically necessary. FMLA leave on an intermittent or reduced schedule may not be taken for the birth, adoption or receipt into foster care of a child. If FMLA leave is taken intermittently, an employee may be required to transfer temporarily to an alternative position, with equivalent pay and benefits that better accommodates recurring periods of leave than the employee's regular position.
3. If FMLA leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the workplace.

D. **Recordkeeping Requirements**

1. Requests for FMLA leave must be submitted to the Department Head in writing ~~along with required doctor's certification (See Appendix J) outlining the nature of the request.~~ The Department Head will forward the request to the ~~Administration~~ Human Resources Director for review and final approval by the City Manager. Employee will be required to submit the Health Care Provider Certification of a serious health condition to Human Resources within 15 days of the request. (See Appendix J). Certification is to include the date on which the serious health 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, and an estimate of the time required, or that the employee is unable to perform the job functions, and in the case of intermittent leave, the dates and duration of treatments to be given. Once received, The decision of the City will be documented on the Employer Response to Employee Request for FMLA form (See Appendix J).

2. FMLA leave requests shall be for a period of not less than one (1) hour increments, and additional increments shall be in not less than one (1) hour.
3. ~~The employee must provide doctor's certification of a serious health condition for himself or spouse, parent or child. When necessary, the City shall provide the doctor with the Certification of Health Care Provider form for completion (See Appendix J). Certification is to include the date on which the serious health 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, and an estimate of the time required, or that the employee is unable to perform the job functions, and in the case of intermittent leave, the dates and duration of treatments to be given.~~
4. An employee may be required to submit to a medical evaluation for a second opinion at the City's expense. In the event of conflicting opinions, the employer may pay for a third and final provider to offer a binding decision.
5. The employee may be required to provide subsequent "recertification" on a reasonable basis as required by the City.
6. An employee returning to work from FMLA leave due to his own serious health condition is required to present to the Department Head and the Administration-Human Resources Department a statement from the attending physician certifying his ability to return to full, unrestricted duty as described in the job description for the position. Employee cannot return to work until granted permission from the Human Resources Department.

E. Status of Benefits

1. An employee who completes a period of FMLA leave will be returned to the same or an equivalent position.
2. FMLA leave will not result in the loss of any previously acquired benefits, however, FMLA leave time will not be credited towards any future benefits.
3. The employee may elect to continue participation in the City's group health benefit program during the employee's FMLA leave status. The employer is responsible for paying the employee's portion of the premium. When an employee returns to work upon completion from leave, the employee will be responsible for reimbursing the City for his/her portion of the premiums. This also includes contributions due from the employee for Virginia Retirement

System and all other voluntary elected benefits. If an employee does not return to work following the expiration of FMLA leave, the City shall take action to recover any unpaid employee premiums as well as contributions due from the employee for Virginia Retirement System and all other voluntary elected benefits. ~~the City's contributions to premiums. Exceptions to this include the employee's failure to return to work due to the continuation, recurrence, or onset of a serious health condition or, other circumstances beyond the control of the employee.~~

5.5 Sick Leave Bank

A. Purpose

The Sick Leave Bank is designed for extenuating health circumstances where an employee does not have adequate accrued leave to meet the medical need without adversely impacting his income. It is designed to help co-workers and their families during financial hardship brought about by serious and unforeseen illness of significant duration or other unforeseen tragic family event. The program is not intended to assist employees with routine medical problems, elective procedures, or predictable medical events (such as the normal six- week recovery period following childbirth). If an employee qualifies for worker's compensation, they may not draw from the bank.

B. Eligibility for Membership

All full and part-time classified employees may elect to participate in the Sick Leave Bank. The employee must be employed for six consecutive months. New employees may enroll after this six-month period. Current employees who opted not to join at onset of Sick Leave Bank may elect to enroll during WinFlex annual benefits open enrollment. Enrollment may be denied based on the employee's past attendance record. All employees participating in the Sick Leave Bank are required to certify that they are covered by a health insurance plan.

Upon termination of employment, withdrawal of membership from the bank or termination of the bank, participating employees will not be permitted to withdraw their contributed days nor will they be reimbursed for any days in the bank.

C. Enrollment and Deposits

An employee must file a completed Application for Sick Leave Bank Membership (See Appendix K) with the ~~Administration~~ Human Resources Department. The application will be forwarded to the City Manager for consideration. The ~~Administration~~ Human Resources Department will notify the employee of his acceptance or denial within ten days of application.

Deposits are defined as an initial contribution of two times an employee's monthly sick leave accrual rate and, when deemed necessary, annually thereafter at one

times the monthly sick leave accrual rate.

