



CITY OF NEW BRAUNFELS POLICIES AND PROCEDURES

PROCEDURE(S): FAMILY AND MEDICAL LEAVE ACT (FMLA) AND WORKERS COMPENSATION

EFFECTIVE DATE: MAY 20, 2019

REVISION DATE(S):

FAMILY AND MEDICAL LEAVE ACT (FMLA) AND WORKERS COMPENSATION

A. Purpose

To provide employees with family and medical leave benefits pursuant to the Family and Medical Leave Act of 1993, as amended ("FMLA").

B. Eligibility

Any employee who has been employed by the City for at least twelve (12) months, has worked for at least 1,250 hours during a twelve (12)-month period and has an FMLA-qualifying event is eligible to take medical leave as provided under the FMLA. The 12 months need not be consecutive. However, employment prior to a break in service of seven years or more will not be considered when determining whether an employee has worked for the City for at least twelve (12) months. FMLA will run concurrently with any loss of time due to a Workers' Compensation claim.

C. FMLA Definitions

A. General Family and Medical Leave

1. **Eligible Family Member:** Employee's parent, son or daughter, spouse or domestic partner.
2. **Parent:** For the purpose of this policy, "parent" is the biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis 1 to the employee when the employee was a child. This does not include parents "in law."
3. **Son or Daughter:** For the purpose of FMLA leave taken for birth or adoption, or to care



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- for a family member with a serious health condition, son or daughter is defined as a biological, adopted or foster child, a stepchild, a legal ward, or child of an employee who is standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that the FMLA leave is to commence.
- a. **In loco parentis:** refers to a person who provides either day-to-day care or financial support to a child. The status does not require a biological or legal relationship. Whether an employee stands in loco parentis to a child will depend on the particular facts.
 4. **Spouse:** A husband or wife as defined or recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage or an individual who was legally married to a person of the same gender in a state that recognizes same gender marriage.
 5. **Domestic Partner:** An individual, 18 years of age or older, of the same or opposite gender as the employee, who shares a primary residence and common resources of life with a City employee for at least (six) 6 continuous months.
 6. **Serious Health Condition**
 - The most common serious health conditions that qualify for FMLA leave are:
 - a. Conditions that require an overnight stay in a hospital or other medical care facility;
 - b. Conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three (3) consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
 - c. Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
 - d. Pregnancy (included prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).
 7. **Health Care Provider:** A Doctor of Medicine or Osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, or other persons determined



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by the United States Secretary of Labor to be capable of providing health care services. Others capable of providing health care include podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker, physician assistant, or Christian Scientist Practitioners.

B. General Family Leave Provisions

1. In accordance with the general provisions of the FMLA, the City will provide eligible employee 12 workweeks of leave for the following reasons:
 - a. Birth of an employee's child, and to care for the newborn child;
 - b. Adoption of a child by the employee, or official placement of a child with the employee for foster care;
 - c. Care of the employee's son, daughter, spouse, domestic partner or parent with a serious health condition; and
 - d. A serious health condition that makes the employee unable to perform the functions of the employee's job.
2. In determining the amount of leave available to an employee for the reasons above, the City will consider any FMLA leave taken in the twelve (12) months prior to the date the requested leave is to begin. This method is a "rolling 12-month period."
3. Spouses or domestic partners who are employed by the City are limited to a combined total of twelve (12) weeks in the amount of family leave they may take for birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.
4. Leave for birth and care of newborn or placement for adoption or foster care, must conclude within 12 months of the birth or placement and cannot be taken intermittently unless medically necessary or agreed upon by the employee's department director.

C. Military Family Leave Definitions

1. **Health Care Provider:**



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For purposes of leave taken to care for a covered servicemember, any one of the following: a United States Department of Defense (“DOD”) health care provider, a United States Department of Veterans Affairs (“VA”) health care provider, a DOD TRICARE network authorized private health care provider, a DOD non-network TRICARE authorized private health care provider, or authorized health care providers (as defined above in Section III. A. 6) who is not affiliated with DOD, VA, or TRICARE.

2. **Military Caregiver Leave:**

Leave provided to an eligible employee to care for a covered servicemember with a serious injury or illness. For purposes of this type of FMLA leave, the eligible employee is defined as a spouse, domestic partner, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury and is actively receiving medical treatment. Military caregiver leave extends to those seriously injured or ill members of the Regular Armed Forces, National Guard or Reserves.

Eligible employees may also use this leave to care for a covered Veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness.

