METRO NASHVILLE

FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY HANDBOOK

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Metro Family and Medical Leave Act Policy Handbook

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NON-MILITARY PROVISIONS

MILITARY PROVISIONS - SEE PP. 23 BELOW

Note: Dealing with the health, financial and family issues that go hand in hand with the need to take Family and Medical Leave can be challenging. In addition, returning to work following leave can be stressful. For assistance concerning such personal matters that are outside of the procedures of applying for FMLA leave, Metro offers the Employee Assistance Program (EAP) for free, confidential, one-to-one support at any time before, during, or after your use of leave. The EAP can be reached 24 hours a day, 7 days a week to help you manage the issues at hand and prepare for a successful return to the workplace. Visit the Human Resources webpage to view the EAP program at http://www.nashville.gov/hr_benefits/. For all issues relating to the procedures of applying for FMLA leave, and regarding the actual use of FMLA leave, please contact your department's HR Coordinator for assistance.

A. WHEN ARE YOU ELIGIBLE FOR FMLA LEAVE?

You must have been employed by Metro for at least one (1) year AND for at least 1,250 hours during the preceding 12-month period to be eligible for Family and Medical Leave. **Both** the hours **and** one-year period requirements must be met. So if you work for Metro and put in 1,250 hours before your one-year anniversary date, the hours alone would not qualify you for FMLA leave. In addition, if you take leave, paid or unpaid, during the twelve months of employment preceding the date you request leave, you may not count hours on leave towards the 1,250 hours required for eligibility. This will be referred to as "time in service" in the balance of the handbook. The time in service requirement must be met as of the time leave is set to begin, not as of the date leave is first requested.

B. HOW MUCH FMLA LEAVE CAN YOU TAKE?

If you are eligible, you may be granted a total of twelve (12) workweeks (480 hours) of leave, during any 12-month period.

C. WILL YOUR FMLA LEAVE BE PAID OR UNPAID?

Except as discussed below at §§ N and O, FMLA leave will be **unpaid** leave.

D. HOW DOES METRO COUNT THE FMLA LEAVE YOU ACTUALLY USE?

Your 12-month period of entitlement is measured beginning on the first date you take FMLA leave. Your next period of FMLA entitlement would begin the first time you use FMLA leave after the end of any prior 12-month FMLA period. For example, if you needed a 12-workweek period of leave that began on April 1st of Year 1, your FMLA period would run from April 1st through March 31st of Year 2. If you did not need leave again until September 1st of Year 2, at that point, you would be entitled to 12 workweeks of leave through August 31st, of Year 3.

If a holiday occurs during FMLA leave, and the length of your approved leave is less than a full workweek, the hours you do not work on the holiday are not counted against your FMLA leave entitlement. However, if a holiday occurs during FMLA leave and the length of your approved leave is equal to or greater than a full workweek, the holiday time is counted against your FMLA leave entitlement.

E. WILL YOU HAVE A JOB WHEN YOU COME BACK?

You will ordinarily be returned to the same or to an equivalent position when you return from approved FMLA leave.

F. IMPORTANT DEFINITIONS:

(i) "Employee" means any person employed by Metro, Civil Service status or otherwise, on a full-time, part-time or temporary basis.

(ii) "Incapacity" means inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment for the condition, or recovery from the condition.

(iii) "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves either:

a. Inpatient care in a hospital, hospice or residential medical care facility, or
b. Continuing treatment by a health care provider.

(iv) Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined above, or any subsequent treatment in connection with such inpatient care.

(v) Continuing Treatment by a health care provider includes any one of the following:

a. Incapacity and treatment – incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity that also involves:

(1) Treatment two or more times within 30 days of the first day of incapacity by a health care provider or others under his/her direction; or
(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment.
(3) Treatment means an in-person visit, and the first visit must take place within 7 days of the first day of incapacity.
(4) Whether additional treatments or a regimen of continuing treatment is necessary is up to the provider;
(5) Treatments outside the 30 day period may be acceptable if extenuating circumstances, outside your control, prevent follow-up treatment from occurring.

b. Pregnancy or prenatal care – means any period of incapacity due to pregnancy or for prenatal care.

c. Chronic condition – means a condition that requires periodic visits (at least twice a year); and continues over an

extended period of time; and may cause episodic rather than a continuing period of incapacity.

d. Permanent or long-term conditions – means a condition causing incapacity for which treatment may not be effective, i.e. Alzheimer's, severe stroke, or terminal diseases.

e. Conditions requiring multiple treatments – means absences caused by a need for restorative surgery after an accident or injury or conditions that require treatments to avoid extended incapacity such as cancer, severe arthritis, or kidney disease.

f. Absences under (b) and (c) above qualify for FMLA leave even if the employee or family member does not receive treatment during an absence, and even if the absence does not exceed three calendar days. (Asthma patient advised to stay home due to pollen count; pregnant female advised to stay home due to morning sickness).

(vi) "Serious Health Condition" does not include the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than medically diagnosed migraines, or routine dental or orthodontia treatments. These descriptions are not intended to be universal, and both the employee and Metro must communicate with one another on a case by case basis. For example, certain strains of the flu may in fact qualify as a serious health condition if the requirements of FMLA related to treatment, examination and incapacity are met.

(vii) Substance abuse may be a serious health condition covered by FMLA, but only if leave is taken for treatment and the above definitions are met. Absences due to the employee's use of the substance, rather than for treatment, do not qualify for FMLA leave. An employee who is a covered family member of an individual undergoing treatment for substance abuse may be granted FMLA leave to care for that individual on an intermittent basis.

(viii) "Parent" means the biological or adoptive parent of an employee or an individual who stands or stood in the place of a parent to

an employee when the employee was a child. A person who "stands or stood" in the place of a parent is not required to have a biological or legal relationship with the child. The only criteria are that the person has day-to-day responsibilities to care for and financially support a child or have had that responsibility for the employee when the employee was a child.

(ix) "Son or Daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of a parent who is either under age 18 or 18 or older and incapable of self-care because of a mental or physical disability.

(x) "Health Care Provider" means a physician, dentist, podiatrist, clinical psychologist, optometrist, or nurse practitioner who is authorized to practice medicine or surgery in the state in which the individual practices his/her profession. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor.

(xi) "Workweeks" is a term used by the Department of Labor in all of the regulations concerning the FMLA. The term refers to the typical work period of Monday-Friday, and means a five-day period of time. Employees working in non-traditional positions, or taking intermittent leave as defined below, will likely have their leave tracked by days and hours, rather than weeks. For purposes of the policy, we will use the word "week;" whenever you see the word "week" in this policy we are referring to workweeks.

G. WHAT ARE THE REASONS YOU CAN TAKE FMLA LEAVE?

You may be granted no more than twelve (12) weeks of FMLA leave for the following reasons**:

(i) the birth of your child and in order to care for the child;
(ii) the placement of a child with you for adoption or foster care;
(iii) to care for your spouse, son, daughter, or parent who has a serious health condition; or

(iv) a serious health condition that renders you incapable of performing the functions of your job.