A special assessment from each participating employee may apply if the bank balance falls below 240 hours. At that time, members will have the option to cancel their membership. Any member drawing leave from the bank will be exempted from the assessment at that time, but are required to deposit the assessment when next available. The special assessment must produce a minimum deposit of 720 hours or the bank will cease to exist.

D. **Eligibility for Benefits**

Prior to withdrawal, the member must use up all ~~sick leave and 50% of remaining available leave balances~~ accrued leave excluding floater time not yet truly earned.

Eligible members may draw up to 240 hours (approximately six working weeks) during a twelve-month period. A twelve (12) month period is defined as the consecutive twelve month period measured forward from the date the first sick leave bank usage begins. Upon exhaustion of eligible benefits, an employee will cease to have access to the sick leave bank and will not be eligible in the future.

E. **Bank Withdrawals**

The employee must make application for the benefit; it is not automatic. An employee drawing sick leave from the bank will not be expected to replace it. An employee will not accrue leave of any type including pay for holidays while drawing days from the Sick Leave Bank.

An employee must file a completed Application for Use of Sick Leave Bank (See Appendix K) with the ~~Administration Department~~ Human Resources Department. The Physician's Statement must be attached to this application. The application will be forwarded to ~~the City Manager~~ Human Resources Director for consideration. Once reviewed, the Human Resources Director will obtain final approval from the City Manager and notify the employee of his acceptance or denial within ten days of application.

Participation in the Sick Leave Bank shall run concurrently with Family Medical Leave once all accrued leave has been exhausted. If an employee is receiving short-term disability while using the sick leave bank, the employee shall only draw the amount of time from the sick leave bank to bring his total compensation to equal his regular salary. No benefits shall be paid from the Sick Leave Bank for a work-related injury or for a sickness for which an employee is entitled to worker's compensation.

F. **Appeals and Emergency Applications**

If an Application for Sick Leave Bank Membership or for Use of Sick Leave Bank benefits is denied, a formal appeal may be made in writing and within five working days. The City Manager will conduct a hearing and give his final decision within ten

working days of the receipt of appeal.

For those medical emergencies when a City employee does not meet the minimum requirements, or needs an additional withdrawal after exhausting the terms of this policy, the City of Winchester provides for an emergency application process.

Emergency applications are to be made in writing to the [Human Resources Director](#) and the City Manager ~~and copied to the Benefits Committee~~. The City Manager and the ~~Benefits Committee~~ [Human Resources Director](#) will determine the disposition of the emergency application based on the conditions of the individual case and the merit of the individual appeal.

5.14 ***Closings - Emergency/Inclement Weather/Other***

The City Manager *or designee* will determine when weather conditions or *situations* justify curtailing or adjusting work schedules. It is the intent of the City to maintain City operations to the extent that prudence and safety will allow. Department Heads will maintain normal work schedules unless authorized to alter such schedules by the City Manager. Employees are expected to make a reasonable effort to conform to established work schedules.

~~In the event of an existing or anticipated inclement weather, it is the intent of the City to maintain City operations to the extent that prudence and safety will allow. Employees are expected to make a reasonable effort to conform to established work schedules. When employees arrive at work late because of general transportation difficulties, the period of absence, if determined to be reasonable by an employee's Department Head and approval by the City Manager, may be excused. However, if City offices are operative, employees who do not report to work at all will be charged annual leave, if available, for the full period of absence. If no annual leave is available, the day missed will be charged to approved leave without pay. If an employee misses a workday due to bad weather and the office is subsequently closed early he will still be charged with a full absence. Should inclement weather cause early closing of offices, the effect will be the same as if the normal workday ended. Classified employees who reported for work will be paid a full day.~~

~~Employees absent due to an authorized closing for an entire workday will be paid for such absence. To qualify for payment, employees must work the scheduled workday before and after the closing, or work either of such days and be on approved leave with or without pay for the other day. Employees not qualifying may apply annual leave, if available, to the day of closing.~~

~~Employees identified by Department Heads as being required to work during authorized closings shall be referred to as "essential personnel". Essential personnel shall be credited with compensatory leave or paid for straight time plus time for actual hours worked during authorized closings. Essential personnel required to work in excess of the hours in their normally scheduled shift shall be paid according to established departmental overtime policies.~~

1. Definitions

- a. ***Essential Personnel*** - City employees who, except when specifically exempted, shall continue to perform their assigned duties regardless of existing severe inclement weather or emergency conditions.
- b. ***Non-Essential Personnel*** - All City employees not designated as Essential personnel.
- c. ***Inclement Weather Conditions*** - Shall include but not be limited to such natural

weather conditions as snow storms, hurricanes, tornados, floods, and/or the imminent reasonable anticipated occurrence of such conditions.

