

**CITY OF ALGOMA
COUNTY OF KEWAUNEE
STATE OF WISCONSIN**

**COMMON COUNCIL
SUBSTITUTE AMENDMENT 1 TO
RESOLUTION NO 772 – 2016**

**A RESOLUTION RELATING TO AMENDING THE CITY OF ALGOMA
EMPLOYEE HANDBOOK RELATING TO FAMILY AND MEDICAL LEAVE.**

WHEREAS, The Common Council of the City of Algoma, Wisconsin adopted its Employee Handbook on November 11, 2013, and

WHEREAS, The language used in this handbook is not intended to create, nor is it to be construed to constitute a contract between the City and any one or all of its employees, but does represent the formal documentation of an orderly system of personnel administration that has been developed to meet the organizational needs of the City of Algoma and the employment needs of its personnel, and

WHEREAS, The purpose of this Employee Handbook is to acquaint employees with the City of Algoma and its employment, guidelines, rules of conduct and guidance regarding general expectations of professional behavior and conduct which employees are expected to follow, as well as benefits provided to all full-time regular employees, and

WHEREAS, The City reserves the right to modify, revoke, suspend, terminate, or change any or all of such plans, policies, or procedures, in whole or in part, at any time, with or without notice, and has amended language in the Employee Handbook relating to sick leave and vacation policies on March 11, 2014, and

WHEREAS, The Finance and Personnel Committee reviewed the current language in the Employee Handbook relating to Family and Medical Leave on May 19, 2016 and recommends the adoption of this revised language for addition into its Employee Handbook.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALGOMA, WISCONSIN, AS FOLLOWS:

Section 1. The following Family and Medical Leave policy has been reviewed by the Common Council of the City of Algoma.

Section 2. The following Family and Medical Leave policy will be fully incorporated into the Employee Handbook.

“FAMILY & MEDICAL LEAVE ACT POLICY”

The City’s Family and Medical Leave Act Policy is intended to conform to, and not exceed, the requirements of the federal Family and Medical Leave Act of 1993 (“FMLA”) and, the Wisconsin Family and Medical Leave Act (“WFMLA”). This Policy is intended to comply with applicable laws and does not incorporate all provisions of such laws. This Policy does not repeat every provision of the FMLA’s or the WFMLA’s statutory or regulatory requirements. To the extent that this policy is ambiguous or conflicts with the FMLA or the WFMLA, the FMLA and the WFMLA will govern.

Posters summarizing the benefits required to be provided under federal and state law may be found with other employment-related postings. In addition, you may contact the City Administrator if you have specific questions.

Family and medical leave taken under this Policy may be covered by federal law, state law, or both. When leave taken by employees under this Policy is governed by both federal and state law, the more generous provision will control in the event of a conflict. However, when leaves are governed by state or federal law, but not both, the applicable law will control under this Policy. In this regard, you should note that certain leaves may be covered by both state and federal law for only a portion of the leave. To the extent permitted by law, leave under the FMLA, leave under the WFMLA and leave granted under the City's other policies will run concurrently.

You may be required to provide advance notice and certain information as set forth below to be eligible for family or medical leave under this Policy. You may also be required to submit leave requests in writing when circumstances and applicable law permit. Use of other leaves provided by the City for the reasons covered by law, will be treated as use of family and/or medical leave whenever applicable law allows.

ELIGIBILITY REQUIREMENTS: To be eligible for FMLA, you must have been employed by the City for at least twelve months, must have worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of the requested leave, and be employed at a worksite where 50 or more employees are employed by the City within a 75-mile radius. To be eligible for WFMLA, you must have been employed for more than 52 consecutive weeks and have been paid for at least 1,000 hours in the 52 weeks immediately preceding the request for leave. The kind and amount of leave available to you under this Policy, as well as your rights during leave, depend on whether you meet the above requirements.

TYPES OF LEAVE AVAILABLE: The City provides family and medical leave for eligible employees under the following circumstances:

- (1) For the birth of the eligible employee's child and to care for a newborn child;
- (2) For placement with the eligible employee of a child for adoption or foster care;
- (3) To care for an eligible employee's spouse, child or parent with a serious health condition. Under state and federal law, the term "child" generally includes a legal ward or a biological, adopted, foster or stepchild who is under the age of 18. For leaves governed exclusively by the FMLA, the term also includes a "child" for whom you have assumed day-to-day parental responsibilities of care and financial support and who is either under 18 or incapable of self-care because of a physical or mental disability. For leaves governed exclusively by the WFMLA, "child" includes a treatment foster child or a "child" 18 years of age or older who cannot care for him or herself due to a serious health condition.