3. **Serious Injury or Illness:**

An injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating. This includes pre-existing conditions that were aggravated by service in the line of duty while on active duty and those incurred in the line of duty while on active duty.

4. **Serious Injury or Illness of a Veteran:**

An injury or illness incurred by the member in line of duty on active duty in the Armed Forces and that manifested itself before or after the member became a veteran. This includes:



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- a. Pre-existing conditions that were aggravated by service in the line of duty while on active duty and those incurred in the line of duty while on active duty, and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or
- b. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based in whole or in part on the condition precipitating the need for caregiver leave, or
- c. 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
- d. An injury, including psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

5. Covered Servicemember:

A member of the Armed Forces, including a member of the National Guard, Regular Armed Forces 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.

6. Covered Veteran:

An individual who was a member of the Armed Forces, National Guard, or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

7. Parent of a Covered Servicemember or Covered Veteran:

A covered servicemember or veteran's biological, adoptive, step or foster father or mother,



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or any other individual who stood in loco parentis to the covered servicemember or veteran. This term does not include parents "in-law."

8. **Son or Daughter of a Covered Servicemember or Covered Veteran:**

The servicemember or veteran's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember or veteran stood in loco parentis, and who is of any age.

9. **Next of Kin of a Covered Servicemember or Covered Veteran:**

For purposes of the military caregiver leave, "next of kin" is the nearest blood relative, other than the covered servicemember or veteran's spouse, domestic partner, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember or veteran by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember or veteran has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA, in which case the designated individual shall be deemed to be the covered servicemember or veteran's next of kin.

10. **Qualifying Exigency Leave:**

Leave provided to an eligible employee while the employee's spouse, domestic partner, son, daughter or parent, is on "covered active duty" or call to "covered active duty" status. This leave is provided to address issues related to short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities. The military member must be on "covered active duty" or call to "covered active duty" status in the National Guard, Reserves or Regular Armed Forces.



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11. Son or Daughter on Covered Active Duty or Call to Covered Active Duty Status:

The employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

12. Covered Active Duty or Call to Covered Active Duty Status

A member of the National Guard or Reserves who is under a call or order to active duty deployment to a foreign country or has been notified of an impending call or order to active duty deployment to a foreign country in support of a contingency operation.

13. Military Family Leave Provisions

In accordance with the military family provision of the FMLA, the City will provide an eligible employee leave for the following purposes:

A. Qualifying Exigency Leave:

- a. Leave for any qualifying exigency arising out of the fact that the employee's spouse, domestic partner, son, daughter, or parent is a military member on "covered active duty" or has been notified of an impending call or order to "covered active duty" in support of a contingency.
- b. Leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty.
- c. An employee is eligible for 12 workweeks of leave. In determining the amount of leave available to an employee for a qualifying exigency, the City will consider any FMLA leave taken in the twelve (12) months prior to the date the requested leave is to begin. This method is a "rolling twelve-month period."

B. Covered Servicemember Leave ("Military Caregiver Leave"):



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- a. Leave to care for a Covered Servicemember or Covered Veteran with a serious injury or illness if the employee is the spouse, domestic partner, son, daughter, parent, or next of kin of the servicemember or veteran.
- b. An employee is eligible for 26 workweeks of leave during a “single 12- month period.” The “single 12-month period” begins on the first day the eligible employee takes “military caregiver leave” and ends 12 months after that date.
- c. The maximum leave permitted during a 12-month period is 26 workweeks for eligible employees under “military caregiver leaves;” or a combined 26 workweeks for “military caregiver leave” and all other FMLA qualifying reasons.
- d. Spouses who are employed by the City are limited to a combined total of 26 weeks for “military caregiver” leave.

D. Entitlement, Conditions and Procedures

1. Job Security

Employees taking leave under the FMLA will be allowed to return to the same or equivalent position upon returning to work. Any employee taking FMLA due to their own serious health condition may be required to provide a completed Intent to Return from Leave and Fitness for Duty/Medical Release form.

2. Continuation of Medical Benefits

While the employee’s leave status is paid FMLA, the City will continue to provide the employee with insurance benefits. These benefits will be provided to the employee under the same conditions as if the employee was actively working. The employee must continue to pay applicable premiums, co-payments, deductibles and other out-of-pocket expenses (including premiums for dependent coverage, if any).