<u>SEE REASONS FOR MILITARY FMLA LEAVE BELOW AT §W.</u>**

H. WHAT KINDS OF FMLA LEAVE ARE AVAILABLE TO ELIGIBLE EMPLOYEES?

There are three ways an employee may take FMLA leave. The first and most common, is often called "continuous," "single block" or long-term leave. An employee may take up to 12 weeks of protected leave under the FMLA. Long-term leave involves an employee taking leave for one continuous period of time, as short as a few days or as long as the full 12 weeks.

The second form of FMLA leave is known as intermittent leave, which is leave taken in separate blocks of time due to a single qualifying serious health condition or injury. Intermittent leave may be used for treatment for a serious health condition or for treatments (such as physical therapy) to recover from the condition or injury, or to recover from the treatments given to you as part of your recovery from a serious health condition. Intermittent leave may be taken for as short a time period as an hour, or two or three days in a month, or for an hour several times a week to receive treatment from a health care provider.

The third way an employee may take FMLA leave is actually a form of intermittent leave known as "reduced schedule leave." A reduced schedule form of leave is a leave schedule that reduces an employee's usual number of working hours per week, or hours per workday. A reduced schedule leave is a change in the employee's schedule, normally from full-time to part-time. For example, a female employee may submit a medical certification indicating her hours must be reduced from 40 hours to 32 hours per workweek during the last 6 weeks of pregnancy in order to protect the pregnancy.

I. HOW DOES THIS POLICY WORK FOR PREGNANCY, CHILDBIRTH, ADOPTION, FOSTER-CARE, CARING FOR COVERED FAMILY MEMBERS, AND THE CIVIL SERVICE RULES DEALING WITH ABSENCES AND USE OF LEAVE?

1. **Pregnancy:** Circumstances may require that FMLA leave begin before the actual birth of a child. A pregnant employee is entitled to FMLA leave for incapacity due to her pregnancy, for prenatal care or morning sickness if her condition makes her unable to work. While Metro may require a health care provider to certify the need for leave, a pregnant employee is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive full calendar days. For example, a pregnant employee may be unable to report to work because of severe morning sickness. An employee-husband may be entitled to FMLA leave if he is needed to care for his pregnant spouse who is incapacitated as defined above. "Spouse" for purposes of leave under the FMLA to care for one's spouse, means husband and wife. The father of an unborn child is not eligible for FMLA leave for pregnancy issues, pre-natal care, or to care for the mother during a period of disability following childbirth, unless he is the married husband of the mother.

2. **Childbirth:** Both the mother and father are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. Both spouses are entitled to FMLA leave even if the newborn does not have a serious health condition. An employee's entitlement to FMLA leave for childbirth expires at the end of the 12-month period beginning on the date of birth. (See §6 below for discussion of situation where both spouses are employed by Metro).

3. **Adoption and Foster Care:** Both husband and wife may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose. An employee's entitlement to leave for

adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.

4. **Caring For An Employee's Spouse, Son, Daughter, or Parent:** Encompasses both physical and psychological care and includes situations where the family member is unable to care for basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care. Also included are situations where the employee may be needed to substitute for others who normally care for the family member or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member to be entitled to FMLA leave. Caring for parents-in-law is not covered by the FMLA.

5. **Timing and Duration:** If only one spouse is employed by Metro, the leave period shall begin and end as described above, and shall be limited to twelve (12) weeks of FMLA leave.

6. **Both Spouses Employed By Metro:** If both spouses are employed by Metro, the husband and wife shall be limited to a combined total of twelve (12) weeks of leave during any 12-month period if the leave is taken for (a) the birth of the employee's son or daughter or to care for the child after birth (healthy birth/"bonding time"); or (b) for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement (healthy child/"bonding time"); or (c) to care for the employee's parent with a serious health condition. (C.S. Policy 4.6.4). Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the husband and wife would each be entitled to the difference between the amount he or she has taken individually for one of those purposes, and 12 weeks for FMLA leave for other purposes. For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks

due to his or her own serious health condition or to care for a child with a serious health condition. If each spouse took 6 weeks of leave to care for a parent, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition. The "combined total" limitations do not apply where the reason for the leave is the serious health condition of either the husband or wife or the serious health condition of a child.

7. **Application of Tennessee Maternity Leave Statute:** Civil Service Policy 4.16.3 states that FMLA leave and maternity leave allowed by Tennessee law will run concurrently, i.e. at the same time. Tennessee law allows employees who have been employed as full-time Metro employees for at least twelve (12) **consecutive** months to be absent for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant. If you meet the State law requirements, you may therefore be absent for four (4) months as opposed to the 12-week period allowed by FMLA. For adoptions, the four-month period begins at the time the employee receives custody of the child. Employees who give at least three (3) months' advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave. The additional four weeks of leave allowed by the Tennessee statute are not considered part of the combined limit under the FMLA if both spouses are employed by Metro. Therefore, regardless of how two Metro employees decide to split their combined 12 weeks of federal FMLA leave, if they qualify for leave under the maternity statute, each would be entitled to an additional 4 weeks of unpaid leave.

8. **Use of Intermittent Leave:** When leave is taken after the birth or placement of a child for adoption or foster care, you may take leave intermittently or on a reduced leave schedule only if Metro agrees. Such a schedule reduction might occur, for example, where an employee, with Metro's agreement, works part-time after the birth of a child, or takes leave in several

segments. When leave is taken in order to care for a family member, the use of intermittent leave or reduced schedule leave includes: a) situations where the serious health condition of the family member is intermittent and b) situations where the employee is only needed to care for the family member on an intermittent basis, such as where other care is normally available or where care responsibilities are shared with other family members or a third party.

9. **Interaction with Civil Service Rule 4, §4.4:** Civil Service Rules Chapter 4, Section 4.4 requires an employee to notify a designated supervisor, no later than the first hour of the scheduled work day, stating the reason for an absence. Your department may have its own "call-in" policy for notifying a supervisor of your absence. Under the FMLA, you are required to follow whatever "call-in" policy your department has in place and you must provide sufficient information to allow Metro to determine if your absence qualifies under the FMLA. Simply calling in "sick" without providing more information will not be considered sufficient notice for FMLA leave.

10. **Interaction with Civil Service Rules Chapter 4, §4.7:** Pursuant to Civil Service Rules, Chapter 4, Section 4.7, for approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave an employee may use to care for an employee's spouse, parent, or child, who lives in the employee's household or for whom the employee is the primary caregiver.