"Parent" includes an employee's spouse's legal guardian only if you are requesting leave under the WFMLA.

"Spouse" includes a qualified domestic partner for leaves governed by the WFMLA. Domestic partnerships must be registered with the county of residence and proof of such registration may be requested prior to approval of leave. Unregistered domestic partners must demonstrate that they are 1) both over age eighteen (18); 2) not in a domestic partnership or marriage with another individual; 3) they share a common residence; 4) they are not related in any way that would prohibit marriage under Wisconsin law; 5) they consider each other to be immediate family members and agree to be responsible for the other's living expense.

- (4) Because of a serious health condition that makes the eligible employee unable to perform any of the essential functions of the employee's job.
- (5) Because of a qualifying exigency resulting from active military service by the employee's spouse, son, daughter, or parent in covered active duty or call to covered active duty in the United States Armed Forces including the National Guard and Reserves
Qualifying exigencies, as defined by Federal regulations, include: 1) short-notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post-deployment activities; and 8) additional activities not encompassed in the other categories, but agreed to by the City and employee. Covered active duty means deployment with the Armed Forces to a foreign country.

- (6) to care for a service member who is the employee's parent, spouse, child or next of kin who, while on active military duty, sustains a serious injury or illness or aggravation of a pre-existing illness or injury while in the line of duty, while on covered active duty in the United States Armed Forces, including the National Guard and Reserves, in the line of duty which renders the service member medically unfit to perform the member's office, grade, rank, or rating

Covered active duty means deployment with the Armed Forces to a foreign country. This leave is also available to care for veterans of the United States Armed Forces, including the National Guard and Reserves, provided the veteran was a service member at any time within the five (5) years prior to the start of the treatment, recuperation or therapy. Leave is available for up to twenty-six (26) weeks in a twelve (12) month period. This type of leave is available for serious injury or illness which results in:

1. inpatient medical treatment, recuperation or therapy;
2. outpatient services at a military treatment facility or assignment to a unit established for the purpose of providing command and control of service members receiving outpatient medical services; or
3. assignment to the temporary disability retired list.

The maximum twenty-six (26) weeks of Federal leave to care for a service member includes, and is not in addition to, all other FMLA leave. In other words, employees may not take more than a total of twenty-six (26) weeks of FMLA leave during a single twelve (12) month period for any qualifying reasons under the FMLA. For instance, if an employee takes the maximum twelve (12) weeks of Federal FMLA leave for his/her own serious health condition, the employee may then only take fourteen (14) weeks of FMLA leave within that same twelve (12) month period to care for a military family member injured in the line of duty.

See the City Administrator to determine whether your request for leave qualifies under one of the above categories.

AMOUNT OF LEAVE AVAILABLE: Under federal law, if you meet the eligibility requirements spelled out in Section 1, you are entitled to a total of twelve workweeks of leave during a 12-month period measured backward from the date an employee uses any FMLA leave. Under this "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months for any of the reasons stated above with the exception of leave to care for an injured service member, which is provided as described in (F) above.

Under state law, if you meet the eligibility requirements spelled out in Section 1, you are entitled to the following leave on a calendar year basis:

- (1) a total of six weeks of leave for the birth of your natural child and/or the placement of a child with you for, or as a precondition to, adoption;
- (2) a total of two weeks of leave to care for a covered family member with a serious health condition; and
- (3) a total of two weeks of leave if you cannot perform your employment duties due to a serious health condition, as described in Section 2, above.

The City will treat use of family or medical leave under this Policy as simultaneous use of state and federal leave entitlements whenever permitted by law.

CERTIFICATION BY HEALTH CARE PROVIDER: If leave is requested due to your own serious health condition or the serious health condition of your spouse, child or parent, the City requires that the leave request be supported by certification issued by your health care provider or the health care provider of your spouse,

child or parent. The City reserves the right to certify all information permitted by law. A copy of the Medical Certification Form (Exhibit B) can be obtained from the City Administrator's office.