- d. Emergency Conditions - Shall include but not be limited to such occurrences as explosions, fires, major power failures, major environmental occurrences or conditions of such severity or magnitude that extraordinary governmental action is necessitated in order to avoid immediate and irrevocable harm to the public.*
- e. Other Conditions - Shall include any other situation not listed in 1.c or d. where the City Manager authorizes a closing.*

2. Predesignation of job classifications and incumbents of positions within job classifications as Essential or Non-Essential:

- a. Department Directors shall be responsible for predesignation of Essential personnel under their direction. This predesignation shall be included in the employee's job description and shall serve as notification to each Essential employee. Each Essential employee shall sign the job description acknowledging the essential employee designation. Department Directors shall also transmit a list of all Essential positions in their department and the names of incumbents of these positions to the Human Resources Director and Finance Director. The Human Resources Director shall be responsible for maintaining the official list of Essential personnel. Employee positions and names of employees not appearing on such lists are by exception automatically predesignated Non-essential employees. Designations for some employees may be for all circumstances (i.e., police officers may be designated as Essential regardless of emergency or inclement weather conditions) or some employees may be restricted to specific criteria (i.e., a maintenance tech may be designated Essential only when it snows).*
- b. Predesignation of personnel as Essential or Non-essential shall not restrict or limit the authority of the City Manager or Department Directors to call upon specific Non-Essential personnel for service during emergency/inclement conditions or to relieve Essential personnel from services as necessary or advisable, in particular instances (i.e., incidents of long duration).*

3. Announcements:

- a. Announcements of an emergency/inclement weather condition closure or adjustment of work schedules will be communicated through the City's email system, website, City Facebook Page, and Employee Cancellation Hotline (540-667-1815 ext. 1111). Emergency/inclement weather condition designations are automatically canceled at the end of each day.*
- b. The distinction between Essential and Non-essential will generally not be included in announcements since Essential employees are expected to report to duty for the designated emergency/inclement weather condition.*

- d. *City employees will be responsible for monitoring, City email, the City website and/or the Employee Cancellation Hotline (540-667-1815 ext. 1111) for announcements related to the designation and cancellation of emergency/inclement weather conditions. An employee's failure to hear such announcements shall be the responsibility of the employee, and an employee's unexcused late arrival to or absence from scheduled work due to failure to monitor and act upon such announcements may subject the employee to the City's disciplinary policy.*
- e. *When an emergency/inclement weather condition closure or adjustment of work schedules is designated:*
 - (1) *Announcements will be transmitted through the City's email, the City website and/or the Employee Cancellation Hotline (540-667-1815 ext. 1111), and/or through employees' supervisors.*
 - (2) *If designated during work hours essential personnel will remain on duty, or if scheduled for duty will report at their established reporting time. In the event of an official closure of the City Government non-essential personnel will leave the work site, except such personnel who are subject to a specific call of duty. (A supervisor may request non-essential specific personnel to stay on duty if needed.)*
 - (3) *If designated prior to established work hours essential personnel will report to work at the usual starting time of their work day or as otherwise scheduled by their supervisor. Non-essential personnel would not report to work, except such personnel who are subject to a specific call of duty. (A supervisor may require specific non-essential employees to report for a specific call of duty unlike other non-essential personnel.)*

4. Leaves of absence and overtime compensation during closures:

- a. *If adverse weather conditions cause difficulty in employees getting to or from work and City offices are not officially closed, non-essential employees may use leave to cover their absence should they not report to work or leave work early. Such absence, as in the case for all absences, requires approval of the Department Head or designee.*
- b. *If the City Manager authorizes the delayed opening or early closure of all City Offices because of an emergency, inclement weather or other conditions:*
 - (1) *Non-essential full-time and part-time employees who have reported to work will not suffer a loss in compensation and will be paid their regularly scheduled hours for that day. Part-time employees who do not report to work will not be paid.*
 - (2) *Non-essential full-time employees who do not report to work due to an emergency/inclement weather/other condition and the office is*

subsequently closed will be charged leave, if available, for the full period of absence. If leave is not available, the day will be charged to leave without pay.