When an employee’s leave status is unpaid FMLA, the City will continue the eligible employee benefits. During the period of unpaid FMLA, the employee receives the same benefits and has the same payment obligations as employees who are working. Employees on unpaid FMLA must



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make arrangements with the Human Resources Department to continue paying their share of the premium.

An employee who is on unpaid FMLA and chooses not to pay, or agrees but fails to pay insurance premiums, shall have insurance benefits cancelled for non-payment of insurance premium. Upon returning to his/her regularly scheduled work hours, an employee whose insurance benefits are cancelled (due to non-payment of premium) shall have insurance benefits restored as if there was no break in coverage. Insurance benefits for the employee will be restored without the employee having to meet any qualifications, take a physical examination or satisfy pre-existing conditions.

3. Failure to Return to Work

The City may require any employee who fails to return to work after using FMLA to reimburse the City for any insurance premiums paid by the City to maintain the employee's health, vision and/or dental coverage.

4. Modified Duty

Modified duty assignments are based on the availability of temporary works until the employee can perform his/her regular job functions. Modified duty assignments may be in the employee's department or another other department within the City. The employee's physician, a member of management and the Human Resources Department will jointly establish the modified duty physical limitations and describe in a Bona Fide employee offer. Modified duty shall not exceed ninety [90] days per incident, unless there are extenuating circumstances [reviewed on a case by case basis]. Returning to work in a modified duty status for non-workers 'compensation related leaves is optional.

5. Notification of Need

Employees are required to give thirty (30) day notice of intent to take FMLA to their supervisors and the supervisor must submit a [Request for FMLA form](#) to Human Resources. If 30-day notice is not possible, notice should be provided immediately upon determination of need. Human Resources will determine whether or not an employee qualifies for FMLA leave.



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6. Certification

Any employee requesting FMLA leave under this policy must provide a completed certification to support the request for FMLA leave (Employee's Serious Health Condition, Family Member's Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The medical certification form must be fully completed by the patient's health care provider. The qualifying exigency certification form must be fully completed by the employee, must include appropriate facts supporting the need for leave and must include written documentation supporting the request.

The City may, at its expense, require a second opinion from a health care provider of its choice. If the opinions of the two health care providers conflict, the City may require, at its expense, a third medical opinion from a health care provider mutually agreed upon by the employee and the City. The third opinion shall be considered final and binding on both the employee and the City.

The City is not permitted to require a second or third opinion for "qualifying exigency certifications." The City is not permitted to require a second or third opinion for "military caregiver leave certifications" completed by health care providers affiliated with DOD, VA, or TRICARE. However, second or third opinions may be required by the City for "military caregiver leave certifications" that are completed by health care providers who are not affiliated with DOD, VA, or TRICARE.

7. Reduced/Intermittent Work Schedule

Any employee on a reduced/intermittent work schedule while on FMLA must provide a completed certification form (Employee's Serious Health Condition, Family Member's Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The certification form must be completed by the patient's health care provider, must state that intermittent leave is medically necessary and must specify the approximate length of time the employee will be on a reduced work schedule.



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“Qualifying exigency leave” as defined above may also be taken on an intermittent or reduced work schedule basis. The certification must provide the date on which the qualifying exigency commenced or will commence and the end date; where leave will be needed on an intermittent basis, the frequency and duration of the qualifying exigency; and appropriate contact information if the exigency involves meeting with a third-party.

The certification forms must be submitted directly to the Human Resources Department.

When an employee requests intermittent leave or a reduced work schedule, the employee may be temporarily transferred to alternative positions with equivalent pay and benefits. The purpose of the temporary transfer is to better accommodate the intermittent leave schedule.

When an employee requests intermittent leave for the birth of a child, it is subject to the approval of the Director of Human Resources and Department Head.

Intermittent Leave will now be counted toward the computation of overtime.

8. Confidentiality

Completed certifications are considered confidential medical records and will be disclosed only on a strict need-to-know basis.

9. Employee’s Responsibilities

Any employee requesting FMLA leave must give notice to his/her supervisor no later than 30 days prior or a FMLA leave request (Employee’s Serious Health Condition, Family Member’s Serious Health Condition, Qualifying Exigency, Military Caregiver/Serious Injury/Illness of Covered Servicemember). The completed certification must be submitted directly to the Human Resources Department.



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An employee requesting FMLA for the birth of a child; placement of a child for adoption or foster care, or to care for a parent is required to notify their department head or his/her designee if his/her spouse or domestic partner is also employed by the City.

Employees on FMLA leave may be required to report their status and/or intent to return to work to their department head or his/her designee at least every two weeks.