Employees must provide the fully completed certification to the City Administrator within fifteen (15) calendar days of the date that the certification is provided to the employee, unless it is not practicable to do so despite the employee's diligent, good faith efforts. If it is not practicable to return the certification within fifteen (15) calendar days, it must be returned to the City Administrator as soon as practicable.

If the employee fails to submit the certification, the leave or continuation of leave may be delayed until the certification is submitted. Further, any absence prior to the date the certification is furnished may be considered unauthorized. An employee who is absent without authorization may be disciplined, up to and including termination.

The City Administrator will give an employee a reasonable opportunity to cure any deficiency in a certification, but not fewer than seven (7) calendar days. It is the responsibility of the employee or family member with a serious health condition to use a healthcare provider who will complete and furnish an accurate certification in a timely manner.

A member of the administration, other than the employee's direct supervisor, may contact the healthcare provider to obtain answers to unanswered questions on the form or to clarify illegible answers and to authenticate the certification.

If the City Administrator doubts the validity of a certification, it may require, at the City's expense that the employee obtain a second opinion from a City-designated provider, not regularly employed by the City. If the opinions of the employee's and the City's healthcare providers differ, a third, final and binding opinion may be obtained. The employee must cooperate in obtaining a second or third opinion including facilitating the transfer of pertinent records to the subsequent healthcare providers.

The City Administrator may request re-certifications on a periodic basis as permitted by law.

DEFINITIONS OF SERIOUS HEALTH CONDITION: In conjunction with the certification provided by a health care provider, the City reserves the right to determine whether an illness, injury, impairment or physical or mental condition constitutes a serious health condition entitling you to family or medical leave under state or federal law.

In general, a "serious health condition" under this policy means an illness, injury, impairment, or physical or mental condition that involves one of the following:

- A. Hospital Care.
Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- B. Absence Plus Treatment.
 - (1) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - (a) Treatment two or more times by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider and occurs within seven (7) days of the first day of incapacity.

* Under the WFMLA, leave may also be available for a serious health condition of less than three (3) consecutive days in duration.

C. Pregnancy.

Any period of incapacity due to pregnancy, or for prenatal care.

D. Chronic Conditions Requiring Treatments.

A chronic condition which:

- (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

E. Permanent/Long-Term Conditions Requiring Supervision.

A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. You or your family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's disease, a severe stroke, or the terminal stages of a disease. The continued existence of such a chronic condition is subject to certification no more than once every six (6) months.

F. Multiple Treatments (Non-Chronic Conditions).

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy) or kidney disease (dialysis).

MANNER IN, WHICH LEAVE, CAN BE TAKEN: Leave available under this Policy may be taken in full, and, under certain circumstances, may also be taken intermittently (e.g., one week at a time) or on a reduced leave schedule (e.g., consecutive hours at a time). See the City Administrator for details.

COMPENSATION DURING LEAVE: Generally, leave taken under this policy is unpaid. For leaves governed by WFMLA, you may, at your option, substitute paid leave which you have earned and accrued for leave taken under this Policy, if available. The City reserves the right to deny substitution as provided by law.

For leaves governed exclusively by the FMLA, you must use the following leaves provided by the City, if available:

- (1) Vacation or personal leave, if available, for any family or medical leave;
- (2) Accrued paid family leave (i.e., paid leave covering the particular circumstances for which the employee is seeking leave), if available, for birth, adoption, or to care for a seriously ill family member; and
- (3) Accrued paid medical or sick leave, if available, to care for a seriously ill family member, or for the employee's own serious health condition.

For leaves governed exclusively by the FMLA, the City reserves the right to require you to use paid leave for leave that would otherwise be unpaid FMLA leave taken under this Policy. However, you may not substitute paid sick leave or paid medical leave for leave taken under this Policy in any situation where the City would not normally provide such paid leave.

Any paid leave substituted for unpaid FMLA leave or WFMLA leave will decrease, in whole or in part, the employee's FMLA and/or WFMLA leave entitlement.

CONTINUATION OF BENEFITS: You will remain eligible for group health insurance benefits under the City's group health plan during leave taken under this Policy under the same conditions, as coverage would have been provided if you had been actively employed during the entire leave. However, you have the option of choosing not to retain such coverage during family or medical leave if you prefer.