- (3) Non-exempt essential personnel required to work outside their normally scheduled hours during an authorized closing will receive pay at their normal hourly rate for all such hours worked outside their normally scheduled hours until total hours exceed the applicable over-time threshold.*
 - (4) In addition, non-exempt essential personnel will receive compensatory leave at straight time, on an hour for hour basis, for any hours of required work performed during the periods of authorized emergency/inclement weather closure that fall within their normally scheduled work hours, not to exceed eight (8) hours.*
 - (5) In the case of a closure due to Other conditions, non-exempt essential personnel will receive compensatory leave at straight time, on an hour for hour basis, for any hours of required work performed during the specified period of closing. For example, the City Manager authorizes a 2 hour early dismissal of non-essential staff on New Year's Eve, non-exempt essential employees who are required to work on New Year's Eve would receive 2 hours of compensatory leave.*
- c. If the City Manager authorizes the closing of all City Offices because of an emergency, inclement weather or other conditions:*
- (1) Non-essential full-time and part-time employees will not suffer a loss in compensation and will be paid their regularly scheduled hours for that day.*
 - (2) Non-exempt essential personnel required to work outside their normally scheduled hours during an authorized emergency closing will receive pay at their normal hourly rate for all such hours worked outside their normally scheduled hours until total hours exceed the applicable over-time threshold and shall be paid in accordance with the overtime policy.*
 - (3) In addition, non-exempt essential personnel will receive compensatory leave at straight time, on an hour for hour basis, for any hours of required work performed during the periods of authorized closure that fall within their normally scheduled work hours, not to exceed eight (8) hours.*
- d. Employees who are absent and have had leave approved prior to the designation of closure will remain in the approved status and have the leave charged to the originally approved leave category.*
- f. If the City Manager authorizes the delayed opening, early closure or full-day closure of a specific City facility due to an emergency or other situation that only affects that facility:*

- (1) Non-essential full-time and part-time employees who are scheduled to work at the closed facility will not suffer a loss in compensation and will be paid their regularly scheduled hours during the closure.*
- (2) Non-exempt essential personnel required to work outside their normally scheduled hours during this type of authorized emergency closing will receive pay at their normal hourly rate for all such hours worked outside their normally scheduled hours until total hours exceed the applicable over-time threshold and shall be paid in accordance with the overtime policy.*
- (3) City employees not affected by this delayed opening, early closure, or full-day closure shall report as scheduled and will receive pay at their normal hourly rate for any hours worked.*



EMPLOYEE REQUEST FOR FAMILY AND MEDICAL LEAVE

This application is to be completed and returned to Human Resources at least 30 days before the leave is to commence if the need for the leave is foreseeable. In circumstances when the leave is not foreseeable 30 days in advance, an employee must request the leave as soon as practicable. The City of Winchester may designate leave as FMLA leave without a request from an employee.

Employee Information
Employee Name: _____ Employee Number: _____ Date of Request: _____ Department: _____ Job Title: _____
Type of Leave
I hereby request the following type of leave: <input type="checkbox"/> Family leave for the: <input type="checkbox"/> Birth of my son or daughter <input type="checkbox"/> Placement of a child with me for <input type="checkbox"/> adoption <input type="checkbox"/> foster care Anticipated date of birth or placement: _____ <input type="checkbox"/> Family leave to care for a spouse, son, daughter or parent with a serious health condition Family member's full name: _____ Relationship to you: <input type="checkbox"/> spouse <input type="checkbox"/> parent <input type="checkbox"/> son or daughter <input type="checkbox"/> other (if applicable) <input type="checkbox"/> Medical leave for my own serious health condition (Specify): _____
Amount of Leave
I request that the leave be granted for the following period of time: Beginning on (date): _____ Ending on (date): _____ I further request that the leave be granted for the following reduced or intermittent leave schedule: _____
<p><i>If you are approved for FMLA, you will be responsible for ensuring your benefits are paid for and payments are up to date. As per CEMS Policy 5.4 section C, employees are mandated to use their accrual balances. If you run out of accruals and can no longer make your usual benefit deductions, you will have to pay the City.</i></p> <input type="checkbox"/> Check here if you are participating in the City's Medical Health Insurance and/or Dependent Care Flexible Spending Account(s). <input type="checkbox"/> Check here if you are enrolled in VRS (Virginia Retirement System) and or any other additional elected benefits (Short Term Disability, Critical Accident Coverage).

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If you are participating in any of the above benefits, please indicate how you choose to continue to pay for these benefits while on Family and Medical Leave.

- I have enough paid time off accruals to cover my benefit deductions while I am out on leave.
- Pre-pay the contribution on a pre-tax basis.
- When returning to my position, I authorize deductions be taken from my paycheck.

Employee Certification and Signature

I understand that while on leave and using accrued leave I will continue to earn paid time off accruals. I also understand that while I am on unpaid leave I will not earn paid time off accruals.

I also understand that during my leave, the City of Winchester will not pay my portion of my health and dental insurance premiums. I am required to pay my share of all health and dental coverage. If I fail to make my share of the monthly premium, I will be provided written notice of this failure and be given an additional 15 days to make payment in full. If payment is not made after this notice, I understand that my health and dental benefit coverage will cease.