10. Re-certification

Re-certification from a health care provider may only be required from the health care provider every thirty (30) days. The City is not permitted to require re-certification for “qualifying exigency” certifications or military “caregiver leave” except as noted above in Section V. E.

11. Use of Paid Leave

- a. All accrued paid time, including sick and vacation, will run concurrently with all FMLA leave. Accrued sick and vacation time, and any other paid time must be exhausted prior to taking unpaid FMLA Leave.
- b. When taking FMLA for a “qualifying exigency” purpose, an employee cannot use his/her accrued sick leave.
- c. When taking FMLA to care for a covered servicemember “military caregiver leave,” an employee must exhaust his/her accrued sick and vacation prior to taking unpaid FMLA leave.

12. Manager/Supervisor’s Responsibilities

Proper FMLA use and classification is a process that requires interactive communication between the employee and supervisor/manager. It is the responsibility of the employee to notify the City of the need to use FMLA leave and provide the appropriate certification form(s) to support the same. If there is evidence that the leave may qualify as FMLA, or if a supervisor/manager learns that an employee’s absences may be for a FMLA- qualifying reason, the supervisor/manager must promptly notify Human Resources of the qualifying reason. It is the responsibility of the employee’s supervisor/manager to designate the absences as FMLA



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when reporting the employee's hours in the payroll system.

If an employee's leave potentially qualifies as FMLA leave, Human Resources must provide the employee a Notice of Eligibility and Rights and Responsibilities within three (3) business days that the employee is eligible for FMLA leave.

If the leave qualifies as FMLA leave based on a subsequent certification, Human Resources will notify the employee, within five (5) business days of receiving the certification, that the leave will be designated as FMLA leave. If the leave does not qualify as FMLA leave based on the subsequent certification, Human Resources will advise the department to promptly correct the FMLA classification.

An employee must submit a Work Capabilities Form to HR prior to returning to work in order to establish a full duty or modified duty release.

13. Coordination with Workers' Compensation Benefits

In those cases where the employee is eligible for FMLA and Workers' Compensation (WC), these benefits shall run concurrently. The City will require the employee to use injury and accrued paid leave (e.g. vacation, sick, etc.) before taking unpaid FMLA leave. This coordination shall occur when an employee sustains a serious work-related injury resulting in an overnight stay in a medical care facility or misses more than three (3) workdays (in excess of 4 hours a day) due to a compensable work-related injury.

14. Key Employees

A "key" employee is a salaried employee of the City that is among the highest ten [10%] of the City's employees and lives within 75 miles of the employee's worksite. If the City decides that it will suffer substantial and grievous economic injury to its operations if a key employee on FMLA leave is reinstated at the end of the leave, it can deny reinstatement to the key employee. In order to deny reinstatement to the key employee, the City must:



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- a. Notify the employee of his/her status as a key employee in response to the employee's notice of intent to take FMLA leave.
- b. Notify the employee that reinstatement will be denied and the reasons for the denial.
- c. Provide a reasonable opportunity for the key employee to return to work after giving him/her notice that he/she will not be reinstated.
- d. Make a final determination about reinstatement at the end of the FMLA leave period if the employee then requests reinstatement.

WORKERS COMPENSATION

A. Notification Procedure

The injured employee, along with his supervisor, must complete and submit the appropriate City accident reporting forms to the Human Resources Department. This report shall be submitted within twenty-four (24) hours of the injury and will serve as official notification to HR that a work-related injury has occurred. The HR Department will send a Coordination of Workers' Compensation and Family Medical Leave notice and a copy of the Employee's Rights and Responsibilities to the employee within three business days of receiving the completed Accident Report.

If such injury is designated as FMLA, the Human Resources Department shall notify the injured employee in writing within five (5) business days of such designation. The absence(s) will be deducted from the employee's available FMLA hours. The employee's supervisor/manager must designate the absence(s) as FMLA-Workers' Compensation when reporting the employee's time in the payroll system.

B. Modified Duty Position



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An employee who is physically qualified to work modified duty as determined by the treating physician but declines to do so will forfeit their WC benefits. The employee will be required to use accrued paid leave, e.g. vacation, sick, etc., prior to taking unpaid FMLA leave.

