

SUBJECT: DISABILITY LEAVE/LAYOFF

Purpose: Madison General Ordinances and certain collective bargaining agreements provide employees with unpaid disability leave and disability layoff benefits. The purpose of this document is to set forth administrative standards in order to ensure the consistent application of the City of Madison disability leave and disability layoff policies.

Policy: It is the policy of the City of Madison to comply with all collective bargaining agreements and applicable City ordinances pertaining to disability leave and disability layoff. Eligible employees, in appropriate circumstances, may use up to 6 months of unpaid disability leave and upon exhausting all disability leave may be placed into disability layoff status for up to an additional 18 months. Any employee who is unable to return to work at the end of the 18 month disability layoff period shall be laid off without right to recall and lose all rights of employment with the City of Madison.

Eligibility: This policy applies to eligible permanent City of Madison employees with qualifying medical conditions, which may include but is not limited to employees with disabilities as defined by the Americans With Disabilities Act (ADA) or related legislation. An employee's eligibility for disability leave or disability layoff shall in no way infer the existence of a disability as defined by the ADA or related legislation. Information regarding an employee's eligibility for reasonable workplace accommodations and the City of Madison's compliance with the ADA and related legislation can be found in APM 2-22. Eligibility is established based on language in a collective-bargaining agreement or coverage by the MGO.

Limited term employees may be eligible for a 6 month disability leave at the discretion of their appointing authority, but are not entitled to disability layoff provisions. Employees with an employment contract may be granted a disability leave without pay at the discretion of the Mayor but are not entitled to displacement options unless set forth in the individual employment contract. Hourly/seasonal employees and employees serving an original probationary period are not eligible for disability leave or layoff.

Reason for Leave: An employee may use disability leave/layoff only for his/her own medical condition if the condition makes the employee unable to perform the essential functions of his/her position. For the purposes of this policy, a qualifying medical condition shall be defined as an illness, injury, impairment, or a physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Continuing treatment for the purpose of administering this policy will be defined as follows:

- Incapacity and treatment: a period of incapacity of more than three full consecutive calendar days or other period of incapacity relating to the same condition which involves either two or more visits to a health care provider within 30 days of the first day of incapacity, unless extenuating circumstances exist; or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment;
- Pregnancy and post-birth recovery;

- Permanent or long term conditions, defined as a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

Falsification of Information: An employee will be subject to disciplinary action up to and including termination of employment for falsifying any information required or requested in applying for disability leave or disability layoff benefits.

Appeals and Time Limits: If an employee does not concur with any decision denying or modifying a request for leave, s/he may appeal such decision in accordance with the pertinent collective bargaining agreement or the provisions in the Madison General Ordinances.

Impact of Collective Bargaining Agreements: This policy may be modified depending on provisions of applicable collective bargaining agreements. Where there is a conflict between this policy and a collective bargaining agreement, the terms of the applicable collective bargaining agreement shall be controlling.

Provisions relating to Disability Leave:

Length of Leave Entitlement: An eligible employee may use up to 6 months of unpaid disability leave. Employees are not eligible for holiday pay or paid leave days while on disability leave status and holidays or paid leave days will not act to extend the length of the employee's leave entitlements.

Applying for Disability Leave: An employee requesting the use of disability leave will be required to provide at least 30 days advance notice whenever possible. The failure of the employee to request leave shall not prohibit the City from designating qualifying leave time as disability leave.

In order to be approved for disability leave:

- The employee shall apply for leave, in writing, to his/her Department/Division Head, with a copy to the Human Resources Director. The employee may either use FMLA paperwork or an Application for Leave of Absence Without Pay or Medical/Disability Leave Without Pay form to apply. The forms may be found on employee.net under forms.
- The employee shall submit, directly to Human Resources in an envelope marked "confidential," a completed physician's report including a statement of the illness or injury and whether the employee is able to work and perform the essential functions of his/her position.

A current and approved Application for Family and Medical Leave, including the Health Care Provider Certification covering the employee's own serious health condition shall be sufficient notice of the request for disability leave. An employee should only fill out the Application for Leave of Absence Without Pay or Medical/Disability Leave Without Pay form if s/he is ineligible for or has exhausted his/her FMLA entitlement.

