



# Kalamazoo Public Library

## Operational Policy: Family and Medical Leave Act (“FMLA”)

This document is based on the U.S. Department of Labor’s (“DOL”) “Fact Sheet No. 28,” and fulfills KPL’s statutory notification requirements. All nonrepresented KPL employees are required to comply with this Policy. Represented KPL employees are required to comply with this Policy, unless their collective bargaining agreement specifically conflicts with this Policy, in which case the collective bargaining agreement will (limited only to that language where there is a specific conflict) supersede this Policy.

### **To be eligible for FMLA benefits, an employee must:**

- (1) have worked for KPL for a total of 12 months;
  - (a) While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more need not be counted unless the break is occasioned by the employee’s fulfillment of his/her National Guard or Reserve military obligation (as protected under USERRA), or a written agreement exists concerning the employer’s intention to rehire the employee after a break in service; and
- (2) have worked at least 1250 hours over the 12 months preceding the leave’s commencement.

**If you do not meet the eligibility requirements, you may be able to take time off under another KPL non-FMLA leave provision.**

In all cases where a leave of absence qualifies for purposes of both the FMLA, as well as a contractual leave of absence provision (e.g. sick leave, other absences, etc.), the first twelve (12) weeks of any such leave will be considered an FMLA leave (the leaves will run concurrently), after which any further leave time (and all benefits) will be treated in accordance with the explicit requirements of the particular contractual leave of absence provision.

### **Leave Entitlement**

If you are an eligible employee, KPL will grant you up to a total of 12 workweeks of unpaid leave (with substitution of paid time under specified circumstances) during a rolling 12-month period for one or more of the following reasons:

- (1) birth and care of your newborn child;
- (2) placement with you of a son or daughter for adoption or foster care;
- (3) to care for an immediate family member (spouse, significant other, son, daughter or parent) with a “serious health condition”;
  - (a) child must be under age 18 unless incapable of self-care due to a physical or mental disability.
  - (b) “Significant other” requires a committed cohabitation relationship.
- (4) to take medical leave when you are unable to work (unable to perform one or more essential job function) because of your own “serious health condition,” or
- (5) for qualifying exigencies (e.g. short notice deployment, military events, childcare, financial/legal arrangements, rest and recuperation, postdeployment activities, etc.), arising out of the fact that your spouse,

significant other, son, daughter, or parent is on active duty or is called to active duty status as a member of the National Guard or Reserves in support of a contingency operation (Form WH-384).

### **Special Military Provisions:**

If you are an eligible employee KPL will grant you up to a total of 26 workweeks of unpaid leave (Form WH-385; with substitution of paid time under specified circumstances) during a “single 12-month period” to care for a covered service member under the following conditions:

- (1) you must meet the eligibility requirements set forth above, and must be the spouse, son, daughter, parent or “next of kin” of the covered service member.
  
- (2) A “covered service member” is a member of the Armed Forces (including National Guard or Reserve) who is undergoing medical treatment, recuperation, therapy, etc., due to a serious injury or illness. The 12 workweek (or in appropriate circumstances the 26 workweek) total is computed by combining all qualifying leaves (e.g birth, placement of a child for adoption or foster care, care of a qualifying immediate family member, employee’s own serious health condition, etc.).

As part of a requested leave of absence for the birth/care of a child, placement of a child for adoption or foster care, to care for a spouse, significant other, child, or parent who is suffering from a serious health condition, or for leave due to special military provisions, the employee may elect to use up to five days of accumulated sick leave or vacation, then will be required to exhaust no less than one-half ( $\frac{1}{2}$ ) of his/her accrued vacation time.

- KPL will also permit the following exception to the above: If the employee's spouse, significant other, child, or parent has a diagnosed terminal illness and/or is hospitalized with a diagnosed lifethreatening illness or injury, the employee will have the discretion to utilize any amount (including none) of his/her accrued vacation time. If the leave request is due to the employee's own serious health condition, the employee will be required to utilize any accrued sick days until such time that his/her disability insurance coverage takes effect, if applicable.

**To use/substitute accrued paid time you must comply with our normal paid leave provisions/procedural requirements.**

(1) KPL is responsible for designating if your use of paid leave counts as FMLA leave based on information we receive from you.

(2) When paid leave is exhausted, any remaining portion of your FMLA entitlement will be unpaid. The period of time you are receiving either Workers' Compensation benefits (for work-related illness/injury) or disability benefits (for non-work-related illness/injury), will be considered paid FMLA leave.

