



## **Family and Medical Leave Act (FMLA) Policy** **Effective October 15, 2022**

In accordance with the Family and Medical Leave Act (FMLA), the Philadelphia Housing Development Corporation (PHDC) provides family and medical leave to its eligible employees. PHDC posts the mandatory FMLA notice required by the Department of Labor (DOL) regarding employee rights and responsibilities under FMLA onsite and on the Employee Only page of PHDC's website.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law or a collective bargaining agreement, employees will be afforded all rights required by law and/or the collective bargaining agreement.

If you have any questions, concerns, or disputes with this policy, you must contact the Vice President of Human Resources in writing.

### **A. General Provisions**

Under this policy, PHDC will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

### **B. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all the following conditions:

- 1) The employee must have worked for the employer for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

## C. Types of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the six reasons listed below:

1) The serious health condition of the employee.

- An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
- A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.
- This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.
- Employees with questions about what illnesses are covered under this FMLA policy or under the employer's sick leave policy are encouraged to consult with the Human Resource Director.
- If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the employer may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

2) To care for a spouse, son or daughter, or parent with a serious health condition.

- A "*spouse*" is a husband or wife (including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015, and life partners as that term is defined in Section 9-1102(p) of the Philadelphia Code).
- A "*son or daughter*" is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person 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 FMLA leave is to commence.
- A "*parent*" is a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined above. This term does not include parents "in-law".
- The term "*in loco parentis*" refers to a person who provides day-to-day responsibilities to care for and financially support a child, or in the case of an employee, a person who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

- 3) The birth of a child and to care for that child.
- 4) The placement of a child for adoption or foster care and to care for the newly placed child.
- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- a) short-notice deployment
- b) military events and activities
- c) childcare and school activities
- d) financial and legal arrangements
- e) counseling
- f) rest and recuperation
- g) post-deployment activities
- h) additional activities that arise out of active duty - provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

To care for a covered service member, an eligible employee must be the spouse, son, daughter, parent, or next of kin of a covered service member.

- a) A "*son or daughter of a covered service member*" means the covered service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- b) A "*parent of a covered service member*" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents "in law."
- c) A "*spouse of a covered service member*" is a husband or wife (including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015, and life partners as that term is defined in Section 9-1102(p) of the Philadelphia Code).

d) A “*next of kin of a covered service member*” is 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 service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless 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. 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 shall 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. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member’s next of kin. Alternatively, where a covered service member has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member’s next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).

The term “*covered active duty*” means:

- a) In the case of members of a regular component of the Armed Forces, it means duty during deployment of the member with the Armed Forces to a foreign country.
- b) in the case of a member of the Reserve components of the Armed Forces, it 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, in accordance with 29 CR 825.102.

The leave may commence as soon as the individual receives the call-up notice.

This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

- 6) Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term “*covered service member*” means:

- a) a 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
- b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “*serious injury or illness*” means:

- a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), it means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, it means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

The term “*outpatient status*” with respect to a covered service member means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

## D. Amount of Leave

An eligible employee can take up to 12 weeks for FMLA circumstances (1) through (5) above under this policy during any 12-month period. The employer will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the employer will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the employer will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If married spouses both work for the employer and each wish to take leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If spouses

both work for the employer and each wish to take leave to care for a covered injured or ill service member, the spouses may only take a combined total of 26 weeks of leave.

## E. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to their department manager/director or an HR Representative. Within five business days after the employee has provided this notice, the Vice President of Human Resources or his/her designee will complete and provide the employee with the Department of Labor Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

## F. Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the HR Representative will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

## G. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

## H. Intermittent Leave or Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take days or hours periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) over a 12-month period.

The employer may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the employer and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

## I. Certification

### Certification for the Employee's Serious Health Condition

The employer will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the Department of Labor Certification of Health Care Provider for Employee's Serious Health Condition.

The employer may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator, or management official. The employer will not use the employee's direct supervisor for this contact. Before the employer makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the employer will obtain the employee's permission for clarification of individually identifiable health information. If the employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave. It is the employee's responsibility to provide the employer with a complete and sufficient certification and to clarify the certification if necessary.

The employer has the right to ask for a second opinion if it has reason to doubt the certification. The employer will pay for the employee to get a certification from a second doctor, which the employer will select. The employer may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the employer will require the opinion of a third doctor. The employer and the employee will mutually select the third doctor, and the employer will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### Certification for the Family Member's Serious Health Condition

The employer will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The employer may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The employer will not use the employee's direct supervisor for this contact. Before the employer makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical

Privacy Rules, the employer will obtain the employee's family member's permission for clarification of individually identifiable health information.