J. HOW AND WHEN DO YOU REQUEST FMLA LEAVE?

In all cases, you must complete a "Request For Family or Medical Leave," form available to employees by contacting your department's HR Coordinator, or available to employees on the Metro website at www.nashville.gov, "Employment" sub-site. The Request must be promptly returned to your HR Coordinator or supervisor. Your completed Request must state the reason for the leave, the expected duration of the leave, and the starting and ending dates of the leave. The Request must also indicate whether you are seeking long-term, (block/continuous) leave, intermittent leave or reduced schedule leave.

If you plan to take family or medical leave because of an expected birth or placement (adoption or foster care), or because of a foreseeable, planned medical treatment, you must submit a Request at least thirty (30) days before the leave is to begin. If your need for leave is unforeseeable you must provide notice to your HR Coordinator or supervisor as soon as possible, either the same or the next business day after the onset of the condition requiring leave. If your need for leave is foreseeable, and you fail to provide sufficient notice, Metro can require you to explain in writing, the reason why you did not provide adequate notice.

While your first notice may be verbal, a written Request must be completed and submitted to your HR Coordinator or supervisor as soon as possible. In cases where you have a serious illness or injury, your spouse, family member or other responsible party may provide your initial notice if you are unable to do so personally. Failure to provide notice or to submit a Request for leave, or a failure to request leave in a timely fashion, may result in delay or denial of FMLA leave and possible disciplinary action if you are absent without leave.

Please remember, that even if you do not wish to have your leave considered or counted as FMLA leave, Metro has the right to designate leave taken for an FMLA purpose as FMLA leave. If the reason for the absence meets the definition of a "serious health condition" or other approved reason for leave under the FMLA, the employer may designate (and so advise the employee) and count the absence against the employee's 12-week FMLA entitlement even if the employee has not requested that it be counted as such. (DOL Letter Ruling FMLA-68, July 1995).

K. HOW DOES METRO RESPOND TO A REQUEST, AND WHAT INFORMATION DO YOU NEED TO PROVIDE TO METRO TO ESTABLISH YOUR NEED FOR FMLA LEAVE?

After you request FMLA leave, or if you have been absent for more than three full calendar days due to an illness or injury, your HR Coordinator should, within five (5) business days, provide you with a letter enclosing a form entitled “NOTICE OF ELIGIBILITY AND RIGHTS AND RESPONSIBILITIES.” The letter and the form will advise you whether or not you are eligible for FMLA leave based on

your time-in-service. If you are not eligible, the Notice will advise you of at least one reason why you are not eligible. If you are eligible, the letter will contain all of the requirements for you to follow to obtain FMLA leave, and will fully explain your rights and obligations under the law. You may find enclosed: a medical certification form for you to take to a health care provider, a health care provider instruction sheet, and job description documents for your provider to review.

You MUST return the completed medical certification form to your HR Coordinator within fifteen (15) calendar days. For block or long-term FMLA leave for your own condition, you will be provided with a form entitled "Certification of Health Care Provider for Employee's Serious Health Condition" that you must take to your provider for them to complete and sign. For both block (long-term) FMLA leave and for intermittent or reduced schedule leave related to the need to care for an eligible family member, you will be provided with a form entitled "Certification of Health Care Provider for Family Member's Serious Health Condition." For both kinds of intermittent leave (intermittent or reduced schedule), based upon your own serious health condition, you will be provided with a form entitled "Certification for Intermittent Leave Request Because Of Employee's Own Serious Health Condition."

The responsibility to return the required medical certification is YOUR responsibility, not your health care provider's responsibility. Metro is entitled to receive an informative Medical Certification from your health care provider. Metro can require you to obtain additional information from your health care provider if the initial Certification is incomplete, difficult to read, vague or unsigned. If the certification you return is incomplete or insufficient, Metro will advise you in writing of the problems with the certification and will give you seven (7) calendar days in which to return to your provider and cure the deficiencies in the certification. If you fail to cure the deficiencies in a timely fashion, Metro may deny your request for leave.

However, instead of denying your request, Metro may wish to use its own health care provider to contact your health care provider to seek clarification of issues raised by your provider's initial Medical Certification. Or, Metro may also have your department HR Coordinator, department head, or an appropriate member of the

central HR staff, make contact with your health care provider to seek clarification of the information contained in your provider's initial Medical Certification. Your direct supervisor will NOT be involved in the authentication or clarification contacts with your provider. In order for either of these types of contact with your provider to take place, you may be asked to sign a form entitled "Authorization For Release of Health Information." This release will allow Metro personnel to contact your provider for the limited purpose of authenticating and/or clarifying the information in your medical certification. If you sign the form and allow Metro to contact your provider, your request for leave will continue to be processed. If you refuse to sign the form, your request for leave may be denied.

L. DECISION AND DESIGNATION OF LEAVE

Once Metro has sufficient information to determine whether or not your condition qualifies for leave under the FMLA, you will receive another letter from Metro, advising you of the response to your request. The letter should be sent within five business days of Metro's receipt of sufficient information, and will enclose a document entitled "Designation Notice." The letter and "Designation" will advise you if your request has been approved or denied, or if Metro is in need of additional information. The additional information may be obtained from you and your provider, may involve Metro's own physician, may involve Metro HR personnel contacting your provider, or may involve Metro exercising its right to obtain additional medical opinions concerning the health condition involved. (Described below).

The Designation should advise you of the amount of leave that will be counted against your FMLA leave entitlement. If this amount is known, the Designation should list the number of hours, days, or weeks that will be counted against your entitlement. If it is not possible to estimate the time to be counted, such as your use of intermittent leave on an intermittent basis for an unforeseeable flare-up of a chronic condition, you may request an estimate of the amount of leave being counted against your entitlement once every thirty days. Metro may notify you of the count of your leave usage in writing, and this notice may be via a notation on your pay stub.

If you take FMLA leave for your own serious health condition, Metro may require you to present a fitness-for-duty certification prior to your

being restored to your position. If Metro will require such a certification, the Designation will so indicate, and you may receive a copy of your job description documents with the Designation, to take to your provider as part of the fitness-for-duty certification process. ("Intent To Return and Fitness For Duty/Medical Release" form).

Metro may, as described above, require you to obtain a second Medical Certification from a different provider (not employed by Metro), chosen by and paid for by Metro. If there is a conflict between the first two health care providers Certifications, Metro may require you to obtain a third Certification, again from an independent health care provider chosen by good faith agreement between you and Metro, and paid for by Metro. Pending the outcome of additional Certification(s) you will be provisionally (temporarily/conditionally) entitled to FMLA leave and the continuation of your health insurance. If the Certification(s) ultimately establish that you were not entitled to FMLA leave, the time you were absent will be treated as paid leave until your existing paid leave is exhausted. Any leave taken in excess of what you had saved as paid sick or vacation leave, or held back pursuant to Civil Service Rule 4.16 will be unpaid leave. (See §N below).