In addition to health and dental, if I am taking a full or partial unpaid leave, I am responsible for the payment of all other benefits I have elected. This includes but is not limited to Virginia Retirement System, additional life insurance and additional optional health insurance coverage. Further, if I fail to return to work after the expiration of the leave, I am expected to reimburse the City of Winchester for its share of the health and dental insurance premiums.

I understand that submitting this application does not indicate an approval of my leave. The City of Winchester will respond in writing as to the conditions of my request for leave.

I certify that the information given on this form is true. I understand that making false statements on this form is grounds for discipline up to and including termination of my employment.

Employee Signature: _____ Date: _____

Required Signatures

Requested and Acknowledged:

Department Head Signature: _____ Date: _____

FMLA Eligible: (HR Only)

Benefits Specialist Signature: _____ Date: _____

HR Director: _____ Date: _____

Approved:

City Manager Signature: _____ Date: _____

Frequently Asked Questions and Answers

Q: How much leave am I entitled to under FMLA?

If you are an "eligible" employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options for determining the 12-month period:

- the calendar year;
- any fixed 12-month "leave year" such as a fiscal year, a year required by state law, or a year starting on the employee's "anniversary" date;
- the 12-month period measured forward from the date any employee's first FMLA leave begins; or
- a "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

Q: Does the law guarantee paid time off?

No. The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins.

Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?

It can. FMLA leave and workers' compensation leave can run together, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

Q: Can the employer count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?

Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement.

Q: Can the employer count time on maternity leave or pregnancy disability as FMLA leave?

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave so long as the employer properly notifies the employee in writing of the designation.

Q: If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA leave?

In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. If the employer was not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.

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Q: Who is considered an immediate "family member" for purposes of taking FMLA leave?

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 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 \(ADA\)](#).

Q: May I take FMLA leave for visits to a physical therapist, if my doctor prescribes the therapy?

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay or for treatment of severe arthritis.

Q: Which employees are eligible to take FMLA leave?

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Q: Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

Q: Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Q: How do I determine if I have worked 1,250 hours in a 12-month period?

Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave. As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met;

24 hours worked in each of the 52 weeks of the year; or
over 104 hours worked in each of the 12 months of the year; or
40 hours worked per week for more than 31 weeks (over seven months) of the year.

Q: Do I have to give my employer my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. The employer may, however, request that, for any leave taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

Q: Can my employer require me to return to work before I exhaust my leave?

Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

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Q: Are there any restrictions on how I spend my time while on leave?

Employers with established policies regarding outside employment while on paid or unpaid leave may uniformly apply those policies to employees on FMLA leave. Otherwise, the employer may not restrict your activities. 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.

Q: Can my employer make inquiries about my leave during my absence?

Yes, but only to you. Your employer may 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 after leave. Also, if the employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the employer's expense, or rectification during a period of FMLA leave. The employer may have a health care provider representing the employer contact your health care provider, with your permission, to clarify information in the medical certification or to confirm that it was provided by the health care provider. The inquiry may **not seek additional information** regarding your health condition or that of a family member.

Q: Can my employer refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted your FMLA leave entitlement for the year), you may **not** be denied FMLA leave.

Q: Will I lose my job if I take FMLA leave?

Generally, no. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this law. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. Under limited circumstances, an employer may deny reinstatement to work - but not the use of FMLA leave - to certain highly-paid, salaried ("key") employees.

Q: Are there other circumstances in which my employer can deny me FMLA leave or reinstatement to my job?

In addition to denying reinstatement in certain circumstances to "key" employees, employers are not required to continue FMLA benefits or reinstate employees who would have been laid off or otherwise had their employment terminated had they continued to work during the FMLA leave period as, for example, due to a general layoff.

Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.

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

Under certain circumstances, employers who advise employees experiencing a serious health condition that they will require a medical certificate of fitness for duty to return to work may deny reinstatement to an employee who fails to provide the certification, or may delay reinstatement until the certification is submitted.

Q: Can my employer fire me for complaining about a violation of FMLA?

No. Nor can the employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.

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Q: Does an employer have to pay bonuses to employees who have been on FMLA leave?

The FMLA requires that employees be restored to the same or an equivalent position. If an employee was eligible for a bonus before taking FMLA leave, the employee would be eligible for the bonus upon returning to work. The FMLA leave may not be counted against the employee. For example, if an employer offers a perfect attendance bonus, and the employee has not missed any time prior to taking FMLA leave, the employee would still be eligible for the bonus upon returning from FMLA leave.

