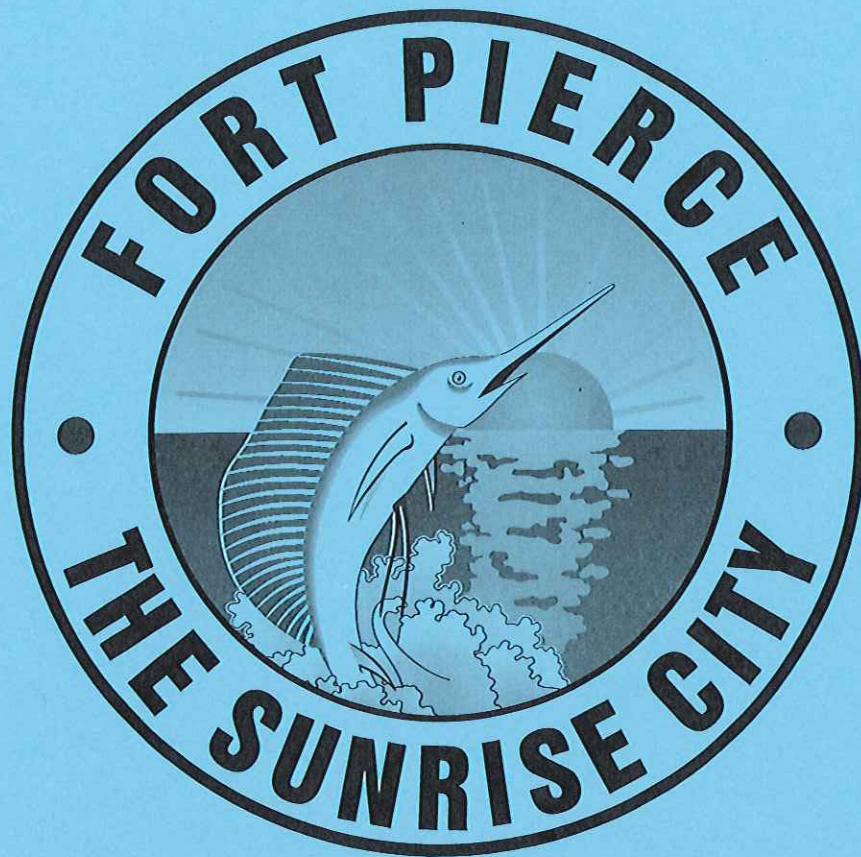


# **City of Fort Pierce**



## **Domestic Violence Leave Policy**

**Administrative Service/HR Department**

**February 12, 2008**

**CITY OF FORT PIERCE**

**DOMESTIC VIOLENCE LEAVE &  
METHODS TO EFFECTIVELY CONTROL  
EXCESSIVE EMPLOYEE ABSENTEEISM:**

**PLEASE READ CAREFULLY**

I HAVE READ AND UNDERSTAND the Domestic Violence Leave Policy. I agree to be bound by the foregoing and to comply with it as a policy of the City of Fort Pierce.

---

Employee Signature

---

Date

**PLEASE PRINT:**

---

Name

---

Department

# Domestic Violence Leave & Methods to Effectively Control Excessive Employee Absenteeism:

February 12, 2008

A new Florida law (Fla. Stat., §741.313) *requires* Florida employers who have 50 or more employees to permit an employee to take up to 3 working days of leave from work in any 12-month period if the employee (or a family or household member) is the victim of domestic violence. The new Florida law took effect July 1, 2007.

The City has issued a Domestic Violence Leave policy outlining the rights and responsibilities associated with this type of leave.

## I. Key aspects of this new Domestic Violence leave

- A. Employed by the City for *3 or more months*
- B. Up to *3 working days* of leave in any 12-month period
- C. If the employee *or a family or household member* of an employee is the victim of domestic violence.

### A. What does it mean to be a “victim of domestic violence?”

1. Domestic violence includes: assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.
2. Also other situations where no physical contact took place will still qualify to trigger domestic violence leave. For example, the statutory definition for domestic violence includes actions which may be accomplished without even touching the victim, such as: assault (threats to injure or kill), stalking, false imprisonment, or any crime that results in physical injury.
3. May include domestic violence between homosexuals.
4. An employee can be eligible for domestic violence leave if they were not a victim (when a family or household member is a victim).

## II. Buzzwords that may trigger Domestic Violence Leave

If an employee expresses a desire to take leave from work to:

1. see a **doctor** to address physical or psychological injuries resulting from the act of domestic violence; or
2. see a **counselor** to address psychological injuries (depression, anxiety, insomnia) resulting from the act of domestic violence; or
3. Seek an **injunction** for protection against domestic violence repeat violence, dating violence, or sexual violence; or
4. Get help from a domestic violence **shelter** or a rape **crisis center** as a result of the act of domestic violence; or
5. Make the employee's home secure from the perpetrator of the domestic violence (**change the locks, get alarm system installed**); or
6. Seek new housing to escape the perpetrator of the domestic violence (**moving back in with mother/sister, etc.**); or
7. Seek legal assistance (**talk to a lawyer**) in addressing issues arising from the act of domestic violence; or
8. Attend and prepare for court-related proceedings (**get ready for and/or attend deposition, hearing, Temporary Restraining Order (TRO), trial, etc.**) arising from the act of domestic violence.

## III. Probably overlap with other leaves (such as FMLA)

- A. FMLA (while not specifically addressing domestic violence), requires covered employers to grant up to 12 weeks of unpaid leave during any 12-month period for specified family and medical needs of an eligible employee (been employed with the City for at least 12 months, and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave).