After you have been approved for FMLA leave, Metro may request recertification of a serious health condition if the leave is for pregnancy, or a chronic or permanent/long-term condition. Recertification may be requested no more often than every thirty (30) days after the date of the initial Certification, unless the minimum duration of the period of your incapacity as described on your provider's initial Certification is longer than thirty (30) days. With certain exceptions, Metro may not request recertification for long-term or intermittent FMLA leave, until the minimum period of incapacity (greater than 30 days) has passed. If you request an extension of leave, if medical conditions described in the initial Certification have significantly changed or if Metro receives information casting doubt on the continuing validity of the initial Certification, Metro may request recertification earlier than the end date first indicated. As with the initial Certification, you will have fifteen (15) calendar days to obtain and return your provider's recertification, and Metro may contact your provider for clarification or authentication under the same terms as apply to the original certification. The cost of obtaining a recertification shall be borne by

you. Metro may provide your health care provider with a record of your absence pattern and ask your provider if the need for leave for the serious health condition is consistent with that pattern. In all cases, Metro may request a recertification at least once every six months.

Metro may require periodic reports from employees on their health status and intent to return to work. These reports are from the employee, not from their provider, and may be requested no more often than every thirty (30) calendar days.

Consequences for Failure to Provide Certification – an employee who fails or refuses to provide requested Certification(s) or recertification(s) may have their Request for FMLA leave denied, and may be subject to discipline up to and including termination from employment. Finally, be advised that any employee who fraudulently obtains a family or medical leave approval by submitting false or forged information may be subject to disciplinary action, to and including termination.

Metro's Right to Retroactively Designate Leave as FMLA – In some situations, Metro may retroactively (after-the-fact) designate leave you have already begun or completed, as FMLA leave. This situation may occur where an employee does not provide Metro with notice that a need for leave was based upon a serious health condition, and Metro learns of the severity of the illness or injury after-the fact. Metro should provide you with notice of a retroactive designation of FMLA leave, within 5 days of the time it has acquired sufficient information to allow an FMLA designation to be made.

M. WHAT IS INVOLVED IN REQUESTING INTERMITTENT OR REDUCED SCHEDULE LEAVE?

To be granted intermittent or reduced schedule leave, you must first submit a medical certification that demonstrates that the leave is medically necessary for a serious health condition. The term "medically necessary" means there must be a medical need for the leave, as distinguished from voluntary treatments and procedures. Also, it must be shown that the medical need cannot be accommodated outside working hours or without having a reduced schedule. The certification must set forth the dates on which treatment is expected to be given and the duration of each treatment or absence.

Second, you must make a reasonable effort to schedule the leave so as not to unreasonably disrupt the operations of your department, and at the time you request leave, you must consult with your supervisor or department head, in order to develop an agreeable work/leave schedule. Third, you must also give at least thirty (30) calendar days notice when the need for leave is foreseeable and not less than one or two business days when the need for leave is unforeseeable. Please note – You MUST satisfy all three elements to be approved for intermittent or reduced schedule leave. If you fail to establish the leave is medically necessary, fail to consult with your supervisor to schedule the leave, or fail to provide adequate notice, your request may be delayed or denied.

Other important factors related to intermittent or reduced schedule leave:

1. Metro counts leave in increments of one hour. However, you will not be charged FMLA time for time spent actually working. For example, if you have a flare-up of a chronic condition 30 minutes prior to the end of your shift, you will only be charged for 30 minutes of FMLA leave.

2. The actual workweek is the basis of leave entitlement. Therefore, if you ordinarily work 40 hours a week and you take off 8 hours, you would use 1/5 of a week of FMLA leave. Similarly, if you worked full-time and a normal 8-hour day, but you work 4-hour days under a reduced leave schedule, you would be using 1/2 week of FMLA leave.

3. If you work a part-time schedule or variable hours, the amount of FMLA leave you use is determined on a pro rata or proportional basis. For example, if you usually work 30 hours a week, but work only 20 hours a week under a reduced leave schedule, your ten hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week you work the reduced leave schedule.

4. If you are required to work overtime, but are unable to do so because of an FMLA-qualifying reason that keeps you from working overtime, the hours you would have been required to work may be counted against your FMLA entitlement. The opposite is true for voluntary overtime assignments.

5. When leave is taken after the birth or placement of a child for adoption or foster care, you may take leave intermittently or on a reduced leave schedule only if Metro agrees. Such a schedule reduction might occur, for example, where an employee, with Metro's agreement, works part-time after the birth of a child, or takes leave in several segments.

6. If you use intermittent leave that is foreseeable, based upon a planned medical treatment, Metro may transfer you to another position within the same department during the time you are using intermittent leave. The new position must provide the same pay and benefits, although the pay may be reduced to match the hours actually worked.

7. Intermittent or reduced schedule leave does not require your department to reduce your workload. And, Metro is free to re-assign some or all of your work to other employees.

8. Metro may discipline an employee on approved FMLA leave, if the employee fails to follow their department's "No Show – Call In" policy. So an employee with approved intermittent leave for migraines, who fails to follow department policy by giving no notice of being absent, as required by policy, can be disciplined.

9. Intermittent or reduced schedule leave will expire if the frequency of your absences exceeds what was originally approved. For example, if you were originally approved for two absences per 10 day work period, and after the first month has passed you begin taking four or five days per pay period, Metro may terminate your intermittent leave. You are then free to submit a new request with a new medical certification establishing a serious health condition and a need for more extensive leave. Metro will act on the first violation of approved intermittent leave allotment, and there is no guarantee that you will be approved and converted to more extensive intermittent leave.

N. HOW WILL YOUR PAID SICK AND VACATION LEAVE BE AFFECTED IF YOU TAKE FMLA LEAVE?

Your paid leave, including sick, vacation, personal or administrative leave, will be substituted for unpaid leave, so long as accrued time is available according to the rules. What this means is your existing "bank" of paid leave will run concurrently (at the same time) with the 12 workweeks of FMLA leave, i.e. they will be counted and used together.

Pursuant to Civil Service Rules, Chapter 4, Section 4.7, for approved FMLA leave, there shall be a limit of twenty (20) days of paid sick leave an employee may use to care for an employee's spouse, parent, or child, who lives in the employee's household or for whom the employee is the primary caregiver. In addition, under Civil Service Rule 4.16, you have the option to "hold back" (save) up to fifteen (15) vacation days from substitution and concurrent counting against your FMLA leave. If you wish to hold back vacation days from FMLA leave pursuant to this policy, you must enter the number of days you wish to hold back on the Request for Family or Medical Leave form, at the time you make application for FMLA leave.