On the other hand, FMLA does not require that employees on FMLA leave be allowed to accrue benefits or seniority. For example, an employee on FMLA leave might not have sufficient sales to qualify for a bonus. The employer is not required to make any special accommodation for this employee because of FMLA. The employer must, of course, treat an employee who has used FMLA leave at least as well as other employees on paid and unpaid leave (as appropriate) are treated.

Q: Under what circumstances is leave designated as FMLA leave and counted against the employee's total entitlement?

In all circumstances, it is the employer's responsibility to designate leave taken for an FMLA reason as FMLA leave. The designation must be based upon information furnished by the employee. Leave may not be designated as FMLA leave after the leave has been completed and the employee has returned to work, except if;

- the employer is awaiting receipt of the medical certification to confirm the existence of a serious health condition;
- the employer was unaware that leave was for an FMLA reason, and subsequently acquires information from the employee such as when the employee requests additional or extensions of leave; or,
- the employer was unaware that the leave was for an FMLA reason, and the employee notifies the employer within two days after return to work that the leave was FMLA leave.

Q: Can my employer count FMLA leave I take against a no fault absentee policy?

No.

FMLA USERRA -Uniformed Services Employment and Reemployment Rights Act

Q. Why is the Department of Labor revising the Family and Medical Leave Act regulations?

A. The Department is revising the regulations to implement and interpret two statutory amendments to the Family and Medical Leave Act (FMLA): the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA) and the Airline Flight Crew Technical Corrections Act (AFCTCA).

Q. How did the FY 2010 NDAA change the military leave entitlements?

A. The FY 2010 NDAA amended the FMLA's military family leave provisions to expand the availability of military caregiver leave and qualifying exigency leave. The FY 2010 NDAA extended military caregiver leave to eligible employees whose family members are recent veterans with serious injuries or illnesses, including conditions that do not arise until after the veteran has left the military. The FY 2010 NDAA also expanded the definition of a serious injury or illness for both current servicemembers and veterans to include serious injuries or

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illnesses that result from a condition that existed before the servicemember's active duty service and was aggravated by service in the line of duty on active duty.

In addition, the FY 2010 NDAA expanded qualifying exigency leave to eligible employees with family members serving in the Regular Armed Forces, in addition to the National Guard and Reserves. The FY 2010 NDAA also added the requirement that for all qualifying exigency leave the military member (National Guard, Reserves, Regular Armed Forces) must be deployed to a foreign country.

Q. How does the Final Rule change the military caregiver leave provisions?

A. Military caregiver leave entitles an eligible employee who is the spouse, parent, son, daughter, or next of kin of a covered servicemember with a serious illness or injury to take up to a total of 26 workweeks of unpaid, job-protected leave during any single 12-month period to care for the servicemember. Before the FY 2010 NDAA was enacted, military caregiver leave was limited to eligible employees who were the family members of current servicemembers with a serious injury or illness incurred in the line of duty on active duty. The Final Rule expands military caregiver leave to eligible employees who are the family members of certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty. The Final Rule expands the definition of serious injury or illness for a current servicemember to include injuries or illnesses that existed prior to the servicemember's active duty but were aggravated in the line of duty on active duty.

Q. Does the Final Rule allow eligible family members to take FMLA military caregiver leave for all veterans with a serious injury or illness?

A. No. The Final Rule limits FMLA military caregiver leave to family members of certain covered veterans. A veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness is a covered veteran if he or she: (1) was a member of the Armed Forces (including a member of the National Guard or Reserves); (2) was discharged or released under conditions other than dishonorable; and (3) was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for the veteran.

Q. How is the five-year period for a covered veteran determined?

A. The Final Rule permits eligible employees to begin taking military caregiver leave up to five years after their family member was discharged or released from the military. The employee's first date of leave must be within the five-year period; however, the employee may continue to take such leave throughout the "single 12-month period" that is applicable to military caregiver leave, even if the leave extends beyond the five-year period.

For a veteran who was discharged before the effective date of this Final Rule, the Final Rule excludes the period of time between October 28, 2009 (the FY 2010 NDAA's enactment date) and the effective date of this Final Rule in calculating the veteran's five-year period. By excluding this period of time, the Final Rule protects the military caregiver leave entitlement for the family members of veterans whose five-year period either expired or was diminished between October 28, 2009 and the effective date of this Final Rule. For example, if a

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servicemember retired on October 28, 2007, on October 28, 2009 he or she would have had three years remaining of the five-year period. The family member will have three years, starting on March 8, 2013, within which he or she can begin to take military caregiver leave to care for that veteran. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018. If the servicemember is discharged on or after March 8, 2013, the five-year period begins on the date of discharge.

