FMLA Best Practices Checklist

**Employer Compliance**

□ Determine whether or not you are a covered employer.

□ If you are a covered employer, post the required Department of Labor’s (DOL) notice at each worksite (See Tab 16). The notice must be posted in a conspicuous and prominent place where it can be readily seen by employees and applicants.

□ Include an explanation of the FMLA, including employees’ right and employers’ responsibilities, in your employee handbook. If you do not have an employee handbook, prepare an information sheet to give to employees (the DOL’s Fact Sheet can be used for this purpose). Be prepared to provide the explanation of rights and obligations under the FMLA to employees taking leave (See Tab 8).

□ Establish the 12-month period for measuring FMLA leave entitlement and communicate it to employees. Any of the following measurements may be applied to 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.

NOTE: The recommended method for measuring leave is the rolling period. Be sure to establish a different 12-month period for Servicemember caregiver leave.

□ Review all of the employment policies and procedures to ensure compatibility with the law. If not already accomplished, employers should adopt a family leave policy tailored to their own workplace practices and, perhaps most importantly, it is critical that this policy be communicated to employees. Employees cannot be bound by procedures of which they have no knowledge.

□ Make certain that your recordkeeping system can accommodate a family leave designation.

□ Determine when, and under what circumstances, employees will be required to substitute available paid leave for FMLA leave.

□ Ensure that your benefit plans can be administered in a way that complies with the FMLA.

□ Establish a procedure for collecting premiums or other payroll deductions while an employee is on leave. If the employee fails to pay his/her share of the premium, the employer must provide written notice stating that coverage will be canceled unless the premium is paid by a specified date. This notice must be given at least 15 days prior to cancellation of coverage.

□ Keep medical information, including the medical certification form, separate from the employee’s regular personnel file in a place where it will remain confidential.
**Triggering Event**

- The employee requests leave:
  - **30 days notice is required when the need for leave is foreseeable. When advance notice is not possible, the employee must provide notice as soon as practical.**
  - → **OR** ←

- The employee has called in sick three days and/or requires time off work due to serious health condition for self or immediate family member.

- The employer is “on notice” that an employee’s absences may be for an FMLA qualifying reason.

**Determination of Eligibility**

- Requested Start Date ______________________

- Employee has:
  - At least 12 months cumulative service over the past seven years
  - Worked at least 1250 hours in prior 12 months

- City had at least 50 employees within a 75 mile radius.

  - Is employee eligible for FML?  □ Yes  □ No
    
    If **no**, give employee the Notice of Eligibility and Rights & Responsibilities (WH-381) form indicating the basis for ineligibility.

    If **yes**, continue through the checklist.

- FML is normally limited to 12 weeks in a 12-month period (or 26 weeks if Servicemember Family Leave).

  Has this employee used FML during this 12 month period?  □ Yes  □ No

  If yes, when did the leave begin? ______________________

  Remaining entitlement for FML: ________ weeks. (Remember that the full 26-weeks is available for a request for Servicemember Family Leave when it is first requested.)
□ Reason(s) for Leave:
  □ own serious health condition (except pregnancy disability)
  □ pregnancy disability
  □ to care for a newborn
  □ to care for a newly adopted child, or a child recently placed into employee’s foster care
  □ to care for a child, spouse, or parent with a serious health condition
  □ to attend to a qualifying exigency
  □ to care for a covered service member
  □ Other:_____________________________________________________

□ As soon as possible, and within five days of receiving notice that an employee has requested FMLA leave or may have an FMLA qualifying condition, issue to the employee the Employee Information Packet, which contains:
  □FMLA Notice of Eligibility and Rights and Responsibilities (completed by the employer) (WH-381), and
  □FMLA Request for Family and Medical Leave, and
  □FMLA Certification of Health Care Provider form (WH-380), or,
  □FMLA Certification of Health Care Provider for Family Member’s Serious Health Condition Form (WH-380F), or,
  □FMLA Certification of Qualifying Exigency form (WH-384), or,
  □FMLA Certification for Serious Injury or Illness of Covered Service member form (WH-385)

(Note: Although the Department of Labor forms are recommended in this checklist; you may use these or alternate forms of your choice which contain the same content. For example, the Certification of Health Care Provider form will be sufficient if it provides the date the serious health condition began, its probable duration, relevant medical facts, and a statement that the employee was/is unable to work. The Employer’s Toolkit also contains several model letters for various contingencies that might not fit the traditional sequence of FMLA notifications and approvals)

□ Employee Information Packet provided to employee on __________(date).