C. Injury Leave

Full-Time employees receiving Workers' Compensation Benefits may qualify for Injury Leave. Each full-time employee [with the exception of employees covered by Civil Service] will be granted a total of eight [8] weeks or three hundred twenty [320] hours of injury leave per calendar year. Injury leave hours will not carry over. Injury leave shall commence on the first day the employee is unable to return to work. An employee, who is injured after giving notice of retirement or resignation, or after receiving notice of termination or layoff, shall not receive injury leave beyond the date that his/her retirement, resignation, termination or layoff effective date. Employees are allowed up to 2 hours of paid time off in order to attend a scheduled medical appointment related to the compensable injury or occupational disease. In the event the appointment requires the employee to stay longer than two hours, additional time will be allowed if the employee brings a note signed by the doctor stating the time of arrival and departure. Injury leave shall be paid at the regular rate of pay and does not count toward the computation of overtime.

When Injury Leave has been exhausted, an employee may use sick/vacation leave to subsidize workers' compensation payments. At no time shall any employee be allowed to collect Workers' Compensation benefits and sick/vacation leave benefits equal to more than 100 percent of his/her normal rate of pay.

D. Injury Leave Payments

If an employee qualifies for injury leave payments, they agree to return any payment from the City's workers' compensation carrier to the Human Resources Department. The City will



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pay the employee base salary, less the deductions for income tax, social security, Medicare, retirement, dependent health coverage [if applicable] and any other deductions applicable to the employee until the employee returns to work or his/her unused applicable leave is exhausted, whichever occurs first. Adjustments to nontaxable income shall be made upon receipt of the returned injury leave payment check to HR.

E. Maintaining Eligibility for Injury Leave

To maintain eligibility for payment of injury leave, an employee must provide Human Resources with a statement from a physician verifying the disability and the expected date of return to work. Any changes regarding the expected date of return must be reported to Human Resources as soon as possible. The City may require the employee to be examined by a City-designated physician paid for by the City. These provisions must be followed in order for the employee to receive payment for sick and/or injury leave.

F. Accrual of Sick Leave & Vacation Leave while on injury leave

An employee continues to accrue sick and vacation hours while on injury leave. If an employee is unable to return to work after injury leave has been exhausted and chooses to receive only workers compensation payments, then accrual of sick and vacation hours shall cease until the employee returns to work or chooses to use his/her accrued sick and vacation hours to supplement the Workers' compensation payments.

G. Compensation after Completion of Injury Leave

If an employee has not returned to work prior to the exhaustion of his/her injury leave, the employee may elect to offset any workers' compensation weekly benefit by using sick and/or vacation leave.; The employee may choose to receive only the workers' compensation weekly benefits and not use his/her accrued sick and/or vacation leave. The employee shall make such election in writing to Human Resources prior to the exhaustion of the injury leave.



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H. Health/Life/Other Elected Benefits

While off work because of an injury, the City will continue to pay the City's share of an injured employee's health/life coverage until the employee terminates employment with the City or one [1] year from the date of the injury, whichever occurs first [applicable to non-civil service employees only]. The employee is responsible for payment of his/her share to include dependent coverage of health/life and other elected benefits through payroll deduction, or by direct payment if injury, sick and vacation leave has been exhausted or the employee is on leave without pay.

I. Workers' Compensation Modified Duty

The employee has a duty to return to work in a full or modified duty status as soon as he/she is medically capable. Modified duty assignments are based on the availability of temporary works until the employee is capable of performing his/her regular job functions. Modified duty assignments may be in the employee's department or another other department within the City. The employee's physician, a member of management and the Human Resources Department will jointly establish the modified duty physical limitations and describe in a Bona Fide employee offer. An employee assigned to light duty shall not work overtime. Modified duty shall not exceed ninety [90] days per incident, unless there are extenuating circumstances [reviewed on a case by case basis]. An employee receiving Workers' Compensation Benefits, or working a modified duty position, must adhere to their work restrictions and prescribed treatment plan. Violations may result in disciplinary action up to and including termination.

J. Release to Return to Work

An employee released by his/her physician to return to work on a full-time basis shall provide a written release from the attending physician verifying the employee's fitness to return to the employee's full former duties and the date of the employee's release to



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Human Resources. Such a release is a condition of returning to work. If an employee is released to return to work on an unrestricted, full-time basis, he/she shall immediately return to work on the employee's next regularly scheduled workday after the date of the release. Failure to return to work when released shall result in appropriate disciplinary action up to and including termination or the employee will have been deemed to have abandoned his/her position with the City.

K. Fraudulent Claims

Evidence that Injury Leave or medical treatment was secured through fraudulent statements or deceptive practices shall be sufficient cause for disciplinary action up to and including termination.