Q. What is a serious injury or illness for a covered veteran?

A. The Final Rule defines a serious injury or illness for a covered veteran as an injury or illness that was incurred by the veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that manifested before or after becoming a veteran, and that is either:

1.a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

2.a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or

3.a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

4.an injury, including a psychological injury, on the basis of which the veteran is enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

The family member of a veteran only needs to show that the veteran meets one of these definitions to establish that the veteran has a serious injury or illness.

Q. Has the definition of a serious injury or illness for a current service member changed?

A. Yes. The Final Rule expands the definition of serious injury or illness for current servicemembers to include preexisting conditions that were aggravated by service in the line of duty on active duty.

Q. Have the medical certification requirements for military caregiver leave changed?

A. Yes. The Final Rule expands the list of health care providers who can provide a medical certification to support FMLA military caregiver leave to include health care providers who are not affiliated with the military. If a medical certification is obtained from a health care provider who is not affiliated with the military, the employer may request a second (or third) opinion from the employee. The Final Rule retains the provisions that healthcare certifications obtained from healthcare providers associated with the military may not be subject to second and third opinions. In either situation, employers are not permitted to request recertifications.

The Final Rule also allows eligible employees to submit a copy of a VASRD rating determination or documentation of enrollment in the Program of Comprehensive Assistance for Family Caregivers from the Department of Veterans' Affairs to certify that the veteran has a serious injury or illness. However, if an employee submits such documents, the employee may still be required to provide additional information.

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Q. How does the Final Rule change the qualifying exigency leave provisions?

A. Qualifying exigency leave entitles an eligible employee whose spouse, son, daughter, or parent is a military member on covered active duty to take unpaid, job-protected leave to address any of the qualifying exigencies listed in the regulations. Before the FY 2010 NDAA was enacted, qualifying exigency leave was limited to eligible employees whose family member was a military member of the National Guard and Reserves. The Final Rule implements the FY 2010 NDAA amendments expanding qualifying exigency leave to eligible employees with a spouse, son, daughter, or parent in the Regular Armed Forces on covered active duty. The Final Rule also includes a foreign country deployment requirement in the definition of covered active duty for both members of the Regular Armed Forces and members of the National Guard and Reserves.

In addition, the Final Rule adds a new category of qualifying exigency that allows employees to take qualifying exigency leave for certain activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's covered active duty. The Final Rule also increases the amount of time from five days to up to 15 calendar days that an eligible employee may take to spend with his or her military family member during the military member's Rest and Recuperation leave.

Q. What is covered active duty?

A. For a member of the Regular Armed Forces, 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.

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.

Q. What is the definition of deployment of a member with the Armed Forces to a foreign country?

A. Deployment to a foreign country means the military member is deployed to an area outside of the United States, the District of Columbia, or any Territory or possession of the United States. Deployment to a foreign country includes deployment to international waters.

Q. Under what circumstances can qualifying exigency leave be taken for the care of the military member's parent?

A. The Final Rule creates a new qualifying exigency leave category that allows an eligible employee to take qualifying exigency leave for certain activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's covered active duty, such as arranging for alternative care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the military member's parent to a new care facility; and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

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**Information obtained on February 24, 2004 from
<http://www.dol.gov/elaws/esa/fmla/faq.asp>**

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USA-DOL
TTY: 1-877-889-5627

APPENDIX K

City of Winchester • Application for Sick Leave Bank Membership

Please type or print:

Name: _____
Last First M.I. Last 4 of Social Security Number

Department: _____

I hereby request to participate in the City of Winchester Sick Leave Bank and authorize the contribution of two times my monthly sick leave accrual rate to the bank. I understand that, each fiscal year hereafter, I may be required to contribute one times my monthly sick leave accrual rate to continue my participation. Additional contributions may be required if the bank balance falls below 240 hours.

I understand that sick leave contributions to the bank will not be returned if I cancel participation in the bank, terminate service with the City or the Sick Leave Bank policy is terminated.

I have read the Sick Leave Bank charter and understand the benefits of membership.

Employee Signature: _____ Date _____

For Office Use Only

Approved: _____ Disapproved: _____

Comments: _____

HR Director Signature _____ Date: _____

<u>Fiscal Year</u>	<u>Hours Contributed</u>	<u>Hours Used</u>	<u>Dates of Use</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

APPENDIX K

City of Winchester • Sick Leave Bank • Physician's Statement

I hereby authorize my physician to release the information requested on this form and to provide additional information upon request of my employer.

Signature: _____

Date: _____

Please print name: _____

Last 4 of Social Security Number

Dear Physician:

The above named employee is requesting benefits under the provision of the City of Winchester Sick Leave Bank. This program is maintained and supported by the contributions of sick leave days by individual members with the purpose of assisting an employee who is incapacitated by any illness or injury.