O. WHAT HAPPENS IF YOU ARE INJURED ON THE JOB OR HAVE PAID FOR OPTIONAL SHORT-TERM DISABILITY INSURANCE?

In-Line-Of-Duty Injury Leave (IOD) - If you suffer an injury on duty (IOD), qualify, and are placed on Metro's In-Line-Of-Duty Injury Leave (Civil Service Rule 4.8), and the condition requiring use of IOD injury leave qualifies as a serious health condition under the FMLA (see Definitions above):

1. You will receive the paid benefits of IOD leave which will be substituted for, and run concurrently with, your unpaid FMLA leave.
2. Other forms of available paid leave (sick, vacation, personal or administrative) will NOT be substituted or used concurrently with IOD leave, i.e. you will not be simultaneously paid for BOTH IOD leave benefits and other forms of available paid leave.
3. If you exhaust available IOD leave benefits during a portion of unpaid FMLA leave, your other forms of accrued paid leave, with the exception of sick leave (CS Rule 4.8 §6) will be substituted for unpaid FMLA leave, and your paid leave and unpaid FMLA leave will run concurrently.

4. The counting of FMLA leave will start at the same time as the beginning of your approved IOD leave, which is the first date you are absent from work, and will be counted concurrently with FMLA leave from that date forward.

Please note that although IOD injury leave has a maximum duration of 130 days, FMLA job protection will not be provided beyond the FMLA's 12-workweek period. Additional protection may be available pursuant to Civil Service Rules or Policies governing IOD injury leave.

Light Duty –Under the FMLA you are not required to accept a light duty assignment in order to maintain your eligibility for unpaid FMLA leave. If your department offers you a light duty assignment: a) the department may limit the duration of the assignment; b) either you or the department may voluntarily terminate the assignment at any time; c) while on light duty status you will retain the right to return to your original position until your 12 month FMLA "year" has expired; and d) the time you elect to spend working in a light duty status does not count against your 12 weeks of unpaid FMLA leave.

Short Term Disability Insurance - If you have purchased optional Short Term Disability (STD) insurance and the condition requiring use of STD benefits qualifies as a serious health condition (see Definitions §F above) your available paid leave will NOT be substituted or used concurrently with FMLA leave. The beginning of FMLA leave will start the first day you are absent from work, including the seven (7) day waiting period required by STD insurance, and will thereafter be counted concurrently with FMLA leave from that date forward. Please note that because STD benefits have a maximum duration of 173 days (180 days less the 7 day waiting period), FMLA job protection will not be provided beyond the FMLA's 12-workweek period. Additional protection may be available pursuant to Civil Service Rules or Policies governing STD leave. In cases of pregnancy leave covered by STD insurance, federal FMLA job protection will last 12 workweeks and state law protection will extend an additional month.

P. WHAT HAPPENS TO YOUR BENEFITS COVERAGE DURING FMLA LEAVE?

During a period of FMLA leave, you will be retained on the same health/dental/optical coverage that you selected and contributed to at the time you requested FMLA leave. If Metro provides a new health plan or if the benefits offered change while you are on FMLA leave, you will be entitled to receive coverage under the new plan to the same extent had you not taken FMLA leave.

Metro employees have three options for the payment of premiums while on FMLA leave:

(i) You may pay all premiums in advance prior to taking FMLA leave.

(ii) You may pay all premiums as they come due on a monthly basis by making monthly payments direct to Metro. See your supervisor or HR Coordinator if you wish to use this option.

(iii) You may request Metro to pay your share of the premiums for medical, dental, and vision insurance while you are on FMLA leave and Metro will recover those payments from you after you return to work. When you do return to work, there will be double deductions from your paycheck until all premiums are repaid. Deductions from pay may be spread out over a longer period of time if your serious health condition causes you to apply for a disability pension.

If you fail to return to work after the expiration of FMLA leave, you will be required to reimburse Metro for payment of health insurance premiums during the leave, unless Metro determines that the reason you fail to return is the result of your own serious health condition, a family member's serious health condition, or due to the serious injury or illness of a covered servicemember, or other circumstances beyond your control. Metro may require a certification from a treating physician to confirm the medical facts necessary to make this determination. The expense of obtaining such a certification will be borne by the employee.

Q. WHAT HAPPENS TO SELF-DIRECTED DEDUCTIONS FROM YOUR PAYCHECK DURING FMLA LEAVE?

As described above, when you are on FMLA leave, part of your leave may be "paid" leave, if you are using paid vacation and/or sick leave during the initial period you are absent. In paid status, all of your self-directed deductions (Sportsplex, MECCC, child support etc.) will continue to be taken from your paycheck per your prior directions. However, if you are in unpaid status for a pay period during FMLA leave, your self-directed deductions from your paycheck will cease. You will need to make arrangements to direct-pay your payments to all of your self-directed deduction recipients during your leave.

R. HOW WILL USING FMLA LEAVE AFFECT PENSION, CONTINUOUS SERVICE DATE, AND LONGEVITY CALCULATION?

If an employee takes FMLA leave, any period of FMLA leave shall be treated as continued service for purposes of eligibility to participate and vesting service in Metro's pension plan.

If an employee is in a Leave Without Pay (LWOP) status for longer than 20 days, their continuous service date will be adjusted based on any days they are absent beyond twenty (20) days. An employee's Civil Service benefits such as vacation, longevity, and lay-off rights are based upon the continuous service date. An employee's longevity calculation is based on their continuous service date per the longevity Resolution (RS2001-642).

S. WHAT HAPPENS WHEN YOU ARE READY TO RETURN FROM FMLA LEAVE?

If you are using long-term, continuous FMLA leave for your own serious health condition, you may be required to complete, (prior to your actual return), an "Intent To Return and Fitness For Duty/Medical Release" form that will be mailed to you toward the end of your approved leave If Metro will require such a certification, the Designation Notice you are given when your leave was approved, will enclose a copy of your job description documents to take to your health care provider along with the Fitness for Duty form. If you wish to return to work prior to the expiration of approved FMLA leave, you must give notice to your supervisor at least five (5) working days prior to your planned return.

T. WHAT HAPPENS IF YOU DO NOT RETURN FROM FMLA LEAVE?

If you fail to return to work upon the expiration of FMLA leave, you may be subject to discipline, up to and including termination, unless an extension has been granted. If you request an extension of FMLA leave due to the continuation, recurrence or onset of a serious health condition for yourself or your spouse, child or parent, you must submit a request for an extension, in writing, to the supervisor or HR Coordinator for your department. This written request should be made as soon as you realize that you will not be able to return at the expiration of your approved leave period. You will be required to obtain and submit a new medical certification from your health care provider that explains the need for an extension of your FMLA leave.

U. WHAT HAPPENS TO YOUR HEALTH INSURANCE IF YOU DO NOT RETURN FROM FMLA LEAVE?

COBRA (derived from the Employee Retirement Income Security Act – ERISA), provides that an employer's group health plan must ensure that covered employees who would lose coverage as a result of a "qualifying event," will be entitled to elect to continue coverage under the plan. Employees who have lost their jobs may continue on the group plan for up to 18 months, at the employee's expense at the same group rate provided to current employees. A "qualifying event" includes termination (except for gross misconduct) or reduction of hours, or an employee's cancellation of existing health care coverage while on FMLA leave.