During leave taken under this Policy, the City will continue to pay any portion of group health insurance premiums for coverage that it was responsible for paying immediately prior to the leave as required by law. You are responsible for paying your portion of health insurance premiums regardless of whether your family and medical leave is paid or unpaid. It is your responsibility to make arrangements with the City Administrator for making premium payments for group health insurance during leaves.

To the extent permitted by law, the City reserves the right to require you to place up to eight weeks' health insurance premiums in escrow prior to leave, or to discontinue coverage if such premiums are received more than thirty days late.

Your entitlement to benefits other than group health benefits during a period of family or medical leave is determined by the City's policy regarding provision of such benefits when an employee is on other forms of leave.

If an employee fails to return to work or fails to remain at work for a period provided under the law, the City may recover its portion of the premiums paid for medical benefit coverage during the leave, unless the reason for the employee's failure to return to work is due to the continuation of the serious health condition or the onset of a new serious health condition.

ACCRUAL OF BENEFITS: You will not continue to accrue seniority or any other employment benefit during leave taken under this Policy, except that such benefits shall accrue if you elect to use other leaves provided by the City pursuant to Continuation of Benefits above, and if such benefits would normally accrue during such leave. The use of leave under this policy will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

EMPLOYMENT RESTORATION: A employee will generally be reinstated to the same position s/he held when leave began or a position with equivalent pay, benefits, and other terms and conditions of employment, if such position remains available, and the employee possesses the ability to perform the essential functions of the job satisfactorily, with or without any accommodation that may be required by the Americans With Disabilities Act of 1990. The employee, however, has no greater right to reinstatement or benefits than if s/he had been actively employed during the leave. Further, if the employee gives unequivocal notice of intent not to return to work, s/he is not entitled to be reinstated.

A employee who exceeds his/her FMLA/WFMLA leave, but remains off work under a non-FMLA/WFMLA leave policy, is not entitled to reinstatement to the same or a similar position under the FMLA/WFMLA.

An employee who is able to return to work prior to the expiration of leave must notify his/her supervisor immediately. Upon such notice, the City Administrator will promptly reinstate the employee to active employment, provided s/he has the present skill and ability to perform the essential functions of his/her job satisfactorily with or without accommodation. However, the reinstatement need not occur until the third business day following the employee's notification of his/her ability to return to work.

REQUIRED ADVANCE NOTICE: You must provide the City with notice in a reasonable and practicable manner before leave taken under this Policy is to begin, if the need for leave is foreseeable, e.g., an expected birth, placement or adoption or foster care, or planned medical treatment for your own serious health condition or that of a family member. When requesting partial or intermittent leave in connection with child birth or adoption, you must provide at least as much notice as required for taking other non-emergency or non-medical leave, as well as a definite schedule for the leave. Where advance notice is not practicable due to uncertainty

as to when leave will be required to begin, a change in circumstances, or medical emergency, notice must be given as soon as practicable. Employees must provide an explanation as to why proper advance notice was not provided in such cases and may be required to verify the explanation. Notice that was not provided timely without reasonable explanation may result in the denial of the leave request.

You must provide a written request for leave, the reasons for the requested leave, and the anticipated beginning date and duration of the leave by submitting a completed FMLA leave request Form (Exhibit A). This form can be obtained from the City Administrator's office or the U.S. Department of Labor.

When planning medical treatment, you should consult with the City and make a reasonable effort to schedule the leave so as not to disrupt unduly the City's operations, subject to the approval of your health care provider. You are ordinarily expected to consult with the City in order to work out a treatment schedule, which best suits, your needs, as well as the City's.

If an employee must take more leave than originally anticipated, s/he must notify the City Administrator within two (2) business days of learning of the circumstances necessitating the extension.

DESIGNATION OF LEAVE

In all circumstances, it is the responsibility of the City Administrator to designate leave, whether paid or unpaid, as FMLA leave and to give the employee notice of the designation and his/her rights and responsibilities under this policy.

The City Administrator will give the employee the notice on each occasion that s/he notifies his/her supervisor of the need for leave that may be FMLA-qualifying, including, but not limited to, when the employee another type of leave for an FMLA-qualifying reason. In the case of intermittent or reduced schedule leave, only one notice will be provided unless the circumstances regarding the leave have changed.

Absent extenuating circumstances, the City Administrator will, at a minimum, verbally notify the employee whether leave is being designated as FMLA leave within two business days of the date the employee provides information to the City Administrator sufficient to enable him/her to determine that the leave is being taken for an FMLA-qualifying reason.