While on leave, the City may periodically require the employee to update his/her status and intention to return to work. Generally, employees will be asked to provide medical documentation every 30 days until such time as the physician certifies that the employee can return to work. The employee

is responsible for maintaining an up-to-date leave application and medical documentation at all times.

Substitution of Personal Leave: An employee must exhaust all sick leave prior to being eligible for disability leave. The employee may choose to exhaust accumulated vacation, personal leave, and/or compensatory time before using unpaid disability leave. Once on disability leave, an employee cannot substitute vacation, personal leave, or compensatory time for unpaid disability leave unless the leave is running concurrently with FMLA time. If the leave is running concurrently with FMLA, the rules of substitution for FMLA will apply.

Unpaid leave taken under the FMLA for an employee's own serious health condition will count against an employee's 6 month disability leave entitlement and vice versa. If an employee is on an FMLA approved leave and initially uses paid leave time, once that employee goes into AWOP status, disability leave will automatically start and the employee does not need to fill out a new application.

City Benefits While on Disability Leave: The City will continue to pay the employer share of the health insurance premium while the employee is on disability leave. If an employee is required to pay a portion of the premium, the employee will be billed for this premium while on leave. If the employee fails to pay his/her portion of the premium in a timely manner, coverage may be cancelled. In the event that a change occurs affecting the premium payment for health insurance during the disability leave, payment arrangements will be adjusted accordingly.

An employee may be eligible to accrue certain benefits for some specific duration of time during the period of disability leave where such accrual is provided by the Madison General Ordinances or pertinent collective bargaining agreements. An employee will be billed for all vacation taken but not earned.

Disability Leave on an Intermittent Basis: Employees on disability leave may only use the disability leave on an intermittent basis in the following circumstances:

- With the pre-approval of the Appointing Authority and the Human Resources Director, when an employee is returning to work at least half-time or more for a limited period of time, following a period of total incapacity, as part of a structured work-hardening program.
- Intermittent leave running concurrently with an unpaid, intermittent leave taken under the FMLA.
- With the pre-approval of the Appointing Authority and the Human Resources Director, when an employee has returned to work full-time, following a period of total incapacity, for a limited period of time to attend medical appointments.

An employee taking approved intermittent disability leave such that s/he is not working at his/her full FTE (Full Time Equivalent), will continue to have the time spent in AWOP status count towards the 6 month disability leave entitlement. If the employee should reach a total of 6 months of disability leave used prior to being released to work at his/her full FTE, the employee will immediately be placed on disability layoff and will not be allowed to return to work until released by his/her physician to work at his/her full FTE or with permanent restrictions.

Returning to Work From Disability Leave: In order to return to work from a disability leave, the employee shall submit a physician's statement of release for work including the ability to perform the essential functions of his/her position to his/her Department/Division Head with a copy to Human Resources prior to returning to work. If an employee is seeking to return to work with temporary restrictions, the employee should provide at least 5 days notice to the Department/Division so that a determination may be made as to whether the restrictions can be accommodated. If the employee is returning from a leave in conjunction with FMLA, the FMLA paperwork certifying the return to work date will be considered appropriate for the release for work.

When medically fit to return to work from disability leave, the City will restore the employee to his/her original position. An employee returning from leave may also be subject to the provisions of the ADA or related legislation and/or City APM 2-22. Job restoration may be denied:

- If the employee would have been laid off had they not been on leave.
- If the employee fraudulently obtained leave.
- If the employee fails to provide medical certification that s/he is able to return to work.
- If the employee fails to return to work or obtain approval for additional leave upon the expiration of an approved leave request.

Successful Return to Work/Eligibility for Additional Disability Leave Entitlements: An employee must have a successful return to work, defined as 2 consecutive months of uninterrupted work, prior to being eligible for additional disability leave entitlements. Any paid leave, including time on worker's compensation, taken during the 2 month period shall act to extend the 2 month period on a day for day basis. If the employee requires any amount of unpaid leave during the 2 month period, such leave will break the period of uninterrupted work. The employee will be required to complete an additional 2 months of uninterrupted work, upon returning from the unpaid leave, in order to have a successful return to work. An employee who has had a successful return to work may be entitled to additional disability leave benefits.