Please describe the nature of the illness or injury that will prevent the employee from fulfilling his/her work responsibilities:

I hereby certify that the above named employee of the City of Winchester is totally unable to meet work responsibilities due to the conditions described above. The return to work date is projected to be

_____.

Physician's Signature

Please print the following:

Name of Physician: _____

Name of Office: _____

Address: _____

Phone: _____

Modified Work Assignment Policy

Modified Work Assignment is intended for employees recovering from a medically documented mental or physical illness or injury sustained on or off the job who have work restrictions, and who are expected to return to unrestricted work.

Assignment of Modified Work Assignment is not a right of employment. As provided in this policy, Modified Work Assignment is allowed with the approval of the Department Head, HR Director and City Manager, as long as necessary and meaningful work is performed. Jobs must be regular positions within the City and no alternative jobs will be created for modified work. In assigning Modified Work Assignments, Department Heads will take the employee's skills and abilities into consideration. Modified Work Assignments can be reviewed within all City departments and if not available in current department, work can be performed in another department. Employees on an Alternate Work Schedule may have their schedule changed while working restricted hours on Modified Work Assignment.

If the employee can perform their regular job duties within the limitations established by a physician, the employee will return to their regular duties, and the provisions of this policy do not apply.

I. DEFINITIONS

A. Modified Work Assignment – Temporary work that is physically or mentally less demanding than normal job duties. Employees are required to provide work restrictions documented by their physician to support the need for Modified Work Assignment. An employee who has been accommodated into a permanent position under the ADA is no longer considered on Modified Work Assignment, and therefore, is not subject to this policy.

B. Reasonable Accommodation – Refers to the requirements of the Americans with Disabilities Act (ADA).

III. PROCEDURES

A. Department Heads are responsible for requesting in writing to the Human Resources Director and City Manager a modified duty assignment for an employee with a reason, planned duration and recommendation of modified assignment within or outside his/her department.

1. An employee requesting Modified Work Assignment either for a work related or personal injury rendering him/her unable to perform her normal assigned job functions, must have a release from a physician, specifying their work restrictions and expected duration of the restrictions.
2. Employees released to work Modified Work Assignment following an injury may be required to remain off work under Family Medical Leave Act (FMLA), if eligible. An employee who chooses not to return to work once released by a physician for a work related injury will not be eligible for Workers' Compensation benefits.

B. While on Modified Work Assignment, employees may schedule doctor and physical therapy appointments during their current work hours, however, appointments should be scheduled at the beginning or end of the employee's shift to minimize their time away from work. For appointments, evaluations, and treatments outside of the employee's current work hours, paid overtime, compensatory time accrual, and floater time is not allowed. If the employee is working part-time, appointments should be scheduled during non-working hours.

C. Employees returning to work on Modified Work Assignment may be assigned Modified Work Assignments in another City Department. The employee's department is responsible for arranging Modified Work Assignments.

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D. An employee will be sent to the City Physician when:

1. The release to Modified Work Assignment and/or regular duty is due to a work related injury.
2. Clarification or confirmation of work restrictions is needed.

E. An employee may be sent to the City Physician when being released from Modified Work Assignment to regular duty.

F. Employees are required to notify their supervisor immediately upon receiving a physician's release to Modified Work Assignment and/or regular duty every 30 days with a progression plan back to full duty. Supervisors must immediately notify Human Resources Director of the change in the employee's work status. Employees will not be allowed to return to work or extend his/her modified work assignment duration without HR Director and City Manager approval.

G. Department Heads are responsible for monitoring Modified Work Assignments of their employees and assuring the provisions of this policy are followed and report status updates to Human Resources every 30 days.

H. Performance appraisals will be completed for employees on Modified Work Assignments, in compliance with their normal review schedule, and will address their performance while on Modified Work Assignments.

1. Employees on Modified Work Assignments are eligible for merit increases based on job performance and availability of funding.

I. If Modified Work Assignment is approved, employee's pay will remain the same as the current position.

IV. DURATION

Modified Work Assignment, as defined in this directive, is temporary, not indefinite. Modified Work Assignment will not extend beyond 6 months, and may be terminated at less than 6 months. Modified Work Assignment will be approved and monitored in 30-day increments by Human Resources Director, Department Head and City Manager.

Employees on Modified Work Assignment for six (6) months must be referred to the Human Resources Director to initiate a case review, evaluation, and possible Reasonable Accommodation process. A review will take place to assess the possibility of the employee returning to regular duty within a reasonable period of time. When there is a high expectation that the employee will be able to return to unrestricted job duties, Modified Work Assignment may be extended beyond 6 months as recommended by the Department Head, and approved by the Human Resources Director and the City Manager, as part of a reasonable accommodation.