The City Administrator will confirm the verbal notice with the written notice as soon as feasible, but no later than the first payday following the verbal notice (unless the payday is less than one (1) week after the verbal notice, in which case the notice must be no later than the subsequent payday).

MANNER IN WHICH LEAVE MAY BE TAKEN. Leave available under this policy may be taken in full and, under certain circumstances, may also be taken intermittently or on a reduced leave schedule. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is leave that reduces the usual number of working hours per day or week. The employee must consult with his/her supervisor and make a reasonable effort to schedule intermittent or reduced schedule leave so it does not unduly disrupt the City's operations.

Intermittent or reduced schedule leave due to a serious health condition must be medically necessary. Medically necessary means there must be a medical need for the leave and the leave can be best accommodated through an intermittent or reduced leave schedule, as certified by the healthcare provider in the Certification.

FITNESS FOR DUTY CERTIFICATION If leave is due to the employee's serious health condition, s/he must present certification to return to work to his/her supervisor upon returning to work. The employee's principal attending physician must complete the certification. The certification must indicate that the employee has been released to return to work. It must also specify any physical or other limitation on the employee's ability to perform regular or other duties and the duration of the limitations. No certification will

be required when the employee returns from intermittent leave, except as otherwise permitted or required by the Americans With Disabilities Act of 1990.

The certification will be limited to the particular health condition that caused the employee's need for leave, except as otherwise permitted by the Americans With Disabilities Act of 1990. If the employee is an "individual with a disability" within the meaning of the ADA, any fitness-for-duty physical examination or inquiry by the City will be job related and consistent with business necessity.

Reinstatement may be delayed until the employee submits the certification. Under such circumstances, if the employee does not promptly provide a certification or qualify for another leave of absence, s/he may be disciplined, up to and including termination.

With the employee's permission, the City's healthcare provider may contact the employee's healthcare provider to clarify and authenticate the certification, but no additional information may be requested or required, and the employee's return to work may not be delayed while the contact is being made. No second or third fitness for duty certification may be required.

CONFIDENTIALITY All medical information relating to leave, whether written or verbal, shall be kept confidential to the maximum extent possible. All medical documents including, but not limited to, medical certifications and return-to-work statements must be maintained in confidential, secure files separate from personnel files.

NO DISCRIMINATION Leave under this policy will not be used as a negative factor in employment actions, such as hiring, promotions, disciplinary actions or under attendance policies.

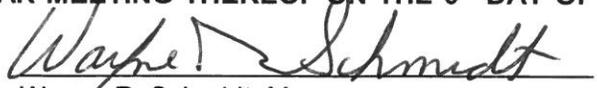
MISCELLANEOUS ADMINISTRATION The City Administrator may designate another administrator to perform his/her duties under this policy.

An employee who fraudulently obtains leave under this policy is not protected by this policy's job restoration or maintenance of health benefits provisions.

The Common Council reserves the right to extend leave beyond FMLA entitlements at its discretion.

A copy of the policy will be provided to each employee."

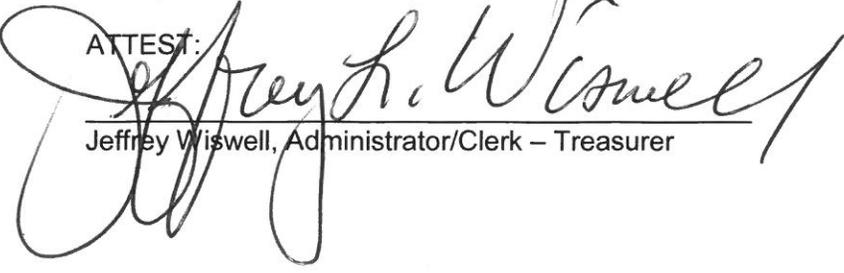
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 6th DAY OF JUNE, 2016.


Wayne R. Schmidt, Mayor

CERTIFICATION

I, Jeffrey L. Wiswell, Sr. Clerk of the City of Algoma, Wisconsin, do hereby certify that the foregoing is a correct copy of a Resolution introduced at a regular meeting of the COMMON COUNCIL on the 6th day of June, 2016, adopted by a majority vote, and recorded in the minutes of said meeting.

ATTEST:


Jeffrey Wiswell, Administrator/Clerk – Treasurer