

Substitution of Paid Leave

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Employers' policies determine if employees will be paid or unpaid and they can require that employees use any and all paid time off **concurrently** with FML.

Under the regulations, all forms of paid leave offered by an employer will be treated the same, regardless of the type of leave substituted. An employee using paid leave concurrently with FML must follow the same rules of the employer's policy that apply to other employees. The statute provides that employees may choose to take annual, personal, sick leave concurrently with FMLA. Employers can require their employees to take paid leave concurrently with FML. If a city does not choose to do this, its employees will then be able to "stack" time, which can result in an undue burden on the employer. (Example: An employee takes five weeks off for surgery and uses all of his available sick leave. The employer does not start FMLA protection until the employee runs out of sick leave, which means the employee will get five weeks sick leave and then the employer will start 12 weeks of FML when the employee is out of sick leave.)

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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