By: __________________(initials of staff member)

Method: ____________ In Person _____________ Certified Mail

□ Employee is told:
  □ The employee can call Human Resources to discuss FMLA leave.
  □ The employee can keep the FMLA Notice of Eligibility and Rights and Responsibilities, or any alternate form utilized by the employer, for his or her records.

□ The employee fills out Section I of the FMLA Request for Family and Medical Leave form and then presents it to Human Resources. Human Resources and the employee should discuss at that time the use of accrued paid leave and timekeeping. Any use of paid leave should be consistent with existing leave policy guidelines. An employee will not be denied FMLA leave, if otherwise eligible, based upon failure to submit the FMLA Request for Family and Medical Leave form.
The Human Resources Representative fills out Section II of the *FMLA Request for Family and Medical Leave* form and provides a copy to the employee.

If the leave is requested for the serious health condition of the employee, a family member, or a covered service member, the employee fills out Section I of the *FMLA Certification of Health Care Provider* form.

- The employee then has the treating physician or health care provider complete the *FMLA Certification of Health Care Provider* form and submit it to the Human Resources within 15 calendar days of request for certification.

- The supervisor is instructed to forward the *FMLA Certification of Health Care Provider* form to Human Resources immediately upon receipt.

If the leave is requested for a qualifying exigency, the employee will need to provide the basis for the qualifying exigency leave request. If the qualifying exigency involves meeting with a third party, the employee will need to provide sufficient information to enable the employer to verify the meeting at its discretion. Copies of military orders or other documents supporting the basis for the request should be attached to the certification form.

- Upon receipt, confirm that the certification has been returned within 15 days from the date of the request. If FMLA is denied because certification was late, be sure employee was clearly notified of timeframe and consequences for failure to return certification on time. If certification is not late, evaluate whether the leave requested is protected by the FMLA. The employee (copy to supervisor and payroll) will be notified if the request is approved, provisionally approved, or denied, in writing within five days after receipt of the certification.

- If the certification is approved, the *FMLA Designation Notice (completed by the employer)* (WH-382) should be sent to employee’s home address.

- If the certification is incomplete or insufficient, the employer shall state in writing what additional information is necessary to make the certification complete and sufficient. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave.

A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

- Human Resources will also forward the employee the *Return to Work Certification* and *Job Description* if on approved leave for his/her own serious health condition.

- The employee begins approved FMLA leave. Create an FMLA log and track the hours used by the employee for approved FMLA leave. *(See, Intermittent FMLA tracking log)*
If employee fails to return the Certification of Health Care Provider within 15 days from the date of the request, Human Resources should send the 15-day follow-up letter (Tab 21), giving the employee another opportunity to provide the certification. If the medical certification is not produced, the absences should be denied under the Family and Medical Leave policies and may be considered unapproved. Consult with legal counsel prior to taking any disciplinary action.

**Note:** the 15-day follow-up letter is not required by law, but may show that the City gave extra effort, if the employee later files an FMLA claim.

Conversion to Leave without Pay: If employee exhausts paid leave, then designate leave as unpaid, or the equivalent of “Leave Without Pay”, in the payroll system.

Human Resources will send a per pay period billing statement to the employee's home employee's portion of insurance premiums & some elected voluntary benefits during unpaid status. Payments will need to be submitted to [City Name].

Depending on the length of FMLA leave, employee may require periodic recertification. Use the FMLA Certification forms for all recertifications.

Update the FMLA log and send the employee a notification each month as to how many hours of FMLA have been used, and how many remain. Employees should be told, in writing, their absences are being counted as FMLA.

The employee returns to work. If required, collect and evaluate *Return to Work Certification immediately* upon employee's return to work.

If the employee is certified to return to work with limited or light duty restrictions, determine availability prior to the employee’s return to duties. If FMLA leave is not expired, a certified request for reduced hours must be granted. Check with legal counsel to determine any accommodation obligations under the Americans with Disabilities Act (ADA).

All FMLA supporting documentation will be maintained as confidential medical records in a secure file separate from the employee's personnel file. Human Resources will maintain FMLA records for at least three years.