V. ARE YOU PERMITTED TO WORK AT OTHER JOBS WHILE YOU ARE ON FMLA LEAVE?

Yes, with two conditions. Civil Service Rules at Chapter 3, Sec. 3.8 allow a Metro employee to engage in employment with another organization as long as he/she satisfactorily performs his/her job responsibilities with Metro. Outside employment includes self-employment. Under the Rule, outside employment must be reported in advance, in writing, to the Appointing Authority. Certain additional conditions apply and are listed in the Rule. An employee eligible for

FMLA leave may engage in outside employment provided: A) the employee's health care provider approves the outside employment by certifying that the outside employment will not impede the employee's recovery from, or treatment for, a serious health condition; and B) the employee's Human Resources Coordinator approves the outside employment as being consistent with Section 3.8. An employee seeking permission to engage in outside employment while on FMLA leave is responsible for having their health care provider submit a separate letter to their HR Coordinator that satisfies the medical aspect of these requirements.

MILITARY PROVISIONS

W. MILITARY FAMILY/MEDICAL LEAVE (6/15/11 as Amended)

There are two forms of Military FMLA leave, "Qualifying Exigency" leave and "Military Caregiver" leave. Any reference to the Department of Defense will be referred to as the "DOD."

DEFINITIONS FOR MILITARY FMLA LEAVE:

"**Covered Active Duty**" – means deployment to a **foreign country** during a war or national emergency as declared by the President or Congress. Service personnel covered include BOTH regular Armed Forces **AND** members of the National Guard or Reserves, retired reserves, and state militias called to active duty. The "call" to active duty must be a **federal** call to duty, as opposed to a state call made by the governor of a state.

"**Covered Servicemember**" – means 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. The definition also includes a **veteran** who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness.

"**Next of Kin**" – only comes into play if the covered servicemember has **not** already listed a spouse, parent, son or daughter, or if the servicemember has not specifically listed his/her next of kin in writing, and means the nearest blood relative in this order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or

statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins.

"**Outpatient Status**" means a covered servicemember assigned to:

a. a military medical treatment facility as an outpatient; or
b. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

"**Parent**"- means the biological parent of an employee; or an individual who stood in loco parentis to an employee when the employee was a child (minor).

Note: "In loco parentis" means a person who had day-to-day responsibility for the care or financial support of the employee when the employee was a child. A biological or legal relationship is not necessary.

"**Serious Injury or Illness for a covered servicemember**" – means:

a) an injury or illness incurred in the line of duty while on active duty in the Armed Forces; or

b) an injury or illness which existed **before** the beginning of the member's active duty which was then aggravated by service in the line of duty;

c) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Further, in the case of a veteran (regular or reservist), serious injury or illness means a qualifying injury or illness (as defined by the Secretary of Labor) that was incurred in the line of duty, while on active duty (or which existed before the beginning of the member's active duty and was aggravated by service in the line of duty, while on active duty) and that manifested itself before or after the member became a veteran.

"**Spouse**" – means a husband or wife.

"**Son or daughter on active duty or call to active duty status**" – means 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 active duty or

called to active duty status, and who is of any age. Note that this definition differs from the definition of "son or daughter" for regular FMLA leave.

"**Veteran**" means a person who served in the active military, Naval or Air Service and who was discharged or released under conditions other than dishonorable. For FMLA purposes a veteran is a member of the Armed Forces (including reservist status) undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred or aggravated while on active duty in the Armed Forces, whether or not the illness or injury manifested itself before or after the member became a veteran. In addition, to meet the definition of "veteran," for military FMLA purposes, the member must have been in the Armed Forces, National Guard or Reserves at any time during the five-year period before he or she began treatment, recuperation or therapy.

1. Qualifying Exigency Leave

To take this form of leave, you must be eligible for FMLA leave under the time-in-service requirements described above at §A. If eligible, you may take leave for a qualifying exigency arising out of the fact that your spouse, son, daughter, or parent is on covered active duty or has been notified of an impending call or order to covered active duty to a foreign country, in the Armed Forces. Metro has a form ("Metro Nashville Request for Military Leave – Qualifying Exigency") for you to use to ask for this form of leave.

1. **Amount of leave** - If you are eligible, you may take up to 12 weeks of FMLA leave during a 12-month period. This is NOT 12 weeks in addition to the regular 12 weeks of FMLA leave.

2. **Qualifying Exigencies –** There are eight (8) types of Qualifying Exigency leave. The need for leave must be based on the fact that the employee's spouse, son, daughter or parent is a covered servicemember. With one exception, Qualifying Exigency leave is **family leave**: it is for an employee who is a family member of a covered servicemember, and is not leave available to an employee who is the covered servicemember. The types of leave are:

    a. **Short-notice deployment:** To address any issue that arises from the fact that a covered servicemember is notified of an impending call or order to active duty, with notice of seven days or less prior to the date of deployment. Leave may begin

on the day the covered servicemember is notified of an impending call or order to active duty. Leave is limited to the seven-day period only.

b. **Military events and related activities:** To attend any official ceremony, program, or event sponsored by the military that is related to covered active duty or to attend family support or assistance programs and informational briefings sponsored or promoted by the military. Leave is limited to the time necessary to attend the related events.

c. **Childcare and school activities:** To arrange for alternative childcare when the active duty or call to active duty status of a covered servicemember necessitates a change in the existing childcare arrangement for a child; or to provide childcare on an urgent immediate need basis (but not on a routine, regular, or everyday basis); or to enroll in or transfer a child to a new school or day care facility, when enrollment or transfer is necessitated by the covered active duty; or to attend meetings with staff at a school or daycare facility when such meetings are necessary due to circumstances arising from the covered active duty or call to active duty for a covered servicemember. Leave is limited to the time necessary to make or alter the childcare or school arrangements.

d. **Financial and legal arrangements:** To make or update financial or legal arrangements to address the covered servicemember's absence while on active duty or to act as the covered service- member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits. Time allowed for this form of leave must be flexible and may be intermittent, due to the employee's lack of control over the schedules of attorneys, accountants, agencies and/or courts.

e. **Counseling:** To attend counseling provided by someone other than a health care provider for oneself, for the covered service-member, or for a child, provided that the need for counseling arises from the covered active duty or call to active duty for a covered servicemember. This leave closely mirrors ordinary intermittent FMLA leave such as leave for physical therapy, i.e.

the employee may need leave at regular times and intervals to attend sessions or to transport children to such sessions.

f. **Rest and Recuperation:** To spend time with a covered servicemember who is on short term temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance.

g. **Post Deployment activities:** To attend arrival ceremonies. Leave is limited to the time necessary to travel to, attend, and return from the ceremonies, with flexibility needed to accommodate travel arrangements.

h. **Additional activities:** To address other events which arise out of the covered servicemember's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

NOTE: None of the qualifying exigency categories listed above call for an employee to request or take several weeks of leave for any one event, appointment or activity. The intent of the law is to allow an employee to have a "bank" of unpaid leave available to them in order to deal with all of the various events and tasks that necessarily occur, or can occur, when a family member is called to covered active duty or when they return from a deployment to covered active duty.