If upon returning to work from a disability leave, it is discovered that the employee is unable to perform the essential duties of his/her position and/or maintain adequate attendance for medical reasons, the employee may be returned to disability leave until s/he is able to obtain a new release from his/her physician. If an employee is returning to work from a leave that was running concurrently with FMLA, the provisions regarding an employee's return to work under the FMLA policy shall govern the employee's return to work entitlements.

If an employee requires additional time off because of an illness, injury, impairment, or a physical or mental condition unrelated to the original leave request, but prior to completing a successful return to work, the employee will be returned to disability leave and will be entitled to the remaining disability leave left before being placed in disability layoff status.

If an employee receives a release with permanent restrictions affecting his/her ability to perform the essential duties of his/her position or ability to work at the budgeted FTE, the employee will be referred to the occupational accommodations process.

Provisions Relating to Disability Layoff:

Length of Leave Entitlement: In the event an employee is unable to return to work following the 6 month disability leave, s/he may be placed in unpaid disability layoff status for up to an additional 18 months. Employees are not eligible for holiday pay or paid leave days while on disability layoff status and holidays or paid leave days will not act to extend the length of the employee's leave entitlements.

Applying for Disability Layoff: Employees do not need to fill out a separate application for disability layoff benefits. Assuming the employee provides medical documentation certifying the continued need to be off work, once 6 months have passed, the employee will automatically be placed into a disability layoff status and will receive a letter indicating the same.

While on disability layoff, the City may periodically require the employee to update his/her status and intention to return to work. However, once the employee is laid off, the City doesn't generally require medical documentation unless the employee is preparing to return to work.

Substitution of Personal Leave: An employee will be paid out all earned and unused vacation and compensatory time when placed in disability layoff status. An employee will be billed for all vacation taken but not earned. No compensatory time, vacation, or sick leave will be accrued while the employee is on disability layoff and no substitution of leave is permitted while on disability layoff.

City Benefits While on Disability Layoff: An employee on disability layoff will be allowed to continue in the City's health insurance plan at the employee's expense. The City will cease contributions to the premium at the time the employee is placed in disability layoff status and the employee will be billed for this premium while on leave. If the employee fails to pay the premium in a timely manner, coverage may be cancelled. In the event that a change occurs affecting the premium payment for health insurance during the disability leave, payment arrangements will be adjusted accordingly.

Disability Layoff on an Intermittent Basis: An employee is not allowed to be in disability layoff status on an intermittent basis under any circumstances.


Returning to work from Disability Layoff: An employee in disability layoff status must be released by his/her physician prior to returning to work. Employees must provide the HR Department with at least 3 weeks notice prior to returning to work. At that time, the employee will have the right to return to work by displacing a junior employee in accordance with the pertinent collective bargaining agreement or the City of Madison Personnel Rules. Employees displacing into a new position will not be required to serve a trial period.

If the employee's release includes permanent restrictions, including restrictions on the amount of time the employee is able to work, a reasonable accommodation may be made to the position the employee selects through the displacement process. However, the City is not obligated to create or fill a position the employee otherwise would not be entitled to through the displacement process in order to accommodate permanent restrictions.

Successful Return to Work/Eligibility for Additional Disability Leave/Layoff Entitlements: An employee must have a successful return to work, defined as 2 consecutive months of uninterrupted work, prior to being eligible for additional disability leave entitlements. Any paid leave, including time on worker's compensation, taken during the 2 month period shall act to extend the 2 month period on a day for day basis. If the employee requires any amount of unpaid leave during the 2 month period, such leave will break the period of uninterrupted work. The employee will be required to complete an additional 2 months of uninterrupted work, upon returning from the unpaid leave, in order to have a successful return to work. An employee who has had a successful return to work may be entitled to additional disability leave benefits.

An employee may be eligible for up to an additional 6 months of disability layoff benefits if upon returning to work after exhausting the 18 month disability layoff period, but prior to completing the successful return to work, the employee requires additional time off because of an illness, injury, impairment, or a physical or mental condition unrelated to the original leave request.

If upon returning to work from a disability layoff, it is discovered that the employee is unable to perform the duties of his/her position and/or maintain adequate attendance for medical reasons, the employee may be returned to disability layoff until s/he is able to obtain a new release from his/her physician.


David J. Cieslewicz
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