The employer has the right to ask for a second opinion if it has reason to doubt the certification. The employer will pay for the employee's family member to get a certification from a second doctor, which the employer will select. The employer may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the employer will require the opinion of a third doctor. The employer and the employee will mutually select the third doctor, and the employer will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### Certification of Qualifying Exigency for Military Family Leave

The employer will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

### Certification for Serious Injury or Illness of Covered Service member for Military Family Leave

The employer will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

### Recertification

The employer may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the employer may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The employer may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

## J. Employee Status of Benefits During Leave

### Health & Prescription Insurance

Under current employer policy, PHDC exempt, non-represented, and AFSCME Local 1971 employees pay a portion of the health care premium.



While an employee is on leave, the employer will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium.

While on unpaid leave, the employer will continue to pay both the employee and employer's portion of the health insurance premium during the leave period. Once the employee returns to work, the employer will require the employee to reimburse the employer the amount it paid for the employee's portion of the health insurance premium during the leave period. The employee will be given the option to repay the reimbursement via payroll deductions either in one lump sum, or an agreed upon payment plan.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee, a serious health condition of the employee's family member, or a circumstance beyond the employee's control, the employer will require the employee to reimburse the employer the amount it paid for the employee and employer's portion of the health insurance premium during the leave period. This reimbursement may be deducted from the employee's leave payout, pension benefit, or both, depending on the amount that is owed.

PHDC Maintenance employees are members of trade unions and are therefore covered under their respective union's health benefits. PHDC Maintenance employee must make arrangements with the Health & Welfare Office of his/her trade union regarding payments for their share of the health benefits.

### Employer Paid Benefits

The employer will continue the employer-sponsored life and accidental death and dismemberment insurance and dental benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

### Voluntary Benefits

Under current employer policy, if the employee is enrolled in voluntary benefits (including, but not limited to additional life insurance, disability insurance, and vision), the employee pays the entire premium.

While on paid leave, the employer will continue to make payroll deductions to collect the employee's premium.

While on unpaid leave, the employee may request continuation of such benefits during the leave period. If the employee requests continuation of voluntary benefits, once the employee returns to work, the employer will require the employee to reimburse the employer the amount it paid for the employee's premium during the leave period. The employee will be given the option to repay the reimbursement via payroll deductions either in one lump sum, or an agreed upon payment plan.

If the employee does not return to work for or any reason, the employer will require the employee to reimburse the employer the amount it paid for the employee's premium during the leave period. This reimbursement may be deducted from the employee's leave payout, pension benefit, or both, depending on the amount that is owed.

### Pension Service Credit

While on paid leave, the employer will continue to make payroll deductions to collect the pension contribution of the pension plan participant and the participant will continue to receive credited service while on leave.

While on unpaid leave, the following applies:

a) City of Philadelphia Pension Plan Participants

The participant can receive credited service by continuing to make the pension contribution. The payment must be received in the Human Resources Department by the first day of each month. If the payment is more than 30 days late, the participant will not receive credited service for that month.

b) Former PRA Defined Benefit Pension Participants

The participant can receive credited service by continuing to make the pension contribution. The payment must be received in the Human Resources Department by the first day of each month. If the payment is more than 30 days late, the participant will not receive credited service for that month.

c) Former PRA Defined Contribution (401a) Pension Participants

Mandatory employee contributions to the defined contribution plan stop and resume automatically upon return to paid status in an eligible position.

## K. Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions.

Highly compensated employees (i.e., highest-paid 10 percent of employees at a worksite or within a 75-mile radius of that worksite) may not be returned to their former or equivalent position following a leave if restoration of employment will cause substantial economic injury to the employer. (This fact-specific determination will be made by the employer on a case-by-case basis.) The employer will notify employees if they qualify as "highly compensated" employees, if the employer intends to deny reinstatement, and of employees' rights in such instances. None of the employees in the AFSCME Local 1971 Bargaining Unit or First Level Supervisory Unit shall be considered key employees under FMLA.

## L. Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition, for the birth of a child, or for the placement of a child for adoption or foster care must exhaust all accrued sick leave and administrative leave prior to being eligible for unpaid leave. At the Employee's discretion, he/she may also use accrued vacation or compensatory leave after exhausting accrued sick and administrative leave.

An employee who is taking FMLA leave because of the serious health condition of a family member may at his/her discretion, use accrued vacation leave, administrative leave, or compensatory leave prior to being eligible for unpaid leave. An employee may not use any accrued sick leave for FMLA leave that is granted because of the serious health condition of a family member.

An employee who is using FMLA military caregiver leave or military leave for a qualifying exigency must use all accrued vacation and annual administrative leave prior to being eligible for unpaid leave.

An employee who is taking FMLA leave for any reason can, at the employee's discretion, use any accrued leave, including annual leave and compensatory leave after using the required leave mentioned above prior to beginning the unpaid portion of FMLA leave.

Workers' compensation leave (to the extent that it qualifies) will be designated as FMLA leave and will run concurrently with FMLA.

Maternity/Paternity leave will be designated as FMLA leave and will run concurrently with FMLA.