**Serious Health Condition**

Means an illness, injury, impairment, or physical or mental condition that involves either:

(1) Inpatient Care: Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or

(2) Continuing Treatment: Continuing treatment by a "health care provider" which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities) due to:

(a) Absence + Treatment: A health condition (including treatment therefore or recovery therefrom) lasting more than three (3) consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two (2) or more times by or under the supervision of a “health care provider” (i.e. in-person visits, the first within 7 days and both within 30 days of the first day of incapacity [absent extenuating circumstances]); or
- one (1) treatment by a “health care provider” (i.e. an in-person visit within 7 days of the first day of incapacity) with a regimen of continuing treatment (e.g. prescription medication, physical therapy, etc.); or

(b) Pregnancy: Any period of incapacity related to pregnancy or for prenatal care. A visit to the “health care provider” is not necessary for each absence; or

(c) Chronic Conditions: Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a “health care provider,” and may involve occasional episodes of incapacity (e.g. asthma, diabetes). A visit to a “health care provider” is not necessary for each absence; or

(d) Permanent/Long-Term Conditions: A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer’s, a severe stroke, terminal cancer). Only supervision by a “health care provider” is required, rather than active treatment; or

(e) Multiple Treatments (Non-Chronic Conditions): Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three (3) consecutive days if not treated (e.g. chemotherapy or radiation treatments for cancer).

**Health Care Provider means:**

- (1) doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- (2) podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- (3) nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice, and performing within the scope of their practice, as defined under state law; or
- (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Mass.; or
- (5) any health care provider recognized by the employer or the employer's group health plan benefits manager.

**Requirements Unique to Birth or Placement of a Child:** Leave for birth and care, or placement for adoption or foster care must conclude within 12 months after the birth or placement.

**Intermittent FMLA Leave:** Under some circumstances you may take FMLA leave intermittently – which means taking leave in separate blocks of time, or by reducing your normal weekly or daily work schedule. When intermittent leave is needed for planned medical treatment, you must make a reasonable effort to schedule treatment so as not to unduly disrupt KPL's operations.

FMLA leave may be taken intermittently whenever medically necessary to care for a seriously injured or ill family member, or because you are seriously ill and unable to work.

**Maintenance of Benefits**

KPL is required to maintain group health insurance coverage (KPL will currently maintain health, dental, vision, life and disability insurances)

for you while you are on FMLA leave if you were receiving such insurance coverage before FMLA leave was taken. Coverage will be on the same terms as if you had continued to work. If applicable, arrangements will be made for you to pay your share of health insurance premiums while on FMLA leave.

If you fail to return to work from an FMLA leave, unless for one of the limited reasons set forth in the FMLA's accompanying regulations, KPL is entitled to recover premiums KPL paid on your behalf during any period you were on unpaid FMLA leave.

Your use of FMLA can not result in the loss of any employment benefit that you earned or were entitled to before using FMLA leave.

### **Job Restoration**

Upon timely return from FMLA leave you will be restored to your original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. If FMLA was taken because of your own serious health condition, you must timely submit a "fitness for duty" certificate before you will be reinstated. If you fail to timely return-to-work and/or fail to present a "fitness for duty" certificate when your FMLA leave entitlement is exhausted, and absent an appropriate request and approval for continuation of non-FMLA leave, you will be subject to discharge.

You have no greater right to job restoration or to other benefits and conditions of employment than if you had been continuously employed.

### **Notice and Certification**

#### **Employee Notice**

(1) Employees seeking to use FMLA leave are required to provide 30-days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable (e.g. birth of child, planned surgery, etc.).

(2) When the need for leave is foreseeable less than 30 days in advance, or is not foreseeable, you must provide notice as soon as practicable (as soon as possible and practical) under the circumstances – generally, either the same or next business day.

(3) Though you need not mention the FMLA, you must provide at least verbal notice/information sufficient to make KPL aware that you need FMLA-qualifying leave (e.g. incapacitated due to pregnancy, hospitalized overnight, etc.), and the anticipated timing and duration of the leave. Calling in “sick” is insufficient. If you have been previously certified/approved for FMLA leave, you must when contacting KPL specifically reference the qualifying reason for leave or the need for FMLA leave.

(4) You are obligated to respond to KPL’s reasonable inquiries aimed at determining if your absence is potentially FMLA-qualifying. You are required to comply with the below usual and customary notice and procedural requirements for requesting leave (absent unusual circumstances):

(a) You (or if personally unable, your spokesperson) must contact KPL’s Benefit’s Specialist/Payroll Supervisor, or if unavailable his/her designee. During non-working/non-operating hours you must leave a voice-mail message at (269) 553-7855, send a fax to (269) 553-7955, or send an e-mail to [FMLA@kpl.gov](mailto:FMLA@kpl.gov). The message, fax, or e-mail must provide information “sufficient to make KPL aware that you need FMLA-qualifying leave, the anticipated timing and duration of the leave,” and a means for KPL to contact you or the person leaving the message, fax, e-mail.