3. **Certification -** Metro may require that a request for Qualifying Exigency leave be supported by a certification confirming the need for leave. Two forms of documentation may be required: (1) a copy of the covered servicemember's active duty orders from the DOD, and (2) a signed statement from the employee describing the type of qualifying exigency leave requested, based upon the eight categories of leave described above. Metro will only request a copy of the covered servicemember's orders for the first request for leave. However, Metro may request certification from the employee (a signed statement) of the reason for each qualifying exigency leave request during the time the covered servicemember is on active duty

status. Metro has a form ("Certification Of Qualifying Exigency for Military Leave") for you to use to provide the necessary certification.

The signed statement (certification) should include the approximate date the exigency commenced or will commence. If you request leave for a single, continuous period of time (block leave) you should provide the beginning and end dates for your absence. If reduced schedule or intermittent leave is requested, you should provide an estimate of the frequency and duration of the qualifying exigency. If a third party is involved, you must provide contact information identifying the third party, the nature of the services they provide, as well as phone, fax, e-mail and address information. Metro has a certification form (for employees to use to certify the need for this form of leave.

Metro is allowed to verify the information on the certification form, and may contact the DOD to verify the orders for a call to active duty. As for the various forms of Qualifying Exigency leave, Metro may call the third party involved to verify a counseling session, meeting or appointment schedule. The employee's permission is not required. Unlike standard (medical) FMLA leave, there is no process for recertification for Qualifying Exigency leave, and no process for obtaining 2nd or 3rd certifications.

4. **Notice of Need for Qualifying Exigency Leave –** Notice of a need for Qualifying Exigency leave must be given "as soon as practicable." Generally, this means making the request the same day, or the day after, the date the employee first learns of the need for leave. The need for leave is usually triggered by the covered servicemember's receipt of orders. The initial notice may be verbal, but must be followed promptly by a written request. If the need is foreseeable, the 30 day notice requirement for regular FMLA leave applies.

5. **Block, Intermittent, Reduced Leave Schedule –** Other than those forms of leave that have their own time/days limitations, Qualifying Exigency leave may be taken in a single continuous block of time, intermittently, or on a reduced leave schedule. If an employee takes leave on an intermittent or reduced schedule basis, Metro will not transfer the employee to another position.

2. Military Caregiver Leave

To take this form of leave, you must be eligible for FMLA leave under the time-in-service requirements described above at §A. Metro has a "Request for Military Caregiver Leave" form for you to use to ask for this form of leave.

1. **Amount of leave** - If you are eligible, you may take up to twenty-six (26) weeks of FMLA leave during a single 12-month period to care for a covered servicemember who suffers a serious injury or illness as defined above.

2. **Leave is not "extra" leave** - As with Qualifying Exigency leave, Military Caregiver leave is NOT 26 weeks in addition to the regular 12 weeks of FMLA leave. Military caregiver leave is family leave, designed for a family member to care for an injured covered servicemember.

3. **Degree of Injury or Illness** - The injury or illness must be a "Serious Injury or Illness for a Covered Servicemember" as defined above.

4. **Covered family members -** To be entitled to FMLA leave, the eligible employee must be the spouse, son, daughter, parent, or "next of kin" of the covered servicemember. For purposes of leave to care for a covered servicemember, the definition of family members eligible to take leave goes beyond parent, spouse, son or daughter to include "next of kin." The regulations allow the covered servicemember to identify one nearest blood relative as their next of kin, and this designation "trumps" all other persons who might seek to take leave to care for the injured or ill servicemember. When this has not been done, the regulations establish an order of priority, as defined above.

If the covered servicemember has **not** previously designated a specific "next of kin," in writing, then all family members sharing the closest level of family relationship to the servicemember are considered "next of kin" and each has the right to take FMLA leave to care for the covered servicemember. For example, if the brothers and sisters are the nearest blood relative, each brother and sister has an equal right to take FMLA leave to care for the covered servicemember, either consecutively or simultaneously.

Metro requires you to provide reasonable documentation (one answer to one question on the "Certification" form described below) that establishes your claimed familial relationship with the covered servicemember. The phrase "to care for" has the same definition as with regular FMLA leave, and includes providing physical or psychological care, transportation for care, and time to make arrangements for care.

5. **Cap on Total FMLA Leave** – Employees are entitled to a combined total of twenty-six (26) workweeks of leave for ANY reason qualifying under the FMLA, during a single 12 month period, and to only 12 workweeks of leave for any reason other than caring for a seriously ill or injured servicemember. The 12-month period for military caregiver leave begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of whether the need to care for the covered servicemember continues, and regardless of when an employee's regular 12 month FMLA period has been calculated in the past for other FMLA-qualifying reasons.

   If an eligible employee does not take all of his/her 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of his/her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited. i.e. unused military caregiver leave cannot be carried over to a new 12 month period.

   The 26 weeks of leave is calculated on a per servicemember, per injury basis. An eligible employee may therefore be entitled to take 26 weeks for more than one covered service family member. An employee could take 26 weeks of leave during one 12 month period to care for her husband who is injured in the line of duty. If her daughter was injured in the line of duty in a subsequent 12 month period, the employee could take a second 26 week period of leave. The same is true if the same covered family servicemember is injured or becomes ill a second time in a subsequent 12 month period. However, as stated above, the maximum number of weeks an employee can use for FMLA leave in any 12 month period is twenty-six, regardless of the number of covered servicemembers she is related to.

   Both spouses employed by Metro? The aggregate amount of time both can take is limited to the combined total of 26 workweeks for caregiver

and all other forms of FMLA leave, and the same forfeiture and non-military limitations apply.

6. **Certification –** As with regular FMLA leave, Metro may require an employee to support a request for military caregiver leave with a sufficient certification. Metro has a "Certification For Serious Injury or Illness of Covered Servicemember For Military Family Leave" form for you to use to obtain the necessary certification.

   A military caregiver certification should be completed by one of the following authorized health care providers: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider.

   Similar to the certification requirements for regular FMLA leave, Metro may request the following information: (1) the probable duration of the injury or illness; (2) frequency and duration of leave required; (3) if leave is requested on an intermittent or reduced schedule basis, an estimate of the frequency and duration of such leave; and (4) the family relationship of the eligible employee to the covered servicemember. You must provide the requested certification to Metro within 15 calendar days unless it is not practicable. The Metro Certification form includes two additional categories of internal DOD casualty assistance designations used by DOD health care providers: (VSI) Very Seriously Ill/Injured and (SI) Seriously Ill/Injured). Both designations meet the standard of a serious injury or illness. Metro may authenticate and/or clarify a certification provided in support of a request for leave to care for a covered servicemember.