## B. Domestic Violence Leave Concurrent with FMLA Leave

- If the incident of domestic violence also qualifies as a “serious health condition” under the FMLA, the 3 days of domestic violence leave run concurrently with the FMLA leave
- FMLA defines “Serious health condition” as 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. Leave is Without Pay

- A. Employees must first exhaust all vacation leave and sick leave that is available to the employee.
  - 1. Then the 3 days of domestic violence leave will be unpaid.
  - 2. Be careful to not accidentally waive this requirement when a domestic violence leave request is made for the first time, because allowing an employee to take the domestic violence leave without requiring the employee to first exhaust all other leave would arguably create precedent.

## V. Notice

- 1. City policy requires 24 hours advance notice if not imminent danger.
- 2. If you (as a supervisor) are informed that an employee or a family or household member of an employee is in *imminent* danger, the documentation may be submitted after the leave is taken, but should be submitted within 3 work days from the employee's return to the workplace.

## VI. Confidentiality

- 1. Public employers in Florida must keep confidential personal identifying information that is contained in records documenting an act of domestic violence submitted by an employee.

2. However, the new law specifically states that two types of documents are only temporarily confidential:

- a) a written request for domestic violence leave submitted by a public employee; and
- b) anytime sheet reflecting such a request.

These two types of records are only confidential and exempt from public records disclosures until 1 year after the leave has been taken.

Given the nature of this leave, any and all documentation used in the request or substantiation of the leave must be routed directly to Human Resources. *Do not retain a copy of any supporting documentation in your department.*

## **VII. No Coercion/discrimination or retaliation for employee seeking to take Domestic Violence leave**

A. You must not discharge, demote, suspend, retaliate, or in any other manner discriminate against an employee for exercising his or her rights under the domestic violence leave policy.

B. An employee has no greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave under domestic violence leave policy. The domestic violence leave policy does not limit the City's right to discipline or terminate any employee for any reason, including, but not limited to, reductions in work force or termination for cause or for no reason at all, other than exercising his or her rights under the domestic violence leave policy.

## **VII. Leave May be Taken in Increments**

- A. Employees may take a full work day or a portion of a work day off (example 4 hours).
- B. Taking any portion of a day off will be counted as one of the 3 days to which an employee is entitled.

**IX. No Accrual**

A. Domestic Violence Leave is not accrued so it is a maximum of 3 days per year.

**X. Additional Resources**

A. In addition to domestic violence leave, EAP can be option for employee assistance

**XI. Remedies**

1. a civil lawsuit for damages and/or equitable relief (can claim lost wages and benefits and may be entitled to reinstatement).

# Absenteeism in General:

- I. Crucial that supervisors begin turning in leave paperwork ASAP
  - A. Particularly paperwork related to FMLA leave
    - delays can be caused as a result of supervisors creating lag time rather than immediately forwarding paperwork
    - HR sometimes only hears about leave for the first time when the employee shows back up
    - HR may not receive paperwork for 2 weeks
    - Especially difficult when it is FMLA-related paperwork
  - B. The City is required by law (reg) to designate leave as FMLA-qualifying, and to give notice of the designation to the employee.
  - C. Failure to designate leave as FMLA may result in employee being entitled to additional 12 weeks of leave!
  - D. In any circumstance where the City does not have sufficient information about the reason for an employee's use of paid leave, the City should inquire further of the employee to ascertain whether the paid leave is potentially FMLA-qualifying. Impossible to do if City unaware of the leave until later.
  - E. Once the employer has acquired knowledge that the leave is being taken for an FMLA required reason, the employer must promptly (**within two business days absent extenuating circumstances**) notify the employee that the paid leave is designated and will be counted as FMLA leave. If there is a dispute between an employer and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employer. Such discussions and the decision must be documented.

- F. The City's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.
- G. Forwarding the paperwork to HR allows HR to ensure consistency *between* the various departments.
- H. Forwarding the paperwork to HR allows HR to ensure consistency *within the same* department
  - a. If only forward certain employees' paperwork, but not all, it can create appearance of unfair treatment

## **VII. Interplay between FMLA, ADA, and Florida's Workers Compensation**

The Family Medical Leave Act ("FMLA"), the Americans with Disabilities Act ("ADA") and Florida's Workers' Compensation statute provide protections, which may include a leave of absence, for employees who have conditions which affect their ability to perform the functions of their job.

### **A. FMLA**

1. The FMLA provides medical leave under certain clearly defined circumstances while acknowledging the legitimate interest of employers in controlling absences and returning employees to work.
2. FMLA protects employees from discipline or discrimination for using family medical leave.
3. FMLA also protects employees from retaliation for using FMLA leave, such as retaliatory unfavorable job assignments upon return to work.
  - a. This means that you may not discipline employees who are absent for a qualifying event under the FMLA.

## **B. ADA**

1. In some limited circumstances, the ADA may require an employer to provide leave in addition to that provided for under the FMLA if it is a reasonable accommodation for a qualified individual with a disability.

## **C. Workers' Comp.**

1. Florida's Workers' Compensation statute provides benefits for workers injured as a result of an on-the-job injury or illness received in the course of their employment.

Each of the statutes also provides restrictions on the employee's ability to take leave which provides the employer with a procedure for controlling employee attendance, managing employee absences and returning employees to work.

Employers should enforce the statutory restrictions placed on an employee's eligibility to take leave.