When appropriate, and when KPL wishes your qualifying time off from work to be counted toward your annual FMLA allotment, KPL will designate the time off as FMLA. Conversely, when you wish to use FMLA to protect your employment status (e.g. avoid being AWOL, avoid an unexcused absence, etc.), it is your responsibility to clearly, unequivocally and timely request use of FMLA.

## **Employer Notice**

When appropriate, KPL will:

(1) Notify you within 5 business days (absent extenuating circumstances) of your eligibility to take leave and inform you of your rights and responsibilities (and consequences if you fail to meet those obligations) under the FMLA (form WH-381). If appropriate, KPL will provide you at least one reason why you are not eligible to take FMLA leave.

(2) Require that you provide medical certification within 15 days (and the consequences if you fail to do so) supporting the need for leave due to a serious health condition affecting you (form WH-380-E) or a qualifying immediate family member (form WH-380-F);

(a) If provided to you, you must share your job's "essential functions" with your health care provider who, when filling out the certification form, must specify which functions you can not perform.

(b) Notify you if your certification is deficient, explain why it is deficient, and require you to cure the deficiency;

(3) When appropriate, require second or third health care provider opinions (at KPL's expense);

(4) Use a health care provider, a human resource professional, a leave administrator, or a management official – but not your immediate supervisor – to authenticate or clarify your medical certification form WH-380.

(5) When KPL has sufficient information we will notify you that your leave will or will not be designated and counted as FMLA leave (form WH-382);

(6) When appropriate, require periodic recertifications at your expense (KPL may present your health care provider with your absence record and ask if your need for leave is consistent with this pattern);

(7) When appropriate, require that you provide KPL with periodic reports during your FMLA leave regarding your status and intent to return to work; and

(8) If you are returning from leave for your own serious health condition, require that you submit a certification that you are able to resume work (you will also be notified of this requirement in form WH-382). If we have reasonable safety concerns, we may require this certification if you are returning from intermittent leave.

When intermittent leave is needed to care for a qualifying immediate family member or your own serious health condition, or is for planned medical treatment, you must consult with us and make a reasonable effort to schedule the leave (and treatments) so as not to disrupt unduly KPL's operations.

In addition to this policy we will also post a notice (on all informational bulletin boards) approved by the Secretary of Labor explaining rights and responsibilities under the FMLA.

### **Other/Additional Provisions**

(1) The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under an employment benefit plan.

(2) When FMLA leave is to be taken intermittently or on a reduced schedule, KPL may require that you transfer temporarily (for the period of your FMLA leave usage) to an available alternate position (with equivalent pay and benefits) for which you are qualified and which better accommodates recurring periods of leave than does your regular position.

(3) If you return from an absence which, though qualifying, was never designated as FMLA because KPL was unaware of the true reason for

your absence (e.g. you provided insufficient notice when first calling in, you took vacation time without explanation, etc.), you must notify KPL within two (2) business days of returning to work of the true reason for your leave and must request the time be retroactively designated as FMLA. An employee who fails to timely do so may be unable to subsequently assert FMLA protection for the absence.

(4) An employee absent from work on FMLA must not (absent written authorization) engage in “outside” or “supplemental” employment (including self-employment).

(5) An employee who fraudulently obtains or utilizes FMLA leave is not protected by FMLA’s job restoration or maintenance of health benefits provisions, and is subject to discharge.

(6) Salaried employees (e.g. executive, administrative, professional, etc.) who meet the Fair Labor

Standards Act (“FLSA”) criteria for exemption from minimum wage and overtime under Regulations 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for FLSA’s exemption extends only to “eligible” employees’ use of leave required by FMLA.

### **Further Information/Enforcement**

(1) It is unlawful for any employer to interfere with, restrain or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

(2) Please contact the Benefit’s Specialist/Payroll Supervisor if you have any questions or concerns about the FMLA, this Fact Sheet and Policy Guide, or KPL’s application of the FMLA. Or, visit the Wage and Hour Division website: <http://www.wagehour.dol.gov> and/or call 1 (866) 487-9243.

(3) To the extent anything contained in this Fact Sheet and Policy Guide conflicts with the Family and Medical Leave Act, the Act will prevail.

Adopted: September 21, 2009.

**Effective: September 21, 2009.**