   In limited circumstances, an employee may establish an entitlement to take military caregiver leave by providing Metro with either an "invitational travel order" ("ITO") or an "invitational travel authorization" ("ITA"). The ITO and ITA are forms issued by the DOD which allow a family member to join an injured or ill servicemember at his or her bedside before having to submit a medical certification form. Therefore, <u>during the period of time specified in the ITO or ITA</u>, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis without having to provide a medical certification in advance.

Metro will accept an ITO or ITA even if the document is not signed by a health care provider. As long as the ITO or ITA is issued by the DOD, Metro will accept it. In addition, because the DOD does not issue an ITO or ITA to every family member who might be eligible to take FMLA leave to care for the covered servicemember, Metro will accept either document as certification for <u>any eligible family member</u>, regardless of which family member's name is listed on the ITO or ITA. An eligible family member may therefore take the leave in a continuous block or on an intermittent basis for the duration of time specified in the ITO or ITA without providing an additional or separate certification that such leave is medically necessary.

If the employee seeks leave for the same purpose beyond the time period specified in the ITO/ITA, Metro may require the employee to establish a right to take further leave by submitting the caregiver certification form (Military Caregiver Form). When an employee requesting leave submits an ITO or ITA, Metro may require the employee to confirm their family relationship to the covered service member. Metro may authenticate and clarify any ITO, ITA, or medical certification submitted to support a request for leave to care for a covered servicemember using the procedures applicable to FMLA leave taken to care for a family member with a serious health condition.

As with regular FMLA medical certifications, it is the employee's responsibility to provide Metro with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. Unlike standard (medical) FMLA leave, there is no process for recertification for Military Caregiver leave, and no process for obtaining 2nd or 3rd certifications.

7. **Employee notice of the need to take (FMLA) military caregiver leave -** As with other forms of FMLA, an employee needing military caregiver leave must provide Metro with timely and adequate notice. Timely notice depends on whether the need for leave was foreseeable or not. If the need is foreseeable for a planned medical treatment, the 30 day notice requirement for regular FMLA leave applies. In cases involving ITO or ITA leave, the employee may submit the Request form after departing to be with the injured or ill covered servicemember.

8. **Form of Leave -** Military caregiver leave may be taken intermittently, on a reduced leave schedule, or in a single block of time. Leave taken on an intermittent or reduced leave schedule must be medically necessary.

9. **Transfer to alternative position -** Metro may transfer an employee who needs leave on an intermittent or reduced leave schedule to care for a covered servicemember when the leave is foreseeable (such as for a planned medical treatment). Equivalent duties are not required.

X. OTHER HANDBOOK PROVISIONS APPLY TO MILITARY FMLA LEAVE

Listed here are the provisions of the FMLA Handbook which apply to Military FMLA leave. An explanation is given whenever the military provisions alter the effect of a section of the FMLA Handbook.

§ A defines eligibility and applies verbatim to Military FMLA leave.

§ B generally outlines how much leave you may take. The length(s) of leave allowed for Military FMLA have been explained in section W.
§C explains that FMLA leave is unpaid, except when the concurrent use of sick and vacation leave is involved as defined by §§ N and O. These sections apply to Military FMLA leave.

§D explains Metro's method of counting or tracking your use of FMLA leave. The tracking of FMLA leave may run on two tracks at the same time for an employee who is using both regular FMLA leave and military caregiver FMLA leave. Paragraph (5) above explains the potential overlap.

§E explains that you will be returned to the same or equivalent position when you return from FMLA leave. The same holds true for military FMLA.

§F provides the definitions of terms for all FMLA leave. Military FMLA leave changes the definition of "son or daughter," has its own types of health care providers who can certify the need for leave, and has its own set of definitions of terms that apply only to military leave. However, the definitions of §F apply for the most part to Military FMLA leave.

§G discusses the reasons you can take FMLA leave. Military FMLA adds two additional reasons for taking FMLA leave.

§H discusses the kinds of FMLA leave that are available to eligible employees – block leave, intermittent leave, and reduced schedule leave. All three forms of leave are available to employees needing military FMLA leave.

§I discusses how the FMLA policy applies to pregnancy, childbirth, adoption, foster-care, and caring for covered family members.

§J describes how you request FMLA leave, and its provisions apply equally to requesting Military FMLA leave. Metro will provide you with a form to request either form of Military FMLA leave. (See Request for Leave Due to Qualifying Exigency; and Request for Leave for Military Caregiver).

§K discusses how Metro responds to your leave request as well as defining what you need to provide in order to establish your need for leave. Metro's obligations to advise you concerning eligibility and your rights and responsibilities are the same. The employee's responsibility to provide certification documents for both forms of military leave are explained within this §W. All provisions allowing Metro to contact providers or others certifying your need for leave, for purposes of authentication and/or clarification apply, as do the provisions allowing Metro to ask you to sign an Authorization, consenting to allow Metro to contact individuals certifying your need for leave.

§L explains that Metro will ordinarily issue a Designation Notice to you within five (5) business days of having sufficient information to determine if your request for leave qualifies under the FMLA. This section applies equally to Military FMLA leave, except for the provisions concerning recertification and 2nd and 3rd certifications, which do not apply to either form of Military FMLA.

§M defines what you must do when seeking intermittent or reduced schedule leave. The concept of "medically necessary" only applies to military caregiver leave. However, the requirement for you to coordinate your leave with your supervisor applies to both form of Military FMLA. Other provisions specific to Military FMLA leave are explained within this §W.

§N involves the use of accrued sick and vacation leave, concurrently with FMLA leave, and the provisions apply equally to Military FMLA leave.

§O discusses the interplay between Injury On Duty and/or Short-Term Disability Insurance, and its provisions will only apply under the rare occurrence of an employee being injured or ill and using FMLA leave, and simultaneously needing one form of Military FMLA leave or the other.

§P defines how your benefits coverage continues and is paid for while you on are FMLA leave, and the provisions apply equally to Military FMLA leave.

§Q discusses what happens to your self-directed deductions from your paycheck while you are on FMLA leave, and the provisions apply equally to Military FMLA leave.

§R discussion how using FMLA leave may affect your pension, continuous service date, and longevity calculation. This section applies to both forms of military leave.

§S explains what can happen when you are ready to return from FMLA leave. This section typically involves leave for an employee's own serious health condition. It may apply to long-term military caregiver leave.

§T describes what happens if you fail to return from leave. This section applies equally to both forms of military leave.

§U explains what happens with your insurance benefits if you fail to return from leave. This section applies equally to both forms of military leave.

§V explains how the FMLA interacts with Metro's outside employment rules, and applies equally to both forms of military leave.